

*Best Practices in Client Advocacy:  
From Beginning to Bitter End*

**Chapter 13 Breakout**

**Client Advocate: Nathan E. Curtis**  
**Moderator**

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**U.S. Trustee's Office: M. Gretchen Silver**

*Office of the U.S. Trustee; Chicago*

**Chapter 13 Trustee: Glenn B. Stearns**

*Chapter 13 Trustee; Lisle, Ill.*



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# GLENN STEARNS, CHAPTER 13 TRUSTEE

Proposed Amended Rules and Proposed Amended Forms and Proposed National Form Plan.

Welcome to the Lisle Chapter 13 Trustee Web Site. This office administers all Chapter 13 Bankruptcy cases filed in the Collar counties: Lake, DuPage, Kane, Will, Kendall, Grundy and LaSalle.

## How to Find the Trustee's Office.

[Office Directory](#) [Office Holidays](#) [Address for Debtor Payments](#) [Correspondence Address](#)

\*\*\*\*\*[MAKE PLAN PAYMENTS ON LINE.](#)\*\*\*\*\*

## PROCEDURES FOR PROVIDING TAXES AND PAY ADVICES

[ORDER A TAX RETURN TRANSCRIPT ON LINE IN SECONDS.](#)

[Providing other documents requested at the 341 meeting.](#)

### 341 Meeting Schedules

Chapter 13 / BAPCPA [Basics](#) at Stearns' office.

Free CLE (4.5 hours) at the Trustee's office.

Click [here](#) for a course outline and links to materials.

Next class this fall, Contact [Marifran Smith](#) to get on the waiting list.

August Disbursement Checks were mailed August 11.

September Disbursement Checks will be mailed September 16.

October Disbursement Checks will be mailed October 13.

## Debt Limits: Next increase in limits will be April 1, 2016

Our Trustee Fee is 3.9%.

## CASE INFORMATION

\*\*\*[Payoff Request Forms](#)\*\*\*

<u><a href="#">Case information for Creditors and Attorneys</a></u>	<u><a href="#">Website ID / Password Request for Attorneys / Creditors</a></u>	<u><a href="#">NDC (Debtor Access to Case Information)</a></u>
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<u><a href="#">BAPCPA Links</a></u>	<u><a href="#">SCOTUS Ransom Decision</a></u>
<u><a href="#">SCOTUS Espinosa Decision</a></u>	<u><a href="#">SCOTUS Lanning Decision</a></u>

ATTORNEY LINKS

CHAPTER 20 LIEN STRIPPING

NDIL BK Filing Statistics

PLAN DRAFTING CONSIDERATIONS, MAKING THE MONEY GO WHERE YOU WANT IT TO.

<u>Model Chapter 13 Plan Form</u>	<u>Local Bankruptcy Forms and Orders</u>	<u>National Bankruptcy Forms</u>	<u>Preferred Section G Language</u>
<u>Bankruptcy Code</u>	<u>U.S. Code</u>	<u>Seventh Circuit Internet Home</u>	<u>Suggested Proposed Order Language</u>
<u>Real Estate Taxes in Chapter 13</u>	<u>Policy: Attorneys Covering 341 Meetings</u>	<u>Payroll Order Form</u>	<u>Self Employed Debtor Forms</u>
<u>Current Prime Rate</u>	<u>Pro Rata Payment &amp; Interest Calculator</u>	<u>Home &amp; Auto Value web sites</u>	<u>ABI</u>
<u>Providing proper service to the IRS</u>	<u>IRS Service Centers</u>	<u>Address for routine service to IDOR</u>	<u>Cornell Law Library</u>
<u>NACTT</u>	<u>NACBA</u>	<u>National Data Center</u>	<u>NACTT Academy</u>
<u>Standing Order: Chapter 13 Fee App's</u>	<u>Model Retention Agreement &amp; Fee Applications</u>	<u>E-filing / filing Form B-21 (SSN)</u>	<u>341 Meeting Schedules</u>

DEBTOR LINKS

<u>Information for Debtors</u>	<u>Debtor's FAQ's</u>	<u>Bankruptcy Q &amp; A</u>	<u>Consumer Ed</u>	<u>Personal Financial Management Class</u>
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COURT LINKS

<u>Bankruptcy Court Home Page</u>	<u>PACER - Search the Bankruptcy's Courts Records</u>		
<u>Judge Goldgar's Calendar</u>	<u>Judge Black's Calendar</u>	<u>Judge Cassling's Calendar</u>	
<u>Lake County Confirmation Call</u>	<u>Joliet Confirmation Call</u>	<u>Geneva Confirmation Call</u>	
<u>Lake County 341 Dates</u>	<u>Joliet 341 Dates</u>	<u>Lisle 341 Dates</u>	
<u>Judge Goldgar's Standing Orders</u>	<u>Judge Black's Standing Orders</u>	<u>Judge Cassling's Standing Orders</u>	

OTHER LINKS

<u>Marshall Office Home Page</u>	<u>Vaughn Office Home Page</u>	<u>U. S. Trustee, Region 11</u>
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AMERICAN BANKRUPTCY INSTITUTE

Draft 7-8-2014

Debtor \_\_\_\_\_

United States Bankruptcy Court for the: \_\_\_\_\_  
[Bankruptcy district]

Case number: \_\_\_\_\_

Check if this is an amended plan

Official Form 113

Chapter 13 Plan

12/16

Part 1: Notices

To Debtors: This form sets out options that may be appropriate in some cases, but the presence of an option on the form does not indicate that the option is appropriate in your circumstances or that it is permissible in your judicial district. In the following notice to creditors, you must check each box that applies.

To Creditors: Your rights may be affected by this plan. Your claim may be reduced, modified, or eliminated.

You should read this plan carefully and discuss it with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you oppose the plan's treatment of your claim or any provision of this plan, you or your attorney must file an objection to confirmation at least 7 days before the date set for the hearing on confirmation, unless otherwise ordered by the Bankruptcy Court. The Bankruptcy Court may confirm this plan without further notice if no objection to confirmation is filed. See Bankruptcy Rule 3015. In addition, you may need to file a timely proof of claim in order to be paid under any plan.

The following matters may be of particular importance to you. Boxes must be checked by debtor(s) if applicable.

- The plan seeks to limit the amount of a secured claim, as set out in Part 3, Section 3.2, which may result in a partial payment or no payment at all to the secured creditor.
- The plan requests the avoidance of a judicial lien or nonpossessory, nonpurchase-money security interest as set out in Part 3, Section 3.4.
- The plan sets out nonstandard provisions in Part 9.

Part 2: Plan Payments and Length of Plan

2.1 Debtor(s) will make regular payments to the trustee as follows:

\$ \_\_\_\_\_ per \_\_\_\_\_ for \_\_\_\_\_ months  
[and \$ \_\_\_\_\_ per \_\_\_\_\_ for \_\_\_\_\_ months.] Insert additional lines if needed.

If fewer than 60 months of payments are specified, additional monthly payments will be made to the extent necessary to make the payments to creditors specified in Parts 3 through 6 of this plan.

2.2 Regular payments to the trustee will be made from future earnings in the following manner:

Check all that apply.

- Debtor(s) will make payments pursuant to a payroll deduction order.
- Debtor(s) will make payments directly to the trustee.
- Other (specify method of payment): \_\_\_\_\_.

## CHICAGO CONSUMER BANKRUPTCY CONFERENCE 2014

Debtor \_\_\_\_\_

Case number \_\_\_\_\_

### 2.3 Federal income tax refunds.

Check one.

- Debtor(s) will retain any federal tax refunds received during the plan term.
- Debtor(s) will supply the trustee with a copy of each federal tax return filed during the plan term within 14 days of filing the return and will turn over to the trustee all federal income tax refunds, other than earned income tax credits, received during the plan term.
- Debtor(s) will supply the trustee with federal tax returns filed during the plan term and will turn over to the trustee a portion of any federal income tax refunds received during the plan term as specified below.

\_\_\_\_\_  
 \_\_\_\_\_

### 2.4 Additional payments.

Check one.

- None.** If "None" is checked, the rest of § 2.4 need not be completed or reproduced.
- Debtor(s) will make additional payment(s) to the trustee from other sources, as specified below. Describe the source, estimated amount, and date of each anticipated payment.

\_\_\_\_\_  
 \_\_\_\_\_

2.5 The total amount of estimated payments to the trustee provided for in §§ 2.1 and 2.4 is \$ \_\_\_\_\_.

## Part 3: Treatment of Secured Claims

### 3.1 Maintenance of payments and cure of any default.

Check one.

- None.** If "None" is checked, the rest of § 3.1 need not be completed or reproduced.
- The debtor(s) will maintain the contractual installment payments on the claims listed below, with any changes required by the applicable contract, and cure any default in payments on the secured claims listed below. The allowed claim for any arrearage amount will be paid under the plan, with interest, if any, at the rate stated. Unless otherwise ordered by the court, the amounts listed on a proof of claim or modification of a proof of claim filed before the filing deadline under Bankruptcy Rule 3002(c) control over any contrary amounts listed below as to the current installment payment and arrearage. If relief from the automatic stay is ordered as to any item of collateral listed in this paragraph, then, unless otherwise ordered by the court, all payments under this paragraph as to that collateral will cease and all secured claims based on that collateral will no longer be treated by the plan. The final column includes only payments disbursed by the trustee rather than by the debtor.

Name of creditor	Collateral	Current installment payment (including escrow )	Amount of arrearage	Interest rate on arrearage (if applicable)	Monthly plan payment on arrearage	Estimated total payments by trustee
_____	_____	\$ _____	\$ _____	_____ %	\$ _____	\$ _____
		Disbursed by:				
		<input type="checkbox"/> Trustee				
		<input type="checkbox"/> Debtor(s)				
_____	_____	\$ _____	\$ _____	_____ %	\$ _____	\$ _____
		Disbursed by:				
		<input type="checkbox"/> Trustee				
		<input type="checkbox"/> Debtor(s)				

*Insert additional claims as needed.*

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Debtor \_\_\_\_\_

Case number \_\_\_\_\_

### 3.2 Request for valuation of security and claim modification. Check one.

**None.** If "None" is checked, the rest of § 3.2 need not be completed or reproduced.

*The remainder of this paragraph will be effective only if the applicable box in Part 1 of this plan is checked.*

The debtor(s) request that the court determine the value of the secured claims listed below. For each non-governmental secured claim listed below, the debtor(s) state that the value of the secured claim should be as stated below in the column headed *Amount of secured claim*. For secured claims of governmental units, unless otherwise ordered by the court, the amounts listed in proofs of claim filed in accordance with the Bankruptcy Rules control over any contrary amounts listed below. For each listed secured claim, the controlling amount of the claim will be paid in full under the plan with interest at the rate stated below.

The portion of any allowed claim that exceeds the amount of the secured claim will be treated as an unsecured claim under Part 5 of this plan. If the amount of a creditor's secured claim is listed below as having no value, the creditor's allowed claim will be treated in its entirety as an unsecured claim under Part 5 of this plan. Unless otherwise ordered by the court, the amount of the creditor's total claim listed on the proof of claim controls over any contrary amounts listed in this paragraph.

The holder of any claim listed below as having value in the column headed *Amount of secured claim* will retain the lien until the earlier of:

- (a) payment of the underlying debt determined under nonbankruptcy law, or
- (b) discharge under 11 U.S.C. § 1328, at which time the lien will terminate and be released by the creditor. See Bankruptcy Rule 3015.

Name of creditor	Estimated amount of creditor's total claim	Collateral	Value of collateral	Amount of claims senior to creditor's claim	Amount of secured claim	Interest rate	Monthly payment to creditor	Estimated total of monthly payments
_____	\$ _____	_____	\$ _____	\$ _____	\$ _____	____%	\$ _____	\$ _____
_____	\$ _____	_____	\$ _____	\$ _____	\$ _____	____%	\$ _____	\$ _____
_____	\$ _____	_____	\$ _____	\$ _____	\$ _____	____%	\$ _____	\$ _____

*Insert additional claims as needed.*

### 3.3 Secured claims excluded from 11 U.S.C. § 506.

Check one.

**None.** If "None" is checked, the rest of § 3.3 need not be completed or reproduced.

The claims listed below were either:

- (1) incurred within 910 days before the petition date and secured by a purchase money security interest in a motor vehicle acquired for the personal use of the debtor(s), or
- (2) incurred within 1 year of the petition date and secured by a purchase money security interest in any other thing of value.

These claims will be paid in full under the plan with interest at the rate stated below. Unless otherwise ordered by the court, the claim amount stated on a proof of claim or modification of a proof of claim filed before the filing deadline under Bankruptcy Rule 3002(c) controls over any contrary amount listed below. The final column includes only payments disbursed by the trustee rather than by the debtor.

Name of creditor	Collateral	Amount of claim	Interest rate	Monthly plan payment	Estimated total payments by trustee
_____	_____	\$ _____	____%	\$ _____	\$ _____
				Disbursed by:	
				<input type="checkbox"/> Trustee	
				<input type="checkbox"/> Debtor(s)	
_____	_____	\$ _____	____%	\$ _____	\$ _____
				Disbursed by:	
				<input type="checkbox"/> Trustee	
				<input type="checkbox"/> Debtor(s)	

*Insert additional claims as needed.*

## CHICAGO CONSUMER BANKRUPTCY CONFERENCE 2014

Debtor \_\_\_\_\_

Case number \_\_\_\_\_

### 3.4 Lien avoidance.

Check one.

**None.** If "None" is checked, the rest of § 3.4 need not be completed or reproduced.

**The remainder of this paragraph will be effective only if the applicable box on Part 1 of this plan is checked.**

The judicial liens or nonpossessory, nonpurchase money security interests securing the claims listed below impair exemptions to which the debtor(s) would have been entitled under 11 U.S.C. § 522(b). A judicial lien or security interest securing a claim listed below will be avoided to the extent that it impairs such exemptions upon entry of the order confirming the plan. The amount of the judicial lien or security interest that is avoided will be treated as an unsecured claim in Part 5. The amount, if any, of the judicial lien or security interest that is not avoided will be paid in full as a secured claim under the plan. See 11 U.S.C. § 522(f) and Bankruptcy Rule 4003(d). *If more than one lien is to be avoided, provide the information separately for each lien.*

Information regarding judicial lien or security interest	Calculation of lien avoidance		Treatment of remaining secured claim
Name of creditor _____	a. Amount of lien	\$ _____	<b>Amount of secured claim after avoidance</b> (line a minus line f) \$ _____
	b. Amount of all other liens	\$ _____	
Collateral _____	c. Value of claimed exemptions	+ \$ _____	<b>Interest rate</b> (if applicable) _____ %
	d. Total of adding lines a, b, and c	\$ _____	
Lien identification (such as judgment date, date of lien recording, book and page number) _____ _____	e. Value of debtor's interest in property	- \$ _____	<b>Monthly plan payment</b> \$ _____
	f. Subtract line e from line d.	\$ _____	

Extent of exemption impairment

(Check applicable box):

**Line f is equal to or greater than line a.**

The entire lien is avoided. (Do not complete the next column.)

**Line f is less than line a.**

A portion of the lien is avoided. (Complete the next column.)

*Insert additional claims as needed.*

### 3.5 Surrender of collateral.

Check one.

**None.** If "None" is checked, the rest of § 3.5 need not be completed or reproduced.

The debtor(s) elect to surrender to each creditor listed below the collateral that secures the creditor's claim. The debtor(s) consent to termination of the stay under 11 U.S.C. § 362(a) and § 1301 with respect to the collateral upon confirmation of the plan. Any allowed unsecured claim resulting from the disposition of the collateral will be treated in Part 5 below.

Name of creditor	Collateral
_____	_____
_____	_____

*Insert additional claims as needed.*

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Debtor \_\_\_\_\_

Case number \_\_\_\_\_

Part 4: Treatment of Trustee's Fees and Priority Claims

4.1 General

Trustee's fees and all allowed priority claims other than those treated in § 4.5 will be paid in full without interest.

4.2 Trustee's fees

Trustee's fees are estimated to be \_\_\_\_\_% of plan payments; and during the plan term, they are estimated to total \$\_\_\_\_\_.

4.3 Attorney's fees

The balance of the fees owed to the attorney for the debtor(s) is estimated to be \$\_\_\_\_\_.

4.4 Priority claims other than attorney's fees and those treated in § 4.5.

Check one.

- None. If "None" is checked, the rest of § 4.4 need not be completed or reproduced.
The debtor estimates the total amount of other priority claims to be \_\_\_\_\_.

4.5 Domestic support obligations assigned or owed to a governmental unit and paid less than full amount.

Check one.

- None. If "None" is checked, the rest of § 4.5 need not be completed or reproduced.
The allowed priority claims listed below are based on a domestic support obligation that has been assigned to or is owed to a governmental unit and will be paid less than the full amount of the claim under 11 U.S.C. § 1322(a)(4), but not less than the amount that would have been paid on such claim if the estate of the debtor were liquidated under chapter 7, see 11 U.S.C. § 1325(a)(4).

Table with 2 columns: Name of creditor, Amount of claim to be paid. Includes two rows for creditor names and amounts.

Insert additional claims as needed.

Part 5: Treatment of Nonpriority Unsecured Claims

5.1 General

Nonpriority unsecured claims will be paid to the extent allowed as specified in this Part.

5.2 Nonpriority unsecured claims not separately classified.

Allowed nonpriority unsecured claims that are not separately classified will be paid, pro rata. If more than one option is checked, the option providing the largest payment will be effective. Check all that apply.

- The sum of \$\_\_\_\_\_.
\_\_\_\_\_% of the total amount of these claims.
The funds remaining after disbursements have been made to all other creditors provided for in this plan.

If the estate of the debtor(s) were liquidated under chapter 7, nonpriority unsecured claims would be paid approximately \$\_\_\_\_\_. Regardless of the options checked above, payments on allowed nonpriority unsecured claims will be made in at least this amount.

## CHICAGO CONSUMER BANKRUPTCY CONFERENCE 2014

Debtor \_\_\_\_\_

Case number \_\_\_\_\_

**5.3 Interest on allowed nonpriority unsecured claims not separately classified. Check one.**

- None.** If "None" is checked, the rest of § 5.3 need not be completed or reproduced.
- Interest on allowed nonpriority unsecured claims that are not separately classified will be paid at an annual percentage rate of \_\_\_\_\_% under 11 U.S.C. §1325(a)(4), and is estimated to total \$\_\_\_\_\_.

**5.4 Maintenance of payments and cure of any default on nonpriority unsecured claims. Check one.**

- None.** If "None" is checked, the rest of § 5.4 need not be completed or reproduced.
- The debtor(s) will maintain the contractual installment payments and cure any default in payments on the unsecured claims listed below on which the last payment is due after the final plan payment. The allowed claim for the arrearage amount will be paid under the plan.

Name of creditor	Current installment payment	Amount of arrearage to be paid	Estimated total payments by trustee
_____	\$ _____	\$ _____	\$ _____
	Disbursed by:		
	<input type="checkbox"/> Trustee		
	<input type="checkbox"/> Debtor(s)		
_____	\$ _____	\$ _____	\$ _____
	Disbursed by:		
	<input type="checkbox"/> Trustee		
	<input type="checkbox"/> Debtor(s)		

*Insert additional claims as needed.*

**5.5 Other separately classified nonpriority unsecured claims. Check one.**

- None.** If "None" is checked, the rest of § 5.5 need not be completed or reproduced.
- The nonpriority unsecured allowed claims listed below are separately classified and will be treated as follows:

Name of creditor	Basis for separate classification and treatment	Amount to be paid on the claim	Interest rate (if applicable)	Estimated total amount of payments
_____	_____	\$ _____	_____%	\$ _____
_____	_____	\$ _____	_____%	\$ _____

*Insert additional claims as needed.*

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Debtor \_\_\_\_\_

Case number \_\_\_\_\_

## **Part 6: Executory Contracts and Unexpired Leases**

6.1 The executory contracts and unexpired leases listed below are assumed and will be treated as specified. All other executory contracts and unexpired leases are rejected. *Check one.*

- None.** If "None" is checked, the rest of § 6.1 need not be completed or reproduced.
- Assumed items.** The final column includes only payments disbursed by the trustee rather than by the debtor.

Name of creditor	Property description	Treatment (Refer to other plan section if applicable)	Current installment payment	Amount of arrearage to be paid	Estimated total payments by trustee
_____	_____	_____	\$ _____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)	\$ _____	\$ _____
_____	_____	_____	\$ _____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)	\$ _____	\$ _____

*Insert additional contracts or leases as needed.*

## **Part 7: Order of Distribution of Trustee Payments**

7.1 The trustee will make the monthly payments required in Parts 3 through 6 in the following order, with payments other than those listed to be made in the order determined by the trustee:

- a. Trustee's fees
- b. \_\_\_\_\_
- c. \_\_\_\_\_ *Insert additional lines if needed.*

## **Part 8: Vesting of Property of the Estate**

8.1 Property of the estate shall revert in the debtor(s) upon

*Check the applicable box:*

- plan confirmation,
- closing of the case.
- other: \_\_\_\_\_.

**CHICAGO CONSUMER BANKRUPTCY CONFERENCE 2014**

Debtor \_\_\_\_\_

Case number \_\_\_\_\_

**Part 9: Nonstandard Plan Provisions**

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**None.** If "None" is checked, the rest of Part 9 need not be completed or reproduced.

*Under Bankruptcy Rule 3015(c), nonstandard provisions are required to be set forth below.*

*These plan provisions will be effective only if the applicable box in Part 1 of this plan is checked.*

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**Part 10: Signatures**

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**X** \_\_\_\_\_ Date \_\_\_\_\_

Signature of Attorney for Debtor(s)

**X** \_\_\_\_\_ Date \_\_\_\_\_

**X** \_\_\_\_\_ Date \_\_\_\_\_

Signature(s) of Debtor(s) (required if not represented by an attorney; otherwise optional)

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Debtor \_\_\_\_\_

Case number \_\_\_\_\_

**Chapter 13 Plan Exhibit: Estimated Amounts of Trustee Payments**

The trustee will make the following estimated payments on allowed claims in the order set forth in Section 7.1:

- a. Maintenance and cure payments on secured claims (Part 3, Section 3.1 total): \$ \_\_\_\_\_
- b. Modified secured claims (Part 3, Section 3.2 total): \$ \_\_\_\_\_
- c. Secured claims excluded from 11 U.S.C. § 506 (Part 3, Section 3.3 total): \$ \_\_\_\_\_
- d. Judicial liens or security interests partially avoided (Part 3, Section 3.4 total): \$ \_\_\_\_\_
- e. Administrative and other priority claims (Part 4 total): \$ \_\_\_\_\_
- f. Nonpriority unsecured claims (Part 5, Section 5.2 total): \$ \_\_\_\_\_
- g. Interest on allowed unsecured claims (Part 5, Section 5.3 total): \$ \_\_\_\_\_
- h. Maintenance and cure payments on unsecured claims (Part 5, Section 5.4 total): \$ \_\_\_\_\_
- i. Separately classified unsecured claims (Part 5, Section 5.5 total): \$ \_\_\_\_\_
- j. Arrearage payments on executory contracts and unexpired leases (Part 6, Section 6.1 total) + \$ \_\_\_\_\_

Total of lines a through j..... \$ \_\_\_\_\_

**Providing Pay Advices and Tax Returns to the Trustee’s Office**

Debtors must provide the trustee with pay advices for the 60 day period pre petition and copies of the prior four years federal tax returns a **minimum** of seven days before the 341 meeting. **Please do not send state tax returns.** §521(e)(2)(A) requires the debtor to provide the trustee with a copy of federal tax returns.

It is best that they be provided **2 business days** after the case is filed to allow time for the case to enter our system. **If you send the documents before the case number is in our case management software you will receive an e-mail with an error message.** You must wait a day and send the documents again.

Pursuant to 1308 (a) & (b) we cannot conclude a 341 meeting unless the debtor provides us tax returns (or tax return transcripts) for the four years pre petition.

Please take a moment to sort the documents before scanning them. If we receive a jumbled out of order half upside down illegible mess we will delete the files and have you sort and resend them.

**Please send two e-mails for each case.**

Please send one e-mail with one PDF file with only federal taxes, most recent year first.

Please send one e-mail with one PDF file with only pay advices, most recent first.

The Subject Line **must** include **only** the case number. For example: 1012345

Please limit pay advices to 60 days only. In the unlikely event that we need to see more than 60 days pay advices we will request them.

The process of indexing pay advices and tax returns is automated. You will receive an e-mail confirming the documents were received. If there was a problem you will receive an e-mail stating what the problem is.

Please send the documents to the appropriate e-mail address listed below.

Document	e-mail address
Pay Advices	<u><a href="mailto:Payadvices@lisle13.com">Payadvices@lisle13.com</a></u>
Taxes	<u><a href="mailto:Taxes@lisle13.com">Taxes@lisle13.com</a></u>

**Do not** fax tax returns or pay advices. **NO FAXES.**

If you are still having problems sending the documents, please call Mike McGuckin at 630-981-3888 x 261.

**AMERICAN BANKRUPTCY INSTITUTE**

**Chapter 13 / BAPCPA Seminar hosted by Trustee Stearns**

Special Guest: Gretchen Silver, Trial Attorney, Office of the US Trustee, March 3

Place: **801 Warrenville Road, Suite 655, Lisle, IL 60532-4350**

Date: March 3, 2014.

Schedule: 9:30-10:30 Eligibility and §109(e) debt limits  
Extending or imposing the stay  
Completing Schedules properly

10:30-11:00 Why the UST wants to dismiss your perfectly good Chapter 7.

11:00-12:00 The Means Test  
Overview  
Detail

12:00-1:00 Lunch on your own.

1:00-1:15 Getting through the 341 meeting

1:15-2:15 Drafting a plan  
Getting a plan confirmed

2:15-2:45 Unsecured junior mortgages

2:45-3:00 Post confirmation issues, §1329 motions and late claims.

3:00-??? A quick peek at the coming national plan and your questions

I'll provide coffee, not that you need any to keep you awake with this exciting program!

4.5 hours of CLE applied for, we always get approved.

Click [here](#) for an overhead view of our location that shows where to park.

CHAPTER 20 LIEN STRIPPING

DECISIONS ALLOWING CHAPTER 13 DEBTORS TO AVOID WHOLLY  
UNSECURED JUNIOR MORTGAGE LIENS WHEN THEY ARE NOT ELIGIBLE  
FOR A DISCHARGE IN THEIR CHAPTER 13 BANKRUPTCY CASE.

Davis, Fourth Circuit

Anderson NDIL Judge Goldgar 10 AP 02467; 10 B 45294

Scantling 11th Circuit

Victorio SD CA

Frazier ED CA

Okosisi NV

Miller ED NY

## Wholly unsecured junior liens on a Chapter 13 Debtor's residence.

In many cases, Chapter 13 provides a powerful tool for homeowners to save their home by avoiding, or “stripping off” wholly unsecured junior liens. If the amount owed on the first mortgage is greater than the value of the property (as determined by a legitimate, professional appraisal) then any and all junior liens are wholly unsecured.

The junior lien holder(s) is properly scheduled as a secured creditor on the original schedule D because they do have a lien as of the petition date. The entire amount owed will be shown in the column labeled “Unsecured portion if any”.

Do not enter payments for debts secured by the junior lien that is to be avoided on schedule J or on Form B22C or in Plan Section C.

Section 506. Determination of secured status; tells us that the secured or unsecured status of a claim is based on the value of the property at the petition date and provides that if a lien secures a claim that is not an allowed secured claim, the lien is void.

Secured status may be determined through a Motion under Rule 3012 or an Adversary Proceeding under Rule 7004. Junior lien holders that are truly unsecured are not contesting these matters if the proposed order provides that the lien remains in effect if the case is dismissed or converted.

The Court has mandated the use of form orders for Rule 3012 motions and Adversaries. Copies are included in the materials and can be found on the Court's web site.

Wholly unsecured Junior Mortgage Creditors **must** be provided for in Plan Section E3.2. It is advisable to include a provision in Section G of the plan with language similar to the proposed order if a Rule 3012 motion will be filed or similar to the judgment order if an adversary will be filed. Do not state the debtor's intentions. Do use clear strong language that tells the Trustee and the creditor how any claim filed by the creditor is to be treated. Identify the creditor by name and identify the real property by address. If the same lender

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has more than one mortgage on the real property in question, state the position of the lien (2<sup>nd</sup> or 3<sup>rd</sup>) and include the last four digits of the account number.

In Round Lake Beach (Lake County, Judge Goldgar) and in Joliet (Will, Kendall, Grundy and LaSalle Counties, Judge Black) the only requirement at the time of plan confirmation is that the unsecured junior mortgage creditor is provided for in Plan Section E3.2 and there is no objection from that creditor. Failure of the creditor to object to confirmation is a pretty good sign that your motion or AP will not be contested. Judge Goldgar and Judge Black will entertain and rule on either a Rule 3012 motion or an adversary filed before or after confirmation.

In Geneva (DuPage and Kane Counties, Judge Cassling) an Adversary Proceeding is not required per se but his requirements regarding notice are so exacting as to make an Adversary the best route to take.

The end goal is to get a title company to issue clear title to the debtor free of the junior lien at some point after discharge. The best and safest way to accomplish this is with an Adversary Proceeding because it provides the debtor with a Judgment Order that can be recorded. This combined with the Plan, Confirmation Order and Discharge Order should smooth the way to having the lien released and should convince a title company that the lien is no longer in force.

Chapter 7 debtors cannot avoid wholly unsecured junior mortgage liens. See *Grano v. Wells Fargo Bank* 20 CBN 438 (Bankr. WDNY 2010). Citing the Supreme Court's ruling in *Dewsnap v. Timm*, 502 US 410 (1992). §1322(b)(2) give a Chapter 13 debtor the ability to avoid a wholly unsecured homestead mortgage. No parallel provision applies in Chapter 7. Wells Fargo's claim was "allowed" pursuant to §502 and secured by a valid lien against the collateral. Therefore it was not subject to avoidance under §506(d), which voids only liens corresponding to claims that have not been allowed and secured.

Judge Goldgar has ruled that a debtor with a recent Chapter 7 discharge can avoid an unsecured junior mortgage in their Chapter 13 even though they are not entitled to a

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Chapter 13 discharge in the case of Anderson v. Harris N.A. 10 AP 02467 (10 B 45294). A transcript of his unpublished ruling denying Harris N.A.'s motion to dismiss the AP is in your materials. The interesting analysis starts on page eight; the key according to Judge Goldgar is that a loan rendered unsecured by §506(a) is not protected by §1325(a)(5).

### Chapter 20 Lien Stripping

Decisions allowing Chapter 13 debtors to avoid wholly unsecured junior mortgage liens when they are not eligible for a discharge in their Chapter 13 Bankruptcy case are listed below. Links to the decisions can be found at

<http://www.lisle13.com.cnchost.com/Chapter20.pdf>

Davis, Fourth Circuit

Anderson NDIL Judge Goldgar 10 AP 02467; 10 B 45294

Scantling MD FL

Victorio SD CA

Frazier ED CA

Okosisi NV

Miller ED NY

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Section D 1 of debtor's plan is hereby modified as follows:

In addition to making the regular monthly plan payments required under section D 1, debtor shall submit their tax refunds each year as additional plan payments. Tax refunds submitted by the debtor increase the amount the debtor is required to pay into the plan dollar for dollar.

Debtor shall provide copies of their tax returns to the trustee no later than April 30 each year and shall submit their tax refund to the trustee within fifteen days of receipt.

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### TREATMENT OF REAL ESTATE TAXES IN A CHAPTER 13 PLAN

All of the courts in this district as well as the United States Supreme Court believe that an amount owed for county real estate taxes constitutes a bankruptcy claim and therefore is subject to the bankruptcy laws and to the jurisdiction of the bankruptcy court. As such, the state law rights of the county can be affected, modified, reduced, or eliminated under the federal bankruptcy laws. The bankruptcy laws are generally applied in the broadest sense to try to protect the orderly distribution of the debtor's property once a bankruptcy case is filed. In deciding federal bankruptcy law, the bankruptcy courts, while using state law for guidance on some issues, hold that federal law supersedes state law.

#### Unpaid Real Estate Taxes are a claim in Bankruptcy.

In section 101(5) of the Bankruptcy Code, a claim is defined as a "right to payment". The United States Supreme Court, in *Johnson v. Home State Bank*, 501 U.S. 78, 111 S.Ct. 2150, 111L.Ed.2d 66 (1991), decided that the right to payment can be solely against the debtor's property, even if it can't be enforced against the debtor personally. So even though a real estate tax can't be collected against the debtor personally, the ability of the county to collect the tax against the real property is sufficient to bring that amount under the bankruptcy laws. Under the case law from this district, a real estate tax claim is generally said to be a secured claim since the county asserts its claim against the debtor's real estate.

There are limitations what a county can do after a bankruptcy filing. First, it can no longer assess interest and penalties as to all outstanding taxes that are due and owing at the time the bankruptcy case is filed. Second, it cannot conduct a tax sale for any due and owing taxes as of the filing date.

#### Sold Real Estate Taxes.

The 7<sup>th</sup> Circuit's LaMont decision likely eliminates the controversy over treatment of sold taxes in Chapter 13 Plans.

Key points in LaMont:

1. The tax purchaser's interest is a secured claim that is modifiable in a debtor's Chapter 13 plan.
2. The bankruptcy code definition of "claim" is very broad, it is a right to payment or right to an equitable remedy for breach of performance if such breach gives rise to a right to payment.
3. The Supreme Court of Illinois has explained, in the context of Illinois' Uniform Fraudulent Transfer Act, that a tax purchaser has no direct right to payment from the taxpayer, but rather the property tax code sets up an indirect right to payment mediated by the county. The procedure set forth in the code establishes a debtor / creditor relationship between the county and the landowner.

Therefore it is proper to redeem sold taxes by paying the County Clerk through the plan.

Sold taxes may be redeemed by payment to the County Clerk through a Chapter 13 plan as long as the case is filed before the end of the state law redemption period.

It is important to give notice to the tax buyer and include a provision in Section G stating that sold taxes are redeemed by payments to the County Clerk in Section E 3.1 and that no payment shall be made to Tax Buyer Inc. related to any claim for sold taxes related to Parcel Number xx-xx-xxx-xxx.

In Cook and Du Page Counties I believe the County and their State's attorney will cling to the paragraph titled "Other Considerations" in which the court writes: ... if the county clerk is unable to receive installment payments, he should inform the bankruptcy court, which may adopt another solution...

I don't think this line is in any way binding, two key words are unable and may. I agree that it is

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inconvenient for the clerk to accept installment payments, and I understand that the clerk does not want to accept installment payments, but bankruptcy is always inconvenient for creditors, and they never like the treatment the plan gives them. Bankruptcy gives debtors the ability to modify the treatment of a creditor's claim.

I think the Court is saying that if the clerk does not like the treatment the plan provides, then the clerk can object to confirmation of the plan and the Bankruptcy Court will rule on the objection.

### **Confirmed Plan is binding on the County.**

Section 1327 of the bankruptcy code states that upon confirmation, the plan becomes binding upon the debtor, the creditors, and the trustee. As long as the County was given proper notice they are bound by the treatment under the confirmed plan.

**Contact information for all Collar County Treasurers and County Clerks including links to web sites with tax payment status can be found at County Treasurers and Clerks .**

### **TOP TEN KEYS TO DEALING WITH PROPERTY TAXES IN CHAPTER 13.**

1. The Treasurer's office deals with property taxes until they have been sold. After the sale date the Clerk's office is responsible.
2. Always ask the debtor if there is an escrow for property taxes.
3. Always assume the taxes are in default if there is no escrow and give notice to the County Treasurer on Schedule D if there is no escrow. The taxes won't be sold if the county has notice.
4. Always give notice to the Treasurer, the Clerk and the Tax Buyer on Schedule D if there are sold taxes. The Clerk can give you the name and address of the Tax Buyer in less than a minute.
5. Check the status your self if there is no escrow. It takes one minute via internet or phone.
6. Specify the tax year(s) and the PIN on Schedule D and in the Plan.
7. Delinquent taxes must be provided for in the Plan. If the taxes are to be paid through the plan, do so in Section E 3.1, be sure to reference the tax year and the PIN. If direct by the debtor do so in **both** Plan section G and Schedule J.
8. Whether the taxes are paid through Plan Section E 3.1 or G, give them a high fixed payment and get them paid as soon as practical.
9. If the plan provides for payment of taxes that have been sold as well as taxes that have not been sold, provide for them separately in Plan section E 3.1 and make sure they are each clearly labeled.
10. If you don't have a tax bill you can search the Treasurer's web site by address.

### **NDIL Decisions of interest regarding property taxes:**

-  
**Lyubomir Alexandrow v. Todd LaMont, et al;** 7<sup>th</sup> Circuit Court of Appeals 13-1187, decided January 7, 2014. Sold taxes may be redeemed by payment to the appropriate taxing authority through the Chapter 13 plan.

**In Re Kasco** 378 B.R. 207, 211, 212-213 (2007) Tax purchaser is a creditor and its claim may be modified

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without regard to redemption under state law.

**In Re Commings** 02 B 42477 Judge Goldgar. Tax purchaser is a creditor and is bound by the terms of the confirmed plan that pays them as a secured creditor.

**In Re Barton**, 359 B.R. 681 (Bankr. N.D.Ill 2006) Automatic stay applies to a county, specifically in the assessment of interest and scheduling a tax sale. County is bound by the terms of the confirmed plan. County is subject to sanctions under section 362(k).

### **CDIL Decision of interest regarding property taxes:**

**Salta Group, Inc. v. McKinney**, 380 B.R. 515 (C.D.Ill. 2008) Tax purchaser's claim may be paid over the life of the plan.

**Business Cases in Chapter 13 from Simple to Complex.**

**Level One – Debtor is a “1099 employee”**, he usually works for the same company or person but the employer does not withhold taxes and issues the debtor a 1099 instead of a W-2. These debtors are not responsible for generating their own business.

**If the debtor has no out of pocket expenses associated with generating this income:**

Schedule I – Name the employer in Part 1, state that the debtor receives a 1099. Report the gross income on Line 2.

Schedule J – Report estimated average monthly tax **liability** on Line 16. Use the debtor’s tax returns as a resource if possible.

SOFA #1 – Report gross income as if debtor was employed.

Form B22C – Report gross income on Line 2 as if debtor was employed.

**If the debtor does incur out of pocket expenses associated with generating this income:**

Schedule I – Name the employer in Part 1, state that the debtor receives a 1099. Report the net income on Line 8a and attach a statement showing gross receipts, ordinary and necessary business expenses, and the total monthly net income.

Schedule J – Report estimated average monthly tax **liability** on Line 16. Use the debtor’s tax returns as a resource if possible.

SOFA #1 – Report gross income as if debtor was employed.

Form B22C – Report gross income on Line 3a, report ordinary and necessary business expenses on Line 3b and report the net business income on Line 3 A.

**If the debtor is paid by check:**

Provide the trustee with copies of checks and a year to date print out summarizing payments from the employer to the debtor.

**Before the 341 Meeting:** Submit the best available proof of income with a YTD statement of income and expenses to [payadvices@lisle13.com](mailto:payadvices@lisle13.com). Review the documents before you send them, they should support the income disclosed on Schedule I.

Be sure to submit the debtor’s complete tax return with Schedule C.

Submitting a statement that the debtor is self-employed and therefore has no pay advices is useless and patently wrong. You must make a reasonable inquiry into the debtor’s circumstances; you must be able to show how the debtor’s income was calculated.

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**Level Two – Debtor is a sole proprietor.** Debtor may be a carpenter, a painter a manufacturer’s representative, an accountant, an insurance agent, a realtor.....

Schedule B – If the debtor maintains a bank account for business use only, disclose it on Line 2; interest in an unincorporated business must be disclosed on Line 13, accounts receivable and other liquidated debts owed to the debtor are to be disclosed on Lines 16 and 18; vehicles used in the business that are titled to the debtor must be disclosed on Line 25; equipment, supplies and inventory must be disclosed on Lines 28, 29 and 30.

Schedule E – Any unpaid income taxes, withholding taxes or sales taxes are personal liabilities of the debtor and must be disclosed and paid through the plan as priority debts.

Schedule G – Disclose any property or equipment leases.

Schedule I – State that the debtor is self-employed in Part 1. Disclose the address the debtor uses for the business in Part 1. Report the **net income** on Line 8a and attach a statement showing gross receipts, ordinary and necessary business expenses, and the total monthly net income.

Schedule J – Report estimated average monthly tax **liability** on Line 16. Use the debtor’s tax returns as a resource if possible. Do not report any business related expenses on Schedule J, see Schedule I, Line 8a.

SOFA #1 – Report gross income.

SOFA #18 – List the name and nature of the debtor’s business, list the beginning and if appropriate, ending dates of all businesses the debtor was involved in during the six years preceding the commencement of the case.

SOFA #19 and 20, complete as appropriate.

Form B22C – Report gross income on Line 3a, report ordinary and necessary business expenses on Line 3b and report the net business income on Line 3 A.

**Before the 341 Meeting:** Submit the best available proof of income with a YTD statement of income and expenses to [payadvices@lisle13.com](mailto:payadvices@lisle13.com). Review the documents before you send them, they should support the income disclosed on Schedule I. Make sure that the expense side of the income statements shows only business expenses. Be prepared to tender supporting documents such as invoices, ledgers and bank statements. Be sure to submit the debtor’s complete tax return with Schedule C.

If the debtor maintains separate business and personal bank accounts be prepared to submit statements for both. Identify any funds taken out of the business for personal use.

Debtors engages in a retail business must submit sales tax returns.

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### **Level Three – Debtor is Self Employed and has employees or employs subcontractors.**

In addition to the foregoing, submit records regarding payments to employees or subcontractors such as: check ledgers, 1099 forms, 941 returns (payroll tax returns).

### **Level Four – Debtor is the sole shareholder of a Subchapter S Corporation.**

Schedule B – Ownership of the shares of stock in the corporation must be disclosed on Line 13.

Schedule D – Any debts of the business secured by assets of the business have almost certainly been personally guaranteed by the debtor.

Schedule E – Any unpaid income taxes, withholding taxes or sales taxes are personal liabilities of the debtor and must be disclosed and paid through the plan as priority debts.

Schedules F and H – Most lenders and wholesale suppliers require personal guarantees to extend credit to small businesses.

Schedule G – Disclose any property or equipment leases the debtor has signed or guaranteed.

The debtor's method of compensating himself determines how his income is disclosed.

#### **If the debtor writes checks to himself from his business account from time to time:**

Schedule I – Disclose his average monthly gross income on Line 2.

Schedule J - Report estimated average monthly tax **liability** on Line 16.

Provide copies of all such checks and banks statements.

#### **If the debtor pays himself a salary and withholds taxes:**

Schedule I – The debtor's income will be reported largely as if he were an employee.

Net profit over and above salary would be disclosed on Schedule I Line 8a or 8h and B22C Line 3.

In all cases:

SOFA – Complete #1, 18, 19 and 20.

Form B22C – Report gross income on Line 2.

**Before the 341 Meeting:** Provide detailed profit and loss statement and balance sheet. Be sure to disclose all assets owned by or titled to the business. Provide at least two years Corporate tax returns (Form 1120S). If the S Corp has any employees the debtor must provide detailed payroll records and payroll tax returns. Debtors engages in a retail business must submit sales tax returns.

**Level Five – Debtor is a shareholder of a corporation, there are other shareholders.**

In addition to the foregoing, provide copies of any shareholder agreements, particularly if insolvency of one of the shareholders triggers any provisions of the shareholder agreement (Liberty Tattoo).

**In all cases:**

1. Does the debtor incur trade credit in the production of income? In other words, at the time of filing the case does the debtor have open accounts with trade suppliers? Will these trade suppliers allow the debtor to maintain open account privileges going forward? If the answers to all these questions are Yes, then the debtor passes (or fails) the §1304 test, see below.
2. A debtor who incurs trade credit in the production of income must provide the Chapter 13 Trustee quarterly income statements, balance sheets, detailed payroll records, detailed accounts receivable records and detailed accounts payable records.
3. Review documents before submitting them to the trustee.
4. Make sure income and expense documents provided can be reconciled with entries on Schedules I and J and Form B22C and the Statement of Financial Affairs.
5. If you send a mountain of bank statements and check registers without reviewing them, be prepared to be surprised when the trustee says they paint a very different picture than your Schedules I and J do.
6. Know if your debtor has employees, incurs trade debt, owes income taxes or sales taxes, has guaranteed any business debts or leases or owns business space,
7. Remember, the amount of a debt is never “unknown”, the trustee will not believe this.
8. The trustee will not believe that debts are truly contingent or unliquidated.

**§1304 Debtor engaged in business.**

- (a) A debtor that is self-employed **and incurs trade credit in the production of income** from such employment is engaged in business.
- (b) Unless the court orders otherwise, a debtor engaged in business may operate the business of the debtor and, subject to any limitations on a trustee under sections 363 (c) and 364 of this title and to such limitations or conditions as the court prescribes, shall have, exclusive of the trustee, the rights and powers of the trustee under such sections.
- (c) A debtor engaged in business shall perform the duties of the trustee specified in section 704 (a)(8) of this title.

**If the debtor incurs trade credit in the production of income then the debtor must perform all the duties required under § 704(a)(8)**

(8) if the business of the debtor is authorized to be operated, file with the court, with the United States trustee, and with any governmental unit charged with responsibility for collection or determination of any tax arising out of such operation, periodic reports and summaries of the operation of such business, including a statement of receipts and disbursements, and such other information as the United States trustee or the court requires;

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**Summary of Operations  
For Self-Employment Income**

**Your Name** \_\_\_\_\_ **Case No.** \_\_\_\_\_

**Business Name** \_\_\_\_\_

**Description of Business** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1. **Business property owned** (Any vehicles and equipment purchased for over \$100.00)

Description	Purchase Date	Purchase Price
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

2. **Inventory** (Dollar value and type of any inventory, merchandise, or supplies)

Description	Current Dollar Value
_____	_____
_____	_____
_____	_____
_____	_____

3. **Business property leased** (Any vehicles, equipment, etc.)

Description	Lease Date	Lease Term
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

4. **Insurance policies** (List all insurance policies for home, vehicles, liability, etc.)

Type of Insurance	Expiration date	Name of Insurance Company
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

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**5. Monthly business budget**

(Based on an average from prior months and estimated future income and expenses)

Budgeted Income (Gross Receipts) \$ \_\_\_\_\_

Budgeted Expenses

DO NOT INCLUDE EXPENSES LISTED  
ON SCHEDULE J.

Rent	\$	
Utilities	\$	
Telephone	\$	
Supplies	\$	
Bank Charges	\$	
Insurance	\$	
Inventory (Material Purchases)	\$	
Transportation	\$	
Contract Labor/Subcontractors	\$	
Employee Salaries	\$	
Employee Benefits	\$	
Equipment Leases	\$	
Advertising	\$	
Professional Services	\$	
Income Tax	\$	
Payroll Tax	\$	
Sales Tax	\$	
Other Taxes	\$	
Misc. (Describe: _____ )	\$	
Total Budgeted Expenses		\$ _____
Net Income (Loss)		\$ _____

I certify under penalty of perjury that I have read the forgoing statement and it is correct to the best of my knowledge, information and belief.

\_\_\_\_\_  
  
\_\_\_\_\_  
Debtor(s)

\_\_\_\_\_  
  
\_\_\_\_\_  
Date

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**MONTHLY FINANCIAL REPORT**

**Your Name** \_\_\_\_\_ **Case No.** \_\_\_\_\_

**Business Name** \_\_\_\_\_

**Month and Year** \_\_\_\_\_

Total Actual Income \$ \_\_\_\_\_

Actual Expenses

DO NOT INCLUDE ANY EXPENSES LISTED ON SCHEDULE J.

Rent	\$ _____	
Utilities	\$ _____	
Telephone	\$ _____	
Supplies	\$ _____	
Bank Charges	\$ _____	
Insurance	\$ _____	
Inventory (Material Purchases)	\$ _____	
Transportation	\$ _____	
Contract Labor/Subcontractors	\$ _____	
Employee Salaries	\$ _____	
Employee Benefits	\$ _____	
Equipment Leases	\$ _____	
Advertising	\$ _____	
Professional Services	\$ _____	
Income Tax	\$ _____	
Payroll Tax	\$ _____	
Sales Tax	\$ _____	
Other Taxes	\$ _____	
Misc. (Describe: _____ )	\$ _____	
Total Actual Expenses		\$ _____

Net Income (Loss) \$ \_\_\_\_\_

**Cash and Bank Balances for Business**

Cash and bank balances for beginning of month	\$ _____
Cash and bank balances for end of month	\$ _____

I certify under penalty of perjury that I have read the forgoing statement and it is correct to the best of my knowledge, information and belief.

\_\_\_\_\_  
Debtor(s)

\_\_\_\_\_  
Date

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**Serving the Internal Revenue Service in  
Northern District of Illinois Bankruptcy Cases**

Adversary Proceedings and Contested Matters

Bankruptcy pleadings in adversaries and contested matters before the United States Bankruptcy Court for the Northern District of Illinois (both Eastern and Western Division) should be served on the United States<sup>1</sup> at both of the following addresses:

D. Patrick Mullarkey Tax Division (DOJ) P.O. Box 55 Ben Franklin Station <sup>2</sup> Washington, DC 20044 (FAX 202-514-5238)	United States Attorney 219 South Dearborn Street Chicago, IL 60604
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See Bankruptcy Rules 3007, 9014, 7004(b)(4); *In re Richard J. Morrell*, 69 B.R. 187, 87-1 U.S.T.C. & 9142, 58 A.F.T.R. 2d & 86-5345 (N.D. Cal. 1986).

Under Rule 4(i)(1)(A) of F.R.C.P. service on the U.S. Attorney must be either by hand delivery to the USA, or to an AUSA or clerical employee designated by the USA in writing filed with clerk of court or by **certified or registered mail** a copy of the complaint and summons addressed to the civil process clerk at the US Attorney office. Under Rule 4(i)(1)(B) of F.R.C.P. service on the Attorney General must be by **certified or registered mail** only. Rule 7004(b)(4) permits first class mail service on U.S. Attorney and Attorney General, but it is only valid if addressed to the civil process clerk at the local U.S. Attorney office.

**In Chapter 7 and 13 cases**, a courtesy copy of the pleading may be sent to:

Internal Revenue Service P.O. Box 7346 Philadelphia, PA 19101	Associate Area Counsel, SB/SE 200 West Adams Street Suite 2300 Chicago, IL 60606 Fax: (312) 368-8712
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**In Chapter 11 cases**, a courtesy copy of the pleading may be sent to:

Internal Revenue Service 230 S. Dearborn Street Mail Stop 5000 CHI Room 3022 Chicago, IL 60604	Associate Area Counsel, SB/SE 200 West Adams Street Suite 2300 Chicago, IL 60606 Fax: (312) 368-8712
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Service on the U.S. Attorney and the Attorney General is only necessary for adversaries and contested matters. Note that the address above to D. Patrick Mullarkey, Tax Division (DOJ) constitutes service on the Attorney General for purposes herein described. Service additionally on the Attorney General at the Main Justice address is superfluous.

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<sup>1</sup> The Internal Revenue Service is not a suable entity.

<sup>2</sup> The street address is Room 7804, JCB Building, 555 4th Street N.W., Washington, D.C. 20001.

## CHICAGO CONSUMER BANKRUPTCY CONFERENCE 2014

### Routine Pleadings

In **Chapter 11 cases**, the petition, schedules, monthly reports, and miscellaneous routine pleadings in cases in the United States Bankruptcy Court for the Northern District of Illinois (both Eastern and Western Division) should only be served on the Territory Manager, Insolvency Territory 7, at Internal Revenue Service, 230 S. Dearborn Street, Mail Stop 5000 CHI, Room 3022, Chicago, IL 60604.

In **Chapter 7 and 13 cases**, routine pleadings should be served at on the IRS's Centralized Insolvency Operation at Internal Revenue Service, P.O. Box 7346, Philadelphia, PA 19101.

### Additional information

The instructions in this memorandum apply only for cases before the **United States Bankruptcy Court for the Northern District of Illinois (both Eastern and Western Division)**. Please use these addresses exactly as given without the name of any individual (except D. Patrick Mullarkey as specified above); use of names will slow down delivery, not expedite it. Do not serve the United States at other locations--pleadings sent elsewhere are merely forwarded to one of the above addresses; they are not read or processed at the inappropriate addresses.

Specifically, because case authority is delegated from the national offices to the field offices, **do not serve**:

*Commissioner of Internal Revenue, Washington, DC  
Office of Chief Counsel, Washington, DC  
Area Counsel, Small Business/Self-Employed (SB/SE)*

Once a taxpayer files a bankruptcy petition, the revenue officer transfers his/her responsibility to the Territory Manager, Insolvency Territory 7. Therefore, **do not serve** any revenue officer at any post of duty.

Because the Service Centers are merely warehouses for returns except for a few processes not relevant to bankruptcy cases, **do not serve** Kansas City Service Center.

### Contact Information

If you have questions about any of the above service instructions, please call Mayer Silber, Associate Area Counsel, Small Business/Self-Employed, at (312) 368-8230.

If you have questions about specific docketed bankruptcy cases, the Centralized Insolvency Unit in Philadelphia can be reached at 1-800-913-9358; Fax # 215-516-2015. It helps if you have the bankruptcy docket number and for very new cases, the taxpayer identification number (employer identification number or social security number).

We encourage you to attempt to resolve many of your concerns administratively prior to seeking recourse in the courts (which may then be avoided altogether). For example, when the Service prepares a proof of claim and its records indicate an unfiled return, the claim will assert an estimated liability for that return. If the debtor later files the return in a different amount (or even claiming a refund), it is not necessary to object to the claim--merely furnish a signed copy of the late filed return to the case worker who will amend or withdraw the original claim.

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Use this address on Schedule E to provide routine notice of filing of a Bankruptcy Case to the Illinois Department of Revenue:

ILLINOIS DEPT OF REVENUE

PO BOX 64338

CHICAGO IL 60664-0338

**BEST PRACTICES IN CHAPTER 13'S—A DEBTOR ATTORNEY'S PERSPECTIVE**

*By Nathan E. Curtis  
Geraci Law L.L.C.*

**PRIOR TO FILING:**

1. Ask questions. Don't be a robot or a dictation service just filling in what the debtor tells you. Ask them questions. Often, the answer to one question will lead to asking another question. That is how you can discover potential issues or problems. If you know about them you can plan for them.
2. Ask for whatever documents/information you need and follow up with the client to get it. Remember you need it for a reason.
  - a. Examples: Proof of car insurance, vehicle finance contract, copies of lawsuits
3. Know your Trustee/Judge. This is a lot harder to do in Cook County (multiple judges and trustees), but easy to do in the collar counties. Make sure you know what the Trustee's position is on certain topics and what the judge has ruled (or perhaps made a comment about in open court).
  - a. If you are in Cook County, know both Trustee's positions on a given topic and discuss the issue with your client PRIOR to filing so you let them know what could happen, depending on which judge or trustee you get
  - b. There is nothing worse than telling a client something and making them feel like they were blindsided because they were not prepared (granted, sometimes you can prepare a client as much as humanly possible and they will still claim to be blindsided)
4. Know your creditor/creditor attorney. Same issues. If certain creditors will ask for certain documents, and you know what their issues will be ahead of time, be prepared. If you know a certain creditor will object to what you are proposing (whether or not you feel it is a valid objection) notify the client.
5. Check what you can. If you know a foreclosure case has been filed, try and get an idea of what the arrears are. Even if the creditor's attorney cannot give you a reinstatement figure on the spot, you can still ask what is the last month they are do for and do the math. Underfunding the plan can lead to huge problems.
6. Ask for help if necessary. If you have an odd issue and you aren't sure how to handle it, most of the trustees or their staff attorneys will be willing to give you at least some guidance. Why? Because they would rather have you get it right before filing then spend the time trying to figure it out after filing and delaying confirmation.

POST FILING:

1. Dealing with the Trustee
  - a. The 3 A's
    - i. **DO** realize that Trustee is your **Adversary**. You do not have to give in to the Trustee. They are doing their jobs just as you are doing yours. They may think they are right but do not be afraid to challenge their position if you think it is wrong.
    - ii. **DO Advocate** on behalf of your client. Take your position and be able to support it, whether by oral argument, brief or both
    - iii. **DON'T** be **Antagonistic** to the Trustee. There are ways to disagree with the Trustee amicably without fostering bad feelings. If you try to make the Trustee dislike you, the only people you could wind up hurting are your clients.
  - b. The 3 C's
    - i. **Comply** with the Trustee's reasonable requests. Nothing good will come of you refusing to comply. If you think the request is unreasonable, ask the Judge for a ruling
    - ii. **Communicate** with the Trustee and the Trustee's office. It is never a bad idea to discuss a case with whichever staff attorney is covering the call. Communicating early is always better than later. If you find out about issues earlier, you can resolve them earlier, which means a higher likelihood of confirmation.
    - iii. **Compromise** with the Trustee. Remember: you both want the same thing—a confirmed, successful plan. If you can come to an agreement that works for both of you, agree to it, even if it is not ideal.
2. Dealing with Creditors: See above. Realize that applying the 3 A's and the 3 C's to Creditors (in a slightly different manner) will also help you accomplish your goal.
3. Dealing with Debtor:
  - a. Communicate: This is by far the most important aspect of dealing with your client post-filing. When something happens, let him or her know what you are doing and how you are proposing to handle it. Remember, it is the Debtor's decision on whether or not they want to amend their plan or pay a particular creditor
  - b. Explain: This goes with Communicate, but it needs to be reiterated. You cannot just tell the client what is going on and what you are

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recommending, you have to explain why. Give them the options and explain them. Then say what your recommendation is and why. You will save yourself a lot of trouble in the long run if you do.

- c. Control: you have to be able to control your client. This means making sure they obtain information you need to move their case forward, and it means making sure they allow you the time to help your other clients. If you find they are monopolizing an inordinate amount of your time, feel free to tell them nicely and request they refrain from contacting you as often as they are. If you have a client who contacts you several times daily or weekly, it is perfectly fine to limit their contacts and tell them to take care of everything at once rather than 5 different times.

NOTES:

## Thirteen Rules to Win the Heart and Mind of a Chapter 13 Trustee

BY HELEN M. MORRIS, ON AUGUST 31ST, 2014

By Helen M. Morris, Chapter 13 Trustee for the Northern and Southern Districts of West Virginia

Treat the trustee's staff with respect. They know what they are doing. If they tell you that they can't give you certain information over the phone, they are following office policy and procedures. You may be able to find the information you are seeking at National Data Center (NDC) or the website provided by the trustee.

Help yourself. Throwing together something just to get it filed doesn't progress the case—whether it's sloppy schedules, a plan that won't work, an incomplete proof of claim, or an inaccurate motion for stay relief. You may have met a deadline, but you've created more work for yourself since sloppy work delays confirmation, generates objections and counter-pleadings, and hearings.

Investigate. As debtor's counsel, BAPCPA requires more knowledge by you of the personal circumstances of your clients. You can't simply rely on what the debtor/client told you. A couple with two children under 5 years of age, shouldn't have a cell phone bill in excess of \$450.00. Apply common-sense when you review schedules. If you are creditor's counsel and are forwarded information for a motion for stay relief, look at more than what your client sent you. Both debtor and creditor counsel should check out the plan. If it provides that the trustee is to make the payments on a secured claim, check it out via NDC or the trustee's site to see if payments have been made. Some creditors seem to have a difficult time applying payments. Better to deal with the condescension of the creditor's employee than explain to the Judge in open court why you didn't check out the trustee's payments.

Review the documents you are required to provide/file. Compare it to the information you put in the schedules, plan and Statement of Financial Affairs. The car value should be the same on the schedules and the plan. Tax returns frequently show greater income or show omitted sources of income than what is listed on the schedules. Trustees actually look at the returns. So should you.

Tax returns are due 7 days prior to the meeting of creditors. This should not be a surprise. BAPCPA went into effect in 2006. It's not "new law."

Evaluate the case. Not everyone, as much as it pains me to write this, can perform in a Chapter 13 case. Nor, sad to say, does everyone who qualifies for a Chapter 13 want to be there. As a trustee, I want to see more filings, but not more non-productive cases.

Enlist the aid of a calculator. Trustees use base 10 for our numerical calculations. Many plans appear to use another numerical system.

No shifting responsibilities. Some things are part of the representation of the debtors. The trustee cannot represent the debtors. The trustee is required to assist the debtor in completing the plan—not replace counsel. The trustee is specifically prohibited from giving legal advice to any party, including creditors.

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- The plan as you fill it out;
- The pleadings which are filed;
- The pleadings you file and the orders you write. The relief set forth in the order you draft should match what the Court granted in a hearing, or, if a default order, what was sought in the motion/objection.

Understand what can and can't be done in your client's case. Filing plans/pleadings which seek to accomplish something that is prohibited by the Code makes you appear to be gaming the system, playing "catch me if you can" with the trustee, opposing counsel, and the Court. You may slip a few past everyone, but if it appears to be a pattern, the trustee, at least, will scrutinize everything you file.

Law changes. Rules of procedure change. Court policies change. Stay current.

Explain. If you want to do something unorthodox, explain why you want/need to do it and give as much authority as you can muster. Disclosure goes a long way! A secured creditor who doesn't want the collateral back may be willing to accept your proposal if it is fact specific enough that it doesn't run the risk of dealing with this issue in every case.

Say "The trustee is right." Say it often and on the record, if possible.

THIRTEEN RULES!!!!