

1. I have something called a Chapter 13 plan. What is that exactly?

The Bankruptcy Code requires that every Chapter 13 bankruptcy have a plan. It is a summary sent to your creditors that, in effect, tells them... “here are my financial problems and here is how I intend to fix them.” Your judge, who must approve your plan, sees the Chapter 13 plan as a contract between you and your creditors. The judges take this very seriously and will insist that you abide by the terms of that contract, or in this case, the plan. If you don’t have a copy of your plan, you should get one immediately and read through it.



The Trustee must pay your creditors exactly as called for by the plan. The Trustee does not have any discretion to change those payments. If they need to be changed, your lawyer must file an amended plan which must be approved by your bankruptcy judge.

The plan is sent to your creditors in advance of the first meeting of creditors to allow them to review and object to their treatment if they don’t like what they see. Once the plan has been sent to your creditors, you will meet with the Trustee at his office for what is called the “first meeting” or “341” hearing to review the plan, make any changes required and, if any creditors appear, to give them a chance to ask any questions they might have.

About 6 weeks after the “first meeting” you will have what is called a confirmation hearing. If you have an attorney, he or she will appear on your behalf. You do not need to attend unless you are instructed to attend by your attorney or the Trustee. At that hearing, the judge will hear from the Trustee and any creditors that want to object to their treatment in the plan. Once the judge is satisfied that the Trustee approves of your plan and that any creditor objections have been resolved, the judge “confirms” your plan and signs an Order of the court that approves your plan that binds both you and your creditors to the contract, or in this case, the plan.

**2. *I understand I must make a plan payment each month to the Trustee.
How do I do that?***

You must begin making your plan payments to the Trustee within 30 days after your case is filed in the amounts as described in Paragraph 1 of your plan.

There are three (3) ways to make your plan payment:

- (1) Have your payments taken directly from your employee paycheck; or,
- (2) Use a service called TFS which will draw the payment directly from your checking account and get it to the Trustee (see your attorney or the Trustee's office for more details); or,
- (3) If you have a valid reason not to use the employee paycheck or TFS, a money order or cashier's check to the Trustee's bank in Memphis Tennessee. (We have included in the back of this book a number of address stickers for you to use to insure any payments you must make yourself reach the bank correctly)

REMEMBER, YOU have the obligation to make sure that payments are made directly to the bank and you need to pay attention to whichever method you choose.

The amount of your payment may change, so be sure to check your individual plan so that you are prepared for any payment changes.

If you have to make any plan payments directly to the Trustee's bank, please note the following:

**THE TRUSTEE'S BANK WILL NOT ACCEPT PERSONAL CHECKS
DO NOT MAIL CASH!!**

If you have to pay directly, the Trustee's bank can only accept Money Orders or Cashiers Checks, which must include:

- (1) your **NAME**;
- (2) your **ADDRESS**; and
- (3) your **CHAPTER 13 CASE NUMBER** (on the front of this book).

Please make all direct payments payable to:

Wayne Godare, Trustee

And mail them to:

Wayne Godare, Trustee

P.O. Box 420

Memphis, Tennessee 38101-0420

The Trustee will never instruct you to make these payments to another address. If someone directs you to another address, call our office immediately!

3. *Who is this Trustee anyway?*

All Chapter 13 cases have a Trustee who is responsible for the overall administration of your case. In all Chapter 13 cases in Northern Oregon, the Trustee is Wayne Godare and he has approximately 5,000 active files in addition to yours.

The Trustee's duties are found in the Bankruptcy Code. They include, at a minimum, reviewing your bankruptcy petition to ensure that it is complete and accurate; determining your ability to make payments and whether your Chapter 13 plan will be successful as proposed; conducting the first meeting of creditors and appearing at other hearings in your case; monitoring the progress of your case; collecting your payments and paying creditors according to the plan; recovering improper payments made before your filing; providing information about your case to those who are authorized and have a need to know; and most importantly, assisting you in the performance of your plan.



The Trustee's address is:
222 S.W. Columbia Street, Suite 1700
Portland, Oregon 97201

The Trustee's phone and fax number is: (503) 972-6300 PHONE

If, for any reason, you change your address while you are in Chapter 13, you MUST notify BOTH the Trustee's office and the Bankruptcy Court.

REMEMBER: the Trustee cannot give you any legal advice. If you need legal advice, you need to contact your attorney.

The Trustee's Office Hours Are – 9am to 12 noon - 1pm to 4pm (closed for lunch)

4. *My plan and confirmation order says I must send copies of my tax returns and any tax refunds to the Trustee while I'm in Chapter 13. Does the Trustee really want those?*

(A) TAX RETURNS

The Judge's Order approving your Chapter 13 plan says that you must *timely file* and submit **signed** and dated **COPIES of BOTH your STATE and FEDERAL TAX RETURN FORMS to the Trustee** every year during your plan whether you get a *refund* or not. **Send your tax returns and any other documents *other than payments* to:**

Wayne Godare, Trustee
222 S.W. Columbia Street, Suite 1700
Portland, OR 97201

DO NOT SEND ORIGINALS! COPIES ONLY

Please send these **copies** to the Trustee immediately after you file the returns and blank out (redact) any social security numbers and children's names. The Trustee will check the returns to see if your gross income has increased and/or if you are entitled to receive a tax refund.

REMEMBER: You will not successfully finish your plan unless you complete this requirement!

(B) TAX REFUNDS

Your Chapter 13 plan requires you to pay your net tax *refunds* each year to the Trustee. If you receive a tax *refund*, the entire *refund* must be sent to the Trustee unless, in that same year, you also owe taxes to a different income taxing authority. For example, if you receive a \$500 Federal tax *refund* and that same year you owe the State \$300, you would only need to send the Trustee the net of \$200. (just endorse the checks over to Wayne Godare or send a money order or cashier's check for the net amount and a note showing the math and send it to the Trustee's bank just like you would send a plan payment) If you receive an adjustment letter from any taxing authority, be sure to send it to the Trustee so we can adjust our records.

You cannot avoid paying your refund to the Trustee by applying your refund to next year's tax obligation, agreeing that your refund can be kept by the IRS for some reason or used as a donation.

REMEMBER: You will not successfully finish your plan unless you complete this requirement!

Tax *refunds* must be mailed to the Memphis payment address. Be sure to put your case number all on payments and state that the check is for your tax refunds. If you fail to do this your check may not be properly credited.

5. My confirmation order also says that I must report to the Trustee if my actual or projected gross income goes up 10%...could you explain that? And what if I take money from my retirement fund or get extra money that's not from my job?

The Judge's Order approving your plan says that you are **required to report** to the Trustee if and when your gross income increases more than 10% from the amount originally reported on your Schedule I that was filed with your bankruptcy papers. If that happens, you should contact your attorney to review all of your income and expenses and file amended schedules to reflect the changes.

You are also required to inform the Trustee if and when you get married during the time you are in Chapter 13.

The Judge's Order approving your plan also says that if you or your spouse take a retirement fund distribution or have the right to receive **any** money exceeding \$2500 during your plan, you **must inform** your lawyer and the Trustee's office. It also says that you must keep any of that money until you either get permission from the Trustee to spend it.

Taking a retirement distribution during the plan could turn your otherwise exempt property into disposable income. If that happens, the amount of the retirement distribution may have to be paid to your creditors before you get your discharge. **BE SURE TO TALK TO YOUR ATTORNEY BEFORE YOU ACT.**

REMEMBER: Everyone in Chapter 13 must pay their ongoing tax obligations during the life of the plan. This obligation includes any taxes owed as a result of any increase in income.



6. *There are some extra paragraphs attached to the end of my plan. What do I do about those?*

Complying *timely* with the requirements of any additional paragraphs added to your plan for special circumstances is critical to your success in gaining your discharge. Remember: Your discharge is the ultimate goal in your Chapter 13. (See number 13 for information about your discharge)

Some of those commonly used paragraphs are as follows: (If any of these are included in your plan, be sure to discuss what you need to do with your attorney)

- A. **Overtime, Bonus or Commission Income:** In some instances, if you receive overtime, bonuses or commissions as income, all or a portion of that income may be income that must be sent to the Trustee. If there is such a requirement, it will be outlined in a separate paragraph at the end of your plan.

- B. **Future Automobile Purchase:** In some instances, you may be planning to purchase an automobile in the near future. You must make the scheduled payments to your attorney until you get permission from the Trustee to make the purchase. See question number 8 for more information.

- B. **Sale of property:** Sale of either personal or real property requires specific steps to be taken to make sure that it is done according to the Bankruptcy Code. If this applies to your case, see question number 9 for more information.

- D. **Tax requirements:** In all cases, you are required to timely file your required tax returns and provide a copy to the Trustee's office. In some cases, that requirement is specifically set out in an additional paragraph in your plan. Be sure to comply because if you don't your case could get dismissed – sometimes without a hearing.

- E. **Charitable contributions:** If you are making charitable contributions from your income, you may be required to provide proof to the Trustee. Getting proof is easy in most instances. If you have this requirement, you need to gather the proof each year and send it to the Trustee. If you don't and can't prove the contributions, you will need to make up the amount you claimed by paying more to the Trustee before you can get your discharge.

7. What happens if I miss payments to the Trustee or creditors for which I am responsible because of an emergency?

You must not miss any payments to the Trustee unless it is permitted by the bankruptcy judge. When you file your Chapter 13, your creditors are prohibited from taking any action against you. In exchange for that protection, you must complete your obligations under the plan. One of those obligations is making your payments to the Trustee on time. If you wish your Chapter 13 to be successful, you cannot have your employer stop making the payroll deductions or miss any scheduled payments you are making on your own. If you miss payments, the Trustee cannot pay your creditors as called for by your plan and the Trustee is obligated to file papers with the Bankruptcy Court asking that your case be dismissed. If your case is dismissed, your creditors will be notified and may resume collection against you.

If you have a change in your circumstances such as an unforeseen emergency, you should notify your attorney at once. Your attorney can re-evaluate your financial situation and, if appropriate, change your plan to reflect the different circumstances. This process can take several weeks, so be sure to contact your attorney immediately if you foresee any problem making your payments.

REMEMBER: The Trustee does not have the power to excuse any payments. Any change in payments must be approved by your Bankruptcy Judge.

IMPORTANT!

REGULAR ONGOING MORTGAGE PAYMENTS

If your ongoing monthly mortgage payments are listed in paragraph 4 of your plan and on Schedule J (your budget) you must make those payments as scheduled. If you miss any of those payments, you will not have complied with Section 1328 (a) of the Bankruptcy Code and may not be eligible for a discharge. That section requires that you make all payments under the plan before a discharge can be granted and ongoing mortgage payments are payments under the plan.



8. *May I incur credit during my Chapter 13? What if my car breaks down and I need a new one...?*

The Order signed by the Bankruptcy Judge approving your plan, states that you **may not** incur any credit obligations during the life of your plan without the Trustee's written consent. The only time you can act without the Trustee's written consent would be:

- (1) an emergency, or
- (2) ordinary expenses for a business approved in your plan.

Any request for credit must be approved by the Trustee in writing **before** you obligate yourself in any way. The most common credit obligation you may wish to incur is for the purchase of a car. Be sure to contact your attorney if you must buy a car or trade in your old one. Do not let a car dealer talk you into anything before your attorney has had a chance to get involved. The Trustee regularly approves requests to finance replacement for basic needs vehicles, so long as you and your attorney follow the proper procedure. That procedure requires that you supply the Trustee with some basic information on a form provided by his office and that you get Trustee approval **before** you commit to any obligation.

REMEMBER: Taking on any new credit obligations could jeopardize your plan and failure to get permission could result in your case being dismissed. AND, not paying your tax obligations as they become due is considered taking on new credit. Be sure to pay whatever tax obligations you have during your plan.



9. My spouse and I have been talking about selling our house and buying another while we are in our Chapter 13. Is there anything special we must do? What if I want to have a Home Loan Modification?

The Order signed by the Bankruptcy Judge requires you to inform the Trustee and your creditors of the sale, lease, encumbrance, disposal or purchase of any real property or any personal property with a value over \$10,000. Informing the Trustee and creditors can be tricky and may have unexpected consequences if not done properly. It is very important you learn and understand all the possibilities

before you take any steps involving the sale or acquisition of any property. You should contact your attorney well before you list or advertise your property or purchase property and discuss what you want to do. The Trustee will require specific information before any permission to buy or sell is given and selling or purchasing property sometimes requires a court order that usually takes about 30 days to obtain. Find out what is required BEFORE you commit to any purchase or sale.

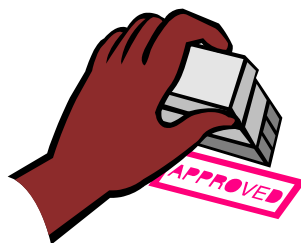


If you think you are going to sell or refinance some real property, check out the Trustee's web site at www.portland13.com and click on “**Information for Debtors**”, then “**Selling or Refinancing Your Home**” for more specific information about the requirements.

Any Home Loan Modification requires the Trustee's approval. Make sure your attorney talks to the Trustee's office before you act.

REMEMBER: Selling, buying or improving property is tricky when you are in Chapter 13. Check the website and talk to your attorney first!

REMEMBER: You cannot incur any credit obligations while in Chapter 13 without first obtaining the Trustee's written consent.



10. How can I find out how my plan is progressing?

In January every year, the Trustee will send you and your attorney a complete record of all receipts and disbursements for the previous calendar year. It will tell you exactly how much money the Trustee has received from you and how much and to whom payments have been made.

You may also request a progress report if you need one. This request must be in writing and sent to the Trustee's office at the address shown in the answer to question #2. It will take approximately a week to 10 days to respond. The progress report will give you a summary of your case to date. If you want to know how much it would take to pay off your case, you should send a request for that information to the Trustee's office in writing. A form for this purpose can be found on my web site at www.portland13.com by clicking on “**Information For Debtors**” and then, at the bottom of the page, “**Want to Request A Payoff of your bankruptcy case?**”

REMEMBER: You cannot pay off your case before you have been making plan payments for your required commitment period and have completed all the requirements of paragraph 1 of your plan, UNLESS you pay all your creditors 100%. (See question #11)



11. *May I make larger payments to the Trustee and complete my case early?*

The Bankruptcy Code requires you to send all your *projected disposable income* to the Trustee for your “applicable commitment period” which will be either 36 or 60 months. Your *projected disposable income* is reflected as your payments set out in paragraph 1 of your plan. Your attorney should inform you of your “commitment period” and you can find it by looking at Paragraph 7 of your plan. It will be marked either 36 or 60. If your commitment period is 36, you may be required to continue with your payments until all required claims have been paid in full. If your commitment period is 60, you must continue making payments unless.....

There is, however, one exception to this “applicable commitment period” rule. You may pay off your plan before your “commitment period” if you pay **all** creditors who have filed claims 100 % of their claims.



DO NOT ATTEMPT TO PAY OFF YOUR CASE EARLY BY SENDING EXTRA MONEY TO THE TRUSTEE. THE BEST RULE IS TO DO EXACTLY AS YOUR PLAN SAYS. When the Trustee

receives unexpected extra payments, he will wonder where you got the extra money and it won't shorten your “commitment period”. Any attempt to pay off your plan early can be complicated and you should check with your attorney before you contact the Trustee.

Making larger payments to the Trustee may be required if your income increases (see answer to question # 5). So, if you want to make larger payments because you got a big raise amounting to more than 10% of what you originally reported as your income, you should inform the Trustee of that fact in writing before you begin sending in more money.

REMEMBER: Do not borrow money or incur credit to make bigger payments to the Trustee hoping that you can complete your plan before the end of your “commitment period”. This is not like paying off a car or mortgage. Your best bet is to make your scheduled payments on time using your disposable income. You filed a Chapter 13 plan to eliminate your debts and get a “fresh start”. The best way to accomplish that goal is to follow exactly the terms of your plan.

12. My attorney said my plan payments would last for at least 36 but might go as long as 60 months. When should I stop making payments?

You or your employer should continue making payments until the Trustee or your attorney specifically tells you to stop.

Depending on whether your income places you below or above Oregon's median income level, you may be required to make payments to the Trustee for at least 36 months and perhaps as long as 60 months. It can be difficult to predict the exact outcome of your case when it is filed. You should ask your attorney whether you are below or above the median. That answer will tell you whether you must continue payments for a minimum of 36 months or whether you must continue for the full 60 months.

REMEMBER: It is not a good idea to send more money than what is specifically called for by your plan. Even if you send more money, you will still be required to make plan payments during the complete length of your "commitment period." Sending more money than what is called for by your plan will not shorten your commitment period. Sending more money than what is called for by your plan will only mean your creditors will receive those extra funds.



13. Well, I'm about to make my last payment. I heard that now I get a discharge. What does that mean and how long does it take?

A **discharge** is your biggest and ultimate goal. The discharge order is a document prepared by the Bankruptcy Court and signed by your judge. It means you have completed the requirements under your plan. Most, if not all, of the creditors you listed may never again contact you about those debts. If you have some nondischargeable debts, such as child support or student loans that have not been paid in full during your plan, those creditors may contact you again about payments of those debts.

REMEMBER: Before you can receive your important discharge, the Bankruptcy laws require that you attend a **Personal Financial Management Class**.



The Trustee must audit and review your case before the Bankruptcy Court will issue the discharge. This normally takes about 60 days. During that period the Trustee double checks your payments and reviews your case to ensure that you have done everything required from his standpoint. Then the Trustee notifies your Bankruptcy Judge and the Court will then issue your discharge in approximately 30 days.

After all your hard work to complete your plan, you should now enjoy what has been termed a "fresh start". You should no longer need to endure the credit problems that caused you to seek Chapter 13 relief in the first place. The Trustee hopes this information has been helpful to you and that it will assist you in avoiding a similar situation in the future.

CONGRATULATIONS AND GOOD LUCK IN THE FUTURE!

Wayne Godare, Trustee

