

SPECIAL ANNOTATED VERSION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA

**RIGHTS AND RESPONSIBILITIES STATEMENT BETWEEN
CHAPTER 13 DEBTORS AND THEIR ATTORNEYS**

Chapter 13 of the Bankruptcy Code gives each debtor (“Debtor”) important rights, such as the right to keep property that could otherwise be lost through repossession, foreclosure or liquidation by a Chapter 7 Trustee. Chapter 13 also places burdens on Debtors, however, such as the burden of making complete and truthful disclosures of their financial situation and prompt payments as required by the Plan. It is important for Debtors who file a Chapter 13 bankruptcy case to understand their rights and responsibilities to the court, the Chapter 13 Trustee and to creditors. Debtors are entitled to expect certain services to be performed by their attorneys, but Debtors also have responsibilities to their attorneys. To assure that Debtors and their attorneys understand their rights and responsibilities in the Chapter 13 process, the judges of the Bankruptcy Court for the Northern District of Georgia have approved this statement of rights and responsibilities of Debtors and their attorneys in Chapter 13 cases that include, but are not limited to the following, as each case’s facts may require more of both Debtor and Debtor’s attorney.

BEFORE THE CASE IS FILED

EACH DEBTOR SHALL:

1. Discuss with the attorney the Debtor’s objectives in filing the case.
2. Timely provide the attorney with full and accurate financial and other information, including, but not limited to:
 - (a) Copies of pay stubs or other evidence of payment received before the date of filing of the petition, as requested by the attorney;¹
 - (b) Copies of all Federal income tax returns (or transcript of the returns) as requested by the attorney.²
3. Inform the attorney of any and all prior bankruptcy cases Debtor has filed.³
4. Provide copies of all bills, notices, statements or communications from creditors, as requested by attorney.⁴

THE ATTORNEY SHALL:

1. Personally counsel Debtor regarding the advisability of filing either a Chapter 13 or a Chapter 7 case, discuss with Debtor the procedures in both Chapters, as well as non-bankruptcy options, and answer Debtor's questions.
2. Personally explain to Debtor the requirement of obtaining a certificate from an approved nonprofit budget and credit counseling agency.⁵
3. Personally explain to Debtor that the attorney is being engaged to represent Debtor on all matters arising in the case, and explain how and when the attorney's fees and the trustee's fees are determined and paid.
4. Personally review with Debtor and obtain Debtor's signature on the completed petition, plan, as well as the Statement of Financial Affairs, Income and Expenses, and other statements as well as the various schedules (the "Schedules"), and all amendments thereto, whether filed with the petition or later. The Schedules may be prepared initially with the help of clerical or paralegal staff of the attorney's office, but personal attention of the attorney is required for the review and signing by Debtor.
5. Timely prepare and file Debtor's petition, plan, Schedules, statement of monthly net income⁶, and any other required pleading.
6. Explain to Debtor how, when and where to make all necessary payments, including both payments that must be made directly to creditors and payments that must be made to the Chapter 13 Trustee, with particular attention to housing, vehicle, and domestic support obligation payments.⁷
7. Advise Debtor of the need to maintain appropriate insurance especially for house and vehicle.
8. Inform Debtor of the need to potentially provide attorney with copies of each Federal income tax return (or transcript of the return) for each tax year ending while the Debtor is in the case.⁸

AFTER THE CASE IS FILED

EACH DEBTOR SHALL:

1. Appear punctually at the meeting of creditors (also called the "341 meeting") with recent proof of income, a photo identification card, and proof of Social Security number. Acceptable forms of proof of identification are: driver's license; government ID, state picture ID; student ID, U.S. passport; military ID; resident alien card. Acceptable forms of proof of Social Security number are: Social Security Card; medical insurance card; pay

stub; W-2 form; IRS form 1099; Social Security Administration Report. Debtor must be present both in time for check-in and when the case is called for the actual examination.

2. Make the required payments to Trustee and to such creditors as are being paid directly, or, if required payments cannot be made, to notify the attorney immediately.
3. Promptly provide attorney, upon their request, evidence of all payments made directly to creditors and Trustee, including amount and date of payment.⁹
4. Notify the attorney immediately of any change in Debtor's address or telephone number.
5. Inform the attorney immediately of any wage garnishments, liens or levies on assets that occur or continue after the filing of the case.
6. Contact the attorney immediately if Debtor loses employment, is "laid off" or furloughed from work or has any significant change in income; experiences any other significant change in financial situation, including serious illness, personal injury, lottery winnings, or an inheritance.
7. Notify the attorney immediately if Debtor is sued or wishes to file a lawsuit, including divorce, matters regarding personal or property injury (including any worker's compensation matters), and any other matter in which Debtor is involved in a lawsuit or legal action outside this court.
8. Inform the attorney immediately if any tax refunds to which Debtor is entitled are seized or not received when due from the IRS or Georgia Department of Revenue.
9. Contact the attorney before buying, refinancing, or contracting to sell real property, and before entering into any loan agreement.
10. Complete an instructional course concerning personal financial management prior to receiving a discharge.¹⁰

THE ATTORNEY SHALL:

1. Advise the Debtor of the requirement to attend the meeting of creditors, and notify or remind Debtor of the date, time and place of the meeting, in such detail as is helpful or necessary to Debtor's appearance.
2. Inform Debtor that Debtor must be punctual and, in the case of a joint filing, that both spouses must appear at the same meeting.
3. Provide competent legal representation for Debtor at the meeting of creditors, appear in time for check-in and the actual examination and, unless excused by Trustee, for the

confirmation hearing.

4. If an attorney not employed by Debtor's attorney's law firm (a "contract" attorney) will be attending Debtor's 341 meeting or any court hearing, personally explain to Debtor in advance the role and identity of the contract attorney, obtain Debtor's written permission for the contract attorney to represent Debtor and provide the contract attorney with the file in sufficient time to review and discuss it with Debtor prior to such representation.
5. Make all reasonable efforts for the individual attorney who met with Debtor to attend the § 341 meeting or any other court hearing. However, if that attorney is unavailable then an attorney will be present on behalf of the Debtor with knowledge of Debtor's case and authority to make any modifications to Debtor's plan deemed necessary.¹¹
6. Timely submit to Trustee properly documented proof of income for each Debtor, including business reports for self-employed debtors, and all required pay advises and tax returns or transcripts.¹²
7. Timely respond to objections to plan confirmation, and where necessary, prepare, file and serve amended Schedules or an amended plan.
8. Timely prepare, file, and serve any necessary annual financial statements¹³, amended statements and Schedules, and any change of address, in accordance with information provided by each Debtor.
9. Monitor all incoming case information (including, but not limited to, Order Confirming Plan, Notice of Intent to Pay Claims, and 6-month status reports) for accuracy and completeness. Contact promptly Trustee or Debtor regarding any discrepancies.
10. Promptly respond to Debtor's questions through the term of the plan.
11. Timely prepare, file and serve necessary modifications to the plan after confirmation, including modifications to suspend, lower, or increase plan payments.
12. Prepare, file and serve necessary motions to buy or sell property and to incur debt.
13. On or before 60 days after the general bar date, certify the attorney has reviewed claims with Debtor, prepared, filed and served objections to improper or invalid claims and filed claims within 30 days after the bar date for creditors who fail to file claims when such failure will adversely affect Debtor's case or its successful completion and discharge or such failure will adversely affect Debtor after case completion and discharge.
14. Timely confer with Debtor and respond to any motion to dismiss the case, such as for payment default, or unfeasibility, and to motions to increase the percentage payment to unsecured creditors.

15. Timely confer with Debtor and respond to motions for relief from stay.
16. Timely prepare, file and serve appropriate motions to avoid liens.
17. Provide any other legal services necessary for the administration of the case.

ENDNOTES

1. Section 521(a)(1)(B)(iv) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the “Act”) provides that the debtor shall file copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition. Additionally, this information would be useful in calculating the debtor’s “current monthly income” as defined in § 101(10A), and the debtor’s “applicable commitment period” as specified in § 1325(b)(4).
2. Section 1308(a) provides that not later than the day before the date on which the meeting of creditors is first scheduled to be held, the debtor shall file with appropriate tax authorities all tax returns for all tax periods ending during the 4 year period ending on the date of the filing of the petition. Also, § 521(e)(2) states that not later than 7 days before the date first set for the first meeting of creditors, the debtor shall provide to the trustee a copy of the Federal income tax return (or transcript) for the most recent tax year ending immediately before the commencement of the case.
3. Some of the most extensive changes in the Act deal with § 362. Section 362(c)(3) provides that the automatic stay terminates on the 30th day after the filing of the case if the debtor had a case pending during the previous year which was dismissed. Section 362(c)(4) states that if a debtor has had two or more cases pending within the previous year which were dismissed, then the automatic stay does not even go into effect. Of course nothing contained herein obviates the need for attorneys to utilize all available methods to ascertain whether their clients have filed cases previously.
4. Substantial changes have been made by the Act pertaining to notice. Section 342(c)(2)(A) specifies how notice may be required to be given by the debtor to a creditor. If, within the 90 days before the commencement of the case, a creditor supplies the debtor in at least two communications sent to the debtor with the current account number of the debtor and the address at which such creditor requests to receive correspondence, then any notice required by this title to be sent by the debtor to such creditor must be sent to such address and shall include such account number.
5. Section 109(h) provides that in order to be a debtor under Title 11, during the 180 day period preceding the date of filing of the petition, the individual must have received from an approved nonprofit budget and credit counseling agency described in § 111(a) an individual or group briefing that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.
6. See § 521(a)(1)(B)(v), which states that in addition to schedules and statement of financial affairs, a debtor must file a statement of the amount of monthly net income, itemized to show how the amount is calculated.

7. "Domestic support obligation" is a defined term under § 101(14A). Pursuant to § 1307(c)(11), failure of a debtor to pay any post-petition domestic support obligation may be the basis for the dismissal or conversion of the case. Section 1325(a)(8) makes the payment of post-petition domestic support obligations a pre-requisite for the confirmation of the plan.
8. See § 521(f) which states, that at the request of any party in interest, a debtor shall file with the Court a copy of each federal income tax return with respect to each tax year ending while the case is pending.
9. Section 1326(a)(1)(C) states that if adequate protection payments are made directly to a creditor, the trustee must be provided with evidence of the payment including the amount and date of payment.
10. Section 1328(g)(1) mandates that the court shall not grant a discharge to a debtor unless the debtor has completed an instructional course concerning personal financial management as described in § 111.
11. It is anticipated that at the meeting of creditors parties will have an opportunity to negotiate for purposes of resolving issues pertaining to the proposed treatment (i.e. value, monthly distribution... e.g.) of creditors under the debtor's plan. The Court expects that counsel for debtors have the authority to negotiate binding arrangements with creditors and the trustee at the meeting of creditors in order to obviate the need for time consuming objections to confirmation to be filed in all instances.
12. See § 521(e)(2)(A)(i) which provides that not later than 7 days before the date first set for the meeting of creditors the debtor shall provide to the trustee a copy of the Federal income tax return (or transcript) for the most recent tax year.
13. Section 521(f)(4) states that at the request of the court, the United States Trustee, or any party in interest, a debtor shall file a statement, under penalty of perjury, of the income and expenditures of the debtor during the most recently concluded tax year and of the monthly income of the debtor, that shows how income, expenditures, and monthly income are calculated.

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