

THE BIG PICTURE: INTRODUCTION TO THE CHAPTER 13 TRUSTEE'S OFFICE FOR NEW EMPLOYEES

Developed by Herbert L. Beskin, Chapter 13 Trustee
Charlottesville, Virginia

- I. Debtors in trouble ...
 - A. Credit card debt (compound interest, etc.)
 - B. Creditor actions
 - 1. Obtaining a judgment
 - 2. Collecting on the judgment:
 - a. Garnishment
 - b. Seizing and sale of assets
 - c. Recording judgment lien against real estate
 - C. Seeking relief:
 - 1. Borrowing money from family or friends
 - 2. Negotiating “deals” with each creditor
 - 3. Debt consolidation services (Consumer Credit Counseling of Virginia)
 - a. For profit
 - b. Non-profit
 - 4. Meeting with a bankruptcy attorney
 - a. What chapter to file (see below)
 - b. Role of “non-exempt property” and exemptions

- D. Filing of a bankruptcy case
 - 1. Electronic filing of necessary papers
 - a. Bankruptcy Court notifies all parties
 - 2. Importance of case number (year- division-chronological)
 - 3. Imposition of the automatic stay

II. Court system

- A. Federal Court structure
 - 1. Circuits, States and Districts
- B. Role of Bankruptcy Courts
- C. Western District of Virginia
 - 1. Divisions and Clerk's Offices (Harrisonburg, Lynchburg, Roanoke)
 - 2. Judges (Connelly; Stone)
 - a. Differences between the Judges and the way they each handle their cases
- D. Role of the United States Trustee system
 - 1. National office
 - 2. Region IV
 - a. Control of budget, hiring of staff in our office
 - b. Trustee's responsibility to make referrals to the UST for fraud, abuse, and criminal matters

III. The Bankruptcy Code

- A. Constitutional background and history of federal bankruptcy law prior to 1978
- B. Enactment of the Code in 1978
 - 1. Nature of a "code"

C. Amended significantly in 2005 (BAP & CPA)

D. Interplay with state law

1. Federal procedure, state substantive law

IV. Three primary kinds of bankruptcy cases

A. Chapter 11

1. Liquidation or reorganization

2. Corporations or wealthy individuals; no debt limits

3. No Trustee usually

B. Chapter 7

1. Liquidation only

2. Trustee assumes control of non-exempt assets

3. Corporations of individual; no debt limits

C. Chapter 13

1. "Standing Trustee"

2. Only individuals with secured debt less than \$1,081,400 and unsecured debt less than 360,475

a. Amounts adjusted every three years

3. Reorganization only

4. 3 – 5 year plan (below median debtors), or 5 year plans (above median debtors)

5. Most common reasons for filing:

a. Stop foreclosure on house, buy significant time to catch up delinquency

b. Pay small percentage of unsecured debts, without interest, and obtain discharge of the unpaid portion

c. Reduce payments and interest rate on secured debts such as cars

- d. Stop repossession of car / recover repossessed car
 - e. Buy time to pay tax debts or child support arrears; no interest on tax debts
 - f. "Cram down" older car, furniture, etc.
 - g. Postpone for 3-5 years large payments on student loans
 - h. Stop collection actions by creditors
 - i. Discharge divorce-related separation agreement obligations
 - j. Discharge older tax obligations
 - k. Resolve disputed claims in more debtor-friendly venue
 - l. Potential hardship discharge of student loans
6. Kinds of debts
- a. Priority debts (taxes; child support; recent wages owed; security deposits; etc.)
 - b. Secured debts: liens and collateral (house mortgage/deed of trust; car loan; furniture loan)
 - c. General unsecured debt (everything else: credit cards; medical bills; personal loans; student loans; etc.)

V. Role of the Chapter 13 Trustee

- A. Code sec. 1302 and 704: the duties of a Chapter 13 Trustee
- B. "Standing Trustee's Pledge of Excellence"
- C. Independent contractor serving at the pleasure of the US Trustee for Region IV
 - 1. NOT a federal employee
 - 2. Trustee's employees are NOT federal employees
- D. Uses independent judgment on cases
- E. "Eyes, ears, and cop on the beat for the Judge"
- F. "Ensuring the integrity of the Chapter 13 bankruptcy system"

- G. Processing and reviewing every case filed
 - 1. Daily downloads from the Court
 - 2. Loading case schedules into BSS/TNG
 - 3. Receiving basic documents from the debtors' attorney
 - 4. Preparing case file for creditors' ("341") meeting
 - 5. Conducting the 341 meeting
 - 6. Filing of the Trustee's Report
 - a. Importance of this document to the case and our duties
- H. Appearing at all hearings involving each case
- I. Making recommendations to the Judge on all matters concerning each case
- J. Moving case along toward confirmation, or seeking dismissal
 - 1. Ensuring plan complies with the Bankruptcy Code
 - 2. Ensuring that plan pays fair amount to GUCs (general unsecured creditors)
 - a. "Chapter 7 test"
 - b. "Disposable income test"
 - (1) Above-median debtors (Form B22C)
 - (2) Below-median debtors
 - c. Importance of notice throughout the Chapter 13 process
 - 3. Continued confirmation hearings

- a. "Six month rule"
- K. Monthly distribution of plan payments to creditors
 - 1. Usually done 3rd to last business day of each month
 - 2. About 2,000 checks and \$2 million each month
 - 3. Single most important task of the Trusteeship
- L. Once plan confirmed, monitoring debtor plan payments
 - 1. Filing motion to dismiss once default reaches 2 months (cumulative)
 - 2. Filing motion to dismiss for no-provision issues
- M. Responding to other post-confirmation motions
 - 1. Motions to lift stay
 - 2. Motions to sell property or incur debt; loan modifications
 - 3. Motions to suspend payments
 - 4. Motions to modify plan
- N. End of case
 - 1. Trustee's notice of completion of plan payments
 - 2. Objection to discharge
 - 3. Rule 3002.1 motions
 - 4. Final Report
- O. Training and education of debtor attorneys and their staffs
 - 1. Office website: cvillech13.net
 - 2. Gold booklet (primarily for debtors)
 - 3. Periodic seminars for attorneys and staff
 - 4. Telephonic advice from Trustee and staff attorney

VI. Petition, schedules, plan, and notices

- A. Petition
- B. Statement of Financial Affairs (“SOFA”)
- C. Attorney disclosure of fees statement
- D. Schedule A (real property)
- E. Schedule B (personal property)
- F. Schedule C (exemptions)
- G. Schedule D (secured debts)
- H. Schedule E (priority debts)
- I. Schedule F (general unsecured debts)
- J. Schedule G (executor contracts)
- K. Schedule H (co-debtors)
- L. Schedule I (income, employment, and family composition)
- M. Schedule J (expenses)

N. Form B22C (for above median debtors)

O. First meeting of creditors notice

1. Case number

2. Date of filing

3. Date of creditors' meeting

4. Date of confirmation hearing

5. Date proofs of claim must be filed by

P. Plan

1. Payments

2. Classification and treatment of debts

VII. Proofs of claim

A. Role in Chapter 13

B. Importance of filing, consequences of not filing

C. Deadlines for filing

VIII. Staff titles and responsibilities

A. Trustee:

B. Staff attorney:

C. Financial officer:

D. Staff supervisor/IT manager/paralegal:

E. Senior Case Administrator:

- F. Case audit administrator:
- G. Court preparation case administrators:
- H. Case closing case administrator:
- I. Claims case administrator:
- J. 341 clerk:
- K. Case opening clerk:
- L. Court prep for valley cases/claims clerk:
- M. Receptionist/clerical:

IX. Miscellaneous Issues

- A. The importance of always remembering that all these documents we process represent the lives of real people in trouble, and that Chapter 13 is often their last hope before going over the financial cliff...
- B. The importance of “*raising your hand when you screw up*”: mistakes are inevitable; our focus is to bring them out into the open and adjust our procedures to minimize them in the future
- C. The importance of confidentiality of debtor information
- D. Phone calls from debtors; debtor complaints
 - 1. Importance of *not giving legal advice*
 - 2. Forward all debtor complaints about their attorney to the Trustee
 - 3. Payoff information: only by specified staff, and only in writing
- E. Dealing with debtor attorneys and their staff

- F. Importance of recording all phone calls and correspondence in case management system: “the truck test”

- G. Communications with the Court’s Clerk’s Office

- H. Our Debtor Education program with TEN

- I. Problems specific to *pro se* debtors

- J. The yearly audit