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ANYTHING YOU CAN DO, I CAN DO BETTER:
WHY YOU SHOULD CONSIDER CHAPTER 13



Panelists:



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ANYTHING YOU CAN DO, I CAN DO BETTER:
WHY YOU SHOULD CONSIDER CHAPTER 13



Panelists:



John Gustafson
Chapter 13 Trustee
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ANYTHING YOU CAN DO, I CAN DO BETTER:
WHY YOU SHOULD CONSIDER CHAPTER 13




WHY YOU SHOULD CONSIDER CHAPTER 13

Property

- Real
 - Catching Up
 - Contrast short delay Chpt 7 affords
 - § 3002.1 makes relief more certain
 - *In re Weigel*, 485 B.R. 327 (Bankr. E.D. Va. 2012)






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WHY YOU SHOULD CONSIDER CHAPTER 13

Property

- Real
 - Avoiding Liens . . . Like You Owe Them Money
 - Generally
 - Only in Chapter 13
 - *Dewsnupp v. Timm*, 502 U.S. 410 (1992)
 - *In re Davis*, 716 F.3d 331 (4th Cir. 2013)



Mark Leffler




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WHY YOU SHOULD CONSIDER CHAPTER 13

Property

- Real
 - Avoiding Liens . . . Like You Owe Them Money
 - Generally
 - Advantage in keeping the home



Mark Leffler




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WHY YOU SHOULD CONSIDER CHAPTER 13

Property


- Real
 - Avoiding Liens
 - Problems with "Chapter 20"
 - Counting or allowing discharged, wholly unsecured debt as unsecured claim in subsequent Chapter 13 case
 - Debt limit problem




WHY YOU SHOULD CONSIDER CHAPTER 13

Property

- Real
 - Avoiding Liens
 - Loan Modifications
 - Filing Chpt 13 used to hurt debtor in obtaining loan modification.
 - Chapter 13 has gone from hurting to actually helping [Speculation or Fact?]




Mark Leffler

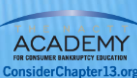


WHY YOU SHOULD CONSIDER CHAPTER 13

Cont'd

- Avoiding Liens
- Loan Modifications
 - Maintain automatic stay to protect against foreclosure while working to obtain loan modification
 - Mandatory in some states
 - Firmly rooted authority
 - 11 U.S.C. § 363
 - F.R.B.P. 6004





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WHY YOU SHOULD CONSIDER CHAPTER 13

◦ Cont'd

◦ Avoiding Liens

◦ Loan Modifications

- *In re Bambi*, 2013 WL 1912940
- *Mickle v. Morin*, 297 F.3d 114, 125 (2d Cir. 2002)
- *Badgley v. Santacroce*, 800 F.2d 33, 36 (2d Cir. 1986)



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WHY YOU SHOULD CONSIDER CHAPTER 13

Cont'd

◦ Avoiding Liens

◦ Loan Modifications

◦ Judge Huennekens' ruling:

- repayment of mortgage arrearages was "cause" why debtors were in 5-year plan (despite not being required to), and once that "cause" no longer existed, debtors could modify plan to shorten plan length*

**In re Brice*, 2013 WL 5701050 (Bankr. E.D. Va. 2013)

WHY YOU SHOULD CONSIDER CHAPTER 13

Property

◦ Personal

◦ Cars

- Getting a vehicle back after repossession
- *In re Jones*, 2012 WL 5993760, Bankr. E.D. Va. 2012 (Judge Tice)

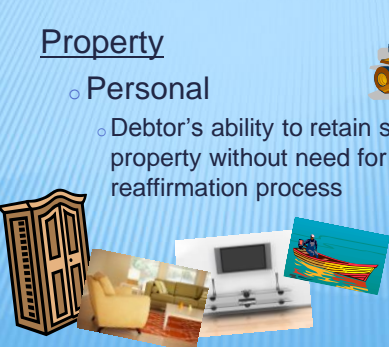



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WHY YOU SHOULD CONSIDER CHAPTER 13

Property

- Personal
 - Debtor's ability to retain secured property without need for *redemption* or reaffirmation process






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WHY YOU SHOULD CONSIDER CHAPTER 13

Cont'd

- Chapter 7 – statement of intentions and choices
 - Redemption
 - High cost of redemption borrowing
 - Who is helping debtor with redemption in a Chpt 7?
 - Is the Chpt 7 attorney doing that work *pro bono*?

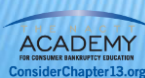



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WHY YOU SHOULD CONSIDER CHAPTER 13

Cont'd

- Chapter 7 – statement of intentions and choices
 - Reaffirmation
 - Requirements – locking the debtor in
 - *In re Husain*, 364 B.R. 211, 219 (E.D. Va. 2007)
 - *Dumont v. Ford Motor Credit Co. (In re Dumont)*, 581 F.3d 1104 (9th Cir. 2009)


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WHY YOU SHOULD CONSIDER CHAPTER 13

Cont'd

- Reaffirmation
 - Chpt 7 attorney signing off where hardship presumption exists
- Courts are split
 - *In re Stevens*, 365 B.R. 610 (Bankr. E.D. Va. 2007)
 - *In re Gomez*, 473 B.R. 322 (Bankr. W.D. Ark. 2012)



WHY YOU SHOULD CONSIDER CHAPTER 13

Property

- Personal
 - Economics of motor vehicle in a Chpt 13
 - Cram-Down
 - Hanging Paragraph – limits cramdown/ but there are exceptions
 - Not a purchase money loan
 - *In re Price*, 562 F.3d 618 (4th Cir. 2008)



WHY YOU SHOULD CONSIDER CHAPTER 13

Cont'd

- Vehicle not for personal use – 1) commercial use; 2) of the debtor (?)
 - *In re Lorenz*, 368 B.R. 476 (Bankr. E.D. Va. 2007)
- Interest rates – knock them down in 13, not in 7
- But, negative equity and gap insurance are part of PMSI



WHY YOU SHOULD CONSIDER CHAPTER 13

Property

- Personal
 - Retain non-exempt property
 - tax refunds
 - Debtor maintains control
 - Meet liquidation if exemption not enough



WHY YOU SHOULD CONSIDER CHAPTER 13

Income

- Differences between 7 and 13 Means Tests
 - “Flunking” 22A does not necessarily mean disposable income on 22C
 - Deductions allowed (in most jurisdictions) for voluntary retirement contributions
 - Deductions allowed for repayment of 401(k) loans



WHY YOU SHOULD CONSIDER CHAPTER 13

Income

- *Sometimes the point is moot*
 - Debtors often win “claims lottery”
 - Claims process in Chpt 13 may result in debtor not having to pay unsecured creditors as much
 - Even creditors with large claims often fail to file claims in Chpt 13
 - Claim objection process often disallows claims that fail to comply with Rule 3002

WHY YOU SHOULD CONSIDER CHAPTER 13



Dealing with Surprises

- Chpt 13 can be used alone or in combination with Chpt 7
- Chpt 13 can be a “safe harbor” keeping options open
 - 8 year bar in Chpt 7

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WHY YOU SHOULD CONSIDER CHAPTER 13

Dealing with Surprises

- Converting:
 - Post-petition debts are swept into Chpt 7
 - Maintain option to convert to Chpt 7 to add anticipated debt
 - Ability to convert and keep property acquired post-petition
 - “Normal” conversion
 - “Bad faith” conversion

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WHY YOU SHOULD CONSIDER CHAPTER 13

Dealing with Surprises

- Converting:
 - Cars: In Chpt 13, can still convert and discharge in a Chpt 7
 - But, in Chpt 13, *Nolan* and *Adkins*



John Gustafson

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WHY YOU SHOULD CONSIDER CHAPTER 13

Special Debts & Debtors

- Domestic Support Obligations
 - Property settlement debts covered by Chpt 13 discharge
- Tax problems
 - Chpt 20
 - Chpt 13



WHY YOU SHOULD CONSIDER CHAPTER 13

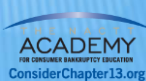
Special Debts & Debtors

- Attorney fees
 - Lamie in Chpt 7
 - Ability to pay Chpt 13 attorney with post-petition earnings vs. discharge of fees in Chpt 7
 - Ability to request supplemental fees
- Co-debtor stay
 - No automatic termination of co-debtor stay
 - §362(c)(3) limitations don't apply
 - What a creditor has to show to get relief from the co-debtor stay

WHY YOU SHOULD CONSIDER CHAPTER 13

Bad Behavior (*Alleged*)

- Using Chapter 13 to manage the risk of non-dischargeability issues
 - Less likely an adversary will be filed
 - Less anger if paying in a Chpt 13
 - Discharge in Chpt 13 is at the end of the case – may be forgotten by then
 - Debtor can voluntarily dismiss



WHY YOU SHOULD CONSIDER CHAPTER 13

Bad Behavior (*Alleged*)

- Discharge claim in Chpt 13 but not Chpt 7
 - Willful and malicious injuries to property
 - Claims for 'conversion'
- Requiring an Amendment (13) vs. going to jail (7)
 - Chpt 13 Trustees are less adversarial
 - Chpt 13 Trustees do not start with assumption that mistakes are intentional

WHY YOU SHOULD CONSIDER CHAPTER 13

Bad Behavior (*Alleged*)

- Re-paying value of preference payments or fraudulent transfers over time to the Chpt 13 trustee
 - Alternative to Chpt 7 trustee suing payee (i.e. tax refund season)



John
Gustafson



WHY YOU SHOULD CONSIDER CHAPTER 13


Other Time Related Issues

- Control during a "liquidating" Chpt 13
 - Chpt 13 allows debtor more control over sale
 - Chpt 13 could result in paying less to unsecured creditors than in a Chpt 7
 - A Chpt 13 debtor may have a better chance of getting increased value for an asset like real estate
 - Chpt 7 trustees typically look for quick sale, which doesn't maximize the value of an asset

WHY YOU SHOULD CONSIDER CHAPTER 13

Other Time Related Issues

- Longer automatic stay
 - Disappears after discharge in Chpt 7/Can be up to five years in Chpt 13
 - Obtain automatic stay while waiting out the 8 year Ch7-to-Ch7 bar




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WHY YOU SHOULD CONSIDER CHAPTER 13

Other Time Related Issues

- Longer automatic stay
 - How to use Chpt 13 to deal with student loans
 - Buying time
 - A payment Plan based on a more holistic budgetary assessment
 - Private lenders (harder to deal with)




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WHY YOU SHOULD CONSIDER CHAPTER 13

Other Time Related Issues


- Credit Reports
 - Chapter 13 is less damaging to the debtor's credit report
 - Generally it remains on credit report for 7 years
 - 10 years for a Chpt 7




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Practice Tips



John Gustafson



Mark Leffler



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