

Keys to Getting a Chapter 13 Plan Confirmed Promptly

IT STARTS WITH PROPER INTAKE.

§526(a)(2) A debt relief agency shall not - make any statement, or counsel or advise any assisted person or prospective assisted person to make a statement in a document filed in a case or proceeding under this title, that is untrue or misleading, or **that upon the exercise of reasonable care, should have been known by such agency to be untrue or misleading (emphasis added).**

§527(c) requires a “...**reasonably diligent inquiry of the assisted person...**” (emphasis added).

§1325(a)(9) requires all income tax returns to have been filed as a condition of confirmation.

Review the debtors tax returns and pay stubs with the debtor(s) during intake. Getting taxes and pay stubs in advance means:

- 1) The 341 meeting can be held on the originally scheduled day.
- 2) Forms 122C1 and 122C2 can be completed correctly.
- 3) Schedule I can be completed correctly, including proof of self-employment or 1099 income.
- 4) SOFA #4 can be completed correctly.
- 5) If you see tax fraud you can discuss it with the debtor and tell them about UST referrals.
- 6) You can be proactive in dealing with IRS issues.
- 7) If any tax returns show amounts owed, give notice to the IRS and IDOR.
- 8) If the debtor states they did not have to file, give notice to the IRS and IDOR and order Wage and Income Transcripts.
- 9) You can be ready to address the IRS’s claim that returns have not been filed. If the tax returns have only recently been filed or are about to be filed, give notice to the IRS and IDOR and make sure you have signed copies of the returns in file ready to provide to them.
- 10) Getting off to a clean start greatly increases your ability to get the plan confirmed.

Failure to provide taxes and pay advices seven days before the §341 meeting **will** delay the meeting and therefore delay confirmation. One in four meetings are not held on the originally scheduled date for failure to provide taxes and pay advices. Delayed meetings are delayed confirmation hearings.

Judges also expect that debtor’s counsel will obtain and review tax returns and pay advices before filing a case. **The following is copied from Judge Slade’s published Court Procedures:**

CHAPTER 13 CASES

a. Court’s Expectations.

- i. To ensure compliance with the deadlines imposed by the Bankruptcy Code and Rules (see, e.g., 11 U.S.C. §§ 521, 1308; Fed. R. Bankr. P. 1007(c)) and

efficient administration of cases, Debtor's counsel are expected to collect from their client prior to filing the petition all documents required for the chapter 13 trustee to hold a section 341 meeting (e.g., pay advices, tax returns/transcripts from the past 4 years), absent extenuating circumstances that necessitate a hasty filing.

ii. If a document does not exist or is not in a debtor's possession when counsel is retained (e.g., a debtor was required to file a tax return but didn't, or filed a return but lacks a copy), counsel is expected to take reasonable steps to obtain the document (e.g., having the debtor prepare and file past-due returns) before filing, again unless extenuating circumstances necessitate a hasty filing. If this is not possible, counsel are expected to either provide the information to the trustee at least seven days before the first scheduled 341 meeting or seek an extension of the deadline and, in that motion, describe why timely providing information to the trustee was not possible.

iii. All parties and counsel should note that Judge Slade may grant motions to dismiss promptly—and may deny fee petitions—if the chapter 13 trustee must expend their resources (and court resources) to seek dismissal because they have not received information that debtor's counsel could and should have collected before filing the case.

Judge Slade's complete court procedures can be found here:

<https://www.ilnb.uscourts.gov/sites/ilnb/files/CourtProcedures2.6.26.pdf>

All the judges have required procedures posted on their web sites, familiarize yourself with them and make sure you check the judges' site to avoid setting a motion for an invalid date.

More Intake issues:

If the debtor is going to pay via payroll deduction, file the payroll order the day the case is filed. Prompt payroll order equals prompt plan payments equals prompt plan confirmation (also gives you a better chance at getting your fees paid).

If not paying via payroll deduction, give them the remit to address for mail payments when the case is filed or give them the link to [TFS](#) and have them set up an account right away.

Fun Fact: Only about 6% of plan payments are made by Cashier's Check or Money Order, 40% are by payroll deduction and 54% are via [TFS](#).

Be sure the debtor sets up their [National Data Center](#) account before the 341 meeting.

Encourage your client to complete the required Personal Financial Management class before the §341 meeting ([Trustee's Free Debtor Ed](#)).

NEXT – GETTING THE §341 MEETING CONCLUDED ON THE FIRST TRY

Send taxes, pay advices, and proof other income including self employment income at least two weeks prior to the §341 meeting. The meeting will not be held without these documents.

We must review all the schedules, statements, plans, taxes and pay advices for every case in advance of the §341 meeting. The sooner we have documents the sooner we can review them and let you know of any deficiencies that must be cured to hold the meeting.

We need proof of **all** income listed on Schedule I to properly prepare for the meeting.

If the debtor has self-employment income on line 8a, you **must** attach a statement showing how that number was calculated and provide documents to support your calculations.

Please be careful and drop the required documents into the correct folder in the document portal so every document is where we expect it. If taxes or pay advices are not where we look for them, the meeting may be delayed.

Look at documents before you send them:

When the trustee's office tells you something is missing, make sure you send what we requested; **do not resend documents you have already provided.** This will probably delay the §341 meeting.

Schedule A issues that might slow you down:

If value is materially less than Zillow/Redfin, be prepared to provide a CMA.

If the property is held as TBE, be prepared to provide a copy of the deed.

If the property is jointly owned and it's not a joint case, complete Schedule H.

If debtor owns other real estate, calculate the 60 month cash flow on each.

If R/E taxes are not escrowed, give notice to the county treasurer.

If R/E taxes are not escrowed, check the R/E tax payment status on line or by phone.

If the county has notice, the debtor has free protection against tax sales.

Schedule D issues that might slow you down:

Make sure all the secured creditors have complete addresses.

Make sure they are all provided for in the plan, and by the **correct name.**

List the County Treasurer if there is no escrow.

If R/E taxes are owed, list the Treasurer and the Clerk and (if sold) the tax buyer.

Call the county to make sure you have a good cure or redemption amount.

Schedule E issues that might slow you down:

Routine notice to IRS: PO Box 7346, Philadelphia, PA 19101-7346. ONLY this address.

Routine notice to IDOR: PO Box 19035, Springfield, IL 62794-9035. ONLY this address.

If the debtor has a DSO obligation, give notice to the DSO recipient, not just IDHFS.

Give notice to the DSO creditor even if the debtor is current. All creditors need notice.

Give notice to the DSO creditor even if there is no order. See definitions of claim §101(5); creditor §101(10) and domestic support obligation §101(14A).

Schedule G issues that might slow you down:

Provide the complete name **and address** of **all** parties with whom the debtor has a lease.

Yes, the debtor must list their landlord.

Schedule I issues that might slow you down:

If debtor reports income on line 8a, failure to attach a statement detailing gross revenue and expenses and showing how line 8a was calculated, **will** delay the §341 meeting.

Schedule J issues that might slow you down:

Debtor must document any non-filing spouse debt service payments.

SELF EMPLOYED DEBTORS (really self employed, not Uber / Lyft / Door Dash etc.)

Before the §341 Meeting:

Provide any tax returns filed by debtor's business such as 1120S or Form 1065.

Debtors' tax returns must include **all schedules** that were filed with the return.

Provide a YTD income statement with bank statements to document revenue.

Provide a full year income statement for the most recent year.

List co-signed or personally guaranteed business debts on Schedules D, E/F and H.

List co-signed or personally guaranteed leases on Schedule G.

PROOFREAD PROOFREAD PROOFREAD

Look at the PDF of the plan before filing. It is not uncommon for a plan provision to look one way on your screen, and another way entirely on the PDF that gets filed.

Math errors and drafting errors **will** delay confirmation.

Rule 3015(d) requires the debtor to serve a plan filed after the petition date on all creditors, an amended plan cannot be confirmed without a certificate of service on the docket.

Here are a few common errors that delay confirmation and are easily avoidable:

Part 3.3, total of payments is less than the amount of claim, this plan cannot be confirmed.

Name of Creditor	Collateral	Amount of claim	Interest rate	Monthly plan payment	Estimated total payments by trustee
Regional Acceptance Co	2023 Kia Forte 8,000 miles	\$22,200.00	7.00%	\$297.02	\$17,821.03

Disbursed by:
 Trustee
 Debtor(s)

Per Rule 3010(b), minimum monthly payment to a creditor is \$15; this plan cannot be confirmed.

Mrc/united Wholesale M	663 E Peachtree Ln Round Lake, IL 60073 Lake County	\$1,858.00	Prepetition: \$479.37	0.00%	\$11.41	\$479.37
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Disbursed by:
 Trustee
 Debtor(s)

Check the math, will the creditor in Part 3 be paid in full within 60 months? If not, the plan cannot be confirmed. In the example below, the terms provided take 65 months to complete.

Name of creditor	Estimated amount of creditor's total claim	Collateral	Value of collateral	Amount of claims senior to creditor's claim	Amount of secured claim	Interest rate	Monthly payment to creditor	Estimated total of monthly payments
Bmw Financial Services	\$44,613.00	2022 BMW X3 53000 miles	\$33,100.00	\$0.00	\$33,100.00	9.5%	\$651.10	\$41,709.60

Amounts in Part 5.1 control. Does the plan fund the amount in the first line in 5.1? In the example below, the total plan payments are \$67,970 with \$41,710 paid on a vehicle loan in Part 3.2 so it is obvious that the plan cannot fund \$67,970 to GUCs, and the plan cannot be confirmed.

5.1 Nonpriority unsecured claims not separately classified.

Allowed nonpriority unsecured claims that are not separately classified will be paid, pro rata. If more than one option is checked, the option providing the largest payment will be effective. *Check all that apply.*

The sum of \$ **67,970.00**
 % of the total amount of these claims or estimated amount of \$6

If the debtor **assumes** a lease in Part 6.1, the plan must provide for payments pursuant to the lease and promptly cure any arrears. A common error that will delay confirmation is for 6.1 to provide payments of \$0.00 per month.

Don't let debtors pay high interest auto loans direct. Even if it's a "910" claim you can cram the interest rate down by paying it through the plan and easily save the debtor an amount greater than your and my fees combined. **Do. The. Math.** Debtors should never pay a 27% APR loan directly unless they are protecting a non-filing co-debtor.

Before, during and after the §341 Meeting:

Please prepare your client for the §341 meeting. You know all the questions. Nobody likes surprises at the meeting.

It is your job to make sure your client makes their first plan payment on time. The first plan payment is the most important payment.

If you know you want the confirmation hearing to be continued to a date past the bar date, let us know at the §341 meeting.

Review the trustee's document requests and amendment requests with the debtor as soon as possible. Provide requested documents and file required amended Schedules and Statements as soon as possible.

Please don't file an amended plan until all secured claims are on file. Wait for the bar date if debtors are required to propose a 100% plan.

The trustee's attorney starts reviewing confirmation matters a week or more before the confirmation hearing. If amendments have not been filed by first time we look at a case it's likely to be put on the continued list.

In summary, the keys to getting a plan confirmed promptly are:

Intake

Prepare (your documents and your client)

Proofread

Do. The. Math.

Communicate