

ADVISING SMALL BUSINESS CLIENTS IN CHAPTER 13



UT LAW
16TH ANNUAL
CONSUMER
BANKRUPTCY
PRACTICE



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Debtor Engaged in Business

11 U.S.C. § 1304

- (a) **A debtor that is self-employed and incurs trade credit** in the production of income from such employment is engaged in business.
- (b) Unless the court orders otherwise, a debtor engaged in business may operate the business of the debtor and, subject to any limitations on a trustee under sections 363(c) and 364 of this title and to such limitations or conditions as the court prescribes, shall have, exclusive of the trustee, the rights and powers of the trustee under such sections.
- (c) A debtor engaged in business shall perform the duties of the trustee specified in section 704(a)(8) of this title.

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11 U.S.C. § 704(a)(8)

- Requires the debtor to file with the Trustee periodic reports pertaining to the debtor's operation of the business.
- These reports may be monthly, quarterly, annually, or as required by the Trustee.
- These reports may include:
 - profit and loss statements;
 - balance sheets;
 - bank statements;
 - proof of insurance;
 - proof of tax deposits; etc.



Federal Rule of Bankruptcy Procedure 2015

(c) *Chapter 13 Trustee and Debtor.*

(1) *Business Cases.*

In a chapter 13 individual's debt adjustment case, when the debtor is engaged in business, the debtor shall perform the duties prescribed by clauses (2)-(4) of subdivision (a) of this rule and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the property of the debtor within the time fixed by the court.

Chapter 13 debtor engaged in business has a

DUTY:

- (1) To keep records of receipts, expenses, and assets;
- (2) To file reports; and
- (3) To give notice of the case to every entity holding money or property of the debtor (i.e. banks, credit unions, utilities, landlords, insurance companies which hold a policy with a cash value, etc.).

Fed. R. Bankr. Pro. 2015 (a)(2)-(4)

Factors in Identifying a Business Case

1. The petition contains a “D/B/A.”
2. Debtor is self-employed on Schedule I.
3. Debts include loans for business assets or trade credit incurred in the production of income.
4. Debtor has one or more employees.
5. Debtor owes 940/941 taxes; personal property taxes for fixtures, furniture, and equipment.

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