

# CHAPTER 13

“THE THIRTEEN (13) MOST COMMON  
QUESTIONS AND ANSWERS”

PRESENTED BY:

**Naliko Markel**  
Chapter 13 Trustee

FOR MORE INFORMATION, VISIT OUR WEBSITE AT:

**[www.eugene13.com](http://www.eugene13.com)**



## ***1. I have something called a Chapter 13 plan. What is that exactly?***

The Bankruptcy Code requires that every Chapter 13 bankruptcy have a plan. It is a summary sent to your creditors that, in effect, tells them... “here are my financial problems and here is how I intend to fix them.” Your judge, who must approve your plan, sees the Chapter 13 plan as a contract between you, the Trustee, and your creditors. The judge takes this very seriously and will insist that you abide by the terms of that contract, or in this case, the plan. If you don’t have a copy of your plan, you should get one from your attorney immediately and read through it.



The Trustee must pay your creditors exactly as called for by the plan. The Trustee does not have any discretion to change those payments. If they need to be changed, you must file an amended plan which must be approved by your bankruptcy judge.

The plan is sent to your creditors in advance of the first meeting of creditors to allow them time to review it and object to their treatment if they don’t like what they see. Once the plan has been sent to your creditors, you will meet with the Trustee for what is called the “meeting of creditors” or “341” hearing to review the plan, discuss necessary changes, and, if any creditors appear, to give them a chance to ask you questions that they might have.

About 6 weeks after the “meeting of creditors”, you will have what is called a confirmation hearing. If you have an attorney, he or she will appear on your behalf. You do not need to attend unless you are instructed to attend by your attorney or the Trustee. At that hearing, the judge will hear from the Trustee and any creditors that want to object to their treatment in the plan. Once the judge is satisfied that the Trustee approves of your plan and that any creditor objections have been resolved, the judge “confirms” your plan and signs an Order of the court that approves your plan that binds both you and your creditors to the contract, or in this case, the plan. You will receive a copy of the Order (called the Order Confirming Plan and Resolving Motions), which you should read.

**2. *I understand I must make a plan payment each month to the Trustee.  
How do I do that?***

You must begin making your plan payments to the Trustee within 30 days after your case is filed in the amount as described in Paragraph 1 of your plan. In most cases the court will order your employer to forward your required payments directly from your paycheck to the Trustee's bank located in Memphis, Tennessee. Sometimes it takes a few weeks for that paycheck deduction to take effect, SO.....

**If You have a Wage Deduction in Place:**

- (1) Remember that, until those deductions are being made by your employer, YOU have the obligation to make sure that payments are sent directly to the Trustee's bank.
- (2) Be sure to watch your paystubs. If there is a delay in getting the payroll deduction started or if your employer, for whatever reason, does not deduct a payment, you need to make the payment yourself until the deduction takes effect.
- (3) *If you change employers, be sure to notify the Trustee's office and your attorney.*

If you have to make any plan payments directly to the Trustee's bank, you have two options:

**Option #1 (Preferred Method): Electronic Payments via TFS**

If you have an active bank account, you can make your payments electronically directly from your bank account with TFS. TFS is the only system that the trustee will accept for electronic payments. For more information, contact your attorney for visit [www.tfsbillpay.com](http://www.tfsbillpay.com).

**Option #2: Cashier's Check / Money Order**

- (1) The payment method should always include your **NAME;ADDRESS, and CASE NUMBER**
- (2) Please note: the Trustee's bank will NOT accept personal checks or online banking checks.
- (3) Do not send cash.
- (4) If the amount of your payment is not your regular payment amount, please state what the funds are for so that the check may be properly credited i.e. bonus, tax refunds, overtime etc.

Please mail and make all direct payments payable to:

**Naliko Markel, Trustee**  
P.O. Box 613199  
Memphis, Tennessee 38101-3199

**Remember:** The Trustee will not send you or your employer a monthly reminder. It is up to you to make sure your payments are getting to the Trustee on time. ....and,

**Also, the Trustee will never instruct you to make these payments to another address. If someone directs you to another address, call our office immediately!**

### 3. *Who is this Trustee anyway?*

All Chapter 13 cases have a Trustee who is responsible for the overall administration of your case. In all Chapter 13 cases in Southern Oregon, the Trustee is Naliko Markel and he has approximately 3,000 active files in addition to yours.

The Trustee's duties are found in the Bankruptcy Code. They include, at a minimum, reviewing your bankruptcy petition to ensure that it is complete and accurate; determining your ability to make payments and whether your Chapter 13 plan will be successful as proposed; conducting the first meeting of creditors and appearing at other hearings in your case; monitoring the progress of your case; collecting your payments and paying creditors according to the plan; recovering improper payments made before your filing; providing information about your case to those who are authorized and have a need to know; filing the appropriate paperwork with the Bankruptcy Court if you fail to meet your obligations under the plan; and, most importantly, assisting you in the performance of your plan.



If you need more information, the Trustee's website is [www.eugene13.com](http://www.eugene13.com). The Trustee's phone number is (541) 343-1555.

**The Trustee's Office Hours Are – 9am to 12 noon - 1pm to 4pm (closed for lunch)**

**If, for any reason, you change your address while you are in Chapter 13, you MUST notify BOTH the Trustee's office and the Bankruptcy Court. Your attorney can help you with this.**

**REMEMBER: the Trustee cannot give you any legal advice. If you need legal advice, you need to contact your attorney.**

4. *My plan and confirmation order say that I must send copies of my tax returns and any net tax refunds to the Trustee every year that I'm in Chapter 13. Does the Trustee really want those?*

## **TAX RETURNS**

The Judge's Order approving your Chapter 13 plan says that you must *timely file* and submit **COPIES of BOTH your STATE and FEDERAL TAX RETURN FORMS** to the Trustee every year during your plan whether you get a refund or not. If your returns include additional Schedules (for example, Schedule A for itemized deductions), send all Schedules to the Trustee as well. **Send your tax returns and any other documents *other than payments* to:**

**Naliko Markel, Trustee  
400 E 2<sup>nd</sup> Ave Suite 200  
Eugene, OR 97401**

**DO NOT SEND ORIGINALS! COPIES ONLY**

Please send these **copies** to the Trustee immediately after you file the returns.  
**REMEMBER: You will not successfully finish your plan unless you complete this requirement!**

## **TAX REFUNDS**

Your Chapter 13 plan requires you to pay your net tax *refunds* each year to the Trustee. If you receive a tax *refund*, the entire *refund* must be sent to the Trustee unless, in that same year, you also owe taxes to a different income taxing authority. For example, if you receive a \$500 Federal tax *refund* and that same year you owe the State \$300, you would only need to send the Trustee the net amount of \$200.

There are three ways you can pay the refunds to the Trustee: (1) if you receive your refunds in check form, you can endorse the checks over to "Naliko Markel, Chapter 13 Trustee"; (2) you can send a cashier's check or money order to the Trustee's bank with the notation "Tax Refund"; or (3) pay the refund online via our TFS system. If you receive an adjustment letter from any taxing authority, be sure to send it to the Trustee so we can adjust our records.

**You cannot avoid paying your refund to the Trustee by applying your refund to next year's tax obligation, agreeing that your refund can be kept by the IRS for some reason, or using part of it as a donation.**

**REMEMBER: You will not successfully finish your plan unless you complete this requirement!**

**Tax *refunds* must be mailed to the Memphis payment address. Be sure to put your case number all on payments and state that the check is for your tax refunds. If you fail to do this your check may not be properly applied.**

5. *My confirmation order also says that I must report to the Trustee if my actual or projected gross income goes up 10% or more. Could you explain that? And what if I take money from my retirement fund or get extra money that's not from my job?*

The Judge's Order approving your plan says that you are **required to immediately report** to the Trustee in writing if and when your gross income increases more than 10% from the amount originally reported on your Schedule I that was filed with your bankruptcy papers. If that happens, you should contact your attorney to review all of your income and expenses and file amended schedules to reflect the changes.

You are also required to inform the Trustee if and when you get married during the time you are in Chapter 13.

The Judge's Order approving your plan also says that if you or your spouse take a retirement fund distribution or have the right to receive **any** money exceeding \$2500 during your plan, you **must inform** the Trustee's office in writing. It also says that you must hold onto all of that money until you either get permission from the Trustee to spend it or obtain an order from the Court.

Taking a retirement distribution during the plan could turn your otherwise exempt property into disposable income. If that happens, the amount of the retirement distribution may have to be paid to your creditors before you get your discharge. **BE SURE TO TALK TO YOUR ATTORNEY BEFORE YOU ACT.**

**REMEMBER: Everyone in Chapter 13 must pay their ongoing tax obligations during the life of the plan. This obligation includes any taxes owed as a result of any increase in income.**



**6. *There are some extra paragraphs attached to the end of my plan. What do I do about those?***

Complying *timely* with the requirements of additional paragraphs added to your plan for special circumstances is critical to your success in gaining your discharge. Remember: Your discharge is the ultimate goal in your Chapter 13. (See number 13 for information about your discharge.)

Some of those commonly used paragraphs are as follows: (If any of these are included in your plan, be sure to discuss with your attorney what you need to do.)

**A. Overtime, Bonus or Commission Income:** In some instances, if you receive overtime, bonuses or commissions as income, all or a portion of that income may be income that must be sent to the Trustee. If there is such a requirement, it will be outlined in a separate paragraph at the end of your plan.

**B. Future Automobile Purchase:** In some instances, you may be planning to purchase an automobile in the near future. You must comply with the details outlined in your plan. See question number 8 for more information.

**C. Sale or Refinance of property:** Sale of either personal or real property requires specific steps to be taken to make sure that it is done according to the Bankruptcy Code. If this applies to your case, see question number 9 for more information. If your plan sets a specific deadline for you to complete the sale or refinance, it's your obligation to make sure you do everything necessary to meet that deadline.

**D. Tax requirements:** In all cases, you are required to timely file your required tax returns and provide a copy to the Trustee's office. In some cases, that requirement is specifically set out in an additional paragraph in your plan. Be sure to comply because if you don't, your case could get dismissed – sometimes without a hearing.

## 7. *What happens if I miss payments to the Trustee because of an emergency?*

You must not miss any payments to the Trustee unless it is authorized by the bankruptcy judge. When you file your Chapter 13, your creditors are prohibited from taking any action against you. In exchange for that protection, you must complete your obligations under the plan. One of those obligations is making your payments to the Trustee on time. If you want your Chapter 13 to be successful, you cannot have your employer stop making the payroll deductions. If you miss payments, the Trustee cannot pay your creditors as called for by your plan and the Trustee is obligated to file papers with the Bankruptcy Court asking that your case be dismissed. If your case is dismissed, your creditors will be notified and may resume collection against you.

If you have a change in your circumstances such as an unforeseen emergency, you should notify your attorney at once. Your attorney can re-evaluate your financial situation and, if appropriate, change your plan to reflect the different circumstances. This process can take several weeks, so be sure to contact your attorney immediately if you foresee any problem making your payments.

**REMEMBER: The Trustee does not have the power to excuse any payments. Any change in payments must be approved by your Bankruptcy Judge.**



**8. *May I incur credit during my Chapter 13? What if my car breaks down and I need a new one?***

The Order signed by the Bankruptcy Judge approving your plan, states that you **may not** incur any credit obligations during the life of your plan without the Trustee's written consent. The only time you can act without the Trustee's written consent would be:

- (1) an emergency, or
- (2) credit/debt incurred as part of the normal operation of your business (i you are self-employed).

Any request for credit must be approved by the Trustee in writing **before** you obligate yourself in any way. The most common credit obligation you may wish to incur is for the purchase of a car. Be sure to contact your attorney if you need to buy a car or trade in your old one. Do not let a car dealer talk you into anything before your attorney has had a chance to get involved and before you get Trustee approval. The Trustee regularly approves requests to finance replacement for basic needs vehicles, so long as you and your attorney follow the proper procedure. That procedure requires that you supply the Trustee with some basic information on a form provided by his office and that you get Trustee approval **before** you sign a contract to buy the car..

**REMEMBER:** Taking on any new credit obligations could jeopardize your plan and failure to get permission could result in your case being dismissed. AND, not paying your tax obligations as they become due is considered taking on new credit. Be sure to pay whatever tax obligations you have during your plan.



**9. *My spouse and I have been talking about selling our house and buying another while we are in our Chapter 13. Is there anything special we must do? What if I want to have a Home Loan Modification?***

The Order signed by the Bankruptcy Judge requires you to inform the Trustee and your creditors of the sale, lease, encumbrance, refinance, disposal or purchase of any real property or any personal property (e.g. cars, equipment, etc.) with a value over \$10,000. Informing

the Trustee and creditors can be tricky and may have unexpected consequences if not done properly. It is very important you learn and understand all the requirements **before** you take any steps involving the sale or acquisition of any property. You should contact your attorney well before you list or advertise your property or purchase property and discuss what you want to do. The Trustee will require specific information before any permission to buy or sell is given. Also, selling or purchasing property sometimes requires a court order that usually takes about 30 days to obtain. Find out what is required BEFORE you commit to any purchase, sale, etc.



If you think you are going to sell or refinance some real property, check out the Trustee's web site at [www.eugene13.com](http://www.eugene13.com) and click on "Escrow" on the line just above the photos for more specific information about the requirements.

Any Home Loan Modification requires the Trustee's approval. Make sure your attorney talks to the Trustee's office before you act.

**REMEMBER:** Selling, buying or improving property is tricky when you are in Chapter 13. Check the website and talk to your attorney first!

**REMEMBER:** You cannot incur any credit obligations while in Chapter 13 without first obtaining the Trustee's written consent.



## 10. *How can I find out how my plan is progressing?*

You can easily track your bankruptcy case online through the National Data Center (the NDC). The NDC's website is [www.ndc.org](http://www.ndc.org). The Trustee encourages you to create an account and regularly monitor your progress. The statistics show that, if you're actively involved in your case, and track your progress, you're much more likely to be successful.

In January every year, the Trustee will send you a complete record of all receipts and disbursements for the previous calendar year. It will tell you exactly how much money the Trustee has received from you, how much, and to whom payments have been made.

You may also request a progress report if you need one. This request must be in writing and sent to the Trustee's office at the address shown in the answer to question #2. It will take approximately a week to 10 days to respond. The progress report will give you a summary of your case to date. If you want to know how much it would take to pay off your case, you should send a request for that information to the Trustee's office in writing.

**REMEMBER:** You cannot pay off your case before you have been making plan payments for your required commitment period and have completed all the requirements of paragraph 1 of your plan, UNLESS you pay all your creditors 100%. ( See question #11)



## 11. *May I make larger payments to the Trustee and complete my case early?*

The Bankruptcy Code requires you to send all your *projected disposable income* to the Trustee for your “applicable commitment period” which will be either 36 or 60 months. Your *projected disposable income* is reflected as your payments set out in paragraph 1 of your plan. Your attorney should inform you of your “commitment period” and you can find it by looking at Paragraph 7 of your plan. It will be marked either 36 or 60 months. However, even if you have a commitment period of 36 months, your plan might need to run longer if it will take you more time to pay all of the creditors that are entitled to payment under your plan.

There is, however, one exception to this “applicable commitment period” rule. You may pay off your plan before your “commitment period” expires if you pay **all** unsecured creditors who have filed claims 100% of what they're owed. If you can't pay the full 100%, you must make your plan payments for your entire “commitment period” before you are eligible for discharge.



**DO NOT ATTEMPT TO PAY OFF YOUR CASE EARLY BY SENDING EXTRA MONEY TO THE TRUSTEE. THE BEST RULE IS TO DO EXACTLY AS YOUR PLAN SAYS.** When the Trustee receives unexpected extra payments, he will wonder where you got the extra money. Also, the extra payments will not shorten your commitment period. Any attempt to pay off your plan early can be complicated and you should check with your attorney before you contact the Trustee.

Making larger payments to the Trustee may be required if your income increases (see answer to question # 4). So, if you want to make larger payments because you got a big raise amounting to more than 10% of what you originally reported as your income, you should inform the Trustee of that fact in writing before you begin sending in more money.

**REMEMBER:** Do not borrow money or incur credit to make bigger payments to the Trustee hoping that you can complete your plan before the end of your commitment period. This is not like paying off a car or mortgage. Your best bet is to make your scheduled payments on time using your disposable income. You filed a Chapter 13 plan to eliminate your debts and get a "fresh start". The best way to accomplish that goal is to follow exactly the terms of your plan.

**12. *My attorney said my plan payments would last for at least 36 months but might go as long as 60 months. When should I stop making payments?***

You or your employer should continue making payments until the Trustee specifically tells you to stop.

Depending on whether your income places you below or above Oregon's median income level, you may be required to make payments to the Trustee for at least 36 months and perhaps as long as 60 months (see Question 11 above). Even if you've reached the end of your 36 or 60 month "commitment period", do not stop making payments. In some cases, the amount you owe to the plan is more complicated than simply making one payment per month for the required number of months. The Trustee carefully audits each case to make sure that the creditors were paid correctly AND that, if you happen to pay more than is required, you get a refund for that amount. So instead of stopping payments early because you think you should be done, you can trust that your case will complete much faster if you simply make your payments until the Trustee tells you to stop. It can be difficult to predict the exact outcome of your case when it is filed. You should ask your attorney whether you are below or above the median. That answer will tell you whether you must continue payments for a minimum of 36 months or whether you must continue for the full 60 months.

**REMEMBER:** It is not a good idea to send more money than what is specifically called for by your plan. Sending more money than what is called for by your plan will not shorten your commitment period.



***13. Well, I'm about to make my last payment. I heard that now I get a discharge. What does that mean and how long does it take?***



A **discharge** is your ultimate goal. The discharge order is a document prepared by the Bankruptcy Court and signed by your judge. It means you have completed the requirements under your plan. Most, if not all, of the creditors you listed may never again contact you about those debts or try to collect from you. However, if you have some nondischargeable debts, such as child support or student loans that have not been paid in full during your plan, those creditors may contact you again about payment of those debts.

**REMEMBER:** Before you can receive your important discharge, the Bankruptcy laws require that you attend a **Personal Financial Management Class**. Your attorney can give you more information about how to meet this requirement

The Trustee must audit and review your case before the Bankruptcy Court will issue the discharge. This normally takes about 60 days. During that period the Trustee double checks your payments and reviews your case to ensure that you have done everything required from his standpoint. Then the Trustee notifies your Bankruptcy Judge and the Court will then issue your discharge in approximately 30 days.

After all your hard work to complete your plan, you should now enjoy what has been termed a "fresh start". You should no longer need to endure the credit problems that caused you to seek Chapter 13 relief in the first place. The Trustee hopes this information has been helpful to you and that it will assist you in avoiding a similar situation in the future.

**CONGRATULATIONS AND GOOD LUCK IN THE FUTURE!**

***Naliko Markel***

***Trustee***

