

**CHAPTER 13 RECOMMENDED  
PRACTICES IN THE WESTERN  
DISTRICT OF KENTUCKY**

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Last Updated: February 1, 2008

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It's been two and one half years since BAPCPA, and Chapter 13 filings in the Western District are now back to year 2002 levels. If your client decides to file bankruptcy, lots of good reasons exist for your client to file a Chapter 13. These reasons include, but are not limited to, the following:

1. My client "flunked" the means test
2. Home arrearages
3. Tax problems
4. Ineligible for Chapter 7 because it's been less than 8 years since the last one
5. LIQUIDATION TEST - The Chapter 7 Trustee would sell my clients house/car/boat and pay creditors
6. Can still cram down cars that were purchased more than 910 days ago
7. Can still rewrite/cram down interest on all cars in the plan – Till is still good law
8. Return of car recently repo'd that is your client's main form of transportation
9. My client actually wants to repay their debts

## 1. PRECONFIRMATION PRACTICE

\_\_\_\_\_ CREDIT COUNSELING (the "Ticket In")  
Congress said you have to do it – just get it done before you file the Bankruptcy.

\_\_\_\_\_ "FIRST DAY" MOTIONS (You should file the following Motions, if applicable, **the same day** you file the petition)  
\_\_\_\_\_ MOTION TO EXTEND THE AUTOMATIC STAY  
\_\_\_\_\_ MOTION TO STRIP SECOND MORTGAGE WITH NO EQUITY  
(See Local Form M)

\_\_\_\_\_ LAST YEAR'S TAX RETURNS AND PAYSTUBS  
The Chapter 13 Trustee **HAS** to have your client's previous years Federal Tax Return and your client's most recent paystub(s) seven (7) days before the meeting of creditors. We need them ahead of time. Don't hand the documents to us at the 341 meeting. You can email them to us – go to [www.louchapter13.com](http://www.louchapter13.com) and click on 341 documents if that is easier/cheaper than traditional mailing.

\_\_\_\_\_ APPRAISALS

An appraisal is mandatory if you want the Court to confirm your case. The telephone number for the Court Appointed Appraiser (Anderson and Associates) is (502) 267-1086.

**RED FLAG SCHEDULE J ITEMS**

- \_\_\_\_\_ Telephone – anything above \$100 month (including cell phones)
- \_\_\_\_\_ Charitable Contributions above \$200 month – your clients are entitled by law to give 15 percent to their church. See 11 U.S.C. §1325(b)(2)(A)(ii). However, we will need some sort of written proof of any amounts above \$200 per month (like last year’s 1040 Schedule A or a written statement from the church). If your clients can’t prove it, the money above \$200 is considered to be DISPOSABLE INCOME that will need to come back into the plan to pay the unsecured creditors.
- \_\_\_\_\_ Auto Insurance – anything above \$175 a month - the Judge may want to see a written bill.
- \_\_\_\_\_ Any Expenses that are “out of the ordinary” or “high.”
- \_\_\_\_\_ “Premium/Deluxe” Cable TV – (i.e. cable beyond Basic Cable)
- \_\_\_\_\_ Private school tuition above \$125/month (plan will need to be a 100% plan, unless child is “special needs”, etc.)

**CHAPTER 13 PLANS**

- \_\_\_\_\_ WHAT YOUR PLAN **MUST** SAY (at a minimum)
  - \_\_\_\_\_ The plan must state which SECURED debts are being paid directly by the debtors, and which ones are being paid by the Trustee (i.e. what debts are “inside” the plan or “outside” the plan).
  - \_\_\_\_\_ The plan must provide the AMOUNT of any mortgage arrearages to be paid by the Trustee.
  - \_\_\_\_\_ The plan must state what PERCENT you anticipate unsecured creditors will receive if all claims are filed by all creditors.
  - \_\_\_\_\_ The plan must state the name and address of all holders of Domestic Support Obligations (DSO’s) of the Debtor(s).

\_\_\_\_\_ The plan must state what non-purchase money liens are to be avoided UPON SUCESSFUL PLAN COMPLETION. (If your plan does not state this, then you will have to file a separate motion).

\_\_\_\_\_ HOW **LONG** MUST THE PLAN BE?

\_\_\_\_\_ A lot of plans have to be 5 years long just because of the large amount of secured and priority debt your clients are paying in the plan.

\_\_\_\_\_ If your client's income was ABOVE Kentucky's Median Income for the 6 months prior to filing, as a matter of law, your plan must be 5 years or a 100% plan.

\_\_\_\_\_ If your client's income was BELOW Kentucky's Median Income, they MAY be allowed to do a less than 60 month plan.

\_\_\_\_\_ **IMPORTANT PRACTICE POINTER:** The closer your plan is to 36 months, and the lower the percent to unsecured creditors, the more scrutiny your plan and your Schedule J Expenses will receive from the Judge, the Chapter 13 Trustee (and possibly unsecured creditors). It should go without saying that if you can get your plan to at least 70 percent, the Judge probably won't be reviewing your plan for confirmation.

\_\_\_\_\_ RED FLAG PLAN PROVISIONS

\_\_\_\_\_ Paying for more than 1 car in the plan (or 2 in the case of a married couple) in less than 100% plans

\_\_\_\_\_ 401(k) / Retirement loan repayments – Your client can make these, but your plan needs to **affirmatively state** that your client is going to raise their plan payment by the amount of the loan repayment the month after the loan is paid back.

\_\_\_\_\_ Unless your plan is 100%, the following plans items WILL NOT receive the Trustee's recommendation for confirmation

\_\_\_\_\_ Timeshares (actually, time shares are a lousy idea anyway)

\_\_\_\_\_ ATV's (these are a bad idea, and dangerous, too.)

\_\_\_\_\_ Big TV's

\_\_\_\_\_ Motorcycles that are not the primary form of transportation

\_\_\_\_\_ Businesses or rental properties that do not have positive cash flow

\_\_\_\_\_ No “pool plans.” Your plan should state the PERCENT that unsecured creditors will receive. If your plan does not tell unsecured creditors what percent they will receive, the meeting will be adjourned ONCE so that you can file an AMENDED PLAN (at least 20 days before the next 341 meeting), and your client(s) will need to miss work again to come to Court.

\_\_\_\_\_ HOW MUCH IS MY CLIENT’S MONTHLY PLAN PAYMENT TO THE TRUSTEE?

\_\_\_\_\_ It seems basic, but the BOTTOM LINE NUMBER on Schedule J is how much your client pays the Trustee each month.

\_\_\_\_\_ PLANS NEED TO BE FEASIBLE - The bottom line number on Schedule J needs to be a POSITIVE number, not a negative number. (If it were a negative number, that would mean the Trustee would be writing your client a check each month to make up the deficit in your clients budget).

\_\_\_\_\_ ESCROWING OF PREPETITION PLAN PAYMENTS

Your clients **MUST** put their pre-confirmation plan payments into your escrow account. If your client’s case was DELAYED in confirmation for some reason, then the Trustee should still receive ALL of the payments that were due since the filing of the petition. (Example – 4 months pass from filing to confirmation, the Trustee should receive 4 payments AT CONFIRMATION). See also 11 U.S.C. §1326(a)(1).

**IMPORTANT PRACTICE POINTER:**

**IF YOUR CLIENT DOES NOT DO THIS, THEN THE CHAPTER 13 TRUSTEE WILL NOT BE ABLE TO PAY ADEQUATE PROTECTION PAYMENTS TO SECURED CREDITORS, AS REQUIRED BY BAPCPA, AND THE CHAPTER 13 TRUSTEE WILL NOT RECOMMEND YOUR PLAN FOR CONFIRMATION.**

Also, please read Local BK Rule 13.4 – Here it is:

**13.4 Debtor's Obligation to Make Escrow Payments; Payments to Standing Trustee (3070-1)**

- a. Every debtor represented by counsel must make proposed plan payments required by 11 U.S.C. §1326 to debtor’s attorney’s escrow account from the date of filing the plan.
- b. Proposed plan payments must be paid to the standing Trustee at the Section 341 meeting.

- c. Failure to make such payments to the standing Trustee shall be grounds for appropriate sanctions - including denial of confirmation.

\_\_\_\_\_ PAYROLL DEDUCT IS MANDATORY. If your client does not want to do a payroll deduct, you will need to see the Judge at the Confirmation Hearing to plead their case. There are 2 code sections in particular that give the Trustee statutory authority to do payroll deducts. They are...

- a. 11 USC §1325(c) – After confirmation of a plan, the court may order any entity from whom the debtor receives income to pay all or any part of such income to the Trustee.
- b. 11 U.S.C. §1302(b)(4) – The trustee shall ... advise, other than on legal matters, and assist the debtor in performance under the plan.

Also, it is a violation of Federal Bankruptcy Law for an employer to terminate employment or discriminate against someone solely because they filed bankruptcy. See 11 U.S.C. §525(b).

\_\_\_\_\_ DOMESTIC SUPPORT OBLIGATION (DSO) INFORMATION

The Chapter 13 Trustee MUST send notification of the Bankruptcy Filing to the holder of any Domestic Support Obligations. **BEST CASE SOFTWARE** gives you a place to put the name and address of the holders of any DSO's on your plan. See Best Case Software Plan Provision 4.b.(1)(b). PLEASE USE IT.

\_\_\_\_\_ THE 341 MEETING

\_\_\_\_\_ Review the Claims Register BEFORE you come to Court. Please log onto ECF and exam at each claim that creditors have filed before you come to Court.

\_\_\_\_\_ Make sure your clients have a picture ID and something with their Social Security number on it (and make sure they have it out of their wallet and ready to go before they come up to the table).

\_\_\_\_\_ Have your client's plan payment ready to hand to the Trustee. We do not accept cash.

\_\_\_\_\_ THE CONFIRMATION HEARING

\_\_\_\_\_ If your plan will pay unsecured creditors at least 70 percent, and if no creditor has a pending objection to confirmation, and if the Chapter 13 Trustee has no other problems with your case, then the Court will automatically confirm your case. You should receive a signed Confirmation Order within about a week of the 341 meeting.

\_\_\_\_\_ If your plan pays unsecured creditors less than 70 percent, then the case will need to go before the Judge for Confirmation. You and your clients will need to stay for the Confirmation Hearing. Confirmation Hearings take place **the same day** as the 341 meeting, at the following times:

Louisville	Morning Cases – 11:30 a.m.
	Afternoon Cases – 3:30 p.m.
Owensboro	11:00 a.m.
Paducah	11:30 a.m.
Bowling Green	11:00 a.m.

\_\_\_\_\_ The Court MAY confirm your case early, before the scheduled confirmation hearing, if there are no pending objections. If the Court does, and if a break occurs during the 341 Docket, the person conducting the 341 Meeting will try to let you know that your clients’ plan has been confirmed so that your client can leave Court and go about their business of earning money so that they can make their Chapter 13 Plan payments.

\_\_\_\_\_ If your case is less than 70 percent, the Trustee **will** make a recommendation to Court regarding Confirmation. See 11 U.S.C. §1302(b)(2)(B). Usually, the Trustee will recommend confirmation.

\_\_\_\_\_ If the Trustee is not recommending confirmation, the Trustee or his representative will tell you why at the 341 table, and we will offer you an opportunity to correct the problem, if possible.

\_\_\_\_\_ If we think that the Judge will think that your client’s plan payment is not their “Best Effort”, we will tell you so. While we cannot read the judiciary’s minds, we have been doing this long enough to know the particular plan provisions and plan expenses that will not “fly” in a Chapter 13 Plan.

\_\_\_\_\_ The Trustee wants your client to obtain a confirmed plan. We have a statutory duty to “assist” your clients in performance of their plan, and we take this duty very seriously. See 11 U.S.C. 1302(b)(4).

## 2. POST CONFIRMATION PRACTICE

Unlike a Chapter 7, your work for your client in a Chapter 13 is not done with your appearance at the 341 Meeting and Confirmation Hearing. The following is a checklist of things to do in a Consumer Chapter 13 AFTER a successful Confirmation Hearing (this list is not all-inclusive).

### \_\_\_\_\_ SCHEDULE OF ALLOWED CLAIMS

\_\_\_\_\_ After the Claims Bar Date has passed, you need to review each and every claim filed.

\_\_\_\_\_ On the Schedule of Allowed Claims, if the claim is good/ok, state that the claim is allowed and should be paid by the Chapter 13 Trustee.

\_\_\_\_\_ If you want to dispute the claim:

\_\_\_\_\_ Say so on the Schedule of Allowed Claims

\_\_\_\_\_ File an Objection to the Claim, and serve the objection upon the creditor.

### \_\_\_\_\_ MAKE SURE YOUR PLAN STILL WORKS (THIS IS VERY IMPORTANT)

\_\_\_\_\_ ON THE SAME DAY that you prepare and file the Schedule of Allowed Claims, you need to make sure that your client's plan still "works." If your client's plan doesn't "work" any more (because claims were higher than you thought, or your client forgot to tell you about 10 creditors, etc.), you will need to file a Motion to Amend the Order of Confirmation (pursuant to 11 U.S.C. §1329) to "fix" your plan. You will need to serve the Motion on all creditors.

\_\_\_\_\_ If you do not take the affirmative step to make your client's plan work, the Chapter 13 Trustee will first make one friendly courtesy call to your bankruptcy "assistant" to tell you of the problem.

\_\_\_\_\_ If you do not fix the problem after 30 days, a second friendly phone call will be placed DIRECTLY TO THE ATTORNEY.

\_\_\_\_\_ If the plan still is not fixed after the second friendly phone call, the Trustee will file a not so friendly Show Cause Motion for the Attorney to come to Court and show cause why they have not fixed their client's plan.

\_\_\_\_\_ LOCAL RULE 13 PRACTICE – Tax Refunds and Tax Returns

\_\_\_\_\_ The rule is WDKY Local Rule 13.6. In sum, all debtors in plans that pay less than 100% MUST send the following to the Chapter 13 Trustee each year by May 15:

\_\_\_\_\_ A copy of their Federal and State Tax Return

\_\_\_\_\_ An updated Schedule J

\_\_\_\_\_ All of their Federal and State Tax Refunds

\_\_\_\_\_ Failure to comply with this Local Rule WILL result in the dismissal of your client's case.

\_\_\_\_\_ The published case that supports this is In re: Risher, 344 BR 833 (Bankr. W.D.Ky. 2006)

**ATTORNEY FEES**

\_\_\_\_\_ Everything mentioned up to this point is included in the flat/no-look fee of \$2500 for doing a Consumer Chapter 13.

\_\_\_\_\_ For everything listed after this point (except for filing the Certificate of Plan Completion at the end of the Plan), you are allowed to charge a “reasonable fee” for performing these services.

\_\_\_\_\_ You are STRONGLY encouraged by the Court and the Chapter 13 Trustee to ask for your fee contemporaneously in your Motion. Please place the amount of your fee to be awarded in your Resulting Order tendered to the Court.

\_\_\_\_\_ SHOW CAUSE HEARINGS

\_\_\_\_\_ MORE THAN 30 DAYS BEHIND – THE TRUSTEE WILL FILE A SHOW CAUSE

\_\_\_\_\_ The Motion to Show Cause will automatically be set for hearing by the Court

\_\_\_\_\_ Tell your client about the hearing

\_\_\_\_\_ Attend the Show Cause Hearing, unless....  
you file an ACCEPTABLE Written Response with a Resulting Order 5 BUSINESS DAYS before the hearing (not the day before).

\_\_\_\_\_ If your client has no defense to the Show Cause Hearing, and you also don't want time to Convert your case to Chapter 7, you may call the Chapter 13 Trustee up to the day before the hearing at 502 581-9042 to say that no legal objection exists to dismissal (however, DON'T call the Trustee the day before the hearing to try to "work out" the Show Cause Motion – we can just do that at Court the next day).

\_\_\_\_\_ **BRING THE NEW PAYROLL DEDUCT INFORMATION WITH YOU.**

\_\_\_\_\_ The Resulting Order from most Show Cause Hearings is that your client will resume payments immediately, the Trustee will issue a wage deduct, and you will be awarded a reasonable fee for your representation on the Show Cause Matter (if the case is more than 6 months old).

\_\_\_\_\_ If your client does NOT comply with the Resulting Order by the next month (i.e. The Trustee does not receive \$\$\$), the Trustee WILL file a Motion to Dismiss (not another Show Cause).

\_\_\_\_\_ If you come to the show cause hearing, and you want 14 days to Modify your client's plan, the resulting Court Order will also direct your clients to resume payments immediately while the Modification is Pending. Your client will NOT be allowed to "ride for free" while the modification is pending (especially if there are secured creditors to be paid by the Trustee).

\_\_\_\_\_ **IMPORTANT PRACTICE POINTER:** Motions to Dismiss filed by the Chapter 13 Trustee after a Show Cause Hearing for failure to resume payments are typically granted the next day by the Court.

\_\_\_\_\_ MOTIONS FOR RELIEF

\_\_\_\_\_ If a creditor files a Motion for Stay Relief, it is YOUR RESPONSIBILITY to inform your client of the Stay Relief Motion.

\_\_\_\_\_ Unlike Chapter 7, all Chapter 13 Stay Relief Motions are automatically set for hearing. In Louisville, those hearings typically take place at 1:30 p.m. on the same day as Chapter 13 341 Meetings. In Bowling Green, Owensboro, and Paducah, the Motions for Relief take place as a part of the regularly scheduled monthly Chapter 13 Motion Docket.

\_\_\_\_\_ PAYMENT SUSPENSIONS

\_\_\_\_\_ If your client has a legitimate reason for a short payment suspension, you can file a Motion on their behalf to suspend their plan payments.

\_\_\_\_\_ Please see Local Form F for an example of a Sample Payment Suspension Motion.

\_\_\_\_\_ AFTER the Payment suspension is granted, it is the attorney or your clients responsibility to make sure the employer receives and complies with the payment suspension Order.

\_\_\_\_\_ The Chapter 13 Trustee is not a bank. If the employer does not comply with the Suspension Order, the Trustee will not refund money sent to the Trustee by the employer unless you ask us to. If we do refund the money, we will do it on the first of the month when we write our monthly disbursements.

\_\_\_\_\_ PAYMENT DECREASES

\_\_\_\_\_ If your client's income goes DOWN during the Chapter 13, or if their reasonable and necessary expenses GO UP, you can still petition the Court by Motion to decrease their payments. You would do this by filing a Motion to Amend the Order of Confirmation. See 11 U.S.C. §1329.

\_\_\_\_\_ **IMPORTANT PRACTICE POINTER:** Payment Decreases or payment suspensions are where you see the typical Chapter 13 Trustee Response/Objection of "THE DEBTOR'S MOTION EXTENDS THE PLAN PAST 5 YEARS". IF YOU DECREASE OR SUSPEND YOUR CLIENT'S PLAN PAYMENTS, YOU NEED TO MAKE SURE THEIR PLAN STILL "WORKS." If unsecured creditors will now receive a lower percent, your

Motion and Resulting Order MUST also say what the NEW percent will be. (The unsecured creditor might want to object to your Motion).

\_\_\_\_ Also, your client's plan still must pass the Chapter 7 Liquidation Analysis with the lower plan payments. If it does not, the Chapter 13 Trustee will objection to your modification.

#### \_\_\_\_ PAYMENT INCREASES

\_\_\_\_ After reviewing your client's tax returns in under 100 percent plans, the Chapter 13 Trustee may file a Motion to Raise your client's plan payments because their income has gone up "significantly" since Confirmation. See 11 U.S.C. §1329.

\_\_\_\_ The Trustee does not raise payments to take away your client's cost of living raises. That would be unfair and mean-spirited.

\_\_\_\_ Last year, with approximately 7500 active Chapter 13's, the Chapter 13 Trustee filed approximately 75 Motions to raise plan payments because your clients had, in the Chapter 13 Trustee's opinion, significantly more disposable income than at confirmation.

\_\_\_\_ We don't have an exact count, but we are confident that there were more than 75 Motions to Suspend Plan Payment and Motions to Reduce Plan Payments filed in the Western District of Kentucky last year.

\_\_\_\_ Just like the Chapter 13 Trustee did not object to most Debtor Motions to Decrease or Suspend Plan Payments, most of the Trustee's Motions to Increase were not objected to by Debtor's Counsel. This is a good reflection on both the reasonableness and the high level of practice of the members of Debtor's Bar of the Western District of Kentucky

#### \_\_\_\_ MOTIONS TO BORROW MONEY

\_\_\_\_ The typical reason for borrowing money during a Chapter 13 is to purchase a car. If the car payment is reasonable, and if your client is current with their plan payment, chances are the Chapter 13 Trustee will not object.

\_\_\_\_ If your client wants to borrow money to purchase a NEW house while in Chapter 13, the Trustee will probably file a "NOT IN THE BEST INTEREST OF CREDITORS" objection unless your client is both current with the Trustee and in at least a 70% plan.

\_\_\_\_\_ Any other type of Motion to Borrow will receive the “NOT IN THE BEST INTERERST OF CREDITORS” objection.

\_\_\_\_\_ Please see Local BK Form G for a sample Motion to Borrow.

\_\_\_\_\_ MOTIONS TO PAY OFF PLAN EARLY – 36 Months is “Magic”

\_\_\_\_\_ In general, the Trustee will object to any Motion to pay off a plan before 36 months have passed, unless the Motion states that it is a Motion to Pay Off the Plan, in Full, at 100%.

\_\_\_\_\_ Motions to Pay Off Early filed after Month 36 may or may not be objected to by the Trustee, depending on, but not limited to, the following factors:

\_\_\_\_\_ The “source” of paying of the plan early

\_\_\_\_\_ The percent that unsecureds are receiving in the payoff

\_\_\_\_\_ How big have the past tax refunds been in the previous 36 months?

\_\_\_\_\_ DEBTOR EDUCATION

\_\_\_\_\_ Before receiving their discharge, your clients must obtain their “Debtor Education” (i.e. Ticket Out). If you don’t file it with the Court, their case will close WITHOUT A DISCHARGE (which is a bad thing).

\_\_\_\_\_ If you Move to Reopen the Case to file the Debtor Education Certificate, the Court is going to presume it was YOUR FAULT for not filing the Debtor Education form. The Court will require YOU (the attorney) to pay the Reopening Fee, unless you can show it was your client’s fault for not doing the Debtor Education

\_\_\_\_\_ REQUEST FOR DISCHARGE

\_\_\_\_\_ In the post-BAPCPA world, just making all of your plan payments does not entitle your client to a discharge.

\_\_\_\_\_ At the end of the Chapter 13, your clients have to say “Mother May I?” You will need to file an **Affidavit** with the Court telling the Court whether or not your client is entitled, as a matter of law, to a discharge. See Local Form Q.

\_\_\_\_\_ **IMPORTANT PRACTICE POINTER**: Your clients must keep you apprised at all times of their new address and new phone numbers. Otherwise, you will not be able to help them obtain their discharge that they will have EARNED after completing all of the plan payments.