

SUGGESTIONS TO ASSIST IN CONFIRMING A CHAPTER 13 PLAN IN THE OAKLAND DIVISION

PREPARED FOR THE BANKRUPTCY SECTION OF THE CONTRA COSTA
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MARTHA G. BRONITSKY, CHAPTER 13 STANDING TRUSTEE

As the case load continues to stagnate Debtor's Attorneys and the Chapter 13 Trustee are looking for ways to efficiently file and administer Chapter 13 cases. Because attorneys do not get the majority of their fees until the plan is confirmed, swift confirmation is key. Because the Chapter 13 Trustee continues to work with a declining staff count it is important to have cases filed that are almost ready for confirmation. Continuances = less \$\$\$.

The tips outlined below are the opinion of Martha G. Bronitsky, Chapter 13 Trustee based on her almost 28 years of administering thousands of plans. They are not meant to be specific to any form plan, nor are they an exhaustive list of tips. They are offered to assist attorneys in filing complete and accurate Scheduled, Statement of Affairs, Fee Forms and Plans.

Please remember that the Trustee reviews cases individually and does not apply a "one-size fits all approach". Please also remember that every action taken in the case has the Trustee's knowledge and approval behind it – asking a staff member, especially Sarah Velasco Staff Attorney to "run it by the Trustee" when it is not a settlement offer, is not appropriate and disrespectful.

TIP ONE – INTAKE IS EVERYTHING – You cannot file a complete and accurate petition without complete and accurate information. Everyone should have a detailed intake list that mirrors the Schedules and Statement of Affairs in language the Debtors will understand. In the opinion of the Trustee it is not best practices to file Schedules etc without paystubs and the most recent tax return in hand. Other documents that you should ask for or get for yourself:

- 1) Tax return status – the debtor can create an account on IRS.gov which allows them to access their account to see how much they really owe
- 2) Valuation documents for any asset that will be involved in a Motion to Value. This will enable you to create a supporting declaration to present to the Debtor at the signing appointment

- 3) Title report – The “super” homestead exemption is only accessible if the debtor has owned the house longer than 1,215 days. Be certain of the dates of ownership
- 4) Title documents for vehicles – Payment of claims will be held up for vehicles if the description on the Proof of Claim does not match the description in Schedule D and the plan.
- 5) Evidence of the deductions on the means test that require it – Wherever the Means Test form says provide evidence to your case Trustee, I am going to require evidence. That evidence needs to be in the form of a declaration with invoices or receipts attached.
- 6) Copies of Marital Settlement Agreements and Domestic Support documents. The debtor must be current on all post-petition DSO payments to obtain confirmation.
- 7) Business documents – Licenses, payroll records, bank account statements for last 6 months. We are happy to provide your office with a copy of our Business Exam questionnaire so you may work off that. However please do not give them to the Debtor to complete as we do not ask for an examination in all “business” cases. Also remember if we don’t do a Business Exam you don’t get business fees. *Special hint – be very careful in valuing and exempting the business. If there are assets, products, or accounts receivable it is not “\$0”.*
- 8) Marital expense deduction on the Means Test – When evaluating this please be aware that any joint expenses paid by the non-filing spouse is income and will need to be listed on Means Test.

TIP TWO – PROOF READ ALL DOCUMENTS BEFORE PUSHING “FILE” – The online programs used by you to prepare Schedules and Petitions are not perfect. In fact, 9 times out of 10 they complete Schedule H incorrectly. Schedule H is an imperfect form however I must enforce it.

Descriptions on Schedules and the Plan must be completed and match.

All fee forms and the plan must match.

The numbers on the Means Test, Schedule I and the Plan must relate to each other.

The Debtor and Co-Debtor’s signatures are not dated

Trustee Pet Peeve – These documents are filed under penalty of perjury. That is a concept we should all take very seriously. If they are inaccurate it puts your client at risk of being prosecuted. Additionally the discharge of a debtor is only as good as the initial documents.

TIP THREE – INFORM YOUR CLIENT OF WHEN AND HOW TO MAKE THE CHAPTER 13 PLAN PAYMENTS IN SEVERAL DIFFERENT WAYS – IN OTHER WORDS TALK ABOUT IT UNTIL THEY TELL YOU THEY ARE BORED OF HEARING ABOUT IT. – For 2023 and beyond the first payment is due 30 days after the petition is filed (not completed) and then on the 20th of the month thereafter. This means for cases filed on 1-1-23 the first payment is due on 2-1-23 and the next payment and every payment thereafter is due on 3-20-23, 4-20-23 etc. **TFS** is the safest and

most efficient way for debtors to make their payments. In fact you can request a wage deduction that looks like it is going to the debtor's private savings account and it is really going to the TFS account. The reason I advocate either TFS or TFS Wage Pay is that debtors have a habit of deciding other things in their lives are important. We need to get them discharged and everyone else paid including the Trustee and you. Electronic payments any other way are rejected by my bank and personal checks are returned when the bank sends them to me.

TIP FOUR – UPLOAD THE SECTION 521 DOCUMENTS AS SOON AS YOU FILE THE CASE – Failure to provide tax returns and paystubs or a declaration that they are not available and/or not filed is the quickest way to get a case dismissed. It is a very quick process and controlled via docket entry only. If you have them in your possession upload them.

TIP FIVE – FILE THE FEE DOCUMENTS AND FEE APPLICATION WHEN YOU FILE THE CASE – About 10% of the cases don't get confirmed because the fee documents and especially the Initial Fee Application are not filed. This is confusing because those documents are entirely in the attorney's control.

TIP SIX – FILE THE MOTION TO VALUE WITHIN A WEEK OF FILING THE COMPLETED CASE – Because the debtor can testify to value you can file these motions fairly quickly. Of course you should double check values but that can be done online and quickly. The notice period is 21 days and the sooner you file the Motion the sooner you can move towards confirmation.

TIP SEVEN – FILE THE DECLARATIONS OF OUTSIDE SUPPORT OR STEP PAYMENTS WITHIN A WEEK OF FILING THE COMPLETED CASE – Your client is going to tell you at the beginning of the case that they are relying on a contribution from outside individuals and/or income later in the plan that will allow them to step up the plan payments. A best practice would be to have the declarations prepared for the debtor to review at the signing appointment.

TIP EIGHT – DON'T WAIT TO FILE AMENDMENTS – If The Trustee objects due to "drafting issues" on the Schedules or missing documents, don't wait to file the corrections. The sooner we can narrow the outstanding issues the better for moving towards confirmation. As a practice tip a Judge will not be pleased that several document fixes haven't been done. If you are waiting to file an Amended Plan because you are negotiating with the creditors or you disagree with The Trustee please email the case Administrator, Staff Attorney or The Trustee to let them know.

TIP NINE– COMMUNICATION WITH THE TRUSTEE'S OFFICE IS APPRECIATED AND BUILDS GOODWILL – If you receive an email from a staff member in the Trustee's office, please respond. We all understand that your clients don't communicate or haven't given you the documents you want. We also understand creditors are difficult in negotiating. But if you respond to the email then we can move it to a different list and The Trustee knows you are focusing on the matter.

Trustee Pet Peeve – Failure to respond to the Senior Paralegal’s Meet and Confer email and/or failure to respond to The Trustee’s Meet and Confer email creates ill will and you might not like what shows up in the pre-hearing conference statement. Communication goes a long way to resolve issues. You can always tell The Trustee that “I have no direction from my client as to how to proceed”. She will get it.

TIP TEN – LEARN MATH OR USE THE TRUSTEE’S NUMBERS – Not everyone has a computer program that does the math with delayed interest and changes in monthly distributions. However many debtor’s attorney manage the math to the penny. The Trustee’s staff is happy to explain the calculations used to get the numbers. Pre-confirmation calculations include all unsecured claims filed or not, so sometimes we have to wait for the Bar Date to get the right number especially when the liquidation calculation or DMI requires 100%.

TIP ELEVEN – IF WE ARE GOING TO HAVE AN ISSUE – LEGAL OR FACTUAL – THAT REQUIRES JUDICIAL INTERVENTION LET’S GET IT NARROWED DOWN – If you disagree with a position that I am taking on a legal issue or my position that my objection is one that requires a factual finding that’s okay. However please make sure you make all other amendments needed to clean up any other issues. Then file a response to my objection – with citations and/or evidence so the Judge knows exactly what he will have to decide. The clearer the issue statement at the first hearing the quicker we get to a hearing or briefing schedule and the quicker it is resolved. My assumption is that the losing party will appeal so a clean record is critical. When evaluating how far you want to go on an issue remember that the generally there are only two final orders that are appealable at when dealing with confirmation of the plan, a confirmation order or a dismissal order. This requires your client’s input because if you are appealing a confirmation order they must make the plan payments and if appealing a dismissal order you need to quickly motion for a stay pending appeal.

TIP TWELVE – MORTGAGE PAYMENTS ARE GOING TO BECOME A MAJOR ISSUE GOING FORWARD – As of 1/1/23 all direct mortgage payments must be reported to the Trustee annually. My office will not send you notice but we will file Motions to Dismiss. We will also file a Motion to Dismiss prior to the annual reporting period if a Relief from Stay Motion is filed. Acceptable evidence is proof of tender – copy of the check and proof of mailing, copy of bank statement showing deduction. Please no screen shots. The Trustee might occasionally object to the plan and request payments be made via conduit due to prior cases. The Trustee will file a Motion to Deny Discharge if the creditor files a 3002.1 response indicating that the debtor did not make on-going mortgage payments.

TIP THIRTEEN – BE CAREFUL WHEN FILING OPPOSITION TO MOTIONS TO DISMISS – The Opposition must state in detail the reasons for the opposition and the proposed cure. If it does not I will upload a declaration and request for order of dismissal. If the opposition says the debtor will do something by a date certain please track it and check in with your client. If you file an opposition and it becomes clear to you that the debtor cannot perform please file a statement of non opposition so we don’t have to have a hearing.

TIP FOURTEEN – BE NICE TO THE TRUSTEE’S STAFF – The Trustee’s staff is under incredible pressure trying to administer cases with fewer resources. They are filing documents that the Staff Attorney or Trustee have instructed them to file. Berating them, making it personal and belittling them will not accomplish anything. And it will get you a phone call from the Trustee advising you that you might not have access to her talented staff anymore. Asking them for specific legal advice will also not advance the case. They can provide the standard language for sale plans and direct you to the Court’s website for other forms, but they cannot tell you what to put in a declaration, or motion.