

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE**

**CLERK'S NOTICE UNDER 11 U.S.C. § 342(b) TO INDIVIDUAL DEBTORS
WHOSE DEBTS ARE PRIMARILY CONSUMER DEBTS**

There are several types of bankruptcy cases which may provide relief for financially distressed individual(s) whose debts are primarily consumer debts. The cases are traditionally given the names of the chapters under the Bankruptcy Code that describe them.

Chapter 7, entitled "Liquidation," contemplates an orderly, court-supervised procedure by which a bankruptcy trustee takes over the nonexempt assets of the debtor's estate, reduces them to cash, and makes distributions to creditors, subject to the debtor's right to retain certain exempt property and the rights of secured creditors. Because there is usually little or no nonexempt property in most chapter 7 cases, there may not be an actual liquidation of the debtor's assets. These cases are so-called "no-asset cases." It is important to remember, however, that a debtor may still lose some property in a no-asset case, such as a home or automobile, which might be returned to the original, secured creditor. A creditor holding an unsecured claim will get a distribution from the bankruptcy estate only if the case is an asset case and the creditor timely files a proof of claim with the bankruptcy court. In most chapter 7 cases, if the debtor is an individual, he or she receives a discharge that essentially releases (or discharges) him or her from personal liability for certain dischargeable debts. The debtor normally receives a discharge just a few months after the petition is filed. Amendments to the Bankruptcy Code enacted pursuant to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 require the application of a "means test" to determine whether individual consumer debtors qualify for relief under chapter 7. If such a debtor's income is in excess of certain thresholds, the debtor may not be eligible for chapter 7 relief. If the debtor does not qualify for chapter 7 relief, they may convert to chapter 13. Under the "means test," debtors who have some excess income after payment of expenses are presumed to have enough income to repay their debts over time under chapter 13. Ordinarily, the filing fee for commencing a case under chapter 7 is \$335.00.

Chapter 11, entitled "Reorganization," ordinarily is used by commercial enterprises that desire to continue operating a business and repay creditors concurrently through a court-approved plan of reorganization. The chapter 11 debtor usually has the exclusive right to file a plan of

reorganization for the first 120 days after it files the case and must provide creditors with a disclosure statement containing information adequate to enable creditors to evaluate the plan. The court ultimately approves (confirms) or disapproves the plan of reorganization. Under the confirmed plan, the debtor can reduce its debts by repaying a portion of its obligations and discharging others. The debtor can also terminate burdensome contracts and leases, recover assets, and rescale its operations in order to return to profitability. Under chapter 11, the debtor normally goes through a period of consolidation and emerges with a reduced debt load and a reorganized business. The filing fee for commencing a case under chapter 11 is \$1717.00.

Chapter 12, entitled “Adjustment of Debts of a Family Farmer or Fisherman with Regular Annual Income,” provides debt relief to family farmers and fishermen with regular income. The process under chapter 12 is very similar to that of chapter 13, under which the debtor proposes a plan to repay debtors over a period of time – no more than three years unless the court approves a longer period, not exceeding five years. There is also a trustee in every chapter 12 case whose duties are very similar to those of a chapter 13 trustee. The chapter 12 trustee’s disbursement of payments to creditors under a confirmed plan parallels the procedure under chapter 13. Chapter 12 allows a family farmer or fisherman to continue to operate the business while the plan is being carried out. The filing fee for commencing a case under chapter 12 is \$275.00.

Chapter 13, entitled “Adjustment of Debts of an Individual With Regular Income,” is designed for an individual debtor who has a regular source of income. Chapter 13 is often preferable to chapter 7 because it enables the debtor to keep a valuable asset, such as a house, and because it allows the debtor to propose a “plan” to repay creditors over time – usually three to five years. Chapter 13 is also used by consumer debtors who do not qualify for chapter 7 relief under the means test. At a confirmation hearing, the court either approves or disapproves the debtor’s repayment plan, depending on whether it meets the Bankruptcy Code’s requirements for confirmation. Chapter 13 is very different from chapter 7 since the chapter 13 debtor usually remains in possession of the property of the estate and makes payments to creditors, through the trustee, based on the debtor’s anticipated income over the life of the plan. Unlike chapter 7, the debtor does not receive an immediate discharge of debts. The debtor must complete the payments required under the plan before the discharge is received. The debtor is protected from lawsuits, garnishments, and other creditor actions while the plan is in effect. The discharge is also somewhat broader (*i.e.*, more debts are eliminated) under chapter 13 than the discharge under chapter 7. The filing fee for commencing a case under chapter 13 is \$310.00.

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Credit counseling Services

The types of credit counseling services provided by non-profit credit counseling agencies include:

- Advice on developing a budget, managing money, using credit wisely, and building a savings plan.
- Creation of a debt repayment or debt consolidation plan.
- Counseling regarding pre-purchase, mortgage default, rent delinquency, post occupancy, and loan declination.

IMPORTANT NOTICE

A PERSON WHO KNOWINGLY AND FRAUDULENTLY CONCEALS ASSETS OR MAKES A FALSE OATH OR STATEMENT UNDER PENALTY OF PERJURY IN CONNECTION WITH A CASE UNDER THIS TITLE SHALL BE SUBJECT TO FINE, IMPRISONMENT, OR BOTH.

ALL INFORMATION SUPPLIED BY A DEBTOR IN CONNECTION WITH A CASE UNDER THIS TITLE IS SUBJECT TO EXAMINATION BY THE ATTORNEY GENERAL.

Kathleen A. Ford, Clerk of Court,
200 Jefferson Ave Suite 413
Memphis, TN 38103