

# **United States Bankruptcy Court for the Eastern District of Kentucky**

## **Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys**

It is important for debtors who file a bankruptcy case under chapter 13 to understand their rights and responsibilities. It is also important that the debtors know what their attorneys' responsibilities are, and understand the importance of communicating with their attorney to make the case successful. Debtors should know that they may expect certain services to be performed by their attorney, and they should understand that the attorney may charge for those services.

It is also important that attorneys understand what is expected of them if they represent debtors in chapter 13 cases in the Eastern District of Kentucky. An attorney representing a debtor in a chapter 13 case is expected to provide competent representation, which requires the knowledge of chapter 13 law and practice, skill, thoroughness and preparation reasonably necessary for the representation.

In order to assure that debtors and their attorneys understand their rights and responsibilities in the bankruptcy process, the following guidelines provided by the Court are hereby agreed to by the debtors and their attorneys. Unless the Court orders otherwise:

### **THE DEBTOR AGREES TO –**

- 1) Discuss with the attorney the debtor's objectives in filing the case, and inform the attorney of any imminent deadlines.
- 2) Provide complete, truthful, and accurate information at all times.
- 3) Timely provide the attorney with all documents requested by the attorney.
- 4) Promptly respond to all communications from the attorney.
- 5) Cooperate with the attorney in preparing all required bankruptcy papers and documents, thoroughly reviewing drafts of documents, and promptly advising the attorney of corrections or additions needed.
- 6) Understand that the trustee might disagree with the attorney, or that the Court might make a ruling adverse to the debtor, and that the attorney cannot guarantee the outcome of the bankruptcy proceedings.
- 7) Comply with all orders of the Bankruptcy Court.
- 8) Make plan payments as required; turn over tax refunds, bonuses, or other lump sum payments if required by the plan or Court order.
- 9) If the plan calls for payments to be made by the debtor directly to any creditor, make all payments in a timely manner.
- 10) Keep records of all plan payments made and all mortgage payments made while in chapter 13.
- 11) Attend the 341 meeting of creditors with proof of social security number and a photo ID.

- 12) File all tax returns; pay postpetition taxes that come due.
- 13) Keep the attorney and the trustee informed of the debtor's address and telephone number.
- 14) Inform the attorney of any wage garnishments, repossessions, or collection efforts which occur or continue after the filing of the case.
- 15) Contact the attorney promptly if at any time during the case the debtor:
  - a) receives lottery winnings, an inheritance, lawsuit settlements or awards, or other unanticipated money;
  - b) files a lawsuit or consults with another attorney about filing a lawsuit, or is considering a settlement in lieu of filing a lawsuit;
  - c) loses his/her job or has other significant financial problems;
  - d) has questions about or does not understand a matter related to the case;
  - e) wants to sell any property; or
  - f) wants to borrow money, incur debt, or refinance a loan.
- 16) Complete the required instructional course in personal financial management.
- 17) If the debtor has a domestic support obligation, contact the attorney when plan payments have been completed and inform the attorney whether all DSO payments have been made.

## **THE ATTORNEY AGREES TO –**

- 1) Meet with the debtor to review the debtor's debts, assets, income and expenses.
- 2) Counsel the debtor regarding the option of filing either a chapter 7 or chapter 13 case, discuss both procedures with the debtor, and answer the debtor's questions.
- 3) Ascertain that the debtor is eligible to file a bankruptcy petition under chapter 13.
- 4) Advise the debtor of the requirements to obtain prepetition credit counseling and a postpetition financial management course from approved providers.
- 5) Obtain from the debtor and review the debtor's deeds, mortgages, tax returns, paystubs, car titles, and other appropriate documentation. If the petition is filed before the documents are received and reviewed, advise the debtor of the potential risks of doing so.
- 6) Timely prepare the debtor's petition, statements, schedules, plan, and related documents. Verify that the information contained therein is consistent with the documentation provided by the debtors.
- 7) Take reasonable steps to verify that all creditors are scheduled and are given appropriate notice.
- 8) Review the completed bankruptcy petition, statements, schedules, and all related documents with the debtor; make necessary changes and additions; obtain the debtor's signature; promptly file the petition/statements/schedules.
- 9) Explain what payments will be made directly by the debtor and what payments will be made through the debtor's chapter 13 plan, with particular attention to mortgages, vehicle loan payments, and student loans.
- 10) Explain to the debtor how, when and where to make chapter 13 plan payments; inform the debtor when the plan payment amount changes.

- 11) Advise the debtor of the necessity of maintaining insurance on collateral.
- 12) Advise the debtor not to sell any property without prior Court approval, or give away any money or property. Advise the debtor not to borrow money, incur debt, or refinance any loans without prior Court approval.
- 13) Advise the debtor of the necessity of filing all tax returns and of paying all postpetition taxes.
- 14) Explain to the debtor which debts will not be dischargeable upon completion of the plan, with particular attention to student loans. If the debtor is not entitled to a discharge, explain the consequences.
- 15) Advise the debtor of the requirement to attend the 341 meeting of creditors, and instruct the debtor as to the date, time and place of the meeting and the necessity of bringing a photo ID and acceptable proof of SSN to the meeting.
- 16) Attend the 341 meeting and any court hearings, either personally or through another attorney.
- 17) If an attorney not employed by debtor's attorney's law firm will be attending the 341 meeting or any court hearing, provide to that attorney sufficient information to allow for proper representation.
- 18) Serve the chapter 13 plan and any amended plan on all creditors and other parties on a timely basis.
- 19) Timely address objections to plan confirmation including the Trustee's Report and Recommendation as to Confirmation, and where necessary, prepare, file, and serve responses or amended plans.
- 20) Where appropriate, prepare, file and serve necessary amended statements and schedules, in accordance with information provided by the debtor.
- 21) Timely review secured and priority claims; timely file amended plans to address claims if necessary; where appropriate, timely file and serve objections to improper or invalid claims. With respect to claims secured by a debtor's residence, timely review Notices of Payment Changes, Notices of Postpetition Fees, Notices of Final Cure Payment, and Responses to Notices of Final Cure Payment; if necessary, take appropriate action.
- 22) Timely file proofs of claims on behalf of creditors if necessary for the protection or benefit of the debtor.
- 23) Upon information received from the debtor, contact creditors who continue to communicate with the debtor after filing, and if necessary, file appropriate pleadings.
- 24) Prepare, file and serve appropriate pleadings necessary to accomplish the goals of the chapter 13 case, including but not limited to:
  - a) motions to extend the automatic stay;
  - b) motions for turnover of repossessed property necessary to an effective reorganization;
  - c) motions to avoid liens on real or personal property;
  - d) motions to deem mortgage current or notices of final cure payment;
  - e) affidavit that debtor is current on post-confirmation DSO payments; and
  - f) financial management certificate.
- 25) Take appropriate action to address a trustee's motion to dismiss for lack of feasibility of the plan.
- 26) Monitor all pleadings filed in the case.

- 27) Communicate with the debtor to discuss pending issues or matters in the case.
- 28) Comply with local and federal rules, and all Court orders.

## **THE ATTORNEY'S COMPENSATION:**

The attorney may accept, in lieu of filing a fee application, a presumptively reasonable fee in an amount up to and including \$3,500, provided the plan is confirmed. This fee includes:

- all services rendered up to and including confirmation of a plan;
- services rendered in post-confirmation matters referenced above; and
- representation in two (2) post-confirmation matters from the following list:
  - Responding a motion to dismiss the case for failure to make plan payments;
  - Responding to a motion for relief from stay;
  - Filing a motion to modify the plan to address a delinquency (including a motion to suspend plan payments);
  - Addressing a trustee's motion to modify the plan;
  - Filing an application to incur debt; or
  - Filing a motion to sell property.

All expenses incurred in connection with the above, including filing fees.

The presumptively reasonable fee does not include:

- Defense of any adversary proceeding;
- Representation in any unanticipated litigation or contested proceedings arising from the debtor's failure to provide complete and accurate information to the attorney;
- Representation in any matter not otherwise addressed herein.

The attorney's representation of the debtor continues through the time the debtor receives a discharge, the case is dismissed, the case is converted, or the court approves the attorney's withdrawal from representation (whether based on a request of the attorney or of the debtor). Therefore, the debtor's attorney is expected to provide, in addition to the services described herein, such other legal services as are necessary for the administration of the chapter 13 case. However, the attorney may seek additional compensation for such services.

Any compensation sought in excess of the presumptively reasonable fee of \$3,500 must be requested by filing an application for compensation pursuant to the applicable Federal Rules of Bankruptcy Procedure and applicable Local Rules.

DATED: \_\_\_\_\_

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DEBTOR

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DEBTOR

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ATTORNEY FOR DEBTOR