



WHAT DOES A BANKRUPTCY TRUSTEE DO?

When you file your bankruptcy petition and related documents, several parties become part of your bankruptcy case. These include you as the debtor (or you and your spouse in a joint filing), the United States Trustee's Office, the local trustee appointed in your case, and each of your creditors. The entire process is overseen by the Bankruptcy Court in your local jurisdiction. The U.S. Trustee's Office is the agency of the U.S. Department of Justice that oversees the administration of bankruptcy cases and the local trustees in each case. Most filers never hear from the U.S. Trustee's Office which gets involved only when fraud, means test, or other major issues arise.

The local trustee appointed in your bankruptcy case is the individual who will review your bankruptcy petition, initially review your case for fraud or red flags, verify exemptions, and try to maximize the amount of money your unsecured creditors will get through your bankruptcy. The trustee's other roles vary depending on whether your case is a Chapter 7 or Chapter 13.

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THE CHAPTER 7 TRUSTEE

CHAPTER 7 MEETING OF CREDITORS

In a routine Chapter 7, the only court proceeding you will need to attend is the meeting of creditors. Despite the name, creditors rarely make an appearance. This meeting is not usually held in a courtroom, but sometimes in a room in the courthouse or even at a neutral location. However, it is a legal proceeding and you will be under oath. The meeting is facilitated by the trustee. He or she will verify your identity and ask you to answer some routine questions about your case. For example, “Have you listed all your assets?” “How did you reach the value for your house?” “Does anyone owe you money?”

Most meetings last only a few minutes and then you are free to go. Sometimes the trustee may ask for additional documents. But, typically, if all your assets are exempt, you will hear nothing further from the trustee. Assuming you meet all your other case requirements (e.g. Debtor Education Course), your case will just track through to discharge.

However, if you have nonexempt assets, the trustee may continue your meeting to another date until you provide additional documentation or turnover assets. In very rare cases, trustees may hire their own attorneys to pursue nonexempt assets.

CHAPTER 7 TRUSTEE’S COMMISSION

The Chapter 7 trustee earns a commission from the court on any property that is recovered and sold for the benefit of unsecured creditors. If your bankruptcy petition indicates that all of your property is exempt, the trustee won’t show much interest in your case unless it looks like you might be hiding assets or mischaracterizing them. If all your property is exempt, the trustee gets no commission. Each trustee does receive a nominal fee for reviewing the paperwork and facilitating the meeting of creditors. The majority of Chapter 7 cases are in fact “no asset” cases.

CHAPTER 7 TRUSTEE’S ADMINISTRATIVE DUTIES

- **Seize nonexempt assets:** If there are nonexempt assets in your bankruptcy estate, the trustee has a duty, under the direction of the bankruptcy court, to collect (or seize) those assets for the collective benefit of your unsecured creditors. You will be given an opportunity to “buy the assets back” from the trustee at a negotiated price or to substitute exempt assets for nonexempt assets. In either case, you are expected to cooperate with the trustee in handing over property and/or cash if buying items back.
- **Abandonment of nonexempt assets:** If you have nonexempt property that has little or no value or would be difficult for the trustee to sell, the trustee can and often will abandon the property. The trustee will then file a motion with the court to abandon the property and put the creditors on notice that the property is not worth liquidation. For example, if you have an old car that is worth \$850 and doesn’t run, but you don’t have enough exemption to fully protect it, the trustee may abandon the car because the cost of picking it up, paying a commission to an auctioneer, and then administering the sale proceeds exceeds the benefit to the unsecured creditors. It might actually cost the trustee more money to sell the car than it is worth.

- **Searching for nonexempt assets:** A trustee will likely conduct asset searches for real estate and vehicles to verify you have listed all your property in your bankruptcy petition. Sometimes the trustee will ask to verify car titles, insurance policies, or other assets with actual records. A trustee might look at social media to see if you have posted pictures of assets not listed in your bankruptcy paperwork. But, it is rare for a trustee to conduct a search of a debtor's home unless the trustee has a legitimate reason to do so. If the circumstances warrant a search of your home, it is your duty to cooperate with the trustee. A failure to do so could force the trustee to obtain a court order and force the issue.
- **Look for fraud and inaccuracies in the Petition:** The trustee acts as the eyes and ears for the U.S. Trustee's Office. Under its supervision, the trustee will assess your bankruptcy filing for accuracy and for signs of possible fraud or abuse of the system.
- **Provide notices related to support payments:** If you owe back family maintenance support payments (e.g. child support or spousal maintenance), the trustee is also required to provide notices to the holder of the support claim and the state support enforcement agency to keep them informed of your bankruptcy and help them locate you after your bankruptcy discharge. Both the payee and the state support enforcement agency can ask the trustee or creditors to provide your last known address.
- **File reports with the court:** The Chapter 7 trustee in both asset and no asset cases is required to file a summary report with court. This will outline the assets, value, whether all property is exempt, or if there is property of value left in the bankruptcy estate. In asset cases, the trustee files additional documents to put creditors on notice if property will be seized and other motions that might be needed to administer the bankruptcy estate. At the end of a Chapter 7, the trustee will file a final report in asset cases and something called Report of No Distribution in no asset cases. This signals the end of the trustee's obligations in the Chapter 7 bankruptcy.

THE CHAPTER 13 TRUSTEE

In many regards the role and duties of the Chapter 13 trustee are similar to those above. However, the Chapter 13 trustee is tasked with some additional duties in the administration of your case. While a Chapter 7 bankruptcy occurs usually over in a matter of months, most Chapter 13 cases last years, up to a total of 60 months or 5 years. Most Chapter 13 trustees do not need to be concerned about exempt and nonexempt property as long as the Chapter 13 plan proposes to pay the unsecured creditors as much as they would have received had the debtor filed under Chapter 7.

Many Chapter 13 trustees play a much more active role in the cases they administer and are less adversarial than Chapter 7 trustees. It is important to remember that, no matter how friendly a Chapter 13 trustee may be, the trustee does not work on your behalf.

CHAPTER 13 MEETING OF CREDITORS

The Chapter 13 meeting of creditors is slightly different than a Chapter 7 meeting of creditors. As with Chapter 7, creditors rarely show up at the meeting. You will need to appear at the meeting and you will be placed under oath. Many Chapter 13 meetings of creditors are actually held at the Chapter 13 trustee's office. This setting is usually much less formal than it would be in a courtroom.

The Chapter 13 trustee will verify your identity, and tax, bank, and income records. The trustee will ask additional questions about your assets and debts. The Chapter 13 trustee's main objective is to determine that all your income is verified and your expenses are reasonable (for example if you list a \$600 monthly fuel bill for your car, but only drive 10 miles a day, you might have some explaining to do). The Chapter 13 trustee must further determine that you have allocated all "disposable income" to the Chapter 13 plan and that you have the income to fund the repayment plan.

CHAPTER 13 TRUSTEE'S COMMISSION

The Chapter 13 trustee is paid by keeping 7 to 10 percent of the payments the trustee disburses to creditors. The trustee is paid only if your plan is confirmed by the court and you make your plan payments.

CHAPTER 13 TRUSTEE'S ADMINISTRATIVE DUTIES

In Chapter 13, the trustee receives your payments and then needs to accurately process the payments by creating accounting records for all the payments, and distributing the payments to creditors. Creditors paid under the plan can include both secured and unsecured creditors. Once a Chapter 13 repayment plan is confirmed by the court, the Chapter 13 trustee will be responsible for the following:

- Receiving the payments you make under the plan and distributing the funds to each creditor in the manner required by your Chapter 13 plan and law.
- Verifying the proof of claims for creditors and prioritizing who gets paid and when based on court rules.
- Monitoring your monthly and annual reports.
- Monitoring your duty to file tax returns with all taxing agencies and reviewing the records each year.
- Keeping all support agencies informed of certain required information, if applicable.
- Bringing appropriate motions. The Chapter 13 trustee is a party to the bankruptcy and can and will file motions when necessary. These are not common in every case, but each motion, whether before or after plan confirmation, will require you or your attorney to respond to it in the bankruptcy court, or risk dismissal of your Chapter 13 case. Some reasons a Chapter 13 trustee might bring a motion include:
 - You fall behind on plan payments. A trustee will bring a motion to dismiss your Chapter 13 case if you are unable to keep up with the monthly plan payments.
 - You fail to comply with other plan requirements such as providing yearly tax records or turning over tax refunds if required.
 - Prior to plan confirmation, the Chapter 13 trustee believes you are acting in bad faith, or you are not paying all your disposable income into the plan, or your expenses seem unreasonable. Then, a court will hold a hearing to make a factual determination on the motion.

IN SUMMARY

In both Chapter 7 and Chapter 13 bankruptcy the trustee has a very active role in reviewing, facilitating and administering your bankruptcy case. The trustee is the gatekeeper and one of the determining factors in whether you get to discharge. You want to listen to what the trustee says, challenge the trustee if he or she steps outside of the boundaries of bankruptcy law, but most importantly cooperate.