

# YOUR GUIDE TO CHAPTER 7 & 13 BANKRUPTCY



## FLEXER LAW, PLLC

### **Columbia**

13 Public Square  
Columbia, TN 38401  
(931) 375-0006  
(931) 375-0010 (fax)

### **Nashville**

1900 Church Street, Suite 400  
Nashville, TN 37203  
(615) 255-2893  
(615) 242-8849 (fax)

### **Murfreesboro**

121 E. Main Street  
Murfreesboro, TN 37130  
(615) 896-4811  
(615) 896-4933 (fax)

**flexerlaw.com**

# FLEXER LAW, PLLC

REAL PEOPLE , REAL RESULTS

## WELCOME

Welcome to Flexer Law, PLLC. We have six full time attorneys on staff to service your legal needs here in Middle Tennessee. We handle more than bankruptcies. We have competent, experienced attorneys who handle Personal Injury, Workers' Compensation, Criminal Defense, Divorce and Family Law, and other types of legal issues.

We thank you for the opportunity to help you with your legal matters. Please feel free to call on us. If we cannot help you ourselves, we will be happy to refer you to another attorney that specializes in your particular type of case.

Sincerely,

*Daniel Castagna*

Flexer Law, PLLC is a debt relief agency.

We help people in Middle Tennessee file for bankruptcy relief under the U.S. Bankruptcy Code.

The material contained herein does not constitute legal advice. The information contained herein does not indicate an attorney-client relationship. This book is intended to provide accurate and authoritative information regarding the subject matter covered. This article should not and cannot substitute for the independent judgment and skills of a competent attorney or other professional who has examined your particular situation.

# Chapter 7 Bankruptcy

## SUMMARY | CHAPTER 7 BANKRUPTCY

Chapter 7 Bankruptcy allows individuals to wipe out, or discharge, their unsecured debts and not pay them. The most common examples of unsecured debts are medical bills, credit cards, payday loans, and deficiency balances from repossessions or foreclosures. These debts and most other debts can be wiped out in a Chapter 7. Some types of debts cannot normally be wiped out in a Chapter 7. These may include student loans, taxes owed to the IRS, criminal fines, restitution, and

### **Unsecured debts** may include:

- medical bills
- credit cards
- payday loans
- deficiency balances  
from repossessions or foreclosures

child support. These debts would still be owed in most instances after you complete your Chapter 7. If you also have secured debts such as a car or home which you are making payments on, you may be able to keep this property if you can continue to make regular payments on the debt and remain current and up to date on the contract.

The whole Chapter 7 process takes approximately 4 to 5 months from when you originally come in to file to

when you receive your discharge. Typically, you will only have to go to Court once, about 3 to 5 weeks after you file. **From the moment you file Chapter 7 Bankruptcy, your creditors must leave you alone.** This includes garnishments, phone calls, letters, and lawsuits; all of these actions must be stopped immediately.

## FEES | WHAT IS THE COST OF FILING A CHAPTER 7 BANKRUPTCY?

The typical fees for the core services in a Chapter 7 cases are as follows:

\$338.00 for the Court filing fee

\$1,067.00 for the attorney fee

\$25.00 (on average) for the first credit counseling course

\$45.00 (on average) for your credit report

**\$1,475.00 total cost**

We know that money may be tight as you are going through the bankruptcy process, so my office allows you to pay in three (3) monthly installments. The first \$475.00 is due when you file. Approximately 30 days later, your second installment of \$500.00 will be due. Thirty (30) days after that, the last installment of \$500.00 will be due.

Our office offers a \$150.00 discount to you if you are able to pay your attorney fees up front instead of paying in installments – **If you pay up front, we will charge you the discounted rate of only \$1,325.00** on the day you prepare your petition.

## Chapter 7 Bankruptcy

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Please note that if you have been self-employed within the last two (2) years or if your case has special circumstances or require additional motions that extend beyond the scope of a normal bankruptcy, additional attorney fees may apply.

Our office accepts cash, money orders, cashier's checks, and debit card payments.

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### ***Two ways to pay for a Chapter 7\*:***

*-3 monthly payments: \$475 down, then 2 monthly payments of \$500 each (\$1,475 total)*

*OR*

*-1 time payment of \$1,325, due upon filing (a \$150 discount)*

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*\*Some cases will require additional fees. We will go over this with you at your consultation.*

## THE BANKRUPTCY ESTATE

Chapter 7 of the Bankruptcy Code is called "Liquidation." When a petition is filed under Chapter 7, a bankruptcy estate is created. The estate consists of your assets as well as anything you might inherit within 6 months of the filing of the bankruptcy. It does not include post-petition wages, lawsuits, or other actions which come into being *after* filing the Chapter 7 petition.

### **Exemptions | What can I keep when I file Chapter 7?**

In Tennessee, a debtor may exempt their personal property from the estate up to \$10,000 (\$20,000 for a husband and wife). If you have not lived in Tennessee for the last three (3) years, the laws of another state will apply so you should make sure to alert your attorney. Personal property includes, for example, money in the bank, furniture, and vehicles without a lien on them (owned free and clear). For personal property on which you are making payments, your equity in the property equals the value of the property minus the amount you owe on it. Oftentimes with automobiles, the value of the automobile has depreciated to less than what you still owe on the loan; therefore, there is no equity in this property.

### **What if I put up some of my household items as collateral for a loan?**

You may have put some of your personal property up as collateral for a loan from a consumer finance company such as World Finance, Republic Finance, or Mariner Finance. If this property falls under the \$10,000 Tennessee personal property exemption, you actually own the property, and it would be exempted except that you pledged it as security on a loan. If you have a loan that falls under this category, you must provide us with a list of every item that you put down as collateral so we can give you your options as to dealing with these loans. Typically, the law allows us to void liens on this property as long as such property falls under the legal definition of "household goods" as defined in the Bankruptcy Code. However, you cannot void the lien if the loan was taken out for the purchase of consumer goods. In that case, you would need to continue making payments on the loan if you want to keep the items purchased. Our office typically charges an additional fee to file a motion to void these liens. Please make sure you tell your attorney if you have pledged household goods as collateral.

## Real Estate in Chapter 7

As far as equity in real estate is concerned, a single individual debtor can keep, in other words “exempt,” \$35,000 of equity in his/her real estate. If you are married, you can exempt up to \$52,500 in equity. The real property that you exempt in Tennessee must be your personal residence. If it is real property from which you receive rental income, and you do not live in it, you cannot claim the exemption. If you have significantly more equity in your home than you are able to protect with your exemption and you wish to keep your home, you may need to file a Chapter 13 bankruptcy. In a Chapter 13 you can keep your home, even if you have equity over and above the exemption, as long as you agree to pay your creditors as much as they would get in a Chapter 7 bankruptcy if the estate was liquidated.

## How Much Is It Worth? | Determining the Value of Your Property

When we prepare your petition, we will go over the values you have placed on your personal and real property and advise you as to whether or not we believe you have any assets which a trustee could take and liquidate (sell) to benefit your creditors. The value of a debtor’s personal assets is normally what a trustee could get at an auction sale which can be described as a liquidation sale or a garage sale. You should estimate the amount for which you would sell these items at a yard sale, and place a value on them using this standard. The vast majority of Chapter 7 cases are “no asset” cases because all of the assets can be exempted.

## INCOME AND CHAPTER 7

Our attorneys will take a look at your current income and the income that you have earned over the six (6) month period prior to filing. If you are married and living in the same household, we will also need to look at your spouse’s income. We will determine whether you are over or under the “median income,” which is the standard used to determine whether your income qualifies you for Chapter 7 in the State of Tennessee. If your income is slightly over the threshold, we will complete the “Means Test,” which allows us to take standard deductions from your income to see if we can help you qualify for Chapter 7. The means test will also allow us to deduct things that you pay, like payroll taxes and health insurance, car payments, etc. If your income is too high for Chapter 7, your only bankruptcy option might be Chapter 13.

## MEETING OF CREDITORS | YOUR COURT DATE

Soon after you file your Chapter 7, you will receive notice both from our office and from the United States Bankruptcy Court for the Middle District of Tennessee about your Chapter 7 Meeting of Creditors. The notice you get from the Court is the same notice that all of your creditors receive. **You must be at your Meeting of Creditors.** Although the Court, for good reasons, may continue (postpone) a Meeting of Creditors, continuances are not routinely granted, and a request for a continuance must represent a genuine emergency situation and you will incur additional attorney fees. **Failure to attend the Meeting of Creditors will result in the dismissal of your Chapter 7,** which means that your creditors will be free to try to collect the debts from you again.

**Meetings of Creditors in Chapter 7 are virtual, and are held via Zoom approximately three to five weeks after your case is filed.** If you have internet connection issues, we welcome you to come into our office for your meeting. The Chapter 7 Trustee will ask routine questions aimed at determining whether you have any assets that can be sold to repay your creditors.

## THE AUTOMATIC STAY AND YOUR CREDITORS

The filing of the Chapter 7 automatically issues a federal injunction which stops all collection efforts by creditors. This is called the Automatic Stay. The protections of the Automatic Stay stop creditors from taking any steps to collect a debt. If you have a pending lawsuit or a garnishment, our office will alert the creditor's attorney that you have filed bankruptcy and attempt to stop any garnishment as quickly as possible. Please note that you must provide us with contact information for your payroll and for each judgement creditor so that we can work promptly to stop these actions.

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### *Automatic Stay:*

*A federal injunction which stops collection efforts against you by your creditors*

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**As a practical matter, a creditor may not know about the filing of your bankruptcy petition until they receive notice from the Court, which could take 7 to 10 days.** Therefore, if you are contacted by a creditor who has not yet received a notice, please refer them to our office and we will advise them that you are under the protection of the Court. If a creditor continues collection efforts after they have been advised of your Chapter 7 filing, please let us know and we will take steps to stop the creditor.

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### **Client FAQ:**

#### ***"Why am I still receiving bills after I filed bankruptcy?"***



*It usually takes 7-10 days for the creditors you listed to receive notice in the mail of your bankruptcy. If you receive bills or phone calls in an effort to collect a debt that you listed, please send us a copy of the bill or notify our office so that we may contact the creditor and let them know you are under the protection of the Automatic Stay.*

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There are three notable exceptions to the Automatic Stay:

1. A bank, savings and loan, credit union, or other institution in which you have a deposit is allowed to take your deposit to set off all funds which were in the account at the time you filed your bankruptcy petition against any outstanding debt that you have with them. **Therefore, if you have a checking or savings account with an institution with which you also have a debt, you need to take immediate steps to remove your funds if you want to keep them!** We recommend that you not make any further deposits into or write any additional checks from an account with a financial institution with which you also have a debt. Rather you should close that account and open an account with another financial institution with which you do not have a debt.
2. There are special rules concerning utilities, such as your electric or phone company. A utility company may not collect money that you have owed them in the past, but they can make you pay a new deposit within 20 days. **Your regular monthly bill for utilities that you continue to use will still be due after you file Chapter 7.** However, if you are behind

on your utilities and wish to include the past due balances in your Chapter 7, you should advise us that you want the Court to set a reasonable deposit for new service within 20 days of the filing of your Chapter 7. If the utility company is trying to make you pay a very high deposit, you should advise this office immediately and we will file a motion on your behalf to request a reasonable utility deposit. You are responsible for any utility bills incurred after you file bankruptcy.

3. Child support obligations remain a matter that can only be addressed in state court.

## WHAT HAPPENS TO MY COSIGNER?

A cosigner or guarantor is a person who will be responsible for paying a debt if you are not able to do so. You are required to list a debt on your bankruptcy regardless of whether you were the primary borrower or if you were the cosigner. By you filing a Chapter 7, the creditor will be able to then pursue your cosigner or guarantor for that obligation. The automatic stay provisions of the Chapter 7 do not extend to your cosigners or guarantors. Therefore, when you file a Chapter 7 bankruptcy the other party will be responsible for carrying the burden of repayment.

## YOUR CREDIT REPORT

Under the Fair Credit Reporting Act, filing a Chapter 7 bankruptcy remains on your credit report for a period of 10 years. This, in and of itself, does not prohibit you from incurring credit, but it would be one of the many factors a creditor would consider to determine whether or not you are creditworthy. **The scope of our services to you in your Chapter 7 does not include any credit repair or credit clean up.** This is your responsibility. You have rights under the Fair Credit Reporting Act. You may wish to access your credit report after your bankruptcy is complete so that you may monitor the accuracy of your credit report. Our office has no control over the way that a creditor reports your debt with them, so if you wish to dispute something on your credit report, you will need to take steps to do so with the Credit Bureau.

## CHAPTER 7 AND YOUR CREDITORS

**You must list all of your debts in your bankruptcy.** Please note that only debts which were incurred **before** you filed Chapter 7 bankruptcy are dischargeable. Any debt, including rent, association fees, utilities, phone service, or other services incurred after the filing of the Chapter 7 petition are not dischargeable under this Chapter 7 proceeding.

## AUTOMOBILE INSURANCE

Pursuant to the Local Rules of the U.S. Bankruptcy Court for the Middle District of Tennessee, you must bring to your Meeting of Creditors proof of full coverage insurance (comprehensive and collision) on any vehicle on which there is a lien. Without such insurance, a creditor can repossess it. If you do not have insurance, the Local Rules require the creditor to give you notice in writing. If you do not hand deliver proof of insurance to the creditor within three days, then the creditor can repossess the car.



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*If you are making payments on a vehicle, you must have physical damage insurance on that vehicle. Without proof of insurance, a creditor who is financing your car can ask the judge to allow the creditor to repossess the car.*

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## CREDITOR'S STATUS IN BANKRUPTCY

In Chapter 7 Bankruptcy, you normally have secured, unsecured, and priority debts, as well as administrative fees. The first payment you make to our office includes the \$338.00 filing fee for your Chapter 7, which is one type of administrative fee. **Unsecured debts** are promises to pay which are not secured by personal property or real estate, such as medical bills and credit card purchases. Tax obligations are normally **priority debts** and are usually not discharged. **Secured debts** are where your promise to repay the debt is secured by personal property or real estate.

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*There are three options with secured debts:*

- 1. You can **surrender** the property and wipe away the debt.*
  - 2. You can **reaffirm** the debt and continue to pay your regular monthly payments.*
  - 3. You can **redeem** the property in some cases and pay back the value of the property in one lump sum.*
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## SURRENDERING COLLATERAL

### **What if the creditor will not pick up my car or furniture that I surrendered?**

In a Chapter 7, you can wipe away a secured debt by agreeing to give back the property. Ordinarily, the law will not force a creditor to pick up collateral you surrender in your bankruptcy. If you surrender property to the estate and/or the creditor, the creditor does not have to reclaim the collateral. This situation is most common with old automobiles of little or no value. It may be necessary for you to tow the collateral to the creditor or to a local agent of the creditor, or you may have to call the codes department in your county to have them pick up the collateral. It is outside of the services which we provide to deal with these situations; *you must handle it yourself.*



## What happens after I surrender my home and move out?

The law does not force a mortgage creditor to foreclose on surrendered real estate. In fact, it can take a mortgage creditor many months to foreclose in some instances. If there is a Homeowner's Association to which you owe dues, then you must continue to pay these dues until the mortgage creditor forecloses on the property and the property is no longer in your name. The bankruptcy will be able to wipe away any Homeowner's dues that you owed *prior* to filing the bankruptcy; however, you will be responsible for any dues that are incurred *post-filing* up until the date that the deed is transferred out of your name. You also may need to keep hazard insurance on the property, as you may be liable for any accidents that occur on the property, even if you are not living there. You may be responsible for maintenance on the property to comply with codes in your county until the mortgage company forecloses on the property. Talk with your attorney about steps you can take to protect yourself if you are surrendering real property in your Chapter 7 bankruptcy.

## REAFFIRMING A DEBT

Many times, clients who file Chapter 7 will want to keep their home, car, or other personal property that they have financed. If you decide to keep a secured debt, then you will need to continue to make all of your regular monthly payments under the original contract with the secured creditor. The creditor has the option to send you a Reaffirmation Agreement. **Make note – it is the creditor's option to reaffirm the debt.** If the creditor does not wish to reaffirm, he can reclaim the property. *You typically must be current on the payments at the time of filing in order for the creditor to send you a Reaffirmation Agreement.* You must sign the agreement promptly and return it, so that the creditor can file it with the court. If the reaffirmation agreement is not signed and returned so that the creditor can file it prior to the closing of your case, then it is not valid and the creditor will be able to reclaim their collateral. Please note, my office is not responsible for preparing or filing Reaffirmation Agreements. We can request that a creditor send you a Reaffirmation Agreement, but whether or not he chooses to do so is at his sole discretion.

## Client FAQ:

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### ***“Can I keep my car/house in a Chapter 7?”***

*If you are current on your payments, a creditor will likely allow you to reaffirm your loan after you file Chapter 7. A reaffirmation agreement is a signed agreement between you and the creditor that reinstates your contract. After signing a reaffirmation agreement, you are obligated once again for the balance of that loan.*

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## RESCINDING (CANCELING) REAFFIRMATION AGREEMENTS

If you reaffirm property, you have sixty (60) days to rescind (cancel). A debtor has sixty (60) days from the entry of the reaffirmation agreement or until the date of discharge to rescind a reaffirmation agreement, whichever is later. A debtor can only rescind a reaffirmation agreement in writing. Should you wish to rescind a reaffirmation agreement, you should immediately do the following: 1) provide written notice to the creditor of cancellation and 2) telephone my office, speak with an attorney, and we can file a notice of rescission of reaffirmation agreement with the United States Bankruptcy Court Clerk to cancel your reaffirmation agreement.

## REDEEMING THE COLLATERAL

In some circumstances, you may be able to redeem your collateral. A redemption is where you pay the value of the property rather than the entire payoff of the note. However, instead of paying in installments, with a redemption you must pay in one lump sum. The creditor has the right to contest the redemption and in some cases will send an appraiser to value the property.

## JUDGMENTS AND BANKRUPTCY

When you have been sued prior to filing the Chapter 7 bankruptcy, you must alert the attorney that you meet with about the lawsuit or judgment. If the court date has passed and you did not attend, or even if you contacted the creditor's attorney prior to the court date, then chances are that the creditor took out a judgment against you. Our office does not have access to all courts and may not know that a judgment has been entered unless you alert us. Typically, judgments are dischargeable in bankruptcy. However, on occasion an attorney may secure their judgment by filing a judgment lien against property, real or personal, that you own. If a judgment has been recorded against your property, then it is a secured debt and will have to be paid back in most circumstances. If the value of your property is not sufficient to support the judgment lien, then we must take action to void the judgment lien through the bankruptcy court. Such an action is outside the scope of a normal bankruptcy proceeding, and thus will require additional attorney's fees. Again, it is your responsibility to alert your attorney if you have a judgment or if a creditor has placed a judgment lien against property that you own.

## PREFERENTIAL PAYMENTS TO CREDITORS

The Chapter 7 trustee will be examining your statement of financial affairs to determine whether you have made any preferential payments to creditors. Under the Bankruptcy Code, any payment to a creditor more than \$600.00 made within 90 days prior to the filing of the bankruptcy petition is considered preferential towards that creditor, and the trustee has the authority to seek the return of that money to the estate in order to divide it up amongst all of your creditors equally. If the creditor is an insider (a friend or relative) the trustee may go back one year and recover the preferential payment. If the payment is in anticipation of bankruptcy and is considered fraudulent, the trustee may go back as far as four years under the general Tennessee Fraud Statutes. These situations do not present themselves in very many cases, but we do want you to know that these types of transfers are subject to the trustee's powers. Please note that during tax season, you must be very careful with your tax refund and make sure that you have not used it to pay off creditors, friends, or family members prior to filing as this could result in preference litigation.

## INCOME TAXES

Please note that, if you have received your tax refund just prior to filing the Chapter 7, you will be required to provide a list of how the refund was spent so that your attorney can advise you of any preference litigation that could ensue.

Normally, taxes are not discharged when no income tax return was filed, when the return was filed less than three (3) years prior to filing of the bankruptcy, or when taxes have been assessed within 240 days of the filing of your bankruptcy.

## YOUR BUDGET

We will be preparing a budget for you as required under federal law. The purpose of the budget is to determine whether you have the ability to reorganize your debts under Chapter 13. An agency called the U.S. Trustee's Office will be examining your budget to determine whether the filing of your Chapter 7 case represents substantial abuse of the Bankruptcy Code. Your attorney will help you determine whether your budget justifies the filing of a Chapter 7 Bankruptcy by conducting a "Means Test." If you have questions about whether you would qualify for a Chapter 7 bankruptcy based on your budget, talk with your attorney. Please note that we must include income for your entire family on the budget, and even if you are married but filing by yourself that your spouse's income will be included on the budget.

## YOUR PETITION

When you receive a copy of your petition, it is important that you review the information in the petition very closely. If you believe that something is wrong, it is important that you let us know about these matters right away so that we may amend your petition as quickly as possible. Please note that you are signing your petition under penalty of perjury, so it is very important to make sure that everything is listed correctly. It is also important to retain a copy for your records.

You are required to list everyone that you owe money to, whether that is a credit card, bank, family member or friend. We understand that sometimes you may forget to add creditors that should have been included on your petition. You must notify us of this immediately and add the missing creditor(s). Please note that you will incur an additional fee for adding creditors after the case is filed.

## DISCHARGEABILITY OF DEBTS

It is important to know that certain types of debts are considered **nondischargeable** (you will still owe them after your discharge in Bankruptcy).

**Debts that may not be able to be discharged (wiped out) in a Chapter 7 may include:**

- Taxes
- Alimony and child support
- Civil and criminal fines payable to a governmental unit
- Student loans
- Debts brought about by driving a vehicle under the influence of alcohol or drugs
- Debts related to fraud, false representation, or willful and malicious injury to another person or property

### Special note regarding the dischargeability of student loans:

In certain circumstances, student loans can be discharged in bankruptcy, but this process will include filing a lawsuit in bankruptcy court wherein we must show your current inability to repay, your future inability to repay, and that you have made a good faith effort to repay. Analysis of the dischargeability of your student loans is not included in our core services, and will require additional attorney fees.

## CRIMINAL PROSECUTION AND CHAPTER 7

**Chapter 7 does not stop criminal prosecution.** This means that if you have written bad checks (the most common example of a crime), the party to whom you wrote the bad check could still have you arrested and criminally prosecuted if you did commit this crime.

Also, criminal restitution, probation fees, court costs, traffic ticket fines and costs, failure to return rental property, and any other criminal acts of any kind are not affected by or discharged in your Chapter 7.

## THE CHAPTER 7 TRUSTEE

The filing of a Chapter 7 results in the appointment of a Chapter 7 Trustee to administer your case. In the Middle District of Tennessee, there is a panel of trustees appointed by the Court on a rotating basis. Your trustee will examine your case to determine whether there are any unexempt assets based on the information in your petition that you provided to our office. Should there be any such assets, the trustee is required to liquidate (sell) such assets and pay your unsecured creditors on a *pro rata* basis.

## TIME LIMITS | WHAT IF I NEED TO FILE BANKRUPTCY AGAIN?

Filing a Chapter 7 petition and receiving a discharge stops you from filing another Chapter 7 petition for a period of eight (8) years. If you need help from the Bankruptcy Court dealing with debts during the eight-year period after you filed for Chapter 7, your only choice is to file a Chapter 13. A Chapter 13 can be filed within this eight-year period. However, if you file a Chapter 13 within four years of your Chapter 7 filing, then you will not be eligible for another discharge.

**Client FAQ:**

***“I filed bankruptcy before. How long do I have to wait to file again?”***

*If you filed a Chapter 7 and received a discharge, you must wait 8 years before filing another Chapter 7. If you need relief from your debts and it has been less than 8 years since your last Chapter 7, you may be able to file a Chapter 13 bankruptcy. Talk with your attorney about what your options are if you have filed bankruptcy before.*

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## OUR OFFICE

A Chapter 7 petition is a significant step for you to take. When you meet an attorney at my office prior to filing, we will review your situation and determine if a proceeding in Chapter 7 or Chapter 13 bankruptcy would be in your best interests. The discharge you are seeking by filing a Chapter 7 bankruptcy will provide you with immediate and permanent relief from creditor harassment, but you may convert your case to a reorganization under Chapter 11 or Chapter 13 at any time prior to the receipt of your discharge. Please remember that bankruptcy was created to give the honest debtor, such as yourself, relief from the weight of oppressive indebtedness and the ability to make a fresh start.

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*Please remember that bankruptcy was created to give the honest debtor, such as yourself, relief from the weight of oppressive indebtedness and the ability to make a fresh start.*

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### **Keep Us Informed of Any Changes**

Please remember that your Chapter 7 case will require regular communication between you and this office. *If your address or telephone number changes, please contact us by telephone as well as in writing with your new contact information.* Things happen very quickly in the Chapter 7 bankruptcy and it is important that we can always reach you immediately if we need to by mail and by telephone. Accordingly, should you require information about your case, or if you change jobs, change your address, separate from your spouse, desire to change your intentions about reaffirmation or redemption, or other matters relating to your case, you should contact our office for advice.

### **Additional Services Required in Your Chapter 7 Bankruptcy**

You should be aware as to what services are to be performed by this office. When you discuss fees with this office, we will quote you a flat attorney's fee based on the anticipated servicing of your Chapter 7 case to its completion and the entry of discharge. *However, we reserve the right to ask for additional fees in the event that matters arise which are not considered regular and routine services.* Such matters include, but are not limited to, litigated matters, attendance at depositions (Rule 2004 examinations), and other pretrial hearings with respect to adversary proceedings concerning discharge of a debt, research, preparation of briefs, preparation for trial, and court time at trial. Although these kinds of matters arise very rarely in Chapter 7 cases and are more likely to arise in cases that are business related, they might arise in your case. Should this office request additional fees, you have the right to consult with us concerning their fairness and reasonableness. We will quote you an hourly rate based on the experience and expertise of the attorney who will be handling any matters which are not regular and routine, and we normally require that a portion of the fee for certain services that are not regular and routine be paid in advance.

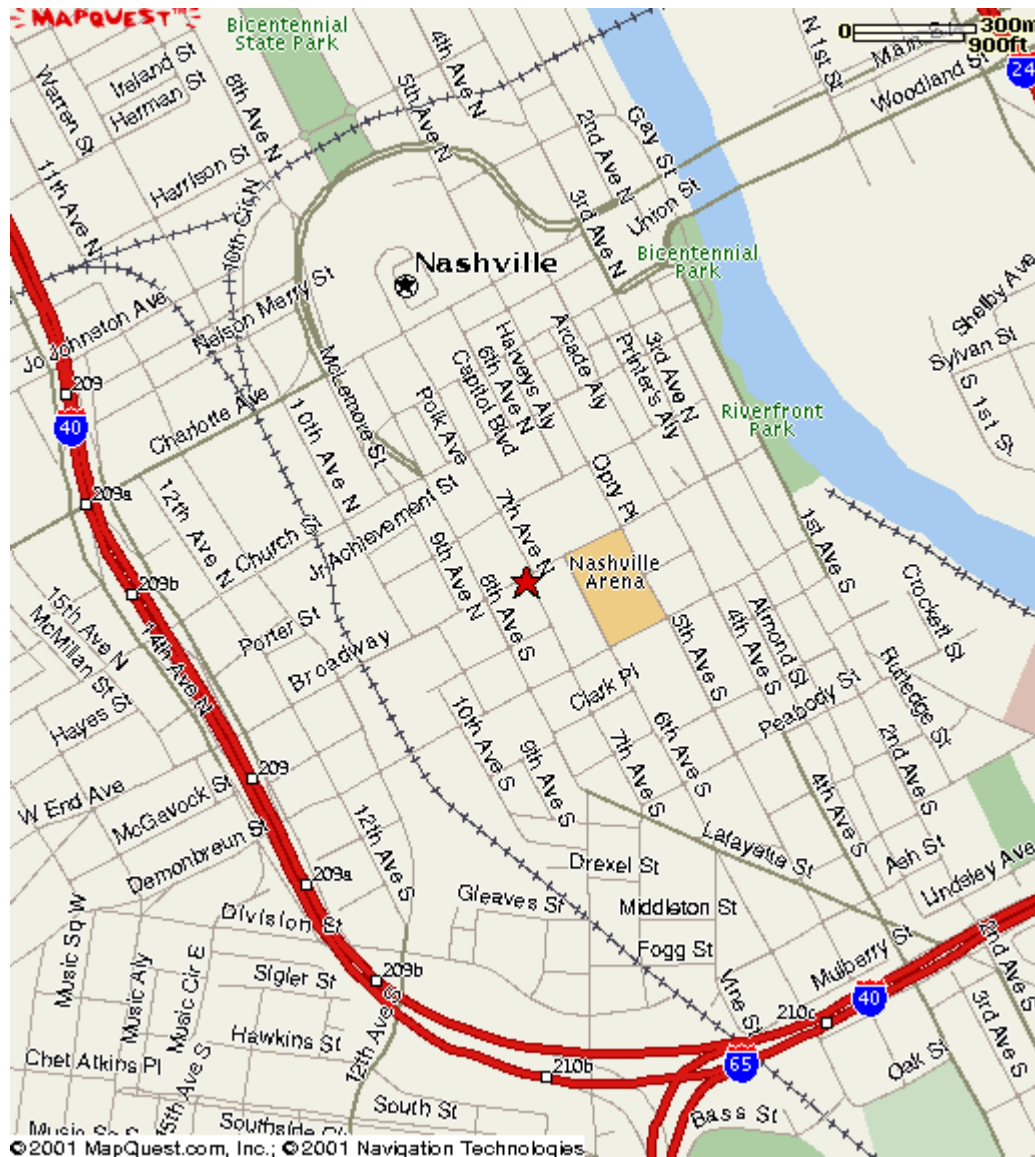
### **FINAL WORD REGARDING CHAPTER 7**

Chapter 7 bankruptcy is designed to provide you a fresh start by discharging the debt that is weighing you down. If you are current on your car and house payments and do not have too much equity in any of your property, a Chapter 7 may allow you to walk away from your credit cards, medical bills, personal loans, repossession deficiencies, and so forth. Chapter 7 has helped millions of people to breathe easier. If you feel burdened by debt, speak with one of our experienced attorneys today to see if Chapter 7 could be an option for you.

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## UNITED STATES BANKRUPTCY COURT – U.S. Customs House 701 BROADWAY NASHVILLE, TN 37203

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The U.S. Customs House is located between 7<sup>th</sup> and 8<sup>th</sup> Avenue on Broadway, across from Hume-Fogg High School. Paid parking is available in the back of the building. The court entrance is also located in the back of the building.





# Chapter 13 Quick Reference:

**Your Attorney is:** Daniel T. Castagna | 1900 Church Street, Suite 400 | Nashville, TN 37203 | Phone: 615-255-2893 | Fax: 615-242-8849 | [www.flexerlaw.com](http://www.flexerlaw.com)

**Your Trustee is:** Henry E. Hildebrand, III  
Mailing address: PO Box 340019 | Nashville, TN 37203-0019 |  
Physical address: 1800 Church Street, Ste. 200 | Nashville, TN 37203  
Phone: 615-244-1101 | Toll free: 1-800-231-5928 | [www.ch13nsh.com](http://www.ch13nsh.com)

**Your Case Number is:** \_\_\_\_\_

**Your payment is \$** \_\_\_\_\_ **to be paid** \_\_\_\_\_.

*\*You should make your first payment immediately. Do not wait until your payroll deduction starts. Make your first payment by direct pay, and continue to pay directly until your payroll deduction has begun.*



Where to send direct payments:

**Mail to: Chapter 13 Trustee | P.O. Box 340019 | Nashville, TN 37203**

*Send only cashier's check or money order. Do not send personal checks.*

*Put your case number and full name on anything you send to the Trustee.*

## You must provide the following prior to your Meeting of Creditors:



Driver's license and Social Security Card

Proof of car insurance



(You must have comprehensive and collision insurance on any vehicle on which you owe money.)



Proof of payment (money order/paycheck stubs) within 30 days of filing your case

The last 60 days of your pay stubs

Your tax return (We need the current year, but you must testify that they last four years of your returns are filed with the IRS)

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# Chapter 13 Bankruptcy

## SUMMARY | CHAPTER 13 BANKRUPTCY

Chapter 13 bankruptcy normally allows you to keep your property, such as homes, cars, and furniture while allowing you to pay some or all of your unsecured debts, such as medical bills, credit cards, and payday loans. Chapter 13 bankruptcy allows you to pay your debts at a rate you can afford rather than at a rate the creditors want you to pay. In Chapter 13, even if you are behind on your car or home payments, you can keep them over the objections of creditors. This is

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***Chapter 13 bankruptcy guarantees that you can keep your home, car, and/or furniture - even if you are behind on the payments.***

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different from a Chapter 7 where the creditor can take back the car, home, or furniture if they want to, even if you are paying for it on time. In Chapter 13, you can normally lower your payments on cars or furniture quite a bit.

However, on homes, the regular mortgage payment stays the same. You can catch up the back payments on your house through your plan.

Chapter 13 puts all of your debt into one payment. This comes out of your paycheck and is then sent to the Chapter 13 Trustee's office by your employer. Once per month, the Trustee sends the money to your creditors. Normally **secured** debts like your home, car, and furniture bills get paid first by the Trustee, as well as other **priority** debts like taxes and child support. Then after these secured debts and priority debts, money is sent to your **unsecured** creditors. You have up to five (5) years to pay a Chapter 13. While the unsecured creditors are waiting to be paid, they cannot charge you late charges, penalties, or interest. Sometimes unsecured creditors only get a very small percentage of what they are owed, but if you complete your Chapter 13 plan, the balance of what you did not pay is discharged, or wiped out.

The creditors cannot call you at home or work. They cannot send you letters, sue you, garnish your wages, or seize your property. They have to direct all contact with you through your attorney. Even if you are already being garnished or a judgment has been entered against you, **Chapter 13 stops garnishments. Foreclosures and repossessions also stop with Chapter 13.**

If you are employed, you must pay your bankruptcy through a payroll deduction from your paycheck. This is not a garnishment, and you cannot be fired or discriminated against by your employer for filing Chapter 13. Most employers are familiar with Chapter 13 and realize it is a federal law. While it is a little more work for payroll, it stops the employees from being hassled by debt collectors. Do not be worried about a payroll deduction. You probably have fellow coworkers in Chapter 13.

You do not need to have a regular job to file Chapter 13. You can be self-employed or have income from Social Security, disability, retirement, or other government assistance. The only requirement is that you have a regular source of income.

Chapter 13 has provided peace of mind and a legal method of dealing with debt problems for millions of people. It can do the same for you.

## INTRODUCTION

Chapter 13 is one method under the Bankruptcy Code to obtain relief from your creditors while at the same time providing a fair means to pay them back as much as you can. It allows you to keep some of all of your property during the time you are paying your creditors back, and it permits you to modify some contract payments and interest rates. Your plan can eliminate late charges and penalties and allow you to extend payments on some of your debts. Chapter 13 has gained widespread acceptance across the country as an attractive alternative to straight bankruptcy (Chapter 7).



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### **Client FAQ:**

#### ***“How much will my payment be if I file Chapter 13?”***

*One of our attorneys will carefully review a budget with you to propose a reasonable Chapter 13 payment that will be fair to your creditors, protect your assets, and leave you room to pay your monthly expenses such as groceries, gas, utilities, and other necessary monthly bills. Your payment is based on your total debt, your income, and your assets.*

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## YOUR CHAPTER 13 PAYMENT

When you come into the office, you will meet with an experienced attorney who will review your debts, assets, and income. We will look at your specific circumstances and calculate a plan payment for you. We will look specifically at your:

- **Income:** We will look at your average income for the last six (6) months as well as your current income. We will also need income from your spouse and other members of your household. If your income is over the average (median) income for the State of Tennessee, then we will conduct the “means test” that gives you standard deductions for your living expenses based on the number of people in your household and the county that you live in. The rule in Chapter 13 is that you commit all of your “disposable income” to your creditors. This means that you will be paying back a percentage of your debt based on your ability to repay.
- **Assets:** Your creditors in Chapter 13 must receive as much as they would have received if your property had been liquidated in Chapter 7. That means, if you have a lot of equity in a house or car or any other asset, then you will need to repay enough of your debt to protect that asset.
- **Total Debt:** You need to let your attorney know everyone that you owe money to so that we can accurately determine your plan payment. This means all of your credit cards, medical bills, personal loans, old landlords, old utilities and cell phone/cable companies from your past, rent-to-own contracts, student loans: **absolutely everyone you owe.**

## YOUR CASE NUMBER

At the time that your Chapter 13 petition is filed, the Bankruptcy Court Clerk assigns your case number. **Your case number is very important.** You will need it whenever you make a payment to the Trustee. Also, if any creditors contact you, give them your case number and tell them to call our office if they have any questions.

## YOUR ADDRESS AND PHONE NUMBER

The Trustee's office and Flexer Law, PLLC need to know your current mailing address for as long as you are in your Chapter 13 plan. The Trustee's office and Flexer Law, PLLC have the address that you put on your petition, and all notices will be sent to that address unless you tell Flexer Law, PLLC to send them somewhere else. *If we cannot reach you by mail, you may miss something important in your case!* **If you ever move or change your mailing address, you must inform Flexer Law, PLLC immediately of your new address in writing.** We will inform the Court and the Trustee's office for you.

**If you change your phone number, Flexer Law, PLLC must be notified immediately as well.** It is important that we are able to reach you about your case at all times.

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## CHAPTER 13 PAYMENTS

Most Chapter 13 payments are made through payroll deduction at your place of employment. Only in unusual circumstances will the Court allow payments to be made directly to the Trustee instead of by payroll deduction order if you are employed. Should you make a plan payment personally, do so by money order, postal money order, or cashier's check, and be sure to include your full name, address, and your Chapter 13 case number. **DO NOT SEND PERSONAL CHECKS OR CASH.**

**Payments must be**

**received by the Trustee by the 20<sup>th</sup> of the**

**month.** Please mail your payments to the address listed on the cover of this booklet. If you wish to make your payment in person, the Trustee's office is located at: 1800 Church Street, Suite 200, in Nashville.

### ***When sending your Chapter 13 payment to the Trustee:***

- ✓ Make your payment by money order or cashier's check
- ✓ Include your name, address, and bankruptcy case number
- ✓ Payments should be received by the Trustee by the 20<sup>th</sup> of the month to be applied on time!

## CALLS TO THE TRUSTEE

The Trustee and his staff cannot give any legal advice regarding your case, so I encourage you to direct all legal questions to Flexer Law.

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***If you need to miss any payments or have a question about your case, call our office first - not the Trustee's! The Trustee is responsible for making sure your creditors are paid through your Chapter 13. We represent your best interest in your bankruptcy and can help you with any issues that arise with your payments.***

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## PAYROLL DEDUCTION ORDERS

At the time you file your Chapter 13 petition, the Judge will issue an order to your employer telling your employer to deduct your plan payments from your paycheck and send them to the Chapter 13 Trustee. It is important that both you and your employer understand that such an order is not a garnishment. A garnishment or attachment can come only from someone to whom you owe money, and you do not owe the Court or the Trustee any money. The Court is just carrying out its duty to administer the plan that you voluntarily filed and the Court has exclusive jurisdiction over your future pay as long as you are in a Chapter 13 plan. If your employer has any questions, he or she may call the Chapter 13 Trustee's office for an explanation.

Until your payroll deduction begins, you are responsible for sending in your payments. If you notice that your employer is not yet deducting your Chapter 13 payments, you must send in your plan payment directly to the Trustee until your payroll deduction begins. **You are responsible for making sure that your payments are being made to the Trustee.** You must begin making payments within 30 days of filing your voluntary bankruptcy petition. If you have any questions about this, please contact my office.

## OBLIGATION TO PAY

Even though the Court will usually order your employer to deduct plan payments and send them to the Trustee, you must remember that you have an obligation to make sure payments are made. If your employer ever fails to make a plan payment deduction, you must notify Flexer Law, PLLC in writing that the deduction was not made and you must send or hand deliver the plan payment to the Trustee by money order, postal money order, or cashier's check. **You must keep your pay stubs to demonstrate that the deductions are taking place.** If a payment is not received by the Trustee as required by your plan, any creditor in your case may ask the Court to dismiss the case. The Trustee will also ask the Court to dismiss your case if you fail to make the required payments during any month during your plan.

## TAX REFUNDS

If you are paying less than 20% of your unsecured debt, the Chapter 13 Trustee requires you to submit any tax refunds you would have received during the time of your Chapter 13 bankruptcy to your Chapter 13 plan to increase the dividend (payment) to your unsecured creditors. There are no exceptions. This tax refund increases your "base," or the total amount you pay to the Chapter 13 Trustee. Seizing your tax refund does not reduce the time you have to stay in Chapter 13, nor does it lower your payments.



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### **Client FAQ:**

#### ***“Can I keep my tax refund when I file Chapter 13?”***

*If you are paying back at least 20% to your unsecured creditors in your Chapter 13 bankruptcy, you should be entitled to receive your income tax return. Exceptions may occur when:*

- your plan is placed on probation for missed payments or other reasons*
- you modify to lower your dividend (payment) to your unsecured creditors to less than 20%*

*If you are paying less than 20% to your unsecured creditors, the IRS should direct your tax refunds directly to the Trustee. If you receive your refund, you are responsible for sending it to the Trustee yourself.*

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## **CO-SIGNERS AND CO-MAKERS**

A co-signer, co-maker, or guarantor on any of your consumer debts is generally protected from contact by the creditor by a “Co-Debtor Stay.” The automatic protection applies only in Chapter 13 cases. If the co-signer, co-maker, or guarantor has given collateral for the loan, the creditor must request a hearing before the Judge in order to proceed against the property. The Co-Debtor stay will only protect co-signers, co-makers, and guarantors for the amount of debt your plan proposes to pay. If your plan is not scheduled to pay all of the co-signed debt in full, a creditor may obtain permission to collect from the co-signer, co-maker, or guarantor the portion of the debt that is not being paid through your plan. The co-signer’s credit can be affected negatively by your Chapter 13 filing.

If you discharge a co-signed debt in your bankruptcy, but do not pay it in full, the creditor may collect the balance from your co-signer after the bankruptcy is finished. If you have questions about how your bankruptcy will affect someone who co-signed on a loan with you, please ask your attorney.

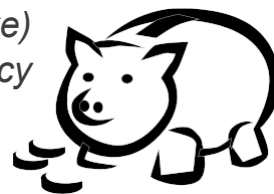
## **RIGHT TO SETOFF**

A bank, savings and loan, credit union, or other institution in which you have a deposit is allowed to take your deposit and setoff against any outstanding debt you have with that institution. Accordingly, if you have a deposit with a financial institution with which you also have a debt, you need to take immediate steps to remove your funds if you want to keep them. The financial institution may setoff all funds which were in the account at the time you filed your bankruptcy petition. Therefore, we recommend that you close that account. Do not make further deposits into an account or write additional checks from an account with a financial institution with which you also have a debt. Rather, you should open an account with another financial institution with which you do not have a debt.



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*If you owe a debt to your bank or credit union, they can setoff (take) any money you have in your account at the time you file bankruptcy to apply to your debt. Protect your money by doing the following:*



*-Withdraw your funds and close your account with any financial institution to whom you owe a debt.*

*-Do not make any further deposits and do not write checks from that account!*

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## CRIMINAL PROSECUTION AND CHAPTER 13

Chapter 13 DOES NOT stop criminal prosecution. This means that if you have written bad checks (the most common example of a crime), the party to whom you wrote the bad check could still have you arrested and criminally prosecuted if you, in fact, committed the crime. This also applies to traffic ticket fines and court costs, failure to return rental property, and any other type of crime.

Also, while criminal restitution, probation fees, and court costs can be paid through the Chapter 13 plan, a state court (i.e. Criminal Court, Circuit Court, or General Sessions Court) may revoke your probation for not paying these fees in a timely manner and put you in jail, according to one recent Federal Bankruptcy Court case. Therefore, filing bankruptcy is not an instant solution to your criminal case, and it is **HIGHLY RECOMMENDED** that you either hire a competent attorney who handles criminal cases or seek the aid of a Public Defender, if you qualify. Normally, criminal courts will be satisfied if you pay these criminal costs and fees through your Chapter 13 plan, but please keep in mind **STATE COURTS DO NOT HAVE TO PARTICIPATE AND CAN ATTEMPT TO REVOKE YOUR PROBATION AND PROSECUTE YOU.**

## STUDENT LOANS

Student loans may not be discharged. If you do not provide sufficient funds to pay these loans off in full during the life of your Chapter 13 plan, the balance will still be owed after you received a discharge. Interest continues to accrue on a student loan during the course of a Chapter 13 plan.

There is an “Undue Hardship” exception to the nondischargeability of student loans, but it is extremely rare. This exception is reserved for extremely unusual cases and there are strict guidelines that must be met before it will be applied.

New federal guidance allows the discharge of student loan debt when you can prove that you have a current inability to repay, future inability to repay, and have made a good faith effort to repay your student loans. Dischargeability of student loans requires an adversary proceeding (a lawsuit against your lender) to be filed in bankruptcy court. We will not seek dischargeability of your student loans unless you hire us separately to do so. Analysis of the dischargeability of student loan debts is not included in our core services and will require additional attorney fees.

## LEASES AND CONTRACTS

Under U.S.C. § 365 of the Bankruptcy Code, Chapter 13 debtors are allowed to assume or reject a lease within 60 days of the filing of the petition. The terms of the lease cannot be changed as it relates to the regular monthly or weekly payment on the lease. That must stay the same. Arrears, or the amount the amount you are behind on the lease, can be cured “promptly.” Most of the legal decisions dealing with what the word “promptly” means hold that lease arrears must be cured within the remaining term of the lease. Some cases have even said that lease arrearages must be cured in as little as two or three months.

If you are behind on rent, your landlord can file a “Motion for Relief from the Automatic Stay” to try to move forward with eviction. If you do reject the lease instead of assuming the lease, the creditor is entitled to a claim for the period of time that you continued to retain the property in question, but their remedy is to file a claim in your Chapter 13 case. A debtor cannot force the holder of the lease, like a landlord, to renew the lease once it is over.

## CONTACT BY CREDITORS | THE AUTOMATIC STAY

All the creditors that you listed on your Chapter 13 petition are under an automatic restraining order which prohibits them from collecting from you in any way. This is called the Automatic Stay, and it is in effect as soon as you file your bankruptcy petition. If you get notices in the mail from your creditors, make a copy for your records, then send the original back to the creditor and include the following information: Flexer Law, PLLC’s name, address, and telephone number. State that you are in a Chapter 13 and give them your case number. If you get a more personal, direct contact from a creditor, such as a telephone call, a personal letter, a summons, or a visit in person, you should immediately inform them that you are under Chapter 13 and give them Flexer Law, PLLC’s name and phone number. Be sure you tell us the name and telephone number of the person who contacted you, so we can follow up on such a call and take any necessary corrective action.

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### **Client FAQ:**

#### ***“Why am I still receiving bills after I filed bankruptcy?”***

*It usually takes 7-10 days for the creditors you listed to receive notice in the mail of your bankruptcy. If you receive bills or phone calls in an effort to collect a debt that you listed, please send us a copy of the bill or notify our office so that we may contact the creditor and let them know you are under the protection of the Automatic Stay.*

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## PAYMENTS TO CREDITORS

You cannot pick and choose a particular creditor and pay him “on the side” because all of your debts must be dealt with through the Court. Any payment which you make to a creditor outside the Chapter 13 plan may be illegal. All creditors must be paid under the authority of the Court, by the terms of the law, and not by any personal desires. If you want to pay your creditors, you must do so through your Chapter 13 plan. You must disclose all of your creditors in your bankruptcy petition when you file for Chapter 13 bankruptcy. Failure to do so may result in the dismissal of your case.

## CHAPTER 13 MEETING OF CREDITORS

Your Meeting of Creditors is scheduled approximately forty (40) days after you file your case. This is the time for the Chapter 13 Trustee to take a look at how your plan is set up and make sure that your payment is working and will pay all of the claims you have scheduled within the time allotted in your plan. The Trustee will also review your income and make sure that you are committing all of your disposable income into the plan and that you are paying enough of your debt to protect your assets.

Prior to your Meeting of Creditors, you will be instructed to watch three (3) videos on the Trustee’s website, to read the Trustee’s red booklet, and to complete a Questionnaire form and return it to our office immediately. In order to move forward with your meeting, we will also be required to submit your most recent tax return, the last sixty (60) days of your pay stubs, and upload a copy of your driver license or photo ID, and proof of your social security number. *Note: You are required to have the last four (4) years of your taxes filed in order to be a debtor in Chapter 13.*

Your Meeting of Creditors will be conducted via Zoom, but we do request that you complete this Zoom hearing in person from one of our office locations. The Trustee will put you under oath, review your identity, and ask you similar questions to those that you answered on the Questionnaire form. They will also review the math of the case and let you know if any changes to the payment are necessary. The hope is that they will be able to “confirm” your plan so that they can start disbursing money to your creditors.

If we cannot confirm the case that day, there will be a hearing in front of a judge a few weeks later. You must come to court that day unless we tell you that your attendance is not necessary.

## CREDITORS NOT LISTED

Creditors not listed by you when you file your bankruptcy petition can cause quite a few problems. There are two kinds of unlisted creditors:

1. Unlisted Creditors: Those you owed money to when you filed, but forgot to list. If you find an unlisted creditor, you should contact Flexer Law, PLLC immediately. Time is very important here, so do not delay in letting us know.
2. Post-Petition Creditors: Those debts you incurred after you filed your petition.

Post-petition creditors are rare because you cannot borrow money while under a Chapter 13 without the Court's permission. **If you incur debts without the Court's permission after you file Chapter 13, the Trustee can ask the Court to dismiss your case.** The only exception to this rule is for medical bills. If you have post-petition medical bills that you cannot pay, please call our office to discuss your options.

You cannot trade in a car, finance a car, buy a car at a "buy-here-pay-here" lot, borrow from a loan company, or enter a rent-to-own contract without Court permission. If you do, the Court may dismiss your case. You also must not fall behind on your rent while you are in Chapter 13, and you must pay all future federal income taxes and property taxes on time while you are in Chapter 13. Incurring debt without Court permission is grounds to dismiss your case.

## CLAIMS OF CREDITORS

Every creditor you list on your Chapter 13 petition is given the opportunity to file a claim for payment. A government entity has 180 days to file a claim. All other creditors are allowed only 70 days from the filing of your case to file their claim for payment. After you have been under the plan for about six (6) months, the Trustee will send you a complete list of every creditor who has filed a claim in your case and the amount which they claim you owe them. You should read and carefully examine this list, called the **"Trustee's Intent to Pay Claims."** If a creditor is listed incorrectly or any amount claimed appears incorrect, you should contact Flexer Law, PLLC immediately. Unless a claim is objected to, the Court will pay the creditor according to the amount they have requested, not the amount listed on your petition.

## HOW CREDITORS ARE PAID

The money that you pay to the Trustee is used to pay the expenses of the administration, including payment to the attorney and then to the creditors. There are three basic types of claims:

1. **Priority** – Administrative Costs, Attorney Fees, Child Support, Alimony, and Federal Taxes Owed
2. **Secured** – Creditors with claims on your property, such as your home or car
3. **Unsecured** – Everyone else

The Trustee's office does not pay anything to unsecured creditors until the priority claims and secured claims are current in monthly payments. Because of this, it can be some time before any payments are made to the unsecured creditors.

## FINANCIAL MANAGEMENT CLASS

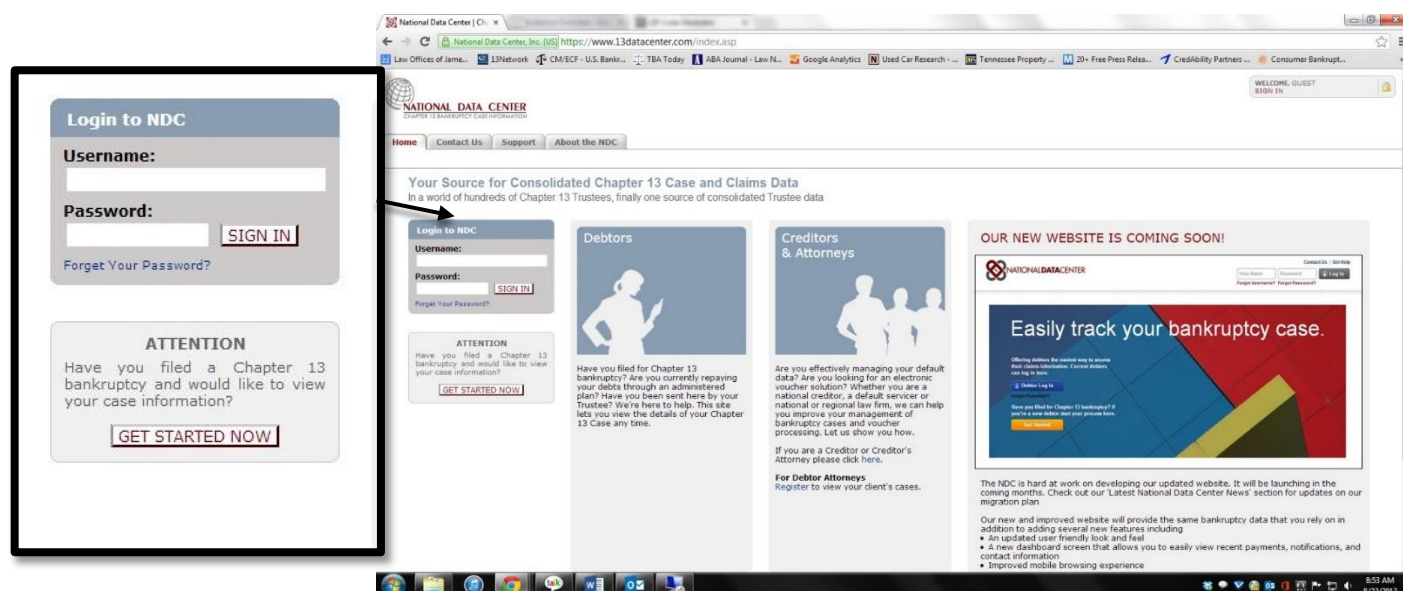
In order to earn a discharge in your Chapter 13 case, you must take a Financial Management Class. This class is offered by the Chapter 13 Trustee. It is free of charge. **To schedule this class, visit the Trustee's website at <https://ch13nsh.com/financial1.htm>.** You must take this class by the time you complete your Chapter 13 plan payments, but we recommend that you schedule the class sometime toward the beginning of your case if possible.

If you have filed a Chapter 13 case before, you may need to take the class before you attend your Meeting of Creditors. You must also take the Financial Management course prior to requesting permission to incur any new debt. Check with your attorney to find out more information if you are uncertain about your obligations regarding this Financial Management class.

## “HOW MUCH DO I STILL OWE?”

Most people are very interested in knowing how much they owe to their creditors and how much they have left to pay on their Chapter 13 plan. The Trustee’s office will automatically send you a letter listing all of your debts and the balance due to each of your creditors once per year.

If you want to see your record more often, you may visit the National Data Center website at [www.ndc.org](http://www.ndc.org) and click on “Get Started Now” to set up an account.



## BORROWING MONEY | EXTENSION OF CREDIT

Obtaining credit without permission of the Court is not only a violation of the Court’s order, it is subject to reversal by the Court. Any credit purchase that you make without approval of the Court would be illegal. The goods would have to be returned and you would very likely lose any payment(s) you had made. You would also place your plan in serious jeopardy if you obtain credit without approval. To obtain Court permission to borrow money, you must make an appointment with Flexer Law, PLLC. At the appointment, you should have with you information about the amount of money you are attempting to borrow, the interest rate, and the monthly payment. We will prepare a budget with you to make sure that you can afford the payments, outside of your Chapter 13 plan, and either send the request for the Trustee’s signature or file a motion with the Court. Note: Prior to obtaining permission for an extension of credit, you must attend the in-person Financial Management Workshop.

## “MY CAR HAS BEEN TOTALLED” | SUBSTITUTION OF COLLATERAL

If you are paying for your car in your Chapter 13 and you wreck your car, you will normally receive insurance proceeds. Often the Court will allow you to use the insurance proceeds to repair the car or, if the car is a total loss, to purchase a replacement automobile with the insurance money.

We normally have to file a motion with the Court asking permission to use the insurance proceeds. There is a 21 day waiting period to give the lienholder or Trustee an opportunity to object. Normally, these motions can be worked out if the parties cooperate. **If your car is involved in an accident and is declared a total loss, please CONTACT OUR OFFICE.**

## SURRENDERING COLLATERAL

Ordinarily, the law will not force a creditor to pick up collateral you surrendered in your bankruptcy. If you surrender property to the estate and/or the creditor, the creditor does not have to reclaim the collateral. This situation is most common with old automobiles of little or no value. It may be necessary for you to tow the collateral to the creditor or to a local agent or representative of the creditor, or you may have to call the codes department in your county to have them pick up the collateral. It is outside of the services which we provide to deal with these situations.

## SELLING OR TRANSFERRING YOUR PROPERTY

You cannot transfer or dispose of your property, including land, without Court approval. If you dispose of your property without Court permission, the transaction may be set aside. If you want to sell your property, trade in a car, or sell your home, you must discuss it with your attorney.

Flexer Law, PLLC represents only you. Flexer Law, PLLC will not give legal advice to creditors, real estate agents, mortgage brokers, attorneys representing you in other matters, nor to any other professional retained by you. If you retain a professional of any type, they should be familiar with Bankruptcy matters or hire their own attorney if they need legal advice. The hiring of a professional must be approved by the bankruptcy court, so please contact our office.

## “I CAN’T MAKE MY PAYMENT” | SUSPENSION OF PAYMENTS

At some point during the life of your Chapter 13 plan you may be out of work, sick, or have other reasons why you cannot pay the Chapter 13 Trustee. If this occurs, you must contact Flexer Law, PLLC and discuss your options. You may need to set an appointment and support your request to stop, or suspend, your payments with a signed budget reflecting that you cannot pay the Chapter 13 Trustee for a short period of time (1, 2, or 3 months).

A suspension of payments is a last resort after you have exhausted all other avenues of paying your plan. Also, though you can successfully suspend your payments, a creditor who did not object to the suspension can then file a Motion for Relief from the Automatic Stay to try to get permission to foreclose or repossess your property.



Of course, creditors can object to your request for a suspension of payments because they will not receive payments. A hearing is set if there is an objection to your request to suspend payments and the Bankruptcy Judge will decide whether to grant the suspension of payments.

If no creditor objects, we will submit an order granting the suspension. **It will take approximately thirty (30) days for the suspension order to go through.** *Note: If you need to suspend for the current month, please contact us by the 20<sup>th</sup> of the month.*

Even though you have suspended, the Court will not send an order to your employer telling them to stop withholding your Chapter 13 plan payments, and these payments will continue while your case is suspended. The Trustee will typically refund payments received during the suspension period, but there can be a significant delay on receiving these refunds due to the timing of the motion and order.

Chapter 13 is for individuals with regular income. If your income is not sufficient and stable enough to support a plan, you may need to consider voluntarily dismissing your Chapter 13 or converting your case to a Chapter 7. Please call and schedule an appointment with us should you wish to discuss these options.

## MODIFICATIONS TO YOUR PAYMENT

If you experience changes to your budget that make it difficult for you to afford your plan, such as a reduction in income or an increase in your expenses, you should contact your attorney to see if adjustments can be made to your plan payment. You will need to provide recent pay stubs and update your budget with our office because a new budget is required to be submitted with the motion to modify your plan. You will need to schedule an appointment for a phone call with our office so that we can go over your grounds to modify the payment and the budget. It will take approximately thirty (30) days for a plan modification to go into effect after the motion is filed.

**An important note: You cannot increase the amount that you are contributing to your 401(k) or retirement accounts while you are in Chapter 13 or take out any new 401(k) or retirement loans while you are in bankruptcy. Doing so may mean that we cannot modify your plan or suspend your plan payments.**

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## DISMISSAL | MOTION TO DISMISS

If you fail to make your payments to the Trustee as required by your plan, the Trustee will ask the Court to dismiss your case. It is very important to contact Flexer Law, PLLC if you ever expect to miss a payment due to being laid off, being medically disabled, or because you have changed jobs. It is very important to talk to Flexer Law, PLLC if you know of any reason why the Trustee would not receive payment. Remember, neither the Trustee's office nor Flexer Law, PLLC has any authority to let you miss a payment or allow you to pay less than your plan requires. Only the Judge can make such a decision.

If you receive a letter regarding the **Trustee's Motion to Dismiss** your case, contact Flexer Law, PLLC immediately to discuss your options.



## VOLUNTARY DISMISSAL

Chapter 13 bankruptcy is voluntary. Federal Bankruptcy law allows you to request that your Chapter 13 case be dismissed at any time. If you desire to stop your case, contact your attorney. A motion to dismiss your case voluntarily will need to be filed with the Court.

You should understand that a dismissal will reactivate all unpaid or disputed debts, all interest, finance charges, and all late creditors who did not file their claims. In addition, you will be forced to deal with those creditors on their terms. If your case is dismissed voluntarily after a Motion for Relief has been filed, you will not be eligible for any kind of Bankruptcy relief for 6 months.

## PERSONAL INJURY, WORKERS' COMPENSATION & CHAPTER 13

If you are injured in an automobile accident or are injured on the job, you must contact our office immediately. The Bankruptcy Court will need to approve and authorize any type of Personal Injury or Workers' Compensation settlement in which you are involved. Failure to notify us as soon as an accident or injury occurs could have an effect on how much of your recovery you will be allowed to keep.

Our office handles Personal Injury and Workers' Compensation cases and can guide you through the potential maze of your injury claim in relation to your bankruptcy.

Also, if your car is damaged in a personal injury claim, you may want to ask the Court to allow you to use the insurance proceeds to purchase a substitute automobile. At any rate, we must be involved in the case as soon as possible to help protect your rights. If you fail to contact us and later you receive a settlement and it is not approved by the Bankruptcy Court, you may have to forfeit or turn over those proceeds to the Bankruptcy Estate. The easy rule of thumb to follow is: **CALL US FIRST.**

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## WHEN YOU ARE FINISHED

After you have successfully completed your plan (the Trustee has received enough money to pay your creditors what you promised to pay them), you will normally receive a discharge of your debts. You will generally not owe any debts, other than child support, student loans, alimony, ongoing mortgage payments, and taxes. If you are not sure which of your debts will be discharged, you should discuss that with your attorney when you meet with him or her. You may receive a small refund check from the Trustee for any overpayment you may have made at the end of your case.

## CONTACT BY CREDITORS AFTER COMPLETION OF CHAPTER 13

Should you receive any request for additional money from a creditor after your plan is complete, do not pay without first consulting Flexer Law, PLLC.

## CREDIT RATING & CREDIT REPAIR

Your credit rating during and after completion of your Chapter 13 will be, as it is now and has been in the past, the personal decision of any creditor who looks at your credit record. A credit rating is a record of all of your past credit purchases and subsequent payment records. This record is made available to a creditor and he makes up his own mind as to whether or not he wishes to grant you credit. Judgments, collections, attachments, straight bankruptcies, and Chapter 13 bankruptcies are indications, in one degree or another, of credit problems. After many years and hundreds of paid-in-full Chapter 13 cases in this area, we have found that many knowledgeable creditors look upon those who have paid debts in full under a Chapter 13 plan as individuals who have fulfilled their obligation to their creditors. Any credit record that has been blemished by payment problems must be gradually rebuilt..

Credit repair is not within the scope of the service that we provide you in representation for your bankruptcy. If you feel that you have incorrect, false, or misleading information on your credit report, you have rights under the Federal Fair Credit Reporting Act. **It is extremely important for you to keep every document that you receive from Flexer Law, PLLC, the Bankruptcy Court, and the Chapter 13 Trustee's office.** This can aid you if you wish to undertake credit repair on your own.




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### **Client FAQ:**

***“When I look at my credit report, some of my creditors are not showing that I have filed bankruptcy. What do I do?”***

*If you believe there are errors on your credit report, you will need to directly contact the credit bureau to update any erroneous information. They may need to see a copy of your notice of filing, bankruptcy petition, and/or discharge, so it is important that you keep all of your bankruptcy documents in a safe place so you can send copies to the credit reporting bureaus if required.*

*Flexer Law, PLLC has no control over the content of your credit report. It is your responsibility to check your credit report periodically and make sure it is accurate.*

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## COMMUNICATING WITH YOUR ATTORNEY

Under the rules of the Bankruptcy Court and your agreement with our office, we will continue to appear and represent you in your Bankruptcy for as long as your case is active or until the Judge permits us to withdraw from your case for some reason. If you ever have a question concerning your case, a creditor, your rights, or your options, you should make it a rule to ask our office FIRST. In most cases, Flexer Law, PLLC will be paid through your Chapter 13 plan. Be sure that you fully discuss with our office whether additional legal services provided to you during your plan will cost you more money or whether the initial fee will cover all legal services. All legal fees must be approved by the Bankruptcy Judge.

You may have questions, concerns, or needs that arise during your Chapter 13 bankruptcy. We ask for your patience when you contact our office. Flexer Law, PLLC's employees are each assigned to different tasks. Our office handles thousands of Chapter 13 cases in addition to yours. Sometimes, it may take several days for us to get an answer from the Trustee, the Court, or a creditor. Many motions by debtors have a 21-30 day waiting period in order to give a creditor or the Trustee an opportunity to review and possibly object to your request. Creditors have such rights under Bankruptcy Codes and rules.

The Flexer Law, PLLC staff are here to work hard for you. Please do not get frustrated if it takes time to resolve your problem. It makes our staff's job much easier when clients are courteous and patient. When emergencies occasionally arise, our office will do everything possible to help you. Remember, we are on your side; however, we cannot solve every problem.

Also, if an employee of Flexer Law, PLLC is not instantly available, please leave a detailed message so that we can start working on your problems as quickly as possible. Often we must obtain information from the Trustee, a creditor, or the Court to answer your question. The more information we have, the quicker we can solve your problem or answer your question. If these basic guidelines are followed, your Chapter 13 will be a more pleasant experience for you.

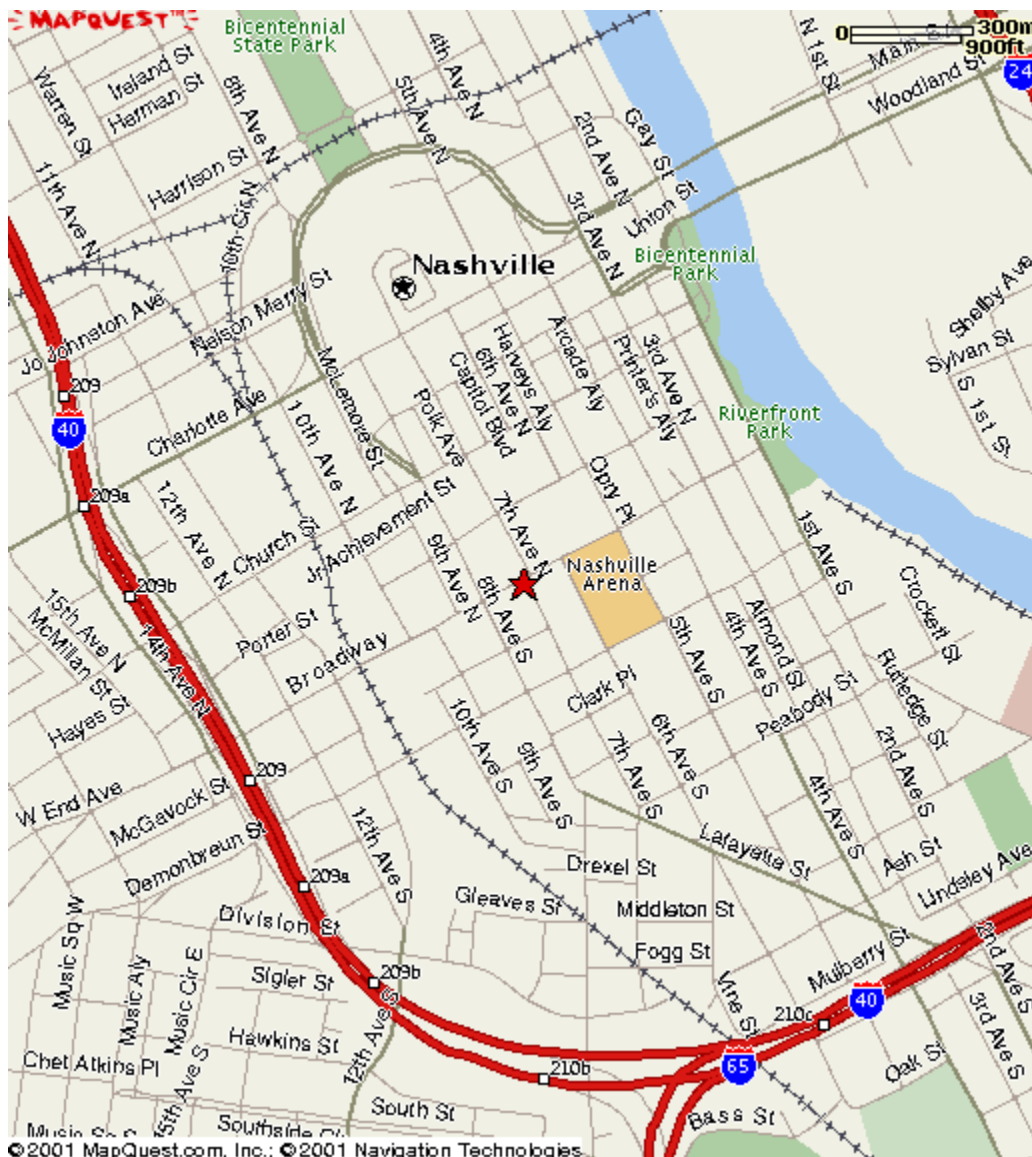
## FINAL WORD

Completing a Chapter 13 plan is not easy. You may have to make a real sacrifice to meet the obligations which you have specified in your plan and still live within your Chapter 13 budget. A Chapter 13 bankruptcy lasts for several years, and throughout that time you may have changes to your job, housing, health, monthly expenses, and family obligations. It is important for you to stay in contact with your attorney if any of these changes makes it difficult for you to afford your plan.

### TELEPHONE CALLS

- ✓ Please be polite and patient with our staff.
- ✓ If you leave a message, wait for a returned call.
- ✓ Please do not call back unless it has been more than 48 hours since you left your first message.
- ✓ Excessive calls will be billed accordingly.

**UNITED STATES BANKRUPTCY COURT (U.S. Customs House)  
701 BROADWAY  
NASHVILLE, TN 37203**



The U.S. Customs House is located between 7<sup>th</sup> and 8<sup>th</sup> Avenue on Broadway, across from Hume-Fogg High School. Paid parking is available in the back of the building. The court entrance is also located in the back of the building.

More information online at  
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