

United States Trustee for the Eastern District of Wisconsin COVID-19 Temporary Emergency Procedures for Conducting Section 341 Meetings

As of March 25, 2020

On March 16, 2020, the United States Trustee issued a notice cancelling all in-person Section 341 meetings and rescheduling those meetings to take place by telephone. This notice addresses the temporary procedures that will be utilized in the Eastern District of Wisconsin with respect to conducting Section 341 meetings going forward until further notice. These procedures are temporary in nature for the duration of the COVID-19 emergency.

All Section 341 meetings will be conducted primarily by telephone (or by such other means as are arranged). No in-person meetings will take place. The audio of all meetings will be recorded. During this emergency, the notices of meetings or rescheduled meetings will contain the date and time of the meeting and a Meet-Me Line telephone number by which all parties can participate in the meeting for a given case.

The Debtor or Debtors (hereafter "Debtor") and his or her attorney are required to call the Meet-Me Line (and enter the passcode followed by the pound # sign) at least 10 minutes prior to the time the case is scheduled to be called. (The Debtor and attorney do not need to be in the same physical location – each can call in separately.) While waiting on the line, please remain quiet if there is another case in progress.

The trustee, after making a periodic announcement of date and time, will call the next case. When your case is called, the Debtor, Debtor's attorney, creditors and other parties appearing for the case should announce their presence. The trustee will then swear-in the Debtor.

After the oath has been administered, the Debtor's attorney is required to make a statement on the record indicating they have personally verified the Debtor's identity and social security number. It is expected that the attorney will have personally viewed the documents verifying the Debtor's identity and social security number, either in person or by video, in advance of the Section 341 meeting. The attorney must indicate what original documents they viewed, that the description on the documents matches the Debtor, and that the social security number matches the number that appears on the Section 341 meeting notice.

In the event that verification of the identity of the Debtor or the social security number is not possible, the meeting will be continued to another time and date.

Pro Se Cases

For cases in which the Debtor does not have an attorney, the Debtor must contact the trustee by telephone at least three (3) days prior to the Section 341 meeting to get instructions for the procedure to verify the Debtor's identity by video or other means.

In the event that verification of the identity of the Debtor or the social security number is not possible, the meeting will be continued to another time and date.

Bankruptcy Information Sheet

As a reminder, in Chapter 7 cases the trustee will ask whether the Debtor has reviewed the Bankruptcy Information Sheet and whether there are any questions about it. A copy is attached. It is important for Debtor's Counsel to make sure the Debtor reviewed the Information Sheet prior to the Section 341 meeting so a continuance for that purpose is not necessary.

Interpreter Service

Interpreter services will be available, but it is important that Debtor or Debtor's attorney contact the trustee well in advance of the meeting to inform him/her of the need for such services. The interpreter will then be given the Meet-Me Line information to connect to the call.

Final Note

Please be patient and flexible during this COVID-19 Emergency. We are trying to meet the needs of all parties and avoid in-person meetings of any kind. These procedures are subject to change and we will notify you of any changes. We welcome any suggestions for improving or streamlining the process.

Thank you!

David W. Asbach

Assistant U.S. Trustee for the Eastern
District of Wisconsin

BANKRUPTCY INFORMATION SHEET

BANKRUPTCY LAW IS A FEDERAL LAW. THIS SHEET PROVIDES YOU WITH GENERAL INFORMATION ABOUT WHAT HAPPENS IN A BANKRUPTCY CASE. THE INFORMATION HERE IS NOT COMPLETE. YOU MAY NEED LEGAL ADVICE.

WHEN YOU FILE BANKRUPTCY

You can choose the kind of bankruptcy that best meets your needs (provided you meet certain qualifications):

Chapter 7 – A trustee is appointed to take over your property. Any property of value will be sold or turned into money to pay your creditors. You may be able to keep some personal items and possibly real estate depending on the law of the State where you live and applicable federal laws.

Chapter 13 – You can usually keep your property, but you must earn wages or have some other source of regular income and you must agree to pay part of your income to your creditors. The court must approve your repayment plan and your budget. A trustee is appointed and will collect the payments from you, pay your creditors, and make sure you live up to the terms of your repayment plan.

Chapter 12 – Like chapter 13, but it is only for family farmers and family fishermen.

Chapter 11 – This is used mostly by businesses. In chapter 11, you may continue to operate your business, but your creditors and the court must approve a plan to repay your debts. There is no trustee unless the judge decides that one is necessary; if a trustee is appointed, the trustee takes control of your business and property.

If you have already filed bankruptcy under chapter 7, you may be able to change your case to another chapter.

Your bankruptcy may be reported on your credit record for as long as ten years. It can affect your ability to receive credit in the future.

WHAT IS A BANKRUPTCY DISCHARGE AND HOW DOES IT OPERATE?

One of the reasons people file bankruptcy is to get a “discharge.” A discharge is a court order which states that you do not have to pay most of your debts. Some debts cannot be discharged. For example, you cannot discharge debts for–

- most taxes;
- child support;
- alimony;
- most student loans;
- court fines and criminal restitution; and
- personal injury caused by driving drunk or under the influence of drugs.

The discharge only applies to debts that arose before the date you filed. Also, if the judge finds that you received money or property by fraud, that debt may not be discharged.

It is important to list all your property and debts in your bankruptcy schedules. If you do not list a debt, for example, it is possible the debt will not be discharged. The judge can also deny your discharge if you do

something dishonest in connection with your bankruptcy case, such as destroy or hide property, falsify records, or lie, or if you disobey a court order.

You can only receive a chapter 7 discharge once every eight years. Other rules may apply if you previously received a discharge in a chapter 13 case. No one can make you pay a debt that has been discharged, but you can voluntarily pay any debt you wish to pay. You do not have to sign a reaffirmation agreement (see below) or any other kind of document to do this.

Some creditors hold a secured claim (for example, the bank that holds the mortgage on your house or the loan company that has a lien on your car). You do not have to pay a secured claim if the debt is discharged, but the creditor can still take the property.

WHAT IS A REAFFIRMATION AGREEMENT?

Even if a debt can be discharged, you may have special reasons why you want to promise to pay it. For example, you may want to work out a plan with the bank to keep your car. To promise to pay that debt, you must sign and file a reaffirmation agreement with the court. Reaffirmation agreements are under special rules and are voluntary. They are not required by bankruptcy law or by any other law. Reaffirmation agreements—

- must be voluntary;
- must not place too heavy a burden on you or your family;
- must be in your best interest; and
- can be canceled anytime before the court issues your discharge or within 60 days after the agreement is filed with the court, whichever gives you the most time.

If you are an individual and you are not represented by an attorney, the court must hold a hearing to decide whether to approve the reaffirmation agreement. The agreement will not be legally binding until the court approves it.

If you reaffirm a debt and then fail to pay it, you owe the debt the same as though there was no bankruptcy. The debt will not be discharged and the creditor can take action to recover any property on which it has a lien or mortgage. The creditor can also take legal action to recover a judgment against you.

IF YOU WANT MORE INFORMATION OR HAVE ANY QUESTIONS ABOUT HOW THE BANKRUPTCY LAWS AFFECT YOU, YOU MAY NEED LEGAL ADVICE. THE TRUSTEE IN YOUR CASE IS NOT RESPONSIBLE FOR GIVING YOU LEGAL ADVICE.

HOJA DE INFORMACIÓN SOBRE BANCARROTA

LA LEY DE BANCARROTA ES UNA LEY FEDERAL. ESTA HOJA PROPORCIONA INFORMACIÓN GENERAL SOBRE LO QUE SUCEDE EN UN CASO DE BANCARROTA. LA INFORMACIÓN QUE APARECE A CONTINUACIÓN NO ES COMPLETA. ES POSIBLE QUE USTED NECESITE OBTENER ASESORAMIENTO LEGAL.

AL DECLARAR BANCARROTA:

Usted puede escoger el tipo de bancarrota que más le convenga de acuerdo a sus necesidades (siempre y cuando, usted satisfaga ciertas calificaciones):

Capítulo 7 - Se nombra a un fiduciario para que tome posesión de sus bienes. Todo bien de valor ser venderá o convertirá en dinero para pagar a sus acreedores. Es posible que usted pueda conservar algunos objetos personales y tal vez bienes raíces, de conformidad con la ley del estado en el que reside y a las leyes federales pertinentes.

Capítulo 13 - Por lo general, usted podrá conservar sus bienes, pero deberá estar ganando un sueldo o contar con otra fuente de ingresos regulares y deberá convenir en pagar a sus acreedores parte de sus ingresos. El juez deberá aprobar el plan de pago y su presupuesto para la devolución de la deuda. Se nombrará a un fiduciario quien recaudará sus pagos, le pagará a sus acreedores y se cerciorará de que usted esté cumpliendo con los términos de su plan de pago.

Capítulo 12 - Es como el Capítulo 13, pero es sólo para granjeros y pescadores.

Capítulo 11 - Las empresas son principalmente las que utilizan este capítulo. Bajo el Capítulo 11, usted podrá continuar desempeñando sus actividades comerciales, pero sus acreedores y el juez tendrán que aprobar un plan para el pago de sus deudas. No hay fiduciario a menos que el Juez decida que se necesita uno; si se nombra a un fiduciario, él o ella asume el control de su negocio y de los bienes del negocio.

Si usted ya declaró la bancarrota de conformidad con el Capítulo 7, es posible que pueda cambiar el caso a otro Capítulo.

Su bancarrota podrá aparecer en su expediente de crédito por un período de hasta diez años. Esto puede afectar su capacidad de recibir un crédito en el futuro.

¿EN QUÉ CONSISTE EL DESCARGO DE LA BANCARROTA Y CÓMO FUNCIONA?

Uno de los motivos por los cuales la gente declara la bancarrota es para recibir un “descargo”. El descargo es una orden judicial que dice que usted no tiene que pagar la mayoría de sus deudas. Algunas deudas no pueden descargarse. Por ejemplo, usted no puede descargar deudas de:

- la mayoría de los impuestos;
- manutención de niños;
- pensión alimenticia
- la mayoría de los préstamos para estudiar;
- multas judiciales y restituciones penales; y
- lesiones personales causadas al conducir en estado de ebriedad o al estar bajo la influencia de drogas.

El descargo corresponde exclusivamente a las deudas contraídas antes de la fecha en que usted declaró la bancarrota.

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Además, si el Juez determina que recibió dinero o bienes por medio del fraude, usted no podrá descargar esa deuda.

Es importante que usted enumere todos sus bienes y sus deudas en sus planillas de bancarrota. Por ejemplo, si usted no anota alguna deuda en particular, es posible que dicha deuda no sea descargada.

El Juez también puede negarle el descargo en bancarrota si usted hace algo deshonesto con relación a su caso de bancarrota, tal como destruir u ocultar bienes, falsificar expedientes o mentir, o si desobedece alguna orden judicial.

Usted podrá recibir el descargo de conformidad con el Capítulo 7 sólo una vez cada ocho años. Es posible que haya otras reglas que resulten pertinentes si usted ya ha recibido el descargo en un caso de Capítulo 13. Nadie le puede obligar a pagar una deuda que ha sido descargada, pero usted puede pagar voluntariamente toda deuda que desee pagar. Para hacerlo, no tiene que firmar un convenio de reafirmación (ver a continuación) ni ningún otro tipo de documento.

Algunos acreedores cuentan con un reclamo garantizado (por ejemplo, el banco que tiene la hipoteca de su casa o la compañía que tiene un derecho prendario sobre su auto). Usted no tiene que pagar una deuda garantizada si la deuda se descarga, pero el acreedor aún puede quitarle el bien.

¿EN QUÉ CONSISTE UN CONVENIO DE REAFIRMACIÓN?

Aún cuando se pueda descargar una deuda, es posible que usted tenga motivos especiales para prometer el pago de la misma. Por ejemplo, es posible que usted desee llegar a un acuerdo con el banco acerca de un plan de pago para poder quedarse con su auto. A fin de prometer pagar la deuda, usted debe firmar y presentar un convenio de reafirmación ante Tribunales. Los convenios de reafirmación se rigen de conformidad con reglas especiales y son voluntarios. No son requeridos por la ley de bancarrota ni por ninguna otra ley. Los convenios de reafirmación:

- deben ser voluntarios;
- no deben imponer una carga muy pesada para usted o su familia;
- deben llevarse a cabo de acuerdo a su mejor conveniencia; y
- se pueden anular en cualquier momento antes de que la Corte emita el descargo o dentro de un período de 60 días contados a partir del momento en el que dicho convenio se presente ante Tribunales, o lo que le dé a usted más tiempo.

Si usted es un individuo particular y no cuenta con representación legal, el Juez tendrá que llevar a cabo una audiencia para decidir si va a aprobar el convenio de reafirmación. El convenio no le obligará legalmente, a menos que el Juez lo apruebe.

Si reafirma una deuda y luego no la paga, usted debe la deuda de igual modo que si no hubiera habido una bancarrota. La deuda no será descargada y el acreedor podrá tomar medidas para recuperar todo bien sobre el que tenga un derecho prendario o una hipoteca. Además, el acreedor podrá tomar medidas legales para obtener el resarcimiento de un fallo en su contra.

ES POSIBLE QUE NECESITE ASESORAMIENTO LEGAL SI DESEA MÁS INFORMACIÓN O TIENE PREGUNTAS ACERCA DEL MODO EN EL QUE LAS LEYES DE BANCARROTA PUEDEN AFECTARLE. EL FIDUCIARIO DE SU CASO NO ES RESPONSABLE DE PROPORCIONARLE ASESORAMIENTO LEGAL.