

## APPENDIX A

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# CHECKLIST OF THINGS TO TELL A POTENTIAL CHAPTER 13 DEBTOR

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- 1. Chapter 13 is bankruptcy.** The debtor should not be mistaken—Chapter 13 is bankruptcy, though it permits repayment of debt over time. It is perceived by the credit community as bankruptcy, though as creditors become more sophisticated and credit reporting agencies more knowledgeable, the effect of a Chapter 13 case on a debtor’s future financial opportunities becomes less like the effect of a Chapter 7 case. Bankruptcy is never fun. It is not something to be proud of, and despite all the good things that can be said about Chapter 13, it is still bankruptcy.
- 2. Chapter 13 takes a long time.**<sup>1</sup> The case will last from three to five years. For the uninformed debtor, Chapter 13 can become quicksand. The debtor without patience will not survive to complete the case.
- 3. Chapter 13 requires discipline.** The debtor must continuously meet obligations to the trustee, the court, and debtor’s counsel. Payments have to be made, contact maintained, budgets lived within, and so forth. Maintaining a Chapter 13 case takes discipline; without it the effort will fail.
- 4. There are alternatives.**<sup>2</sup> Nonbankruptcy solutions and filing under a chapter other than Chapter 13 must be discussed. The debtor may prefer to avoid the stigma of bankruptcy altogether or may prefer the swift relief of a Chapter 7 case.
- 5. Complete information must be revealed.**<sup>3</sup> Chapter 13 is not an opportunity for the debtor to deal with some creditors and not deal with others. The debtor will be required to tell it all—to reveal everyone to whom money is owed, the amounts, and how all debts were incurred. Not all debtors are willing to be so forthcoming. The Chapter 13 case will not work if the debtor is not committed from the beginning to complete honesty.
- 6. Multiple court appearances will be required.** The debtor will have to appear at a meeting of creditors, may have to appear at a confirmation hearing, and may have to attend other hearings on valuation of collateral, relief from the stay, and the like. There are substantial costs in multiple court appearances. In addition to attorneys’ fees, there

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<sup>1</sup>See §§ 112.1 and 112.2.

<sup>2</sup>See § 7.1 for discussion of nonbankruptcy alternatives to Chapter 13.

<sup>3</sup>See §§ 29.1, 30.1, 30.2, 30.3, 30.4, 30.5, 31.1, 31.2, 31.3, 31.4, 31.5, 31.6, 31.7, 31.8, 31.9, 31.10, 32.1, 32.2, 32.3, 32.4, 32.5, 32.6, 32.7, 32.8 and 33.1 for discussion of the information that must be collected prior to filing a Chapter 13 case. See **Appendix H** for a Preinterview Questionnaire. See § 4.1 for discussion of the many warnings to debtors required by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), Pub. L. No. 109-8, 119 Stat. 23 (2005).

are days of missed work, there are days of arranging child care, and there is a psychological toll to court appearances. The debtor should be warned of the additional responsibilities to obtain a pre-filing credit briefing<sup>4</sup> and pre-discharge education.<sup>5</sup>

7. **The debtor must make payments.**<sup>6</sup> Chapter 13 is not free. The debtor pays for everything—attorneys’ fees, trustee’s fees, payments to creditors, interest, and so forth. Payments into the plan will be required. Debtors should be warned that payments will be deducted from their paycheck—while not a garnishment, it may feel like a garnishment, and that discomfort will last the life of the plan. Payments must be made even if not automatically deducted from the debtor’s paycheck. The debtor is responsible for seeing that the trustee receives what is required by the plan even if it means the debtor must carry a portion of each paycheck to the trustee’s office in person.
8. **A payroll deduction order to the debtor’s employer may be required.** In many jurisdictions, Chapter 13 cases are generally funded through payroll deduction orders to debtors’ employers.<sup>7</sup> The debtor’s employer will know of the Chapter 13 case, and some “pressure” may result. Many debtors do not want their employers to know they are having financial difficulties, especially when the debtor is in a sensitive position, a bank teller, for example. The Bankruptcy Code prohibits discrimination against Chapter 13 debtors.<sup>8</sup> However, the requirement of a payroll deduction order convinces some potential debtors not to seek Chapter 13 relief.
9. **Family budgeting will be required.**<sup>9</sup> The debtor must prepare a budget of family income and expenses and then live within that budget for the life of the Chapter 13 plan. For many debtors, family budgeting is unknown and discomfiting. The debtor accustomed to spending \$50 a month on hair styling should know before filing a case that life style changes may be required if confirmation and consummation of a plan are to be realized.
10. **Luxury items may be lost.** The debtor may have to choose between confirmation of a Chapter 13 plan and keeping luxury items that fall outside reasonable maintenance and support for the debtor and the debtor’s family.<sup>10</sup> In many jurisdictions, Chapter 13 debtors are not permitted to pay for luxury automobiles or the like through the plan or

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<sup>4</sup>See §§ 18.1, 19.1, 19.2, 19.3, 20.1, 20.2, 20.3, 20.4, 20.5, 21.1, 21.2, 21.3 and 21.4.

<sup>5</sup>See § 156.5.

<sup>6</sup>See §§ 44.1, 44.2, 44.3, 44.4, 44.5, 44.6, 44.7, 123.2, 125.1, 125.2, 125.3, 125.4, 125.5, 125.6 and 125.7 for discussion of the debtor’s obligation to make payments into a Chapter 13 plan.

<sup>7</sup>See §§ 125.1, 125.2, 125.3, 125.4, 125.5, 125.6 and 125.7.

<sup>8</sup>11 U.S.C. § 525. See § 58.13.

<sup>9</sup>See §§ 36.16 and 92.1, 92.2, 92.3, 92.4, 93.1, 94.1, 94.2, 94.3, 95.1, 95.2, 95.3, 95.4, 95.4, 95.6, 95.7, 95.8, 95.9, 95.10, 95.11, 95.12, 95.13, 95.14, 95.15, 95.16, 95.17, 95.18, 95.19, 95.20, 95.21, 95.22, 95.23, 95.24, 95.25, 95.26, 95.27, 95.28, 96.1, 97.1, 98.1, 99.1, 99.2, 99.3, 99.4, 99.5, 99.6 and 100.1 for discussion of current monthly income and projected disposable income after BAPCPA.

<sup>10</sup>See §§ 91.3 and 93.1, 94.1, 94.2, 94.3, 95.1, 95.2, 95.3, 95.4, 95.5, 95.6, 95.7, 95.8, 95.9, 95.10, 95.11, 95.12, 95.13, 95.14, 95.15, 95.16, 95.17, 95.18, 95.19, 95.20, 95.21, 95.22, 95.23, 95.24, 95.25, 95.26, 95.27 and 95.28 for discussion of monthly expenses that may be considered in calculating projected disposable income after BAPCPA.

deduct their cost from income when calculating “disposable income” to be paid into the plan.<sup>11</sup>

11. **There will be no more credit.** In most jurisdictions, Chapter 13 debtors are prohibited from incurring debt without court approval. Debtors accustomed to using credit cards and to buying on credit will find that confiscation of credit cards and forbearance from all credit purchasing are conditions for confirmation.
12. **The trustee will be watching.**<sup>12</sup> The debtor will be subject to the scrutiny of the Chapter 13 trustee for the duration of the case. The trustee can be expected to police the case to monitor the debtor’s performance, to occasionally communicate with the debtor and require information from the debtor, to be a presence in the debtor’s life for years. Some debtors become comfortably attached to the Chapter 13 trustee and think of the trustee as an ally. Others begin with the misconception that the trustee is the enemy, and a problem case results.
13. **The debtor is protected from creditors.**<sup>13</sup> The automatic stay envelops the debtor for the duration of the Chapter 13 case. Garnishments are severed, executions are stopped, foreclosures are prohibited, and so forth. Creditors cannot contact the debtor. The automatic stay is not available if a nonbankruptcy solution is invoked. The stay continues in Chapter 13 for much longer than in a Chapter 7 case.
14. **The debtor remains in control but has fiduciary responsibilities.**<sup>14</sup> The Chapter 13 debtor remains in possession and control of all property. However, the debtor assumes significant fiduciary responsibilities to use and maintain that property with a level of care to which the debtor may not be accustomed.
15. **Secured claim holders can be forced to accept reduced payments.**<sup>15</sup> The power to manhandle secured claim holders is often the principal attraction of a Chapter 13 case. As a general rule, in a Chapter 13 case a secured claim will be fixed at the value of the collateral, and that value will be paid, with interest, over time. Often, the secured claim is “written down” to the value of the collateral from some larger contractual amount. Typically, the amount of periodic payment, the sum of the payments, and the interest rates will be different from the original contract rights of the creditor. Limitations on the power to modify certain secured claims were added by BAPCPA.<sup>16</sup>
16. **Unsecured claim holders can be paid over the life of the plan.**<sup>17</sup> Unsecured claim holders are entitled to receive at least what they would be paid in a Chapter 7 case,<sup>18</sup>

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<sup>11</sup>See §§ 92.1, 92.2, 92.3, 92.4, 93.1, 94.1, 94.2, 94.3, 95.1, 95.2, 95.3, 95.4, 95.4, 95.6, 95.7, 95.8, 95.9, 95.10, 95.11, 95.12, 95.13, 95.14, 95.15, 95.16, 95.17, 95.18, 95.19, 95.20, 95.21, 95.22, 95.23, 95.24, 95.25, 95.26, 95.27, 95.28, 96.1, 97.1, 98.1, 99.1, 99.2, 99.3, 99.4, 99.5, 99.6 and 100.1.

<sup>12</sup>See §§ 53.1, 53.2, 53.3, 53.4, 53.5, 53.6, 53.7, 53.8, 53.9, 53.10, 53.11, 53.12, 53.13, 53.14, 53.15, 53.16, 53.17, 53.18, 53.19 and 53.20 for description of the role of the Chapter trustee.

<sup>13</sup>See § 58.1 for discussion of the automatic stay. See also § 58.2 for changes made to the automatic stay, including new limitations on the stay, by BAPCPA.

<sup>14</sup>See § 45.1.

<sup>15</sup>See § 74.1.

<sup>16</sup>See § 74.2.

<sup>17</sup>See § 86.1.

<sup>18</sup>See §§ 90.1, 90.2, 90.3, 90.4, 90.5 and 90.6.

but that amount can be paid over the life of the plan, and the Chapter 13 debtor has great control over the timing and amount of payments to unsecured claim holders. Assuming the debtor proposes to exhaust disposable income for at least three years, unsecured claim holders have no greater claim to the debtor's income than the minimum amount they would receive upon liquidation under Chapter 7. In a Chapter 13 case, the debtor is permitted to pay that hypothetical liquidation dividend over the life of the plan. Unsecured claim holders do not vote and can rarely participate in any meaningful way in determining when their rights will be satisfied during the life of the plan.

17. **Codebtors may be protected.**<sup>19</sup> To the extent the plan proposes payment, creditors are prohibited from seeking collection from codebtors in a Chapter 13 case. This is a substantial attraction to the debtor with friends, relatives, or coworkers who have co-signed the debtor's obligations. Coupled with the power to separately classify codebtor claims, Chapter 13 is a powerful vehicle for dealing with financial obligations that have been guaranteed or co-signed.
18. **Utility cutoffs.**<sup>20</sup> Chapter 13 can help deal with utility service problems. If a utility is threatening cutoff, a Chapter 13 filing buys the debtor 20 days in which to come up with a reasonable deposit or otherwise to satisfy the utility of the likelihood of paying future bills. If utility service is already interrupted, Chapter 13 can provide a framework for reestablishing utility service that does not include immediate payment of the full balance due.
19. **Negotiating with creditors.** The filing of a Chapter 13 case shifts responsibility for dealing with creditors to debtor's counsel and the trustee. Debtors need to understand that creditors should not be contacting them and that they should not be contacting creditors.
20. **Loss of job or employment instability.** Chapter 13 is based on periodic payments to a trustee. Any interruption in the debtor's job or loss of regular income upsets the prospects for consummation of a plan. Explaining Chapter 13 to a debtor includes discussion of employment and may require commitment from the debtor to accept or continue a job that is stable though less than perfect.  
The debtor must appreciate that any loss of job, any layoff, and any reduction (or increase) in hours or salary must be reported to counsel. The failure to report problems or improvements in employment can jeopardize the Chapter 13 case.
21. **Illness, temporary disability, and pregnancy.** The debtor must understand that any illness, disability, or other impairment must be reported to the debtor's counsel if the debtor is to be helped through a period of changed income, increased expenses, or temporary inability to make payments. Pregnancy can have a traumatic effect on a family's income and expenses, but it is manageable in a Chapter 13 case. A planned interruption in family income and planned additional expenses can be dealt with if the debtor's counsel is informed.
22. **Maintaining insurance.** The debtor must insure property subject to liens during the life of the plan. Debtor's counsel must determine whether property is insured before

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<sup>19</sup>See §§ 65.1, 65.2, 65.3, 65.4, 65.5, 66.1, 66.2, 66.3, 66.4, 67.1, 67.2, 67.3, 67.4 and 67.5.

<sup>20</sup>See §§ 68.1 and 68.2.

filing, for uninsured property will immediately become the subject of consuming preconfirmation litigation.

Lapses in insurance during the Chapter 13 case may lead to disruptive and expensive motions for relief from the stay, to convert, or to dismiss. The cost of insurance must be budgeted.

- 23. Divorce and other marital problems.** Divorce is a principal cause of financial distress, and marital problems are disruptive of success in a Chapter 13 case. The debtor should be encouraged to communicate any serious marital problem with counsel before a domestic disaster leads to the demise of the Chapter 13 case. Counsel should warn debtors of potential conflict issues when clients who were married become separated or divorced during the case.
- 24. Tax returns and tax refunds.** The debtor remains responsible for filing tax returns. The possibility of tax refunds must be revealed in the Chapter 13 Statement. In many jurisdictions, tax refunds during the life of the plan must be committed to funding the plan,<sup>21</sup> much to the dismay of debtors who are accustomed to consuming their “forced savings.” BAPCPA added many new requirements for debtors to file tax returns and to provide those returns to the trustee and potentially to creditors.<sup>22</sup>
- 25. Changes of address.** It is essential that the debtor inform counsel and the Chapter 13 trustee of any change of address until the case is closed.
- 26. Signing documents.** The debtor must sign the petition, Schedules, and Statement of Financial Affairs.<sup>23</sup> Typically, it is not possible to sign these documents during the first visit to counsel’s office because information collection is not complete and the finished documents have not been generated. Counsel should not allow or encourage the debtor to sign an incomplete document. The debtor instead should return to the attorney’s office or sign the documents by mail. Counsel should explain that the debtor’s signature is a swearing that carries penalties if false.
- 27. Modification.** Modification of a proposed plan is possible before confirmation,<sup>24</sup> and a confirmed plan can be modified after confirmation<sup>25</sup> if circumstances require. This flexibility allows Chapter 13 to work for many differently situated debtors and over time as an individual debtor’s circumstances change. Flexibility is available only if the debtor maintains contact with counsel to permit the modifications before circumstances degenerate beyond repair.
- 28. Conversion or dismissal.**<sup>26</sup> The debtor should be informed that conversion from Chapter 13 to Chapter 7 or dismissal is possible at any time. The commitment to attempt a Chapter 13 case is not irreversible.

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<sup>21</sup>See §§ 91.2 and 122.1.

<sup>22</sup>See §§ 42.4, 42.5, 42.6, 42.7, 42.8, 42.9 and 152.3.

<sup>23</sup>See § 36.2.

<sup>24</sup>See §§ 114.1, 114.2, 114.3, 114.4, 114.5, 114.6 and 114.7.

<sup>25</sup>See §§ 126.1, 126.2, 126.3, 126.4, 126.5, 126.6, 127.1, 127.2, 127.3, 127.4, 127.5, 127.6, 127.7, 127.8, 127.9, 127.10 and 127.11.

<sup>26</sup>See **Part 8** for discussion of conversion and dismissal.

- 29. Discharge.**<sup>27</sup> If the debtor completes payments under a confirmed Chapter 13 plan, the broadest discharge available under the Bankruptcy Code will be realized. The discharge includes claims that would not be dischargeable under other chapters and includes claims that are compromised and claims that are not paid because no proof of claim is filed.
- 30. Postpetition claims.**<sup>28</sup> If postpetition credit is necessary to the debtor's performance of the plan and is incurred correctly, it can be managed through the plan as if it were a claim arising prior to filing. The debtor must be informed of this power and instructed to approach counsel before incurring debt to maximize the probability postpetition credit can be dealt with through the plan. It should be emphasized that incurring postpetition debt without the permission of the Chapter 13 trustee is a ticket to trouble for the debtor.

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<sup>27</sup>See **Part 9** for discussion of discharge in a Chapter 13 case.

<sup>28</sup>See §§ **113.6, 114.5, 122.4, 123.4, 127.4, 132.9, 137.1, 142.5** and **158.6** for discussion of postpetition claims in Chapter 13 cases.