

**THE LAW OFFICES OF BONNIE L. JOHNSON  
10830 N CENTRAL EXPWY SUITE 175  
DALLAS, TX 75231  
(214)748-4848**

**CHAPTER 13 SURVIVAL GUIDE  
MOST COMMONLY ASKED QUESTIONS AND ANSWERS  
ABOUT CHAPTER 13**

Please note: This information is provided to you to assist you in understanding and successfully completing a standard Chapter 13 proceeding. It is not intended to cover the multitude of problems that can arise in complicated cases or business bankruptcies. Questions about such cases should always be discussed with one of our firm attorney's. This material is informative in character and is not intended as advertising. Our office features "FREE CONSULTATION AT ANY TIME" if you are concerned over a serious issue in your case, we recommend you call immediately and set up a free consultation that will be provided to you at a mutually convenient time.

## CLIENT QUESTIONS 13

### EFFECTS OF FILING BANKRUPTCY

**Q: CAN I HAVE MY TRUSTEE PAYMENT TAKEN OUT OF MY PAYCHECK OR OUT OF MY CHECKING ACCOUNT?**

A: Yes. This is a voluntary procedure. One of our paralegals can assist in filling out a wage order. To increase your chances of successfully concluding this bankruptcy, we recommend a wage order or and ACH withdrawal. However, it is your decision to make.

**Q: AT WHAT POINT DOES MY BANKRUPTCY PROTECTION ACTUALLY BEGIN?**

A: The “automatic stay” (or protection from creditor action) occurs the instant that your petition is filed with the Bankruptcy Court. The petition is a two page document which lists your name, address, social security number and other basic information. As soon as that petition is file-stamped by the Court at the clerk’s office with a bankruptcy number, you have filed bankruptcy and are under the protection of the Court. A case number is never issued (or assigned) to more than one case. You will be the only Debtor with that case number. This is why it is helpful to supply your creditors with your bankruptcy number. It is proof that you have actually filed.

**Q: AFTER I FILE BANKRUPTCY DOES THAT MEAN THAT THE TRUSTEE CAN TAKE CONTROL OF MY PROPERTY OR BANK ACCOUNTS?**

A: No. One of the advantages of filing a Chapter 13 in this District is that you remain in control and possession of all your exempt property. You will continue to use your exempt property and control your bank accounts as usual. All payments made to the Trustee on your part are voluntary. In this district the Trustee will not seize or garnish your paycheck or bank accounts for your monthly Trustee Chapter 13 payment unless you request it. **HOWEVER, YOUR IRS TAX REFUNDS MAY BE RETAINED BY THE TRUSTEE.**

**Q: HOW LONG DOES MY CHAPTER 13 BANKRUPTCY AFFECT MY CREDIT RATING?**

A: For an eleven year maximum duration from the date you file your case. However, our office IS NOT responsible for contacting the credit bureaus on your behalf after the bankruptcy has been discharged and making sure all of the creditors in your bankruptcy have been listed.

**Q: WHAT CAN I DO TO REDUCE THE EFFECT OF MY CHAPTER 13 ON MY CREDIT RATING?**

A: The best thing that you can do to have Chapter 13 help your credit is to have our office draft a plan to pay 85% to 100% on the dollar to your unsecured creditors. Even though you are paying ZERO INTEREST, believe it or not, the Chapter 13 Trustee has a very credible, efficient credit rehabilitation program for both the Dallas and Fort Worth Divisions of the Northern District of Texas. However, to qualify, you generally must repay 85 cents on the dollar. As little as 75 cents on the dollar has helped certain debtors. This is only available to debtors that have successfully completed their Chapter 13 bankruptcies. Next, even if you can't pay that much back, at least keep current on all the payments required by your Chapter 13 bankruptcy plan. Remember, it is better in the creditors' eyes that you repaid even 30 cents on the dollar, rather than just erased your debts in a 7. Also, credit bureaus may be willing to let you add "explanatory comments" to your credit report. The last page of this manual has a partial list of creditors who can help you AFTER you have successfully completed your Chapter 13 bankruptcy. For more information, contact the Credit Rehabilitation Department for the Dallas and Fort Worth Chapter 13 Trustees.

**Q: IF I HAD FILED A CHAPTER 7 BANKRUPTCY INSTEAD OF CHAPTER 13 HOW LONG WOULD THAT HAVE REMAINED ON MY CREDIT?**

A: For eleven years from the date of filing.

**Q: WILL THE FILING OF MY BANKRUPTCY BE PUBLISHED IN THE PAPER?**

A: The filing of a Consumer Bankruptcy is a matter of public record and as such your case is subject to inspection by anyone who has knowledge of your filing. Everyone listed on your mailing matrix (creditors) in your bankruptcy paperwork will receive notice of your filing. Therefore, only creditors are normally aware of your bankruptcy unless you tell others. However, there is not any law that limits the right of a newspaper to publish a list of bankruptcies filed. Your creditors are the only ones aware of your bankruptcy in most instances.

**Q: WILL MY EMPLOYER FIND OUT ABOUT MY BANKRUPTCY?**

A: No, not unless one of the following six things occurs: (1) You decide to tell your employer or, (2) Your Employer is also a creditor and is, therefore, listed on your bankruptcy mailing matrix; (3) Your employer is informed by a third party (i.e. creditors) that you have filed, (4) Your employer subscribes to a business or legal publication that publishes the name and case numbers of consumer debtors, (5) you have your Chapter 13 Trustee payment deducted from your paycheck, or (6) Your employer runs "routine" credit checks for security purposes. In this last event, a bankruptcy is generally considered to be a responsible resolution of your debts. In fact, certain Department of Defense security clearance revocation actions may be stopped when a person files and notifies the department. Remember, you must disclose a bankruptcy filing to an employer or security clearance authority when asked about it on a questionnaire. Disclosure is the only alternative.

Furthermore, if it is necessary for our office to call you at work in relation to your case, we will only identify ourselves as representing your attorney's office. We will not disclose the nature of the call or give any information informing the person you are in bankruptcy. We take this precaution not because we feel there is anything incorrect with a person filing bankruptcy, but because we wish to protect your privacy whenever

possible.

**Q: CAN I BUY ANOTHER HOUSE OR CAR AFTER FILING CHAPTER 13?**

A: In terms of buying a House, The June 23, 1992 U.S. Dept. of Housing and Urban Development Guidelines, Handbook 4155.1 Rev. 4 states "A borrower paying off debts under Chapter 13 of the Bankruptcy Net may also qualify if;

- (1) One year of the pay-out period has elapsed and performance has been satisfactory; and
- (2) The borrower receives Court approval to enter into the mortgage transaction."

Also, a debtor will normally qualify for any non-qualifying assumptions on pre 1985 housing. Regarding car loans, Chrysler Credit Corp. has a "Second Start" program where a buyer may qualify if \$2500.00 is paid down on a car valued at \$11000.00 or less. DO NOT walk into a dealership and tell the salesperson that you are in bankruptcy on the front end. That person may attempt to charge you a premium for the car, plus higher interest. DO NOT discuss your credit situation until you have a written quote on price from the dealer for the specific auto or truck you desire to purchase. Folks that have filed bankruptcy will normally pay a higher interest rate to borrow on cars, but should not position themselves to pay twice for the vehicle by untimely front end disclosure of an adverse credit standing.

Several reputable dealers, including Toyota of Irving, Toyota of Dallas are generally known to sell cars to folks that have filed Bankruptcy. Please always reference an NADA Guide when buying any car. You will generally pay a higher rate of interest but should never pay over the "Average Retail" value when buying a car. The NADA Guide can be purchased at most major bookstores. GMAC has in the past financed vehicles where there was previous satisfactory credit with GMAC.

**PLEASE NOTE THAT A DEBTOR IS NOT ALLOWED TO BUY A HOUSE OR CAR WITHOUT SEEKING COURT AUTHORIZATION.** When a debtor is attempting to buy a house or car before confirmation, a Court Order must be obtained. Please avoid "Tote-The-Note" lots.

**Q: CAN MY EMPLOYER LEGALLY DISCRIMINATE AGAINST ME BECAUSE I FILED BANKRUPTCY?**

A: Absolutely not. The Bankruptcy Code expressly prohibits an employer from discriminating against an employee merely on the basis that he or she filed bankruptcy.

**Q: I'M ENTITLED TO GOVERNMENTAL BENEFITS. IS THERE ANY WAY MY FILING BANKRUPTCY CAN JEOPARDIZE MY ABILITY TO RECEIVE THOSE BENEFITS?**

A: No. The Bankruptcy Code expressly prohibits any governmental unit or agency from denying benefits to anyone merely because they have filed bankruptcy. This includes all veterans' benefits such as disability, health care, retirement, and all benefits to which you are entitled as an employee of the city or state. However, you should expressly list those benefits in your exemption elections and exempt them as your exempt property.

**Q: AM I ELIGIBLE FOR STUDENT LOANS AFTER FILING BANKRUPTCY?**

A: Yes. 11 U.S.C. 525(c), as of October 1994, allows a debtor to not be discriminated against as to Student Loan Applications solely because of the filing of a Bankruptcy.

**Q: I AM CONCERNED THAT A CREDITOR MAY COME AND UNEXPECTEDLY TAKE MY HOUSE, CAR OR OTHER PROPERTY. CAN THIS HAPPEN?**

A: Yes, but very rarely. A creditor cannot legally take back its collateral without a formal Court Order and permission. Gaining the Court's permission to repossess or foreclose on your property through a Motion to Lift Stay takes at least a month to occur since a formal hearing is also required in addition to the filing of a Motion. We will receive notice of the Motion shortly after it is filed and will immediately file the paperwork which is necessary to stop the creditor from getting a default or automatic judgment against you. We will be in contact with you to attempt to settle the matter through negotiation with the creditor (which is one of the reasons it's so important for you to supply us with a new phone number or address). If we cannot negotiate a settlement, we will represent you in a hearing before the Court and let the Judge make a decision on the matter.

Note: If a creditor who is duly listed in your bankruptcy schedules does attempt to repossess or foreclose on your property without a Court Order, such action is not legal and there are measures we can take on your behalf to get the property back. Most creditors are aware of the Bankruptcy rules, and it is, therefore, very rare for a creditor to attempt such action without going through the lengthy steps to gain the Court's permission as outlined above.

**Q: CAN I KEEP ANY OF MY CREDIT CARDS AFTER THE FILING OF MY BANKRUPTCY?**

A: Only if you had a zero balance on the card at the time you filed bankruptcy and you also obtained the permission of the Trustee beforehand for each purchase of consumer related goods you wish to charge on the card. All payments to credit cards made within 90 days of filing should be disclosed.

**Q: I HAVE A CO-DEBTOR ON ONE OF MY DEBTS. CAN MY CO-DEBTOR ALSO BE PROTECTED BY MY FILING BANKRUPTCY?**

A: It depends. If you and the co-debtor (i.e., a husband or a wife) both signed on the note to your home, the answer is yes; your filing alone will stop the pending foreclosure on the home. For other types of debts (i.e., a car loan) the answer depends on the circumstances involved (for instance, whether it was a business or consumer debt, and who received the benefit of the loan). This is a complex legal question which should be discussed with your attorney. Where co-signed notes are not paid off in your Bankruptcy, the Co-Debtor may be sued for any unpaid balance. You may insist on paying co-signed debts. This is permissible under the Bankruptcy Reform Act.

**SOME DEFINITIONS OF TERMS REGARDING YOUR BANKRUPTCY**

**Q: WHAT IS A "MOTION TO LIFT THE STAY" OR A "SECTION 362 PROCEEDING"?**

A: They are both the same thing. A Motion to Lift the Stay is essentially a request by a secured creditor for the Bankruptcy Judge's permission to repossess or foreclose on property. If you receive a copy of a Motion to Lift the Stay on property you don't wish to keep, simply call the office and let us know you want to give it back. **IF YOU RECEIVE A MOTION TO LIFT THE STAY ON PROPERTY YOU WANT TO KEEP, MAKE AN APPOINTMENT TO SEE YOUR ATTORNEY AT ONCE.**

There are very short time limits on answering such a motion, and once the deadlines are past, there is nothing we can do to help you. There are other, more exotic, Motions to Lift the Stay which usually involve a lawsuit that had already been filed in State Court when your bankruptcy was filed. These should be discussed with your attorney individually.

**Q: WHAT IS LIEN AVOIDANCE?**

A: Lien avoidance refers to a way that some Chapter 13 debtors can erase or void a lien on a secured debt. It applies only to the type of secured debt which occurs when someone puts up pre-owned household goods to secure a new loan from a finance company. It does not apply in a situation where a person buys household goods or appliances from a creditor, unless the person later went back to the creditor to borrow more money, and pledged the household goods and appliances previously bought as collateral on the second loan. If you are asked by our office to sign a Motion to Avoid a Lien, you should schedule an appointment as soon as possible to do so. We will file this Motion with the Court and attempt to void the lien which is the subject of the Motion.

**Q: WHAT IS THE "AUTOMATIC STAY"?**

A: When you file your bankruptcy, an "automatic stay" (or protection against creditor harassment and repossession) is immediately in effect. If a creditor files a Motion to Lift that Stay, that creditor is asking for the permission of the Bankruptcy Court to foreclose or repossess your property. A creditor is not allowed to repossess or foreclose on your property after you file bankruptcy without an express written court order. A Motion to Lift the Stay is the judicial procedure by which a creditor seeks permission of the Bankruptcy Court to take back your property.

**Q: WHO IS THE CHAPTER 13 TRUSTEE, AND WHAT DOES HE/SHE DO?**

A: If you file your bankruptcy case in Dallas, effective October 1, 1996, the Chapter 13 Trustee is Thomas Powers. If you file in Ft. Worth, then the Chapter 13 Trustee is Tim Truman. The Chapter 13 Trustee is appointed by the U. S. Trustee. Their job is to disburse the trustee payments you send every month to the various creditors that are being paid through your bankruptcy. It is also the Trustee's job to review and monitor your payments and to inform the Court whether or not your Chapter 13 plan be confirmed or approved by the Court.

**Q: WHAT IS A SECTION 341 OR CREDITOR'S MEETING?**

A: A creditor's meeting is a requirement under the Bankruptcy Code. It is held at the same time as the debtor's school. It is an opportunity for your creditors to meet with you and our attorney and ask reasonable, relevant questions relating to your bankruptcy. You will be assisted by an attorney from our office in answering any questions posed to you by a creditor. It is generally helpful if you are making efforts to pay the Trustee on time, and have proof of your Trustee payments with you. Please bring copies of your bank statements and last two years of tax returns, your social security card and your drivers' license with

you,

**Q: WHAT IS CONFIRMATION?**

A: Confirmation refers to the formal approval by the Court of your Chapter 13 plan. This occurs after your attorney sends out a Motion for Confirmation to all your creditors following your Debtor's School/Creditor Meeting. Your plan is confirmed once the Bankruptcy Judge signs the Order confirming your Plan at the confirmation hearing.

**Q: WHAT DO THE TERMS "PRE-PETITION DEFAULTS" AND "POST-PETITION DEFAULTS MEAN"?**

A: Pre-petition defaults are payments that you did not make to a creditor before the bankruptcy was filed. Post-petition defaults are payments not made to a creditor after the bankruptcy was filed.

**BANKRUPTCY 'MUSTS'**

**Q: MUST I LIST ALL MY DEBTS IN NY BANKRUPTCY PAPERS?**

A: YES, YOU MUST! One of the most basic principles of bankruptcy law is that all similar creditors must receive similar treatment through the bankruptcy. Since a debt which is not listed is usually not discharged, that debt would survive the bankruptcy (that creditor could sue you, for example). The omission of a debt is preferential treatment to an unlisted creditor over the listed ones, and that is forbidden by the Bankruptcy Code. When you sign your schedules you are declaring under penalties of perjury that you have listed all creditors of which you are aware.

**Q: MUST I LIST ALL MY ASSETS?**

A: Yes. One of the most serious mistakes anyone can make in a bankruptcy case is to try to hide property from the Trustee or the Court. If the Court believes that any failure to list an asset was deliberate, the Court may certify the facts to the United States Attorney for possible prosecution. Once again, when you sign your bankruptcy papers you are declaring under penalties of perjury that everything is correct to the best of your knowledge. Intentionally failing to list property is not only perjury but a bankruptcy crime as well. If you mistakenly omit any asset from your papers, let us know immediately. We are allowed to amend your schedules for some time after they are filed.

**Q: WHY IS IT SO IMPORTANT THAT I SUPPLY THE LAW OFFICES OF BONNIE L. JOHNSON WITH A LIST OF ALL MY CREDITORS AND THEIR CORRECT MAILING ADDRESSES?**

A: First, the Bankruptcy Court requires it. You must inform the Court of all your debts and obligations. Willful failure to do so is a federal crime. Second, if you don't give the Court the right address for a creditor then that creditor will not be notified of the bankruptcy. A creditor who is not notified of your bankruptcy is not legally affected by it, and that debt will survive your bankruptcy and that creditor could file suit to collect such a debt.

**Q: WHY ARE CREDITOR'S ADDRESSES SO IMPORTANT?**

A: The debt associated with a creditor who doesn't get notice of the filing of a bankruptcy filing is not discharged. This means that such a creditor would still have all its original rights to try to collect its debt. For example, they could still call, write, or sue you. We suggest that if you have more than one address for a creditor that you give us all the addresses you have. In this way we can be more assured that the notice of your bankruptcy filing will reach the creditor. If a notice comes back to us, we will ask you to search your records for a current and correct address. This is very important and is well worth the time and trouble it may take to obtain a current address.

**Q: WHY IS IT SO IMPORTANT THAT I KEEP MY APPOINTMENT TO RETURN TO THE OFFICE WITHIN 15 DAYS OF THE DATE I FILED MY BANKRUPTCY PETITION?**

A: The Bankruptcy Court requires that a complete set of financial documents called schedules be filed on every Chapter 13 case within 15 days of the original petition. If this is not done, the Court could dismiss your bankruptcy and bar you from filing another bankruptcy for a six month period. We need for you to supply the necessary information, review, and sign your Chapter 13 schedules before we can submit them to the Court.

**Q: MY EMPLOYMENT CONTRACT WITH THE LAW OFFICES OF BONNIE L. JOHNSON, P.C. REQUIRES THAT I IMMEDIATELY INFORM THEM IN WRITING OF A CHANGE OF ADDRESS OR PHONE NUMBER FOR EITHER WORK OR HOME. WHY IS THIS NECESSARY?**

A: If there is any sort of problem or attack against your bankruptcy we must be able to contact you to effectively represent your interests. For instance, if we receive a Motion by a creditor to take back your property or to oppose your confirmation, we must be able to notify you of what must be done to protect your property.

**Q: SHOULD I LIST CREDITORS IN MY BANKRUPTCY TO WHOM I FEEL THE DEBT IS UNCERTAIN OR DISPUTED?**

A: Yes. You must list even uncertain, contingent, or disputed debts in your bankruptcy. Failure to do so means we cannot give you the benefits and protection of your Chapter 13 regarding those debts. Those debts may survive the bankruptcy and those creditors could sue you later.

**Q: I HAVE FILED BANKRUPTCY, BUT MY SPOUSE DID NOT. MUST I STILL LIST MY SPOUSE'S INCOME IN MY BANKRUPTCY PAPERWORK?**

A: Yes. The Bankruptcy Court requires that the income of both the filing and the non-filing spouse be included in developing a Chapter 13 plan. The only exception would be if you and your spouse were separated, living under separate roofs, and not planning to contribute any income to each other's expenses in the future (e.g. anticipating filing for divorce or in divorce proceedings).

**Q: WHAT SHOULD I DO IF I EXPERIENCE A SERIOUS INCREASE OR DECREASE IN MY EXPENSES OR INCOME SINCE I FILED BANKRUPTCY?**

A: Contact our office immediately, and set up an appointment. Amended paperwork must be filed in your bankruptcy to reflect changes of this type within ten days from the time that the changes occur.



## **MOTION TO LIFT STAY**

### **Q: WHAT IS A MOTION TO LIFT THE STAY OR A SECTION 362 PROCEEDING?**

A: They are both the same thing. A Motion to Lift the Stay is essentially a request by a secured creditor for the Bankruptcy Judge's permission to repossess or foreclose on your property. If you receive a copy of a Motion to Lift the Stay on property you do not want to keep, simply contact the office and let us know that you do want to give it back. -- **IF YOU RECEIVE A MOTION TO LIFT THE STAY ON PROPERTY YOU WANT TO KEEP, MAKE AN APPOINTMENT TO SEE YOUR ATTORNEY AT ONCE.** There are very short time limits on answering such a motion, and once the deadlines are past, there is nothing we can do to help you. There are other, more exotic, Motions to Lift the Stay which usually involve a lawsuit that had already been filed in State Court when your bankruptcy was filed. These should be discussed with your attorney individually.

### **Q: WHEN CAN A CREDITOR FILE A MOTION TO LIFT STAY?**

A: At any time that your bankruptcy is still active and on file with the Court. In a Chapter 13 Bankruptcy, this is usually from three to five years.

### **Q: WHAT CAN I DO TO AVOID A MOTION TO LIFT STAY?**

A: First of all, make sure you make all payments, at the appropriate time, as you have been instructed by our office (Please refer to your "Payments We Must Make Sheet."). Secondly, make sure that your house, cars, and any other major pieces of equipment you own are adequately insured. This means that each piece of property has full insurance coverage (including comprehensive) and lists the lien holder (or the creditor) as a "loss payee" on your insurance policy. Provide a copy of your full insurance coverage (including comprehensive) directly to your creditor just as soon as possible after your case is filed. Following these steps will make it very unlikely that you will have a Motion to Lift Stay filed against you.

### **Q: WHAT SHOULD I DO IF I RECEIVE A MOTION TO LIFT STAY IN THE MAIL AND I WANT TO TRY AND KEEP THE PROPERTY THE CREDITOR IS ATTEMPTING TO GET BACK?**

A: Contact our offices immediately to set up an appointment. You will need to come in right away to sign an affidavit (sworn statement) regarding the reasons why you should be able to keep the property in question. This affidavit must be done to comply with a rule of the Bankruptcy Court (for Debtors in Dallas). If you do not furnish an affidavit to the Court through our office within a certain amount of time, the Court could let the creditor have the property back no matter how "in the right" you may be. When you come for your appointment to prepare your affidavit, bring proof of insurance on the property in question, proof of your Trustee payments, and proof of direct payments made to the objecting creditor since the filing of the bankruptcy (but only if direct payments were required by the terms of your plan).

### **Q: I RECEIVED A MOTION TO LIFT STAY ON A PIECE OF PROPERTY THAT I HAVE DECIDED TO RETURN TO THE CREDITOR. WHAT SHOULD I DO?**

A: Notify our offices immediately of your desire to surrender the property. Then send a note informing us that you authorize the Law Offices of Bonnie L. Johnson to surrender the property on your behalf. Sign the note, date it, and mail it to us. This will be a big help to us. It will also keep us from developing extra

hours that you could be required to pay for in the event we file a “Fee Application.” If you have lost all important property that you originally filed a Chapter 13 in order to keep, due to non-payment, don’t despair. Set up an appointment for a free consultation. We are generally able to convert your case to a Chapter 7 and discharge the rest of your debt without further Trustee payments. (Cost is normally \$2225.00.)

**Q: HOW DELINQUENT IN MY MORTGAGE PAYMENTS DO I HAVE TO BE BEFORE THE MORTGAGE CO. WILL FILE A MOTION FOR RELIEF FROM STAY?**

A: There is not a definite answer. Each creditor is different in its time response to post-petition default. Some creditors will file on the basis that the payments are received late each month. Others will not file until several months of post—petition arrears have accumulated. There is not a way to predict for sure if or when you will have a Motion to Lift Stay filed in your case. The safest thing to do, of course, is to make all mortgage payments on time.

**Q: I’M BEHIND ON MY HOUSE PAYMENT, WHAT SHOULD I DO?**

A: Send in partial payment if that’s all you can afford. Send in the balance as soon as possible. If you have a contact at the mortgage company (such as a loan officer) with whom you have enjoyed a good relationship in the past, it might be helpful to call and inform that person when you’ll be sending your payment. Do not become overly distressed or lose sleep if you are delinquent on just one mortgage payment since the filing of your bankruptcy. The chances of getting a Motion to Lift Stay are not as great if you are late on just one mortgage payment as if you have missed two or more since filing the bankruptcy. But try to make every mortgage payment on time every month to eliminate a Motion to take back your house. The more delinquent you are in making your mortgage payment; the more likely it is that the mortgage co. will take action to take back the house.

**HOUSE PAYMENTS TO YOUR MORTGAGE COMPANY AFTER FILING**

**Q: IS THERE ANYTHING I CAN DO TO INCREASE THE PROBABILITY OF RECEIVING PROPER CREDIT FOR THE PAYMENTS I MAKE TO MY MORTGAGE COMPANY OR TRUSTEE?**

A: Yes. On every check you send to the mortgage company, you should include your loan number and bankruptcy number. On your trustee payments, make sure to list your bankruptcy number. It is always better to send your mortgage payments by check since they are easier to replace if lost and provide better proof of payment than a carbon copy of a certified check or money order.

**Q: MY MORTGAGE COMPANY IS RETURNING THE PAYMENTS I SENT AFTER MY BANKRUPTCY WAS FILED. WHAT SHOULD I DO?**

A: **FIRST OF ALL, DON’T SPEND THE MONEY!** It is an error on the part of the Mortgage Company to return your mortgage payments after the filing of your bankruptcy. However, you will still owe them the money and this won’t stop them from demanding all the money back again once they discover their mistake. If this occurs and you’ve already spent the returned funds, the Mortgage Co. could file a Motion to Lift Stay to take back your property on the grounds that you failed to make all your payments since the filing of your case. You should deposit the returned payments into a separate bank account (where you’re not tempted to spend them) and contact our office about the problem. We will notify the attorney for the

Mortgage Co. This will usually solve the problem.

### **CONTACT WITH YOUR ATTORNEY'S OFFICE**

#### **Q: WHAT SHOULD I DO IF I HAVE A QUESTION REGARDING MY BANKRUPTCY?**

A: To repeat, review this Survival Guide! The answer to your question is probably somewhere within these materials. If not, call our office and speak to one of our paralegals. In most instances they will be able to answer your question. If not, you may direct your question to one of our attorneys. If you are unable to reach one our paralegals by phone, attempt to e-mail them directly. Their e-mail addresses are located on their business cards.

#### **Q: I HAVE AN IMPORTANT QUESTION REGARDING MY CASE THAT THE PARALEGALS CAN'T ANSWER, BUT I CAN'T REACH AN ATTORNEY BY PHONE. WHAT SHOULD I DO?**

A: Each attorney at our firm makes every attempt to return all client calls. However, the demands on their time are so high that it may not always be possible for them to do so. If this occurs, call our office and set up an appointment to see an attorney. A FREE consultation will automatically be scheduled so that your problem may be resolved through a face to face meeting with an attorney.

#### **Q: I HAVEN'T HEARD ANYTHING FROM MY ATTORNEY'S OFFICE SINCE I FILED MY CASE. DOES THAT MEAN THERE'S SOMETHING WRONG?**

A: No! Don't worry if you haven't heard from us for a while. Generally the only time you would be contacted by our office is if there is some type of problem with your case. If everything is going smoothly, there usually is no need to contact you. If there is a problem, such as a Motion to Lift Stay (a Motion by a creditor to take back your property) or an Objection to your Confirmation (Court approval of your Bankruptcy), we will contact you about what needs to be done to protect your property and your bankruptcy.

### **CREDITOR HARASSMENT**

#### **Q: WHAT SHOULD I DO IF I CONTINUE TO GET BILLS FROM MY CREDITORS?**

A: If the bills are computerized statements or letters, you should not be disturbed if you continue to receive them for 6 to 8 weeks. Personalized letters or threats to sue should be saved and brought to the office so that we can contact the creditor responsible. If you are telephoned, give the caller your bankruptcy number and our name and telephone number and tell the person they can verify the bankruptcy filing with us. You should also make note of the name of person calling, the person's telephone number and the date of the call should we need this information later in an action to enforce your bankruptcy protection.

#### **Q: WHAT DO I DO WHEN A CREDITOR CALLS AT HOME OR WORK?**

A: First of all, remember there is no need to get upset! Handle the call in a businesslike fashion by telling the creditor the following facts:

- (1) You have filed Chapter 13 bankruptcy.

- (2) The date of the filing.
- (3) Your Chapter 13 case number.
- (4) That you are represented by the Law Firm of Bonnie L. Johnson, P.C. in your bankruptcy and that any further questions regarding that creditor's debt should be directed to our office (give them our phone number and address).
- (5) That they are prohibited from attempting to contact you directly under order of the Bankruptcy Court and any further attempts by them to contact you except through your attorneys will be immediately reported to Bonnie L. Johnson, P.C. and appropriate action will then be taken.

**Q: WHAT SHOULD I DO IF I GET SUED WHILE IN BANKRUPTCY?**

A: Call our office regarding the problem. We will discuss with you the possibility of filing additional papers (a Suggestion of Bankruptcy) with the Court in which your case is pending to ensure that your rights are adequately safeguarded. Once again, remember you may schedule a free consultation to discuss filing a Suggestion of Bankruptcy with the Court to properly notify the Court and opposing Counsel of the Bankruptcy. Otherwise, post-discharge, (After your bankruptcy is discharged, after all payments have been made that are due in your plan to be paid through the Trustee) you file a Motion to Dismiss or Answer asserting your Affirmative defense of discharge in bankruptcy or your creditor will obtain a judgment that may be valid and collectible. This is IMPORTANT! If you are sued, file your responsive pleading asserting the affirmative defense of discharge in a timely fashion.

**SURRENDER OR SALE OF PROPERTY DURING BANKRUPTCY**

**Q: CAN I SELL MY HOUSE WHILE I'M IN BANKRUPTCY?**

A: Yes, as long as you are up to date on your Trustee fees and the sale price on your house is sufficient to pay off all the liens against it. You **MUST** obtain prior approval from the Bankruptcy Court in order to sell any property during your bankruptcy.

**Q: WHAT MUST I DO BEFORE MY HOUSE IS SOLD?**

A. It depends. If you want to close on your property before your bankruptcy is discharged by the Court, you may do two different things. 1<sup>st</sup>, contact the Chapter 13 Trustee's office and tell them you wish to sell your home. They will send you a packet to fill out and return to them. After you have returned the packet, the Trustee's office will advise you as to whether they are able to give you permission to sell your property without court approval. If they deny your request you may contact our office to prepare a formal Motion and Order to get the Court's permission to sell the property. This procedure is very complex, time consuming, and expensive (an additional \$400.00 in attorneys' fees is involved).

**Q: I HAVE DECIDED TO SURRENDER OR GIVE BACK MY VEHICLE. I HAVE NOTIFIED MY ATTORNEYS. WHAT SHOULD I DO?**

A: In this situation, it is better to voluntarily relinquish your vehicle to the dealer where you bought it rather than the embarrassment of repossession by the creditor. When you surrender the vehicle to the dealership, talk to a person in charge (a manager or assistant manager). Tell that person why you are there, and return the keys to the car. In exchange, ask that person to provide a short note indicating that

you returned the vehicle and the date it was returned. Please forward a copy of this note to our office for inclusion in your file. If that person is not willing to provide the note, don't worry. It's not strictly necessary. Just obtain the person's name and write our office a note telling us when and to whom you returned the vehicle.

**Please Note:** For the purposes of any surrender of cars or houses, you should amend your schedules to properly disclose the surrender. This is necessary in order to effectively discharge the debt and reduce any amount that would be due and payable to them under the plan. The order lifting stay will not change the numbers to be paid to whom in a Chapter 13. You must meet with a paralegal or attorney to discuss this modification. You may want to convert to a 7 where all of your property you were trying to save was lost due to unforeseen circumstances and inability to pay the debt. Please meet with an attorney to discuss conversions.

**Q: I HAVE INDICATED IN MY PLAN OR HAVE DECIDED TO SURRENDER CERTAIN PROPERTY. IS IT OK FOR ME TO PAWN THAT PROPERTY OR INCUR NEW DEBT AGAINST IT?**

**A:** Absolutely not! It would seem that this question shouldn't need to be addressed. However, we have heard of a few debtors in the past who have pledged or pawned goods they had indicated they would give back to the creditor. This is definitely not allowable and could lead to criminal action against you by the injured creditor. Please return the property involved as soon as possible unless the property is a house you are not ready to vacate.

**Q: I HAVE DECIDED TO SURRENDER MY HOUSE AND HAVE NOTIFIED MY ATTORNEY. I HAVE MOVED (OR WILL MOVE SOON) FROM MY HOUSE. WHAT SHOULD I DO ABOUT THE MORTGAGE CO.?**

**A:** The best and most courteous thing to do in this event would be to send the mortgage co. a note notifying them of the date you have moved (or plan to move) and to enclose a set of keys to the property along with your letter. Please also send a copy of the letter to our office for your file.

**Q: I HAVE DECIDED TO SURRENDER MY HOUSE AND HAVE NOTIFIED MY ATTORNEY, BUT I DON'T HAVE ANOTHER PLACE TO MOVE TO AND I'M NOT READY TO MOVE RIGHT AWAY. WHAT SHOULD I DO?**

**A:** Do not move until the house is sold at foreclosure. The mortgage company cannot legally sell your house at foreclosure until they have received formal permission of the Bankruptcy Court to foreclose and have gone through the required notice proceedings to post your property for foreclosure. This process can take several months to occur. In the meantime, there is nothing wrong or illegal with staying in the property without making mortgage payments. You can use the money you save and apply it to your moving costs and/or the down payment on a new house or apartment.

**Q: HOW WILL I KNOW IF THE MORTGAGE CO. HAS POSTED MY PROPERTY FOR FORECLOSURE?**

**A:** You should receive notice 3 weeks or more before the foreclosure by receiving a certified letter from the mortgage co. (or it's attorney) informing you that the property has been posted and the date on

which it will be sold at foreclosure. Foreclosure sales in Texas only occur on the 1st Tuesday of each month.

**Q: ONCE THE MORTGAGE CO. HAS MY PROPERTY POSTED, CAN THEY FORCE ME TO MOVE BEFORE THE FORECLOSURE DATE?**

A: No. The Mortgage Company cannot force you to move prior to foreclosure. Even after they foreclose, the mortgage company must use judicial means to evict you if you do not willingly move.

**Q: AFTER MY HOUSE HAS BEEN SOLD AT FORECLOSURE, HOW LONG DO I HAVE TO MOVE?**

A: By far the best thing to do is to vacate the property shortly before the actual foreclosure day. If you are still living there after the foreclosure day, the mortgage co. will start eviction proceedings against you. To evict you, they must give you written notice that you have 3 days to vacate the premises or they will file suit to evict you. If you haven't moved within those three days they have a right to file suit in the Justice of the Peace Court. After that point, there will be an eviction hearing set for approximately one week later. If you do not win at that hearing (and you probably will not!), the Judge will send the Sheriff to forcibly evict you after a day or two of the hearing date if you have not already moved. Again, it is better to avoid all this by willingly vacating the property on or shortly before the foreclosure date.

### **THE CHAPTER 13 TRUSTEE AND TRUSTEE PAYMENTS**

**Q: WHO IS THE CHAPTER 13 TRUSTEE AND WHAT DOES HE DO?**

A: If you file your case in Dallas County, effective October 1996, the Chapter 13 Trustee is Tom Powers. The Chapter 13 Trustee is appointed by the U. S. Trustee. Part of their job is to disperse the trustee payments you send every month to the various creditors that are being paid through your bankruptcy. It is also the trustee's job to review and monitor your payments and to inform the Court whether or not your Chapter 13 plan be confirmed or approved by the Court.

**Q: WHERE ARE THE TRUSTEE'S OFFICES LOCATED? IS THAT WHERE I SEND MY TRUSTEE PAYMENTS?**

A: If your case was filed in Dallas, Tom Powers' office is located at 125 E. John Carpenter Freeway, Ste. 1100, Irving, TX 75062. However, your Trustee payments should be mailed to the following addresses: P.O. Box 1958, Memphis, TN 38101-1958. To ensure proper credit, **BE SURE TO PUT YOUR BANKRUPTCY NUMBER ON YOUR MONEY ORDER OR CASHIER'S CHECK**

**Q: I NEED TO CHECK ON WHETHER I RECEIVED CREDIT FOR A PAYMENT TO THE TRUSTEE'S OFFICE, WHAT NUMBER SHOULD I CALL, AND WHO SHOULD I TALK TO?**

A: The number for calling the Trustee's office on routine matters is (214) 855-9200. Do not expect to speak to the Trustee personally; they will not be available to answer routine phone calls. Instead, simply address your questions to the Chapter 13 representative who answers your call.

**Q: WHAT DOES MY TRUSTEE FEE INCLUDE?**

A: Your trustee payment includes payment to all the creditors that are being paid through your bankruptcy and 10% interest on all secured debts that are being paid through the plan (unsecured creditors do not receive interest). Your payment also includes an extra 11.11% flat fee to the Trustee. This extra 11.11% on all the monies collected in your bankruptcy is sort of “use tax” imposed by Congress to pay for the costs of the Trustee handling your payments and performing other duties.

**Q: CAN I PAY OFF MY BANKRUPTCY EARLY?**

A: Yes, the Trustee’s office will always accept additional payments from Chapter 13 debtors, but early payments will not reduce the 10% fee to the Trustee or the interest payments on your secured debts in the bankruptcy. However, if you pay off the “base amount” (or the total amount due the Trustee over the term of the plan) before 36 months, then you may be asked to continue your Trustee payments until 36 months have expired for you to obtain a discharge. The Trustee may follow the “Base Amount Paid” line of decisions and allow you an early discharge. So long as you fully disclosed everything, as instructed, you ~ be allowed an early discharge.

**PLEASE NOTE:** If you have extra disposal income available to pay a dividend, and can pay 85% to 100% of your unsecured creditors, which includes credit cards, car deficiencies, medical bills, etc., the Trustee has a credit rehabilitation program. We strongly back the Trustee’s efforts to help you re-establish credit. You may modify your plan at any time to pay all unsecured creditors in full.

**Q: I AM LATE ON MY CHAPTER 13 PAYMENT THIS MONTH; BY WHAT DATE OF THE MONTH IS IT CONSIDERED LATE? WHAT SHOULD I DO?**

A: **FIRST OF ALL, YOUR FIRST PAYMENT TO THE TRUSTEE MUST BE SENT IN BEFORE THE DATE THAT IT IS DUE!! IT CAN NOT BE LATE!! IF YOUR 1ST TRUSTEE PAYMENT IS NOT MADE ON TIME, THEN YOUR CASE WILL AUTOMATICALLY BE DISMISSED WITHIN 48 HOURS!!!** After you have made your first trustee payment, other payments can be sent in by the early part of the third week of the month in which the payment was due. However, it is best to get your payment in on time.

**TRUSTEE’S MOTION TO DISMISS**

**Q: ON WHAT GROUNDS COULD THE TRUSTEE FILE A MOTION TO DISMISS MY CASE?**

A: If you miss a Trustee payment, the Trustee could file a Motion to Dismiss your case. If this occurs, you will receive a copy of the Motion from the Trustee notifying you of the Motion to Dismiss and of the hearing date when the Motion will be decided in Court.

**Q: WHAT SHOULD I DO IF I RECEIVE A TRUSTEE’S MOTION TO DISMISS MY CASE?**

A: Contact our office immediately. If your plan has been confirmed and you are behind on payments that were due after the confirmation, a post confirmation modification may be available to cure the delinquent trustee payments. We normally require \$400.00 down for modifications but may reduce the

down payment, depending on the circumstances.

**Q: IF I'M ABLE TO BECOME CURRENT ON MY DELINQUENT PAYMENTS TO THE TRUSTEE PRIOR TO THE HEARING ON THE MOTION TO DISMISS, WHAT OCCURS?**

A: The Trustee will withdraw the motion, and your case will be reinstated. However, you should still appear at the hearing to make sure that you have been given proper credit for all your payments.

## **DEBTOR'S SCHOOL**

**Q: WHAT IS A DEBTOR'S SCHOOL?**

A: Debtor's school is a class which you must attend in order to get your plan approved by the Court. At the class, you will be instructed by representatives of the trustee's office regarding basic principles of budgeting, financial planning, and practical points for successfully completing your Chapter 13 plan. Debtor School lasts one day (8:45 a.m. - 4:30 p.m.). The Debtors School is normally held on a Thursday 30 - 50 days after the case is filed.

**Q: MUST BOTH MY SPOUSE AND I ATTEND DEBTOR'S SCHOOL?**

A: Only if you both filed Chapter 13. If only one spouse filed, only that spouse must attend the school.

**Q: WHEN DOES THE DEBTOR'S SCHOOL TAKE PLACE?**

A: At the same date as your creditor's meeting is held; approximately six weeks after you file your case.

**Q: HOW WILL I BE NOTIFIED OF THE DATE AND LOCATION OF THE DEBTOR'S SCHOOL?**

A: The Trustee will send you a letter shortly after your case is filed notifying you of the time, place, and date of your Debtor's School and what you'll need to bring with you.

**Q: CAN I RESET THE DATE OF MY DEBTOR'S SCHOOL?**

A: Generally not. Absent a crucial emergency such as a serious illness or death in the immediately family or the like, the Trustee's office will not agree to reset your Debtor's School. If you are facing a truly emergency situation and cannot, under any circumstances, make the originally scheduled date, call the Trustee's office immediately. Explain to them the nature of the problem and request a pass. If a pass is granted, call our office as a courtesy to let us know not to expect you on the originally scheduled date.

**Q: WHAT WOULD HAPPEN IF I FAILED TO ATTEND DEBTOR'S SCHOOL WITHOUT RECEIVING A PASS FROM THE TRUSTEE?**

A: The Trustee would file a Motion to Dismiss your Chapter 13 case.

## **THE CREDITOR'S MEETING**



**Q: WHAT IS A CREDITOR'S MEETING?**

A: A creditor's meeting is a requirement under the Bankruptcy Code. It is held at the same time as the Debtor's School. It is an opportunity for your creditors to meet with you and/or your attorney and ask reasonable, relevant questions relating to your bankruptcy. The meeting with your creditors to discuss your plan is usually done by your attorneys. The only exception to that would be if a creditor attended the meeting and requested to talk with you personally. In that event, someone from our office would contact you at the debtor's school and take you to the creditor's meeting. You would be assisted by an attorney from our office in answering any questions posed to you by a creditor.

**Q: WHEN DOES THE CREDITOR'S MEETING TAKE PLACE?**

A: The creditor's meeting takes place approximately six weeks after you file your case.

**Q: HOW WILL I KNOW WHETHER OR NOT ANY OF MY CREDITORS WILL APPEAR AT MY CREDITOR'S MEETING?**

A: You won't. There is no way to predict if any creditors will appear. They are not required to notify anyone regarding their intent to attend. However, in the majority of our client's cases, creditors do not appear. If creditors do attend your meeting and wish to question you, there is nothing for you to worry about. You will be represented by an attorney throughout any questioning with a creditor. No one will be allowed to humiliate, harass, or embarrass you in any way. Typically, the questions are very routine in nature and they must be relevant to your case. Creditors will not be allowed to ask personal questions not directly related to your bankruptcy proceeding.

**THE CONFIRMATION HEARING**

**Q: WHAT IS CONFIRMATION?**

A: Confirmation refers to the formal approval by the Court of your Chapter 13 plan. This occurs after your attorney sends out a Motion for Confirmation to all your creditors following your Debtor's School/Creditor's Meeting. Your plan is confirmed once the Bankruptcy Judge signs the Order confirming your Plan at the confirmation hearing.

**Q: WHEN DOES THE CONFIRMATION HEARING TAKE PLACE?**

A: Approximately one year after your date of filing.

**Q: MY CONFIRMATION HEARING WAS PASSED TO A LATER DATE. IS THIS CAUSE FOR CONCERN?**

A: No. Confirmation hearings are often passed for a variety of reasons (e.g., the need to make a change in your plan, add new creditors, or provide additional notice as may be required by the Court). Passing your confirmation hearing does not jeopardize your bankruptcy protection in any way.

**Q: MUST I ATTEND MY CONFIRMATION HEARING?**

A: No, not unless you hear from our office that a creditor has filed an Objection to your Confirmation which we have been unable to resolve through negotiation.

**Q: HOW WILL I BE NOTIFIED OF AN UNRESOLVED OBJECTION TO MY PLAN AND THE NEED TO ATTEND NY CONFIRMATION HEARING?**

A: Our office will write and/or call you to inform you of the objection and the time, place, and date of the Confirmation Hearing. In addition, the objecting creditor may send you a copy of his objection; however, the creditor is not required to do so.

**Q: MY CONFIRMATION HAS BEEN SCHEDULED, BUT I HAVE NOT BEEN INFORMED BY MY ATTORNEY THAT AN OBJECTION HAS BEEN FILED IS THERE CAUSE FOR CONCERN?**

A: No. We will not notify you unless an objection has been filed in your case which cannot be resolved with the creditor and, therefore, a hearing is required. In this type of situation, no news is good news, and your case will be confirmed by the Court as scheduled. However, you should check your records to be certain that we have your current address (if you have moved since your initial filing with us). A notification of an objection sent to the wrong address could have a detrimental effect on confirmation of your bankruptcy plan.

**Q: IF I DO NOT HAVE ANY OBJECTIONS TO MY CONFIRMATION AND THEREFORE, DON'T NEED TO ATTEND, WILL ANYONE APPEAR AT THE CONFIRMATION HEARING AND ENSURE THAT THE COURT SIGNS THE ORDER TO APPROVE MY PLAN?**

A: Yes. At least one attorney from our firm will attend each confirmation hearing to make sure that the client's Order of Confirmation is signed by the Judge--even when there is lack of opposition.

### **OBJECTIONS TO CONFIRMATION**

**Q: WHAT IS AN OBJECTION TO CONFIRMATION?**

A: An Objection to Confirmation is a legal document filed by a creditor or the Trustee and served on your attorney. An objection informs the Court that they are objecting to one or more provisions in your Chapter 13 plan.

**Q: I HAVE RECEIVED NOTICE FROM THE LAW OFFICE OF BONNIE L. JOHNSON THAT AN OBJECTION TO MY BANKRUPTCY HAS BEEN FILED. WILL I BE REPRESENTED AT THE HEARING ON THIS OBJECTION?**

A: Yes. At least one attorney from our firm appears at every Confirmation hearing to represent our clients.

**Q: DOES IT AUTOMATICALLY MEAN THAT MY PLAN WON'T BE APPROVED IF I DO RECEIVE AN OBJECTION?**

A: No. Usually an Objection does not prevent a plan being confirmed. The creditor in most cases is simply attempting to get better treatment under your plan and is not actually trying to prevent your plan's confirmation by the Court. The issue is generally not whether or not your plan will be confirmed, but how much you will have to propose to pay through your bankruptcy in order to get your plan confirmed.

**Q: ON WHAT GROUNDS CAN A CREDITOR FILE AN OBJECTION?**

A: There are several grounds on which the Creditor may file an Objection to your Confirmation. For example, one of the most common complaints from a creditor is that your plan lists his debt as being a too small amount or that you are proposing to pay him out in your plan over too long a period of time. Or, a creditor may claim that, based on your income, you can actually pay a higher percentage to your unsecured creditors than proposed in your plan and, therefore, the Trustee fee should be increased. These are merely typical examples of creditor objections. The details of the particular objection to your case will be discussed with you by our office prior to the confirmation hearing (if any objections are filed).

**POST-CONFIRMATION MATTERS**

**Q: MY CHAPTER 13 PLAN HAS ALREADY BEEN CONFIRMED OR APPROVED BY THE COURT; HOWEVER, I AM DELINQUENT IN MAKING MY TRUSTEE PAYMENTS. WHAT SHOULD I DO?**

A: If you cannot become current on all the payments to the Trustee in the very near future, you should schedule an appointment with our office immediately to discuss a possible plan modification. A plan modification could be prepared by us on your behalf in order to propose (to the court) a payment plan to become current on your Trustee payments. Such a plan modification, if timely filed, could prevent or resolve a Trustee's Motion to Dismiss your case, thereby helping keep your case in good standing with the Court.

**ADMINISTRATIVE AND MISCELLANEOUS MATTERS**

**Q: MY SPOUSE CAN'T MAKE THE APPOINTMENT TO COME BACK TO THE OFFICE TO PROVIDE INFORMATION ON MY CHAPTER 13 SCHEDULES. IS IT ALL RIGHT FOR ME TO COME ALONE?**

A: Yes, as long as you are also filing bankruptcy, you can supply all the financial information regarding yourself and your spouse, and you have the authority or permission of your spouse to speak for him or her in relation to your bankruptcy.

**Q: WHAT HAPPENS IF I FORGET A DEBT AND NEED TO ADD IT AFTER THE CASE IS FILED?**

A: It can be done, but the sooner such a debt is added, the easier it is to do. If the First Meeting of Creditors has been held, it is difficult to add a creditor. If the Confirmation Order has been entered, it requires a post—confirmation motion plan modification (\$350.00 extra fee). If you discover the existence of an unlisted creditor, simply supply all the information on the debt to our office as soon as possible. Remember, a creditor who is not listed may not be discharged in the bankruptcy.

**Q: CAN I MOVE WHILE THE CASE IS PENDING?**

A: Certainly. Just be sure to keep the office informed (in writing) of your current address and telephone number. This will enable us to inform you of the various setting dates and to keep everything in satisfactory condition and current.

**Q: WHO NOTIFIES CREDITORS OF THE BANKRUPTCY?**

A: The Bankruptcy Court is responsible for sending notice of your bankruptcy filing to all the creditors who appear on your mailing matrix and other papers filed by our office in your bankruptcy. The Bankruptcy Court often takes up to 30 days to send notice to your creditors.

**Q: SHOULD I LIST GUARANTORS ON MY HOME LOANS OR OTHERS LOANS SUCH AS VETERANS ADMINISTRATORS OR OTHER COSIGNERS?**

A: Yes. Often mortgage companies will collect against guarantors who can later sue on the debt if they are not notified of your bankruptcy filing. It is essential to list all of your guarantors and co—signers on any debts. If you have failed to do so, you must bring this fact, in writing, to the attention of our office.

**Q: IS IT PERMISSIBLE TO INCUR MORE DEBT AFTER THE FILING OF MY BANKRUPTCY.**

A: Guidelines for use of business credit may change from time to time and should be discussed with your attorney. Generally speaking, paying business accounts on a normal 30-60 day billing cycle is permissible after the Filing and during the bankruptcy. If you want to take out more consumer-related debt (i.e., non-business purchases for the home or family), you should first get permission from the Trustee's office.

**Q: WHAT SHOULD I DO ABOUT PAYROLL DEDUCTIONS?**

A: We prefer to stop payroll deductions after you file a bankruptcy. You have a right to continue payroll deductions with a credit union related to an Employer loan. However, please be aware that if the note will be paid off in less than 36 months, you will need to pay the same amount to the trustee for the remainder of the 36 months in order for your plan to be confirmed. You stop deductions. To stop deductions go directly to the person in your company responsible for payroll deductions and speak to them personally about your bankruptcy. Show them your paperwork from your case, tell them when you filed, and ask them to stop the deductions. Usually they willingly do so. If the payroll deductions are not voluntarily stopped by the credit union, call our office.

**Q: HOW MANY TIMES WILL I HAVE TO GO TO COURT?**

A: Only one time. You go to Court for your Debtor's school unless an objection to your plan (such as a Motion to Lift Stay or an Objection to Confirmation) is filed in your case.

**Q: IF WE BOUGHT A HOUSE ON AN ASSUMPTION, AND WE LATER DEFAULT ON THE NOTE, DO WE REMAIN LIABLE ON THE NOTE TO THE PERSON WE ASSUMED THE NOTE FROM?**

A: Yes. You should list the mortgage company and the person from whom you assumed the note as creditors in your case. Failure to do so could result both in that debt surviving bankruptcy and in attempts by that creditor to collect from you in the future.

**Q: CAN I FILE FOR DIVORCE AFTER I FILE CHAPTER 13?**

A: Yes, but first you'll need to notify us and specifically ask to have us prepare a Motion to obtain the formal approval of the Bankruptcy Court before finalize your divorce. This Motion is sent out to all your creditors, and if no one objects, the Bankruptcy Court will sign a formal Order allowing the divorce proceeding to be pending at the same time as your bankruptcy.

Your divorce attorney may also perform this service for you. Failure to obtain the permission of the Bankruptcy Court before you file your divorce could result in many future problems in both cases. You may also be best advised to sever your case from your ex—spouse and/or convert your case to a Chapter 7. We will quote a fee for this service upon request.

**Q: MY HOUSEMATE AND I BOUGHT A HOUSE TOGETHER, AND WE BOTH WANT TO FILE CHAPTER 13. CAN WE FILE TOGETHER IN THE SAME CASE?**

A: No. The Bankruptcy Code expressly provides that only a husband and wife can be co—debtors in the same bankruptcy case.

**Q: I WANT TO RENT A NEW APARTMENT WHILE I'M IN BANKRUPTCY. IS THAT POSSIBLE?**

A: Yes, as long as your prospective landlord is willing to do so. If the rental application asks whether you have ever filed bankruptcy, you must, of course, answer "Yes." Some landlords will not rent to you just because you're in bankruptcy; but others will. It is far better to search until you find a landlord who will rent to you regardless of your bankruptcy than to possibly commit a crime by falsely stating on your lease application that you have never filed.

**Q: I WAS REJECTED ON MY APARTMENT LEASE APPLICATION BECAUSE I'M IN BANKRUPTCY. IS THERE ANYTHING I CAN TRY TO DO TO CHANGE THEIR MINDS?**

A: You cannot force the apartment management to lease to you if they do not want to. However, as a practical strategy, you might offer a substantially higher deposit than required in their lease or ask them how much of a deposit (or how much "down") it would take to change their minds. This strategy has worked for many of our clients in the past and might work for you too. It's worth a try!

**Q: CAN I PAY MY MORTGAGE AND TRUSTEE PAYMENTS BY PERSONAL CHECK?**

A: You may pay your mortgage payment by personal check but your Trustee payment MUST be made by Money Order or Cashier's Check.

**Q. WHAT ARE POST CONFIRMATION MODIFICATIONS OF MODIFIED CHAPTER 13 PLANS?**

A. Your Chapter 13 plan is a flexible plan. If you want to surrender a car that you have been paying

for through the trustee plan, then schedule an appointment with our office and we may be able to surrender the vehicle and lower the plan payment you make to the trustee. The same is true for a house where past due amounts are being paid through the trustee's office. If you do not complete a plan modification then that secured creditor will still be paid by the Trustee's office. The surrender of a car or house without a modification through our office will result in a windfall to that secured creditor.

## **CREDIT REHABILITATION**

### **Q. Can I re-establish credit by doing something affirmative in my bankruptcy?**

A: Yes. The trustee has a credit rehabilitation service available for debtors that complete 85 to 100% plans. That means that if you complete paying plans off where all of your creditors are paid in full, then you can go to the trustee's office in Fort Worth, and they will pull all three credit bureaus and make corrections to show that you have paid all of your creditors in full. They will then assist you in making application that fits your credit needs at that time. You can change your plan to pay 85 to 100% at any time before the discharge of the bankruptcy. In order to take advantage of the credit rehabilitation program, please instruct your paralegal at our firm to prepare an 85% to 100% plan. You have as long as five years from the date of filing to do this. Once you have completed paying the 85 to 100% plan, you may begin the process of credit rehabilitation.

### **Q: WE RECEIVED A NOTICE OF INTENT TO PAY CLAIMS AND AN UNSECURED CREDITOR FILED A SECURED CLAIM. WHAT DO WE DO?**

A: Immediately contact our office, in writing and notify us of the situation. Otherwise, please set up an appointment for a free consultation and direct our attention to the error. If your creditor has filed a secured claim for an unsecured debt, then that creditor is not discharged in a Chapter 13 and it will appear as "Pay Direct - not provided for in the plan." Arguably, this creditor can sue you unless we object to their Proof of Claim. This is a dangerous situation and you must immediately notify us if you detect an unsecured creditor filing a secured claim. Review your documents sent to you by the Trustee and tell us if you notice a problem. We will handle the situation after written notice or after an appointment is made discussing the situation. As always, when in doubt, call our office to resolve any potential problems.

## **POSTSCRIPT**

### **Q: WHAT ARE THE MOST IMPORTANT THINGS I CAN DO TO MAKE MY BANKRUPTCY A SUCCESS?**

Here is a list of the 10 most important things we feel you need to do (and to remember to do) in order to make your bankruptcy a success with our office:

- (1) Read this Survival Guide from start to finish.

- (2) Follow the instructions given to you by our office.
- (3) Follow the instructions given to you by the Trustee's office.
- (4) Send us notification immediately and in writing of any change of address or phone number (home and/or business).
- (5) Set up an appointment (no charge) to see an attorney if you have any questions regarding your case that cannot be answered by this Guide or through phone calls to our office.
- (6) Keep careful records of all the payments you make to your mortgage company and to the Trustee.
- (7) Immediately respond to any letters from our office notifying you of an attack on you case.
- (8) Attend any and all Court hearings you are requested to attend by our office or the Trustee's office.
- (9) Exercise complete honesty in all the information you supply our office and the Bankruptcy Court regarding your case.
- (10) Believe in yourself! You have the ability to improve your financial situation through hard work and the advantages offered through Chapter 13 reorganization.

Sincerely,  
The Staff of the Law Offices of Bonnie L. Johnson