

Information for Clients

After Filing Bankruptcy

Part B

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Chapter 8

Post-Filing Matters

1.0 Collection Efforts After Filing

The Automatic Stay in § 362 generally provides that after a bankruptcy has been filed, creditors may no longer pursue their claims against you, subject to the exceptions explained in Part A of this booklet. Unfortunately, some creditors will not know about your bankruptcy immediately after you file, some creditors may choose to ignore it, and there are some exceptions to the stay. Therefore, you may continue to receive collection notices even after you have filed. If you receive a written collection notice, make a copy and give the copy to the Attorney.

If you provided the Attorney with copies of all legal proceedings against you prior to filing, he will have already sent those creditors and the appropriate Courts notice that they must cease their collection efforts. If you forgot to give this information to the Attorney, or if a creditor proceeds despite the bankruptcy, you will need to know what to do.

1.1 Writ of Garnishments

If your wages are garnished after you have filed bankruptcy, you should immediately obtain a copy of the Writ of Garnishment from your employer. Under Utah law (Rule of Civil Procedure 64D(g)(3)), your employer is required to “serve the writ, answers, notice of exemptions and two copies of the reply form upon” you within 7 days after the Writ was served on your employer. Your employer cannot legally pay the garnishment until payment to you has become due. Unless the Writ says otherwise, your employer must hold the garnished funds for 20 days after your employer is served to give you an opportunity to contest the garnishment (URCP 64D(i)).

When you get the copy of the garnishment, you should give it and the name, phone number and fax number of the head of your payroll department to your Attorney. The Attorney will then be able to contact the payroll department so they will stop the garnishment. The Attorney will also notify the Court that issued the garnishment so they can close their file. If any funds were actually taken, your Attorney will also contact the attorney who requested the garnishment and will request a refund of the money taken. Unfortunately, it can take several weeks to receive a refund of your money that was improperly garnished, if you get it at all. If the garnishing attorney refuses to cooperate, your Attorney can take the matter to the Bankruptcy Court, but this will cost you extra fees.

1.2 Foreclosures

A notice of sale of real property is handled much like a Writ of Garnishment. If you receive a Notice of Foreclosure, you must immediately provide your Attorney with a copy of the notice and any other documents you received. This allows the Attorney to contact the foreclosing agent and inform them of the bankruptcy filing.

1.3 Writ of Execution

Occasionally a Sheriff will appear at your door with a Writ of Execution after you have filed bankruptcy. This document normally allows a creditor to seize your non-exempt personal property to satisfy the creditor’s claim against you. Be polite to the person serving the document. They are just doing their job. Be sure to give them your bankruptcy case number, the date of filing and your Attorney’s name, address and phone number so they can verify the filing.

1.4 Surrender

If you indicated in your bankruptcy papers that it is your intent to surrender certain secured property, you must actually surrender that property within 45 days after the 341 Meeting (§ 521(a)(6)). If the creditor contacts your Attorney for permission to contact you concerning the surrender, the Attorney will grant such a request because it is more efficient for you to arrange a time that is convenient to you to have the creditor come out and pick up the property. If you do not wish to have any contact with the creditor, you must notify the Attorney in writing so that he can make other arrangements.

Some client’s desire to retain the collateral for as long as possible before surrendering it. However, the creditor is entitled to possession of the property as soon as possible because you are not paying for the use of the property. Also, as long as the property is in your possession, you are responsible for any damages to the property. You are also required to keep the collateral insured until the creditor takes possession. Therefore, you will want to deliver the property to the creditor as quickly as possible so you can cancel the insurance and be relieved of any liability.

Motor Vehicle. A motor vehicle can be delivered to the bank that financed the sale, or to the lot where you purchased it. At the place of business give the keys to someone in authority. You may simply indicate that your Attorney has instructed you to return the vehicle. You may want to take a third party to witness the surrender in case there are questions later.

If you cannot deliver the vehicle because it is nonfunctional, that information as well as the location of the vehicle should be provided to the creditor as soon as possible. Once the creditor has been informed, it is their responsibility to take possession of the collateral. It is no longer your responsibility to return the vehicle, although there is nothing wrong with that. Nevertheless, you must keep the vehicle insured for a reasonable time after you told the creditor they can pick up the vehicle.

House. To surrender a house, you should provide the mortgage company or their agent with the key and notice of the date upon which you are abandoning the property. When you move out, you should secure the house and turn off the utilities. If it is winter, you should attempt to secure the house by shutting off any exterior utilities and draining the water lines to prevent freezing. Otherwise, you should leave the utilities on for two weeks after you have left the property before shutting them off. If you do this, you will also have to pay for the utility bills incurred after the date of filing.

Cell Phone. You must not use a cell phone after the date of filing if you do not intend to pay for it. Instead, you should return it to the place of purchase. You should also personally notify the service provider that you have filed bankruptcy and give them your case number, date of filing and Attorney information.

2.0 Legal Pleadings

Do not ignore any legal papers you receive after the filing of your bankruptcy. If you receive a document you do not understand, immediately contact your Attorney. Usually the Attorney will need to see a copy of the document, so you should fax or drop off a copy for the Attorney before you call. Some common documents you may receive are explained below.

2.1 Motion for Relief from the Automatic Stay

If a creditor is not “adequately protected,” if you have no equity in the property, or if you have indicated an intent to surrender, the creditor can move the Court to lift the automatic stay. This means that the creditor is seeking permission from the Court to pursue its rights against the collateral, such as taking possession of your home or vehicle.

If you have stated you intend to surrender the property, or you are behind in your payments, the Court will automatically grant the creditor’s request to lift the stay. Therefore, the Attorney will not object in these circumstances.

If you have indicated your intent to retain the collateral and are current on your payments, you should immediately bring to the Attorney proof that you have made all your payments. Such proof must be canceled checks, your bank statement, or other proof that the creditor received the payments, not that you sent them. The Attorney must have this information so he can object to the motion. Because an objection must be filed within 10 days, you must give your Attorney proof of payment immediately or he cannot help you. You may also be required to attend a hearing and present evidence to the judge to prove you are current. This hearing will also require additional Attorney fees.

2.2 Bankruptcy Adversary Proceedings

Occasionally you will receive a Summons issued by the Bankruptcy Court with a Complaint filed by one of your creditors in the Bankruptcy Court. This is called an adversary proceeding. It is a legal action filed in the Bankruptcy Court, but it is handled separate from the bankruptcy you filed. This action allows debtors and creditors to work out any non-criminal problems related to the debtor’s financial affairs. An adversary proceeding is handled just like regular litigation in the state courts.

The most common adversary proceedings are those filed to determine the dischargeability of a particular debt under § 523. These often involve fraudulently incurred debts, recent consumer purchases over \$500, cash advances over \$750, alimony and child support, and taxes and other priority debts. Another common adversary action is a complaint under § 727 asking the Court to deny your discharge due to fraud because someone thinks you failed to list assets or gave false answers in your bankruptcy papers. If you receive an adversary proceeding, do not ignore it! If you do, the creditor will win and get a judgment against you that will survive the bankruptcy.

Our office does **NOT** handle adversary actions. If you receive one, you will need to contact another attorney to represent you. Some

attorneys who (at least at the time of the writing of this booklet) do handle such actions are:

Anna Drake
215 S. State St. #900
Salt Lake City, UT 84111
(801) 328-9792

Jeffrey W. Shields
170 S. Main St. #1500
Salt Lake City, UT 84101
(801) 521-3200

R. Mont McDowell
50 W. Broadway #1200
Salt Lake City, UT 84101
(801) 359-3500

Jory Trease
#9 Exchange Place #200
Salt Lake City, UT 84111
(801) 596-9400

Mr. Trease also handles violations of the automatic stay.

2.3 State Court Summons and Complaint

If you receive a Summons and Complaint filed in a state court after you file bankruptcy, you should immediately provide a copy of those documents to your Attorney. His office will send a notice of bankruptcy to the State court and the attorney for the creditor. This should end the matter. If you receive any further documents in that case, immediately take copies to your Attorney.

2.4 Motion and Order in Supplemental Proceedings

If there is a judgement against you, you might be served a Motion and Order in Supplement Proceedings. If you have previously given your Attorney copies of all legal actions against you as requested in the questionnaire, this will be unlikely because the Attorney will have already sent notice to the state courts. But if you do receive such papers after you have filed, immediately bring copies to your Attorney. He will notify the state court of your bankruptcy filing. You should not normally have to attend any hearings. Nevertheless, if you have time, you may want to attend the hearings any way because sometimes the state courts misplace documents, even if they have been properly filed.

2.5 Order to Show Cause

Occasionally a state court will schedule an Order to Show Cause or other supplemental proceeding to verify you filed bankruptcy. You should appear at such hearings and provide the court with proof of your bankruptcy filing. Your Attorney's office can furnish you with proof of your filing.

2.6 Criminal Actions

Filing bankruptcy does not protect you against any criminal actions or the State's safety ordinances. If you receive legal documents in such an action, you should immediately hire an attorney who handles such matters.

3.0 Creditor Contacts

Sometimes you will be contacted by a creditor, even after you have filed bankruptcy. These contacts usually consist of phone calls or billing statements.

3.1 Phone Calls

If you receive a phone call from a creditor after you have filed bankruptcy, politely tell them that you have filed a bankruptcy and give them your case number and your Attorney's name and phone number. If the creditor is rude or continues to call, ask for their name, phone number and the name of their supervisor. Give this information to your Attorney immediately.

3.2 Billing Statements

If you receive a bill from a creditor after you have filed bankruptcy, first check your bankruptcy papers to make sure that creditor is listed. If the creditor is not listed, or they are a new collection agency, it would be wise to add them by amendment. This will cost you only \$50, no matter how many creditors you need to add at one time. If the bill is from a creditor who is listed and it has been more than 30 days after you received the 341 Notice, you should immediately bring a copy of the bill to the Attorney's office so the paralegal can send them a follow-up letter.

In some cases you will continue to receive regular billing statements, even after the Attorney contacts them. This commonly occurs if you are surrendering a home on which taxes are owed. You will continue to receive these statements until someone buys the property and pays the taxes.

4.0 Safeguarding Property or Services

After you have filed bankruptcy there are some things you will need to do in order to retain certain services or property.

4.1 Utilities

If you are not current on the utilities you are using and you have listed the utility company in your bankruptcy, you must immediately contact that utility company to give them your case number, filing date and to ask if a new deposit will be required to continue service. By law, a utility company can require you to post a new deposit after you file bankruptcy. This deposit can be as much as 2-3 times your previously largest monthly bill. You will only have 20 days after you file bankruptcy to make this deposit, or your service can be cut off. You must also pay for all services provided after the date of filing and after making the new deposit. If your service is disconnected, you will also have to pay another fee to have it reconnected.

4.2 Vehicle Insurance

State law requires you to insure your vehicles. You cannot reaffirm any vehicle for which you do not have current insurance. If you let your insurance lapse, the creditor can use that fact to have the automatic stay lifted.

4.3 Post-Petition Debts

Any debt you incur after filing is not part of the bankruptcy and must be paid.

Chapter 7. After filing bankruptcy, you should continue to pay your on-going living expenses, such as food, utilities, clothing, shelter, etc. If you want to keep your gym membership or a leased vehicle, you should make all those payments also. You should also pay all secured debts if you want to keep the property. If you fail to make payments for secured items, the creditor can repossess the property. You may also pay any other debt you desire, such as your doctor.

Chapter 13. You may not incur any new debt after you file and before your case is discharged (3-5 years). You are not allowed to make payments on your debts outside of the Chapter 13 Plan, other than your normal living expenses. Doing otherwise can jeopardize your discharge. If you need to purchase something on time, you should wait until your case has been discharged.

4.4 Reaffirmation - Chapter 7 only

Most secured creditors (other than mortgage companies) will send a reaffirmation agreement to your Attorney after you file. The Attorney will then forward that agreement to you. If you want to reaffirm, you should complete any requested information on the form, sign it and return it to the Attorney as soon as possible. If you have questions about the terms of the reaffirmation you should discuss them with the Attorney. When you have approved the terms of the agreement and signed it, the Attorney will also sign it and then forward it to the creditor to be signed and filed with the Court. Reaffirmations must be filed within 30 days of the 341 Meeting.

If you sign a reaffirmation and then change your mind and no longer want to be bound by that agreement, you must notify the Attorney in writing at least 14 days before the bar date (the last day to file complaints as set forth on the 341 Notice), or 60 days after the reaffirmation was filed, whichever date is later. After that date you cannot rescind the reaffirmation.

Many credit unions require you to sign an agreement pledging all collateral they may have for all debts you have with their institution. This is called cross-collateralization. This means that if you want to reaffirm on any debt with that creditor, you will be required to reaffirm on all debts you may have with them, including debts you thought were unsecured. In many cases this will be unwise and you will want to surrender all the collateral.

4.5 Redemption - Chapter 7 only

If you want to keep collateral that is worth far less than the amount you owe, it may be possible to redeem it rather than reaffirm the debt. The redemption amount is the fair market value of the property. Some creditors will allow you to pay the redemption amount in installments. Other companies will require you to pay in a single lump sum (§722). Voluntary redemptions are signed and filed with the Court just like reaffirmations.

5.0 Amendments

Many Clients often realize after they have filed bankruptcy that they have left some creditors off their schedules. By law, all creditors are entitled to notice of your bankruptcy at least 30 days prior to the bar date. If you discover creditors that need to be added, you should fill out the Amendment Sheet we sent you with the 341 letter and bring it with \$50 *cash* to our office at least 45 days prior to the bar date. If you do not supply complete information, the Attorney cannot prepare the amendment.

6.0 Sale or Disposition of Property

After you have filed bankruptcy, all of your assets become part of something the Court calls a “bankruptcy estate.” This means that no one, not even you, can dispose of your property prior to your discharge without the Court’s permission. This includes, vehicles, houses, tax refunds, etc.

6.1 Sale or Disposition of Property in Chapter 7

6.10 Motor Vehicles

There are three situations in which a motor vehicle may be sold after you file bankruptcy: (1) Sometimes a creditor may repossess the vehicle and then sell it. They can do this only after the Court grants their Motion for Relief from the Automatic Stay, or they get the Trustee to abandon the property. Any remaining debt on the vehicle is discharged by the bankruptcy, so you will owe them nothing; (2) A buyer may contact you about buying the vehicle. In most cases it is best simply to put them in contact with the financial institution. Then the two of them can make whatever arrangements are appropriate. Do not waste your time acting as an agent in the sale; (3) The Trustee may decide to sell the vehicle and give the proceeds to your creditors. You will be required to deliver the vehicle to the Trustee. Then you will have no further obligation.

6.11 House

The disposition of a house is essentially the same as for a vehicle. If a creditor wants the house back, they will file a Motion for Relief from the Automatic Stay. When the motion is granted, the creditor may begin normal foreclosure proceedings. Foreclosure is necessary so they can clear the title to the property. The entire process averages 3-6 months.

Sometimes a creditor will ask you to sign a Deed in Lieu of Foreclosure. This means they want you to sign a Quit Claim Deed that gives them immediate title to the property so they can avoid the time and expense of foreclosure. If you are requested to sign a Deed in Lieu of Foreclosure, you should bring a copy of the document to the Attorney to review. While most deeds in lieu are just fine, occasionally someone puts additional restrictions in the deed that will waive the bankruptcy and make you liable for the deficiency.

If anyone approaches you with other possible dispositions of your house, such as a short sale, always review the matter with your Attorney before you sign anything.

6.12 Tax Refunds

Any tax refunds to which you are entitled but have not received prior to the filing, or which may still be in your bank account on the date of filing, are part of your bankruptcy estate and belong to the Court. You should not spend these funds without the express written permission of the Trustee.

If you receive a tax refund after the date of filing, you should immediately notify your Attorney so he can provide that information to the Trustee. When the Trustee requests the tax refund, you must immediately provide the refund check to the Attorney (or a certified check for the exact amount of the taxes made out to the Chapter 7 Trustee). Failure to do so may result in your case being dismissed or your discharge being revoked.

6.13 Other Assets

The Trustee has the right to take and dispose of any non-exempt assets in which you have a legal interest on the date of filing. By law you are expressly prohibited from selling or otherwise disposing of any of your property during the course of the bankruptcy without Court permission. If the Trustee requests that you turn over property, you must do so immediately. Failure to cooperate with the Trustee can result in your case being dismissed or your discharge being revoked.

6.2 Sale or Disposition of Property in Chapter 13

As part of your Chapter 13 Plan you may propose the sale of assets. However, once a buyer has been found, the Court must approve the transaction, including any sales commissions. As a general rule, all of the proceeds must be provided to the Trustee for distribution to creditors. There are some exceptions to this general rule. Post-confirmation sales require not only permission to sell, but modification of any existing Plan. This will require additional attorney's fees.

7.0 Notice of Hearing

Within 2 weeks after the day your case was filed, the Court will schedule a hearing and send out a notice of your meeting of creditors. This is also called a 341 Notice. These notices are sent to you, your creditors and your Attorney.

The Court will not change the date of your hearing. You must appear at the time and date scheduled, or your case will be dismissed. If you are married and have filed jointly, the failure of one spouse to appear will result in their part of the case being dismissed. The case for the other spouse can still go forward.

If you know you cannot appear at the hearing for medical reasons, you should immediately provide the Attorney with a signed statement from your health care provider indicating that you are not able to attend the hearing for sound medical reasons. In some limited cases, the Attorney can use this to persuade the Court to reschedule the hearing. Other reasons for missing the hearing, such as the unwillingness of your employer to give you time off or that you will be out of town, are not acceptable to the Court.

8.0 New Address or Phone Number

If your address changes after the date of filing, it will be necessary for your Attorney to file a Notice of Change of Address with the Court. Therefore, you should immediately provide any new address or phone number in writing to your Attorney. If you do not notify your Attorney of any change of address, you may not receive an important notice and your case may be dismissed. If the Attorney cannot reach you by phone, he cannot properly complete your case.

9.0 Legal Questions and Advise

Although the Attorney's staff can help you with most matters, they are not allowed to give any legal advise. Anything requiring a legal opinion must be handled by the Attorney. The Attorney's staff CANNOT: (1) accept someone as a Client, (2) set fees, (3) give direct legal advise, (4) negotiate legal matters on your behalf, or (5) represent you in Court. Other than these matters, a legal assistant can do almost anything else the Attorney can do.

10.0 Mandatory Financial Education Class (Step 11).

Under 11 U.S.C. §727(a)(11) and §111, after you have filed your bankruptcy and before the Court will grant you a discharge, you must complete an instructional course concerning personal financial management. This class can be done in exactly the same manner in which you did the mandatory briefing. It is suggested that you complete this class before the Meeting of Creditors, even though you have up to 45 days to complete the class. After you have completed the financial education class, the agency will send you a certificate that you must give to your Attorney so it can be filed with the Court. If you take the class before the Meeting of Creditors, you can give the certificate of completion to the Attorney at the 341 meeting. **If you fail to provide the Court with proof that you have completed this class, the Court will NOT grant you a discharge and you will still owe all the debts you owed before you filed.**

Chapter 9 The Meeting of Creditors (341 Hearing) Steps 12-13

Local Court rules require that both the Attorney and the Client attend the Meeting of Creditors. Failure of either to attend the hearing will result in the dismissal of the case. This meeting, often called a 341 Hearing by attorneys, provides the Trustee and your creditors an opportunity to ask you questions to obtain clarification regarding your bankruptcy estate. The 341 Meeting for Chapter 7

is discussed in section 1.0 below. The Chapter 13 341 Meeting is discussed in section 2.0.

1.0 341 Meeting in Chapter 7

The Trustee is an experienced attorney appointed by the Court to manage the bankruptcy estate for the Court. All estates must have a Trustee. The Chapter 7 Trustee usually has his own separate legal practice in addition to serving as a Trustee. The Trustee is paid for his services relative to your estate out of a portion of your filing fee and a percentage of any assets from your estate that are used to pay your creditors.

1.10 Preparation for the Hearing

If you do not yet have a copy of your filed papers, you can pick up a paper copy at the office, or we can email you a copy at your request.

Adequate preparation for the Meeting of Creditors can mean the difference between a swift and easy hearing lasting only 3-4 minutes and a protracted, embarrassing hearing for both you and the Attorney. Proper preparation of the original bankruptcy papers is a good start, but there is more to be done.

After the Court schedules your hearing, the Attorney will send you a letter reminding you of the date and time of your hearing and setting forth certain documents you must bring to the hearing. Failure to have these documents with you can result in a difficult hearing and the possible dismissal of your case. These documents include:

- Driver's License and Social Security card
- Copies of your monthly bank statements including the date of filing
- Your most recently received pay stub
- The DSO information sheet filled out and signed

Enclosed with the Attorney's 341 letter you will find a document called "Bankruptcy Information Sheet." If you do not receive this information sheet, you should immediately contact the Attorney so you can get one. One of the Trustee's first questions at the hearing will be whether you have read and understood this information. The Trustee will not hold your hearing if you have not read this sheet, so be sure to read it before you come to the hearing.

1.11 The Trustee's Interests

After he is appointed, the Trustee will examine the papers you filed with the Court. The Trustee is most interested in the schedule of assets, any voluntary transfers or sales you have made in the last year, payments you made exceeding \$600 on any debt in the last 3 months, the status of your secured debts, your exemptions and any unusual debts. After examining your schedules, the Trustee will typically note any questions he has for the 341 hearing on a form. He will refer to this form during the hearing so he will remember his questions.

1.12 The Hearing

When you arrive for the hearing, you should check in with your Attorney. He may have final questions for you or documents for you to sign, such as a reaffirmation agreement or an amendment. You should have both your identification and social security number card in your hands.

There are usually 9-12 debtors scheduled for the same hour. They, their attorneys and any creditors present will all met together in the same room. The Trustee sits at a table in front of the room and directs the meeting. Near the Trustee there will also be some tables and chairs for you, your Attorney and any creditors who appear.

The Trustee will begin the hearing by making a short 5-7 minute statement. This statement will include information about how the hearing will be conducted and Court deadlines and procedures as well as an encouragement to cooperate with any requests made by the Trustee.

After this introduction, the cases will be called one at a time. When your name is called, you should move to the front. The Trustee will put you under oath to tell the truth. You can then take the seat provided for debtors. Your Attorney will sit next to you. You should then hand your identification documents to the Trustee. He will then ask you some questions.

Listen carefully to all questions before answering. Keep your answers short and truthful. The Trustee is not interested in your personal feelings. He just wants to learn the facts as quickly as possible. All your answers should be in an audible voice because the Trustee is recording the hearing. Do not just shake your head.

If you do not understand a question, do not guess. Either indicate that you did not understand, or turn to your Attorney for clarification.

The Trustee may ask any of the following questions:

- State your name, address, phone number and social security number.
- Did you review the petition, statement and schedules filed with the Court?
- Did you read these documents before signing them?
- Did you sign these documents before they were signed?
- Are you personally familiar with the information in your papers?
- Is this information true, accurate and complete?
- Are there any corrections or additions you need to make at this time?
- Have there been any changes to your circumstances since the filing date?
- Have you read and understand the Bankruptcy Information Sheet?
- Did you list all your debts and all your assets on the papers you filed?
- Have you filed a bankruptcy prior to this one?
 - If so, when, what chapter, where, were you granted a discharge?
- Do you currently own any real estate?
 - If so, when did you buy, for how much, what is it worth today?
 - How did you arrive at that value?
- Have you ever owned any other real property (house or land)?
- What is the value of your car? Do you own any other vehicles?
- Were you employed on the date of filing?
- Have you filed all your tax returns?
- Do you have a 401(k) or other retirement plan?
- Have you ever run a business?

When the Trustee has asked all his questions, he will tell you that you are dismissed. At that point, you are free to leave. **Do not ask your Attorney any questions or say anything else out loud until you and the Attorney have both completely left the hearing room.**

1.13 Creditor Questions

The Trustee's last question before he says you are dismissed is almost always: "Are there any creditors with questions?" If there are, they will come forward and ask their questions. This does not happen very often. The only creditor who appears on a regular basis is RC Willey. It is good that they come because they always bring the reaffirmation agreement and you can get that signed right there if they are one of your creditors.

Occasionally, another creditor will appear. If that should happen, just answer their questions calmly and truthfully. They are not allowed to ask abusive or irrelevant questions. Usually they are just looking for some more information for their files, or they mistakenly thought they were required to come. Creditors are not required to come to this hearing, so very few of them ever do. Some secured creditors, like RC Willey, come just to work out the reaffirmation agreement.

Sometimes, but rarely, questions by creditors will prompt the Trustee to ask additional questions. If that happens, just answer those questions to the best of your knowledge. When the Trustee is finished, he will say you are dismissed.

2.0 341 Meeting in Chapter 13

Local Court rules require that both the Attorney and the Client attend the Meeting of Creditors. Failure of either to attend the hearing will result in the dismissal of the case. This meeting, often called a 341 Meeting by attorneys, provides the Trustee and your creditors an opportunity to ask you questions to obtain clarification regarding your bankruptcy estate and your ability to make the monthly Plan payment. Your bankruptcy estate is everything in which you have a legal ownership interest, including your income during the Plan.

The Trustee is an experienced attorney appointed by the Court to manage the bankruptcy case for the Court. There are 2 Chapter 13 Trustees in Utah: Kevin R. Anderson and J. Vincent Cameron. The Trustees are paid for their services by receiving a portion of your filing fee and a percentage of the monthly payments you make to their offices each month.

2.1 Preparation for The Hearing

Adequate preparation for the Meeting of Creditors can mean the difference between a swift and easy hearing lasting only 3-4 minutes and a protracted, embarrassing hearing for both you and the Attorney. Proper preparation of the original bankruptcy papers is a good start, but there is more to be done. After the Court schedules your hearing, the Attorney will send you a 341 letter reminding you of the date and time of your hearing and setting forth certain documents you must bring to the hearing. Failure to have these documents with you can result in a difficult hearing. These documents may be:

- Driver's Licence or other government-issued photo ID
- Proof of Social Security Number
- Your first payment in the form of a cashier's check or money order

Not all these items may apply to your case. If you have any questions, ask your Attorney.

2.2 The Trustee's Interests

After he is appointed, the Trustee will examine the papers you filed with the Court. The Trustee is most interested in the type of debts you have, any unusual debt, your income, whether you have a business, and your budget (Schedules I and J). The Trustee wants to ensure that you can actually make your monthly Plan payments. After examining your schedules the Trustee will typically note on a form any enquiries he wants to make. He will refer to this form during the hearing. In many cases, the Trustee himself will not actually attend the hearing, but will send his representative.

2.3 The Hearing

The Meeting of Creditors is fairly informal. The Judge cannot be there. All the debtors filing Chapter 13, their attorneys and any creditors present will all meet in a large room in Salt Lake City. The Trustee (or his representative) will sit at the head of the table in the front of the room and will conduct the meeting. After making a short statement (or showing a power-point presentation) on how the estate will be administered, the Trustee will call each case in order.

When your case is called, you should move forward and sit in the chairs provided for debtors. Your Attorney will sit next to you. The Trustee will put you under oath to tell the truth and you will present your photo ID, proof of social security number and your first monthly payment. The Trustee cannot accept cash or partial payments. Your payment must be made payable to "The Standing Chapter 13 Trustee, ___[name of your Trustee]___." After you have made your payment the Trustee will ask you some questions about your case. The Trustee will focus on (1) your ability to make the monthly Plan payments, (2) the nature of the debts to be paid in the Plan, and (3) whether the Plan meets the current legal requirements.

When the Trustee has finished, he will ask whether any creditors want to ask questions. Usually 1 or 2 creditors will appear and ask questions. The questions they can ask are severely limited. They may not ask abusive or irrelevant questions. Most often the only creditors who appear just want you to stipulate to the value and interest rates on their debts or have information for the Trustee. Sometimes questions by the creditors will prompt more questions by the Trustee.

When the Trustee and creditors have finished asking questions, the Trustee will hand your Attorney a number of documents. These include payment coupons to put on your future payments, instructions on how to make future payments and instructions about your taxes (if you are delinquent).

When you and the Attorney have been dismissed, you may go out into the foyer or hallway to talk. You may also speak with any creditors who have additional instructions for you. You and your Attorney will discuss the Trustee's Directive so that you will know exactly what you have to do to have your case confirmed.

3.0 Missing the Hearing

If you miss the hearing, your case will be dismissed. If the reason you missed the hearing is adequate, you might persuade the Court not to dismiss your case. This motion will cost extra fees.

Chapter 10

Interim Administration

(Steps 14-15)

1.0 Chapter 7 Meeting of Creditors

Interim administration refers to what happens between the Meeting of Creditors (341 Meeting) and the Discharge. This is the time when creditors may file proofs of claim, property is abandoned or turned over to the Trustee, amendments are made, adversary actions are filed, reaffirmations are signed and filed and surrenders are completed.

1.10 The Trustee's Directive

In about 10% of all Chapter 7 cases, the Trustee will request additional information or copies of documents. These requests will be written into a Trustee's Directive. You will receive a copy of the directive at the 341 Meeting. It is very important that you comply quickly with these requests. Failure to cooperate with the Trustee can result in your case being dismissed and penalties being assessed against you.

1.11 Property Turnover

If you have some property the Trustee thinks should be sold to help pay the claims of your unsecured creditors, he will direct you to take that property to the Court Appraiser, Tom Erkelens, 430 W. 300 N., Salt Lake City, Utah 84103 (801-355-6655) (www.salesandauction.com). Mr. Erkelens will appraise the property and provide the Trustee with a written statement of the value. The Trustee will then make a final determination as to whether the property should be sold or returned to you.

If the Trustee takes any property and sells it and you had any funds in the bank on the date of filing, the Trustee will also request that you turn those funds over to him along with the other property.

1.12 Books and Records

If you have operated a business, have investments, are owed money, are recently divorced, or are anticipating a large tax refund, the Trustee is likely to request any documents you may have in relation to these matters. These documents must be delivered to the Attorney within 10 days after the hearing.

If you have unusually high budget expenses, have made recent large payments to creditors, or recently received a large sum of money that you no longer have, the Trustee will also request copies of your financial records to verify disposition of those funds. In some cases, the Trustee may ask that creditors or other third parties refund the monies they received.

If you have real estate with substantial equity or have recently sold a large item (like a house or car), the Trustee may request copies of all documents relating to that property.

1.13 Tax Refunds

If you file during the period from August through mid-June, the Trustee will often ask whether you are entitled to receive a tax refund. If you are, the Trustee will request that those funds be given to him. If you had any funds in your bank account on the date of filing, he will also ask for those funds. He will then distribute those funds to your creditors. If you fail to turn over any of these funds, the Trustee may ask the Court to deny or revoke your discharge. If your discharge is denied or revoked, you will have no bankruptcy protection and you will not be allowed to file bankruptcy on these debts at any time in the future.

1.2 Trustee Actions

During the interim period the Trustee will either abandon your property, or collect it and make a distribution to your creditors.

1.21 Abandonment

The Trustee will ordinarily abandon property which is burdensome or of inconsequential value to the bankruptcy estate. Abandoned property usually reverts to you. Abandonment does not of itself release the property from the automatic stay. It only releases it from the direct control of the Trustee.

If a creditor wants a certain piece of property, they will request abandonment along with a lift of the automatic stay. Otherwise, the stay automatically terminates upon discharge, dismissal or closure of your case.

1.22 Distribution to Creditors

If the Trustee can obtain sufficient assets from your bankruptcy estate to make a return to your creditors, he will notify the Clerks Office. The Clerk of the Court will then send a notice to each creditor listed in your case and ask them to file a claim. Creditors must file a claim if they want to participate in the distribution. You and your Attorney may not file claims.

Occasionally a creditor will file a proof of claim that is inaccurate or improper. If this occurs, you should immediately notify the Attorney.

1.23 Audits

Under §527(a)(2)(d), the Office of the United States Trustee (OUST) can require an audit of your bankruptcy. Some audits will be done based on a suspicion that there is something wrong with your case. Other audits will be done randomly. If you are asked for an audit, you should cooperate fully with all requests from the OUST.

1.3 Debtor Actions

During the interim period you may need to perform a number of actions.

1.31 Lien Avoidance

This involves the removal of a lien that may exist on some of your property. Section 522(f) provides that you may set aside a non-purchase money security interest in household goods, the tools of your trade, professionally prescribed health aids, and your homestead. If you want the Attorney to file such a motion, you must make that request in writing. There will be additional charges to make these motions.

1.33 Dismissal

Some debtors decide to dismiss their case after it has been filed. The Court usually does not grant these requests if (1) the Trustee objects, or (2) you cannot show how your creditors will receive more money if you are allowed to handle the debts on your own. Trustees seldom object in no asset cases, but if you have substantial assets, the Trustee is almost certain to object.

1.34 Order to Show Cause

If a creditor acts inappropriately, such as violating the automatic stay by garnishing wages or bank accounts and refusing to return the funds, the Attorney can file an action asking the Court to order the return of your property. In some cases the Court may even impose fines and penalties on the creditor. These actions require additional Attorney fees.

1.35 Undelivered Mail

The Court puts the Attorney's office address as the return address on all Notices it sends out. Therefore, if mail cannot be delivered, it is returned to the Attorney. Because all creditors must receive notice, when we receive these returned notices, we double check your file to see if the address is the same one you gave to us. If the address is not the one you gave us, we will resend the notice to the correct address. If it is the same, we will send you a letter asking you to take care of the matter.

1.36 Duty to Update

If you receive any property by inheritance, property settlement or as life insurance proceeds during the 180 days (6 months) after you file, you must update your schedules to disclose that property within 10 days (§541(a)(5), Rule 1007(h)). It is possible for the Trustee to take this property for the benefit of your creditors. Please contact the Attorney immediately if this happens.

2.0 Chapter 13 Meeting of Creditors

Interim administration is defined as what occurs between the confirmation hearing and the obtaining of a discharge. This can last for 3-5 years.

2.1 Confirmation of Chapter 13 Plan

Approximately 75 days after you file Chapter 13 (45 days after the 341 Meeting) there is a hearing to decide whether your Plan meets all the requirements of the law. If it does, it is “confirmed.” If not, it can be dismissed, or the confirmation hearing can be continued to another date.

If you and your Attorney have been able to resolve all the Trustee concerns and the objections of your creditors (if any), your Plan can be confirmed without a formal hearing. This is called confirmation by consent. If your Plan is confirmed by consent, it will not be necessary for you to attend the confirmation hearing.

2.2 Objection to Claims

Even if your creditors do not object to your Plan, they can file claims after your case has been confirmed. Occasionally a creditor will file a proof of claim that is not accurate or is entirely improper. If a fair distribution of your assets is to be made, the claims must be accurate. Erroneous claims can result in higher than necessary Plan payments and may be unfair to other creditors. Your Attorney can often settle these by objecting to such claims. Sometimes it may be advisable to contact the creditor to work out the dispute or even hold a hearing so the Court can settle the dispute.

2.3 Trustee Actions

During the interim administration period the Trustee will continue to administer your estate. You may occasionally hear from him.

2.31 Distribution to Creditors

After your Plan has been confirmed, the Trustee will begin to make monthly distributions of your payments to your creditors.

2.32 Quarterly Reports

The Trustee will send you and your Attorney a quarterly report of the payments you have made and a report of the payments he has made to your creditors.

2.4 Debtor Actions

During the interim administration period there are some issues you may need to address.

2.41 What Do I Do If I Fall Behind in My Chapter 13 Payments?

If you have an unexpected financial set back while you are in a Chapter 13, you should immediately contact your Attorney. Sometimes it is possible to skip a payment (called an abatement), or receive an extension of time in which to make the payment. However, that request must be made immediately or you will lose the right to do so. You can make as many as 3 requests for abatement during the life of your Plan. If you need to make a 4th abatement request, you may need to consider whether you should convert your case to a Chapter 7.

3.0 Conversion

Conversion occurs when a debtor changes their bankruptcy from one chapter to another.

3.1 Conversion of Chapter 7

Conversion occurs when you change from one type of bankruptcy to another. Most often this occurs when debtors change from Chapter 7 to Chapter 13 in order to protect non-disclosed assets from a Trustee who is attempting to take those assets. A Chapter 13 will often allow you to repay your creditors and keep your property. A conversion must be done before the bar date or discharge, whichever is later.

3.2 Conversion of Chapter 13

You can convert your Chapter 13 to a Chapter 7 at any time. If you believe conversion is in your best interest, you should immediately make an appointment with the Attorney to discuss the matter. Conversion is not always the best thing to do and you

should discuss the consequences of such an action with your Attorney.

4.0 File Closing

After the Attorney completes taking care of the claims filed by your creditors, he will send you a letter giving you 2 weeks to obtain any documents you may need out of your file. After that date, your file will be archived and the only documents readily available to you will be those that have been scanned into the Court's PACER system. You can obtain copies of those documents by contacting the Court directly, or through your Attorney's office. There is a charge for downloading these documents from the Court's website.

Chapter 11 Discharge (Step 16)

1.0 Chapter 7 Discharge

Obtaining a discharge is the reason you file bankruptcy. The discharge is the Court order saying that you are not legally required to pay the debts listed in your bankruptcy.

1.1 Availability

A Chapter 7 discharge is available only to individuals, not to corporations. Your discharge can be denied as the result of certain adversary actions. You also cannot have a Chapter 7 discharge if you received a discharge in another Chapter 7 or a Chapter 11 case within the last 8 years, or in a Chapter 13 within 6 years of filing, unless your Plan paid at least 70% to unsecured creditors. If you paid at least 70%, then you can file again at any time. (§727(a)(8) and (9))

Mandatory Financial Education Class. Under 11 U.S.C. §727(a)(11) and §111, after you have filed your bankruptcy and before the Court will grant you a discharge, you must complete an instructional course concerning personal financial management.

1.2 Extent

A discharge in Chapter 7 discharges only those debts which actually arose before the filing of the papers. It does not affect the validity of liens (other than judicial liens) on your property. This means these liens can be collected even after you file bankruptcy, but are limited to taking the property to which the lien applies. A discharge also does not discharge debts exempted from discharge under §523. Among others, these include debts:

- (1) for a tax or a customs duty,
- (2) for money, property, services, obtained by false pretenses, or actual fraud,
- (3) neither listed nor scheduled in your papers,
- (4) for fraud, embezzlement, or larceny;
- (5) to a spouse, former spouse, or child, for alimony to, maintenance for, or support of such spouse or child,
- (6) for willful and malicious injury to another entity or to the property of another entity,
- (7) for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit,
- (8) for an educational benefit overpayment or loan made, insured or guaranteed by a governmental unit,
- (9) for death or personal injury caused by your operation of a motor vehicle if such operation was unlawful because you were intoxicated,
- (10) that was or could have been listed or scheduled in a prior case in which you waived discharge, or were denied a discharge under section §727.

1.3 Revocation

A discharge obtained by fraud can be revoked under §723(d) within 1 year after it was issued if the fraud is not discovered until after the discharge is granted. A discharge may also be revoked if you refuse to obey a lawful order of the Court or to answer a material question of the Trustee.

1.4 Effect

Section 524(a) “operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor.” This injunction also protects your post-bankruptcy property from discharged debt. A violation of this injunction is punishable by the Court. Violations can also be brought before the Court by an Order to Show Cause. Remember that an Order to Show Cause will require additional fees before it can be filed.

It should be noted here again that a creditor’s lien remains attached to your property unless it is avoided during the bankruptcy. This means the creditor can enforce the lien, but only to the extent of the secured property’s value.

1.5 Notice

After the bar date passes, the Court will begin processing your discharge. It takes approximately 1-2 weeks for the Court to put the discharge notice in the mail. A copy of the notice will be sent to you, your creditors and the Attorney.

Sections 522(q)(1) and 727(a)(12) state that a discharge will not be granted to any debtor who owes: (1) a debt from violations of securities laws, (2) fraud in connection with a security, (3) any civil remedy under 18 USC 1964 (racketeering), or (4) serious injury or death to another person in the last 5 years.

2.0 Chapter 13 Discharge

The discharge in a Chapter 13 is granted only after you have made all your Plan payments.

2.1 Availability

A discharge under §1328 is available only to individual debtors. Under §1328(f) the Court will not grant you a discharge in a Chapter 13 if you had a discharge in a Chapter 7 or 11 within 4 years before you filed the Chapter 13, or in another Chapter 13 within 2 years of filing.

2.2 Extent

The discharge in Chapter 13 discharges all debts provided for in the Plan, as well as those debts disallowed under §502, except (1) debts whose repayment period is longer than the Plan length (like home mortgages), (2) alimony and child support, (3) student loans, (4) injury caused while driving under the influence, and (5) criminal restitution and fines.

2.3 Revocation

A discharge obtained by fraud can be revoked under 11 U.S.C. §1328(e) within 1 year of issuance if the fraud is not discovered until after the discharge is granted.

2.4 Notice

After the final Plan payment has been made under your Plan, the Trustee’s office will perform an audit of your case. After the audit has been completed, a notice will be sent to the Court. Approximately 1-2 months after the discharge date set forth in your 341 notice, you will receive your official discharge notice in the mail. Do not ask the Attorney to call the Trustee to speed-up the process. Your Attorney cannot make the process go any faster by calling the Trustee. A copy of the official discharge notice will also be sent to each of your creditors and to your Attorney.

Chapter 12 Post-Discharge Matters

A number of issues typically arise after the discharge is granted. Some of these are discussed below.

1.0 Case Closing

After the Attorney receives a copy of your discharge notice, you will have 2 weeks in which to come to the office and obtain any documents you need from your file. If you need anything from your file after that date, the only documents available to you will be those in the Court's PACER system. You can obtain copies of these documents by contacting the Court directly, or through your Attorney's office. There is a charge for downloading any documents from PACER.

2.0 Amendments

After a discharge has been issued, it is not usually possible to add creditors. In the local case of *In Re Matthew & Debra Cox* (Bnk No. 02-23363), the Utah Bankruptcy Court ruled that a bankruptcy case cannot be reopened for the purpose of adding creditors if no assets were administered. This is based upon *In Re Parker*, 264 B.R. 685 (10th Cir BAP 2001). In the *Parker* case the Tenth Circuit said that unsecured obligations are automatically discharged, even if they are not listed in the bankruptcy, if: (a) no assets were available to be administered, (b) no bar date was set for the filing of creditor claims, and (c) the Trustee made no distribution of assets to creditors.

Under 541(a)(5) and Rule 1007(h), if you receive an inheritance, property settlement in a divorce or life insurance benefits within 180 after the date you filed bankruptcy, you are required to amend your papers to show that property.

3.0 Reaffirmations and Redemptions

After the bar date, it is too late to file a reaffirmation or redemption agreement with the Court. However, this does not prevent a creditor from executing a "new" contract with you under such terms as you both find acceptable. However, most creditors do not understand that they have this ability and will often refuse to enter into such agreements.

4.0 Credit Report Errors

After your bankruptcy has been discharged, your credit report should indicate that all the debts listed in your bankruptcy have been discharged. No one removes any debts from your credit report. Many companies will notify the credit bureaus that you filed bankruptcy or that their debt has been charged off. Unfortunately, not all creditors update their information voluntarily. Therefore, about 2-3 months after you receive your discharge you may want to contact each credit agency for another copy of your credit report. There will be a fee for this. If incorrect information is still in any report, you should contact that agency and follow their in-house procedures for correcting the report. You will be required to provide the credit agency a copy of the bankruptcy schedule listing that particular creditor and a copy of your discharge notice. We do not update or correct credit reports.

5.0 Home or Vehicle Purchase Problems

Most often you will learn of errors on your credit report when you attempt to purchase a motor vehicle or a home and are denied credit because of incorrect information on your credit report. Some financial institutions will still extend you credit regardless of errors on your credit report if you can prove that the particular obligation in question was in fact listed in your bankruptcy and you did receive a discharge. If you have lost or misplaced your documents, your Attorney may be able to obtain copies for you from the Court PACER site. There will be a charge of this service.

6.0 1099 Forms

Occasionally, a creditor discharged in your bankruptcy will send you a 1099 form. By law, if a creditor forgives your debt outside of bankruptcy, the amount of the forgiven debt is taxable income and must be reported on your next federal and state tax returns. However, a debt discharged in bankruptcy is not taxable income, except for federally guaranteed mortgages. If you should receive a 1099 form for a debt other than a federal guaranteed mortgage, just prepare your tax returns as you would normally, but attach a copy of your bankruptcy discharge notice and the schedule listing that particular debt. Do not include the amount on the 1099 form as income on your tax returns.

Getting Answers to Your Questions

If you have any questions concerning your bankruptcy case, you should first look for the answers in this booklet. If you do not find the answer you need in this booklet, please feel free to contact our office at **801-226-2101**. Be sure to ask for Mr. Jensen's paralegal. If your question regards a procedural matter (such as the date of your hearing or whether a reaffirmation has arrived) the paralegal can help. If your question involves legal matters, the paralegal cannot answer that question, but if you provide her with all the information regarding your question, the Attorney will call you back