



**Chapter 13 Quarterly Newsletter
September 2014**

1. Updated 341 Forms

From time to time it is necessary to update standard forms used by the Chapter 13 office in Akron. As counsel are aware, the Chapter 13 office in Akron provides various forms during the 341 meeting to both help the debtor better understand the Chapter 13 process and provide a status of their case. These forms have now been updated and copies of the following forms are attached to this newsletter for counsel to review.

- A.** The standard affidavit used in Akron to remind debtors the importance of making payments into their Chapter 13 plan and also the requirement to make ongoing mortgage payments if debtors are seeking to retain their residence.
- B.** Self employed affidavit. This affidavit reminds the debtors of the importance to pay ongoing tax payments subsequent to the petition filing date and also provides the debtors notice that from time to time the Trustee will ask for relevant financial information regarding their business operations pursuant to 11 USC Section 1302(c).
- C.** Student loan affidavit. This affidavit reminds the debtors that at the conclusion of their Chapter 13 case that the balance of their student loan will remain non-dischargeable.
- D.** Standard 341 examination sheet. This examination sheet allows debtors and counsel to better understand the Trustee's position on the case at the conclusion of the 341 meeting. Often times, the only thing the Trustee is needing to conclude the case is relevant documents that were not supplied during the 341 meeting

2. Personal Financial Management Class, October 25, 2014 Annual Saturday Morning Class

Please note that the Chapter 13 office in Akron will hold its next Personal Financial Management Class for debtors who have not yet taken this required class on Saturday, October 25, 2014 from 10 AM to 12 PM at the main library in downtown Akron. The Chapter 13 office offers this class free of charge. The annual Saturday class allows Debtors the opportunity to take the class, especially if their schedules do not allow them to take the class during the week.

As all counsel know, if a debtor fails to take the class, the debtor will not be eligible for discharge and creditors would be permitted to keep all funds paid into the plan and seek further recovery from the debtors. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 made the Personal Financial Management Class a requirement for discharge.

A few cases did not receive a discharge this year but were closed for the debtor's failure to take the required class. The cases were closed even after the debtor was given a warning that the case would close without a discharge but the debtors, for whatever reasons, failed to take the class.

The Trustee thanks all counsel for working with their clients to take the class early in the bankruptcy process as possible as taking the class within the first few months of the petition filing date does seem to help the debtors complete the plan successfully and gives the debtors a better understanding of the Chapter 13 program.

A flyer for the October 25, 2014 class is attached to this newsletter for counsel to share with their clients.

3. Timing of Trustee Fees

Due to recent Court decisions, the United States Trustee Program has required that Chapter 13 Trustees nationwide adjust the timing of their earning of trustee fees to be in compliance with 28 USC Section 586(e)(2).

For about 20 years, Chapter 13 Trustees were allowed their standard administration fee when distributions were made to creditors. However, 28 USC Section 586(e)(2) specifies that trustee fees shall be taken at the time the debtors make payments into their Chapter 13 plan.

This timing of fees will not increase the amount of trustee fees or administrative cost that debtors have to pay in a Chapter 13 plan. It will simply be that the trustee fee will be taken upon receipt and not upon disbursement. In no circumstances will the trustee fee be taken twice.

It is not yet clear how the change in the timing of receipts will affect the online information received by the debtors through Bankruptcy Link or the National Data Center. It is expected that the funds on hand on these programs will show the funds that are available for creditors as it will be shown after the trustee fee has been charged to the case. For example, if the debtor makes a \$100 monthly Chapter 13 payment and there is a 6% Chapter 13 administration fee, \$94 will be posted to the case and that should be shown both on the National Data Center and the Bankruptcy Link programs. Please note that it may take a few weeks for these programs to make this change.

If counsel have any question or concern on the change and how information is being shown to the debtors, please do not hesitate to contact the Chapter 13 office.

4. Template Motion and Order to Sell Property

The Chapter 13 office has received some requests for an example of a motion and order to sell real estate. Attached to this pleading, please find a template motion and order for consideration by counsel.

The attached motion and order assumes it is not the debtor's residence. If it is the debtor's residence being sold, counsel may need to adjust the pleading to claim the appropriate exemption for the debtors on their residence.

Lastly, as with all pleadings supplied by the Chapter 13 office, please remember these are only templates to be used by counsel and counsel must still exercise their own legal judgment on any editing to the template motion and order for their respective cases.

The Chapter 13 office will add the template motion and order to the Chapter 13 webpage in the near future.

5. Trustee's Use of 102 Language

Over the last few months, the Trustee has updated many motions to add language pursuant to 11 USC Section 102. This language allows a default to be taken on a case if counsel do not respond within the objection period. Generally for most pleadings, bankruptcy rules require a 20 day notice period.

All Chapter 13 pleadings provide a minimum 30 day notice period. Motions to modify filed by the Trustee provide a 40 day notice period.

The Trustee would ask that if counsel are not in agreement with the relief being requested that they file appropriate objections within the stated objection period.

Lastly, in response to motions to modify filed by the Trustee, some counsel have filed objections stating that they do not believe the Trustee's calculations are correct. Please note, if counsel will contact the staff person who filed the pleading that staff person will provide the calculations used for the motion for counsel to review. The Trustee also respectfully requests that counsel provide a copy of their calculations for review by the Chapter 13 Office.

6. No Opt Out of Rule 3002 Language

Some creditors have been adding an opt out provision for Rule 3002 into their orders for relief from stay. These orders do not cite any statutory provision for the opt out of the Rule 3002 language which requires mortgage companies to provide an accounting to the debtor at the conclusion of the Chapter 13 case and to state affirmatively whether or not the debtor is current or not current in mortgage payments as of the date of the discharge.

It is the Trustee's position that Rule 3002 does not have an opt out provision. The Trustee would note that the creditors are not asking for an opt out of Rule 3002 language in their motion, which would allow an objection to be filed by parties to the motion.

The Trustee would ask that all creditors counsel not to include any opt of Rule 3002 language unless said opt out request is included in the motion and the statutory legal authority for the opt out is cited. Absent that citation in the motion and a statutory authority of allowing the opt out, the Trustee will challenge any request to opt out of the requirements for Rule 3002 language.

7. Counsel Request for Updated 341 Booklet

In the next couple of months, the Chapter 13 office will be updating its 341 educational booklet provided to debtors prior to the 341 meeting.

The booklet has worked well for many years and in conjunction with the Chapter 13 webpage, attempts to provide debtors an understanding of the Chapter 13 program and process.

The Chapter 13 office would welcome suggestions by counsel if they feel anything should be deleted or added to the handbook to better help their clients understand the Chapter 13 program. A copy of the current handbook can be obtained at the Chapter 13 webpage at www.chapter13info.com.

Items and suggestions to improve the handbook can be sent to the Trustee at krucinski@ch13akron.com

8. Separate Checks for Joint Filers

Unfortunately, debtors are sometimes living separate and apart at the conclusion of a Chapter 13 case and one, or both, debtors have filed new addresses with the Court. It is the Trustee's position that all funds to be returned to debtors are owned jointly by debtors in a joint case. Therefore, effective October 1, 2014, the Trustee will be sending separate checks to joint filers unless there is a motion and order directing that the returning funds should only be sent to one of the debtors. Of course, the Trustee would ask that any motion or order be served on both debtors or that both of them sign the pleading agreeing that only one of them should get the returned funds.

9. Proof of Social Security Number and Identification for 341 Meetings

The Chapter 13 Office has noticed some confusion on what is acceptable identification and proof of social security number at the 341 meeting.

For proof of ID the following is acceptable:

Driver License, US government ID, State ID, Student ID, passport or current visa if not US residence, military ID, resident alien card and ID car issued by a national government authority. **DEBTORS MAY NOT USE COPIES OF THESE ITEMS, THEY MUST HAVE AN ORIGINAL.**

For proof of social security we can accept –

Social security card, medical insurance card, pay stud, W-2 for, IRS form 1099, and Social Security SSA form. Originals are preferred, but copies are acceptable.

Too often Debtors are showing up for the 341 meeting missing one of the above, which delays or adjourns the meeting. It would be appreciated if possible if counsel would contact their client the week of the 341 meeting as a reminder to bring these items to the 341 meeting.

10. Case Law

Plymouth Park Tax Services, LLC v. Bowers (In re Bowers) (6th Cir. July 21, 2014).

Prior to filing chapter 13, Debtors allowed the taxes to become delinquent on their real property located in Akron, Ohio. After the Debtors became delinquent on their taxes, the Summit County Treasurer held a tax certificate sale and Plymouth Park Tax Services ("Plymouth Park") purchased two delinquent tax certificates pursuant to statute. The first tax lien certificate (Certificate #1) was filed on November 5, 2010 with the Summit County Fiscal Officer indicating a purchase price of \$4,083.73 with a negotiated interest rate of 0.25%. On October 3, 2011, the second tax lien certificate (Certificate #2) was filed with the Summit County Fiscal Officer indicating a purchase price of \$2,045.44 with a negotiated interest rate of 18.00%. Both of these certificates are titled "Tax Certificate (Negotiated sale)." In Ohio, when real estate taxes are not paid, a tax lien attaches to the property, annually, including interest, penalties, and fees accrued until paid, pursuant to Ohio Revised Code Section 323.11. Summit County and other Ohio counties sell tax lien certificates that entitle the certificate holder to the first lien on the property. Property owners may redeem and remove the lien by paying the holder the purchase price plus interest, penalties, and costs, pursuant to Ohio Revised Code Section 5721.32. The certificate holder may initiate foreclosure proceedings after one year. Summit County filed a foreclosure complaint following a request by Plymouth Park. The complaint stated that "as provided by Section 5721.38(b) of the Ohio Revised Code" the "redemption price" calculated was \$10,585.82. A month later, the Debtors filed their Chapter 13 plan and petition; they did not file any notice to "redeem" their property during the bankruptcy action. The Chapter 13 payment plan proposed to pay the interest rates listed on the certificates. Plymouth Park filed a proof of claim based on both certificates for \$10,521.46, including \$2,120.00 in fees and the principal balance of \$7,781.19 plus 18% interest. The Bankruptcy Court held that Plymouth Park's claim was a tax claim under 11 U.S.C. 511 and that state law governed the interest rate, but rejected a claim that the 18% statutory rate, rather than the negotiated rate, should apply. Plymouth Park appealed to the Bankruptcy Appellate Panel which affirmed the Bankruptcy Court's order and concluding that the 0.25 % interest was the certificate rate of interest for the entire claim. The Sixth Circuit affirmed the Bankruptcy Court and the Sixth Circuit's decisions, holding that the Chapter 13 debtors did not seek to redeem the property as set forth in Section 5721.38(b) of the Ohio Revised Code. Because Plymouth Park had not pointed to any statutory provision or case which provided a basis for assuming that the filing of a notice of intent to foreclose triggers an early expiration of the six year period in Ohio Revised Code Section 5721.37(A)(3)(b). The Court held that Section 5721.37(A)(3)(b) applied to the present case and that the 0.25 percent interest rate on the face of the tax certificate was the certificate rate of interest which continued to accrue during the extension of time because of the bankruptcy filing.

In re Cain, (Sixth Circuit B.A.P.)(Case No. 13-8045)(July 2014)

Debtors filed a Chapter 7 petition and received a discharge in February 2008. In July 2008, Debtors filed a Chapter 13 case to pay an auto loan and tax obligations, to cure the default on a first mortgage, and to avoid a wholly unsecured second home mortgage. The Amended Chapter 13 Plan was confirmed in September 2008 and provided: Debtors will avoid the mortgage and/or judgment liens of Amerifirst Finance, Squires Construction, and the Ohio Department of Taxation, which are wholly unsecured under 11 U.S.C. Sections 506(a), 1322(b)(2) and 1325(a)(5)(B), and which impair Debtors' exemption in their home (11 U.S.C. Section 522(f)); those unsecured claim shall be disallowed as discharged in Debtors' Chapter 7 Bankruptcy unless otherwise allowed by separate order. Because Debtors had received a Chapter 7 discharge within the preceding four years, they were ineligible for discharge under Chapter 13, 11 U.S.C. Section 1328(f)(1). Upon completion of plan payments, the Chapter 13 Trustee sought an Order Releasing Wages and Closing Case Without Discharge, which was granted on May 6, 2013. The Debtors sought to avoid Amerifirst's lien to effectuate

the confirmed Chapter 13 Plan. The residence was valued at not more than \$100,800 and was encumbered by a first mortgage of \$106,306.38 and by Amerifirst's second mortgage of \$9,415.28. No party objected, but the Bankruptcy Court denied the motion, stating that the lien stripping power of 11 U.S.C. Section 506 was unavailable. The Sixth Circuit Bankruptcy Appellate Panel reversed and remanded, holding that the wholly unsecured status of Amerifirst's claim, rather than eligibility for a discharge is determinative.

SAVE THE DATE

To help him celebrate his retirement, the Akron Bar Association Bankruptcy and Commercial Law Section is having a Roast and Celebration of Terry Zimmerman, Esquire on October 8, 2014, from 5:30 PM to 7:30 PM at Brico, 1 West Exchange, Akron, Ohio 44308.

You may RSVP at (330) 436-0106.

Please see attached flyer for details.