

## Chapter 13 Rights and Duties

Please read and initial each paragraph. If you are married and filing a joint bankruptcy, both spouses must read and initial each.

### 1. GENERAL

#### 1.1 UNDERSTANDING ALL MY RIGHTS AND DUTIES

\_\_\_\_\_ I am acknowledging that I have read all the following sections and understand them whether they are initialed or not and whether or not I and/or my spouse have signed this Bankruptcy Rights and Duties on the last page.

#### 1.2 ONLY ONE SPOUSE INITIALING/SIGNING

\_\_\_\_\_ If I am the only spouse who has initialed any section of these rights and duties or Attorney Retainer Agreement or signed below, the other spouse fully understands this/these sections and joins with me in my initialing and/or signing and has discussed this with me and fully understands the same.

#### 1.3 LAST RESORT – WORKING WITH CREDITORS, BORROWING MONEY

\_\_\_\_\_ I understand that Gary Cunha, P.C. has advised not to file a Chapter 13 if I can work with the creditors or otherwise handle our financial problems without bankruptcy.

#### 1.4 CREDIT REPORT – CREDIT RE-ESTABLISHMENT PROGRAM

\_\_\_\_\_ I understand that the filing of a Chapter 13 will reflect as a negative on my credit and will appear on my credit report for up to 10 years, even if bankruptcy actually raises my credit score. In the Western District of Texas, Waco Division, I am aware that, if I complete an 80% or higher Chapter 13 Plan, I will qualify for credit re-establishment with the assistance of the Trustee's Office. The filing will be on my credit report even if my case is dismissed. My credit may be checked for future loans, applications for insurance, and in other instances where credit checks are run.

#### 1.5 PERSONAL DECISION

\_\_\_\_\_ I understand that the decision to file a Chapter 13 is a personal decision and not merely a legal decision. I have been advised as to the legal consequences and I am making this decision of my own free will. I understand that Gary Cunha, P.C. cannot make this decision for me. I understand that I am filing a form of bankruptcy, and I have never been told otherwise by my attorney or any other staff member.

### 2. PAPERWORK-SCHEDULES

#### 2.1 DEBTS

\_\_\_\_\_ I know must list **ALL** creditors I owe, even if I am current on my payments or the first payment is not yet due and even if I "don't want to include them in the bankruptcy." This includes credit unions, child support, credit cards, disputed debts, co-signed debts, business or personal debts, real estate, taxes, delinquent federal income taxes, homeowners insurance, Veterans Administration or HUD, debts to family members, and any other guaranteeing agency on your home loan or student loans. However, I do not have to list a credit card which is paid off with a zero balance.

#### 2.2 SPOUSES & FORMER SPOUSES

\_\_\_\_\_ I know I must list my spouse, even if he or she is not filing the bankruptcy petition with me, and all former spouses. I understand that I cannot discharge alimony to or maintenance for support of my spouse, former spouses or children or other debts related to family court decisions.

## 2.3 PROPERTY

\_\_\_\_\_ I know I must list **ALL** property, real, personal and/or intellectual, that I own (i.e., houses, rental property, rent-to-own, furniture, stocks, bonds, lawsuits, potential lawsuits against someone else, debts owed to me, jewelry, cars, office equipment, accounts receivable, inherited interest in property, money in credit union accounts, retirement plan benefits, livestock, life insurance cash values, anything of value, etc.). I know I must include all community property even if my spouse does not file with me. Neither my attorney nor anyone on his staff has told me to exclude any of my property. **I know it is a crime to willfully refuse to list all my property.**

## 2.4 INHERITANCE, LIFE INSURANCE OR PROPERTY SETTLEMENT FROM A DIVORCE

\_\_\_\_\_ I understand that if it appears that I will, or I do, inherit money, acquire property as a result of a family court order, or become entitled to money as a beneficiary under someone else's life insurance policy or death benefit, within 180 days from the date of filing, or separate from or divorce my spouse and come to additional money or property not shown on my schedules, they must be amended and I will inform Gary Cunha, P.C. in writing. These assets may be a part of your bankruptcy estate and if they are not exempt I may have to raise my Chapter 13 Plan payment in order to protect these assets.

## 3. PLAN PAYMENT-CHAPTER 13

### 3.1 AMOUNT

\_\_\_\_\_ I know that plan payments to the Trustee in a Chapter 13 **may** increase if additional debts are discovered (depending on the kind of debt, income and other financial factors), if I owe more than shown on my schedules, or if the judge requires an increase in my payment due to legal considerations including the valuation of the collateral. I know I may have to pay the contractual interest rate of interest which may increase my plan payment. I know that I am to pay to the best of my ability in a Chapter 13. I understand that if I pay less than 70% of my unsecured claims in a Chapter 13 that I would not be able to file a Chapter 7 within the 6 year time period following the commencement of the Chapter 13. If I pay less than 70% to my unsecureds in a Chapter 13, I have made this decision after being fully informed of the consequences and have made the personal choice to pay less than 70%.

### 3.2 CHANGE OF FINANCIAL CONDITION

\_\_\_\_\_ If I fall behind on my payments, my plan will have to be modified to raise my payments to catch up any arrears or my case will be dismissed. I ALSO UNDERSTAND THAT IF THE COURT FINDS THAT I AM ACTING IN BAD FAITH (e.g. trying to defraud my creditors), AND I FALL BEHIND ON MY PAYMENTS, THE COURT MAY NOT ALLOW ME TO MODIFY MY PLAN TO RAISE PAYMENTS, BUT MAY DISMISS MY CASE AND/OR ALLOW CREDITORS TO TAKE MY SECURED PROPERTY. Also if my income goes up and/or expenses go down, I may have to raise my payment to the trustee.

### 3.3 DISMISSAL IF NO PAYMENT

\_\_\_\_\_ I know that when I file a Chapter 13 I **must** make my monthly plan payments or my case will be dismissed without further notice. I understand that the court may not agree with my excuses for failure to pay. I understand that Chapter 13 is probably my last chance to pay my debts and save my property. Gary Cunha, P.C., has informed me that I cannot skip a plan payment without the Court's permission. I should contact my attorney immediately before I miss a plan payment. I know my first payment is due 30 days after I file my case.

### 3.4 ORDER OF WITHHOLDING

\_\_\_\_\_ I know in a Chapter 13 my employer will receive an Order of Withholding and there will be a deduction from my paycheck (unless I am self-employed) unless otherwise agreed to by the trustee. I do NOT have to set up this automatic pay myself, the Court will send an Order to my employer. I understand that I must make all plan payments UNTIL this automatic withholding starts.

3.5 MILITARY – DO **NOT** SET UP ALLOTMENT

\_\_\_\_\_ I understand that I should **NOT** set up an allotment to pay the trustee. The Bankruptcy Court will arrange for the payment to the trustee by sending in a Pay Order signed by the Clerk of the Court. If I set up an allotment, I may not be able to get that money refunded to me.

3.6 RESPONSIBILITY FOR MAKING PAYMENT

\_\_\_\_\_ I know in a Chapter 13 I am responsible for making the payments UNTIL my employer withholds them from my paycheck or if my employer for any reason fails to withhold the proper amount. *My first full-month's payment to the trustee is due no later than 30 days after the filing of my Chapter 13 case.* I will send my plan payment (cashiers check or money order only) to the address below until my employer does withhold it from my paycheck.

**Ray Hendren, Chapter 13 Trustee**  
**PO Box 807**  
**San Antonio, TX 78293-0807**

3.7 MISSING PAYMENTS

\_\_\_\_\_ I understand that the Chapter 13 Trustee will not allow me to skip or miss a payment without permission from the Judge. If I miss payments in a Chapter 13, my plan payments will increase and additional interest may accrue, as well as interfering with all payments to my other creditors. I also understand that if I am found to be acting in bad faith and I miss and/or I am late on any payments, my case may be dismissed and/or I may lose property **WITHOUT FURTHER NOTICE OR HEARING!** Missing payments can result in a scheduled hearing to determine if the Chapter 13 is to be dismissed. **This will cost me additional attorney's fees.**

3.8 EFFECT OF DISMISSAL

\_\_\_\_\_ I understand that if my case is dismissed for failure to pay in a Chapter 13 that I may not be able to file a Bankruptcy under any Chapter (7, 11, 12, or 13) again for 180 days or longer. Upon such dismissal, all creditors will be free to continue collection efforts for the full, unpaid amount of the debt. Such efforts could include foreclosure, repossession, garnishments, lawsuits, etc. The fact of my filing will continue to be shown on my credit report. Dismissal could also negatively affect any attempt at future bankruptcy and/or automatic stay.

3.9 MILITARY – PAID MONTHLY

\_\_\_\_\_ I understand that my mid-month pay will cease once I file. Although my monthly salary will not change, I will only be paid once a month, so I must plan my budget accordingly. Army Emergency Relief (AER) loans are generally not available to cover the loss of mid-month pay.

3.10 EARLY PAYOFF

\_\_\_\_\_ I understand that I have a right to pay off my Chapter 13 Plan early should I come into extra money or am able to send in additional payments. By paying off my Plan early, I will likely save money on interest charges to my secured creditors. However I realize the trustee may investigate where the extra money came from and could ask the judge to increase my bankruptcy payment rather than give me an early discharge.

**4. TRUSTEE**

4.1 COOPERATION WITH

\_\_\_\_\_ I understand that the **TRUSTEE IS NOT MY ATTORNEY**. He will be collecting the monthly payment and will make the monthly payments to my creditors. I understand the Chapter 13 Trustee is Ray Hendren. I understand that the Bankruptcy Code requires me to cooperate with the trustee. My case can be dismissed or a discharge denied if I fail to fully cooperate with the Trustee. However it is in my best interest to consult with my attorney prior to speaking with Ray Hendren.

4.2 TRUSTEE FEES

\_\_\_\_\_ I understand that the Chapter 13 Trustee's compensation is up to 10% of the total moneys paid and distributed under the plan.

4.3 PERMISSION TO GET NEW CREDIT OR SELL SECURED PROPERTY

\_\_\_\_\_ I understand that while I am in a Chapter 13 I CANNOT incur ANY new credit or sell property without the permission of the Trustee, the Court, and notice to the creditors until my case is completed. **(If I need credit while I am in my plan, I must contact my attorney before taking any action.)** I also understand there may be some additional attorney's fees incurred to take the necessary steps for me to get new credit.

5. ATTORNEY

5.1 GARY CUNHA, P.C.

\_\_\_\_\_ I understand that I have retained Gary Cunha, P.C. to represent me in the bankruptcy and that a lawyer from Gary Cunha, P.C. will represent me as necessary. I realize that I may have spoken with, and may continue to speak with, non-lawyers at the firm who will assist me with non-legal questions.

5.2 REASONABLE COMPENSATION

\_\_\_\_\_ I understand that Gary Cunha, P.C. is entitled to reasonable compensation for all work performed and if I decide at any point not to continue with this case, there will be a fee charged depending upon the amount of work actually performed.

5.3 DETERMINATION OF ATTORNEY'S FEES

\_\_\_\_\_ I understand that the attorney's fee is controlled by the Bankruptcy Court. No fees can be charged without disclosure to the court. The amount of the fee will be determined by the amount and type of my debts, and also by the amount of work performed by any attorney, legal assistant, paralegal, or other staff member.

5.4 WHAT FEE DOES NOT COVER

\_\_\_\_\_ I understand the estimated fee I will be paying Gary Cunha, P.C. covers only routine services in the completion of the case. It does **not** include services such as enforcement of criminal matters, warranty claims, child support, defense of debtor in lawsuits, denial to pay by insurance companies, tax advice, contesting tax claims, filing to avoid liens on real estate. It **may not** include services such as Motions for Relief from Stay, Motions to Value Security, Objections to Claims, and other post-petition motions. Court appearances arising out of failure to make Chapter 13 Plan payments & house payments and/or keeping motor vehicles or homes insured and/or modifications of my Plan will incur an additional fee. Gary Cunha, P.C. will provide all services required by the judge's standing order in effect at the time my case is filed.

5.5 REPRESENTATION UPON DISMISSAL OR CONVERSION

\_\_\_\_\_ I understand that Gary Cunha, P.C. will not represent me as to problems occurring after dismissal or after conversion to another Chapter unless a new fee agreement is entered into or unless so ordered by the Court.

5.6 PENDING ACTIONS

\_\_\_\_\_ I understand that Gary Cunha, P.C. does not represent me as to any actions now pending in any other court or government agency. I must obtain other counsel if I desire to continue such action or proceeding. I understand that if my case is dismissed, such proceedings are reinstated automatically. Regardless of whom I retain to represent me that I must take immediate steps to retain representation so my legal rights are not lost.

## 5.7 DISCUSSING MY CASE

\_\_\_\_\_ I understand that based on the costs involved, Gary Cunha, P.C. will not accept collect calls. I know I must write down any questions I have and fax or email them to my Attorney before calling. I realize that it is not reasonable or practical to speak only with one person from the office of Gary Cunha, P.C.

## 5.8 LEGAL ASSISTANTS AND NON-LAWYERS

\_\_\_\_\_ I understand that non-lawyers may be working on my case. These non-lawyers are called “paralegals” or “legal assistants.” They may or may not be so certified. I understand that if I insist on speaking to an attorney for non-legal questions, instead of another non-lawyer staff member assigned by Gary Cunha, P.C. to my case, I may be responsible for additional attorney’s fees.

## 6. CREDITORS

### 6.1 WHAT TO TELL CREDITORS

\_\_\_\_\_ Once my case is filed (but not before) I am to tell any creditors who contact me that I have filed a Chapter 13 bankruptcy, my case number, the trustee Ray Hendren, and the Court “**Western District of Texas, Waco Division.**” Creditors should cease all contact with me after I provide them that information. If they persist in contacting me, I should document each incident and contact Gary Cunha, P.C.

### 6.2 PAYMENT OF CREDITORS

\_\_\_\_\_ In a Chapter 13, I understand that I must continue to make all payments to creditors that I have labeled as “Direct Pay” in my plan (usually house payments or other large payments). I further understand that the creditors may not send me payment books or statements, so I must continue to make the payments even without the aid of a payment book or statement. I know lack of a payment book or statement is not a valid excuse for not paying. I further understand that I must continue to pay all items that are listed in my Schedule J Budget (such as food, insurance, phone, electric, water, etc.).

### 6.3 AUTOMOBILE INSURANCE

\_\_\_\_\_ I know at ALL TIMES, I am to keep collision and liability insurance (ie: full coverage) with contractually required deductibles on any vehicle I own that is collateral for any creditor. I further understand that I must keep Texas mandated minimum insurance coverage on any vehicle that I drive, regardless of whether or not the vehicle is used as collateral. *I understand that single interest coverage purchased by the creditor is NOT sufficient.* I understand that failure to maintain such insurance may cause the Court to allow the creditor to repossess. I also understand that in the event my vehicle is not covered by insurance during my case and the vehicle is damaged and/or destroyed that I will still be responsible to the creditor for all payments on the vehicle. I understand that a creditor filing a court action for failed to maintain insurance may result in additional attorney’s fees to cover the additional work involved due to my failure to maintain insurance. I understand it is the law that I maintain liability insurance on my vehicles even if they are not collateral for a loan.

### 6.4 TAX REFUNDS

\_\_\_\_\_ I understand if I owe the Internal Revenue Service or any other taxing authority, and I am due a tax refund, the taxing authority may be entitled to offset my refund against what I owe them. I also understand that if I get behind on my child support, after the filing of my Chapter 13 case, that the IRS may be able to keep my refund. ***I further understand I cannot get a “rapid refund” or other loan against my tax refund.***

## 6.5 UNFILED TAX RETURNS

\_\_\_\_\_ If there are ANY years I have not filed a tax return, **regardless of whether or not I was legally required to**, the IRS will file a Proof of Claim saying that I owe up to \$15,000 or more per year in taxes. **Unless** I file a tax return, *or provide proof that I was legally not required to file one*, I may be liable to pay the amount specified in the IRS Proof of Claim. I further realize that the Trustee may dismiss my case because of unfiled tax returns, ***even if I am not legally required to file them***, unless I provide proof that I am not legally required to file them. Any old or corrected tax returns that I file should be filed with the bankruptcy special procedures IRS at:

IRS  
PO Box 7346  
Philadelphia, PA 19101-7346

## 6.6 FHA SUBSIDIZED HOUSING

\_\_\_\_\_ I understand that if I am getting help in the form of reduced payments, co-payments by the government, or guaranteed payments on my housing, the amount I pay for housing will depend upon the rules of the government agency. My payments may go up if my family income exceeds the limitation imposed by the government agency or if I fail to send in to the agency all required paperwork.

## 6.7 SECURED DEBTS

\_\_\_\_\_ I understand it is a criminal offense to hide, sell, or give away property that is secured by a loan or debt.

## 6.8 OBJECTION TO CLAIMS/MOTIONS TO VALUE SECURITY

\_\_\_\_\_ The amounts I listed on my Schedules are not necessarily the exact amounts that I owe my creditors. The creditors will file "Proofs of Claim" in my case that will often differ with the amounts that I listed on my Schedules. These Proofs of Claim will supercede the amounts I have listed on my Schedules. I have a right to object to any claim, either to completely disallow a claim, or to change the amount of the claim. I understand that it is my responsibility to request Objections to Claims and/or Motions to Value Security. I understand that I will have to pay the full amount listed on a Proof of Claim unless I Object to it **and** the Judge grants my Objection. I realize that Gary Cunha, P.C. will attempt to work out an agreement with any creditor that we file an Objection against. If Gary Cunha, P.C. is unable to work out an agreement, I realize that I will have to attend a Court hearing to settle the dispute. I understand that if Gary Cunha, P.C. is unable to reach me during negotiations they may settle the dispute without my consent or without notice to me.

## 7. CHAPTER 13 – OTHER MATTERS

### 7.1 CRIMINAL MATTERS

\_\_\_\_\_ I understand a Chapter 13 will not protect me as to criminal prosecutions, fines, orders of restitution, probation revocation, hot checks, DWI fines, municipal court fines, theft, welfare fraud, fraud in receiving government benefits, VA, school loans, disability benefits, unemployment benefits, social security benefits, or charges resulting from failure to have automobile liability insurance, etc. I understand that Gary Cunha, P.C. does not represent me as to any aspect of the criminal charges that have or may be brought against me.

### 7.2 CHILD SUPPORT & ALIMONY

\_\_\_\_\_ I understand that I must continue to make such payments, and could face state court proceedings if I fail to maintain such payments. I understand the state and/or federal government will be allowed to take my tax refunds each year if I fail to pay my child support. ***I further realize that even my EXEMPT property, INCLUDING MY HOMESTEAD, may be seized to pay back child support in bankruptcy.***

### 7.3 DIVORCE

\_\_\_\_\_ I understand that if I am married and filing jointly that Gary Cunha, P.C. cannot represent one spouse against the other (i.e. divorce, separate maintenance, separating payments, seeing to it that one party makes payments, what I can make my spouse do or not do, etc.). I further understand that if we file for divorce, the Gary Cunha, P.C. may have to withdraw from this case due to the conflict of interest.

### 7.4 CO-DEBTORS

\_\_\_\_\_ Although a Chapter 13 will, in most cases, protect co-debtors for consumer debt situations, I understand that Chapter 13 will not protect co-debtors in business loans or non-consumer debts or any debt where I did not receive the benefit of the loan (i.e. where I co-sign for a relative to buy a car) or any debts not paid in full. **I understand that these cases the creditors will be free to proceed under state law against any co-debtors. I understand that Gary Cunha, P.C. does not represent the co-signer and cannot do so because of a conflict of interest and therefore cannot discuss any aspect of the case with the co-signer.** I further understand that the court can lift the co-debtor protection at the request of a creditor.

### 7.5 DEBTS NOT IN MY NAME

\_\_\_\_\_ I understand that bankruptcy does not cover debts that are not in my name and on which I am not liable to the creditor (i.e. if I have charged on someone else's account; if I have incurred a debt solely in a business name; if I have assumed someone else's debt without the creditor's permission in writing.)

### 7.6 UTILITY BILLS

\_\_\_\_\_ I know I am to remain current on my utility bills or the utility companies may turn off my utilities. I understand that I may have to pay a new deposit on all utility debts that are listed and discharged if I want to continue my service. I understand that if Gary Cunha, P.C. handles problems with utility bills incurred after the filing of my bankruptcy there will be an additional charge.

### 7.7 POST PETITION DEBTS

\_\_\_\_\_ I understand that Chapter 13 will not protect me as to debts (including taxes and child support) arising after my filing, and that the creditor may be allowed to exercise all collection efforts including a lawsuit, garnishment, phone calls, and repossessions. This includes repairs done on motor vehicles. I understand I must pay for such repairs before I can get the vehicle back in my possession. To discuss these post-petition debts with Gary Cunha, P.C., there will be an additional consultation charge to discuss the problem. Some post-petition debts may be dischargeable if I convert my Chapter 13 to a Chapter 7.

### 7.8 SURRENDERED PROPERTY

\_\_\_\_\_ I understand that if I am to surrender property to a creditor I will be responsible for loss or damage to the property. If I have stated that I intend to surrender certain property, I understand the creditor may then be able to repossess such item(s) without further notice. I know that if I have filed a Chapter 13 that once my plan is confirmed and I surrender property and/or lose it for failure to maintain insurance on it, that I may still be liable for the entire balance of the debt. I have been advised by Gary Cunha, P.C. that the decision to keep secured property is a personal choice.

### 7.9 CREDIT COUNSELING

\_\_\_\_\_ I understand that I must complete credit counseling BOTH before filing bankruptcy and again a separate class on financial management before my last plan payment is due or my discharge may be denied or revoked.

## 7.10 NON-EXEMPT PROPERTY

\_\_\_\_\_ I understand that not all the property I own may be exempt (which means if I convert to a Chapter 7 Bankruptcy at some future date, the Chapter 7 Trustee may be able to take this property and sell it for the benefit of my creditors). I have revealed all the property I own, or in which I have any kind of interest, to my attorney and he has informed me what is exempt and what is not exempt. I further understand that under Texas state law, cash (or its equivalent) is not exempt. Therefore, I understand that any tax refund being held by the government is subject to the Trustee's seizure, and I understand that any funds in any financial institution (banks) or held by another person or entity, including myself, **on the date of conversion from a Chapter 13 to a Chapter 7, even if I have checks drawn on any or all of these funds**, may not be exempt and may be seized by the trustee and/or by the bank if I owe money to the bank. If, in the future, I intend to convert to a Chapter 7, I acknowledge that my attorney has advised me to operate on a cash basis and to not have more than a minimum balance (such as \$10.00 or less) in any financial institution (bank account) or held by other entity, including myself, **on the date of conversion from Chapter 13 to Chapter 7**. If I file a Chapter 13, I further understand that I must pay my unsecured creditors as much as they would have been entitled to receive had I filed under a Chapter 7. I further understand that recent decisions from the U.S. Supreme Court have confused what property is exempt.

## 7.11 CASH COLLATERAL

\_\_\_\_\_ **I understand that if I have funds in a financial institution (bank) at which I also have a loan, these funds may be collateral for the loan and subject to seizure (set-off) by the bank.** I understand that my attorney recommends that I remove all such funds before filing a bankruptcy petition and to not put any more funds (including direct deposit) in any such institution while my bankruptcy is pending because these deposits could be frozen and ultimately seized by the institution. If I choose to keep bank accounts during bankruptcy I do so at my own risk. I further understand if I have a business with my accounts receivable as collateral for loans, I may have to get court permission before I can use my business proceeds.

## 7.12 ATTENDING MEETING OF CREDITORS

\_\_\_\_\_ I understand that BOTH spouses must attend the "Meeting of Creditors" (341(a) meeting) and budget workshop unless I otherwise receive express written instructions from my attorney. If either does not attend, I understand that the Court may not allow me to reschedule which will probably result in my case being dismissed, and I will not receive a discharge. I further understand if I do not receive a notice of when this meeting is to be held within 20 days of the date my bankruptcy case is filed, I will call my attorney's office at 254-752-4279 to get a copy of this notice. If I move between the time I file my case and I receive notice, I understand that I am responsible to make sure my mail is forwarded to the new address AND I must give my new address and phone number to my attorney and the Trustee's office. I further understand that if I convert to another Chapter of the Bankruptcy Code, I must attend a new "Meeting of Creditors" and all of the above statements apply again.

## 7.13 FILING OF CLAIMS

\_\_\_\_\_ I understand that I am personally responsible to make sure a Proof of Claim is filed for each and every secured creditor who does not file one itself. If I do not file these Proofs of Claim, then the Chapter 13 Trustee will not pay on these debts, and the creditor may be able to repossess the collateral without notice to me.

## 7.14 NEW ADDRESS AND PHONE NUMBER

\_\_\_\_\_ I understand that if I change my address, phone number (home, work, cellular, or pager), or email address I must contact my attorney **within 24 hours** and provide Gary Cunha, P.C. my new information. I will phone AND send the information in writing as well.

## 8. WHAT IS A CHAPTER 13?

### 8.1 FORM OF BANKRUPTCY

\_\_\_\_\_ I understand that I am filing a form of bankruptcy and it is filed in the United States Bankruptcy Court for the Western District of Texas, Waco Division.

## 8.2 JOINT FILINGS

\_\_\_\_\_ I know that if I am married I can file separately or jointly. I know I do not have to join in with my spouse if I do not desire to do so, but the non-filing spouse cannot later join my case after the case is filed. I know that if we file a joint case, that the case may only be able to continue as a joint case and one of the parties may not be able to be deleted from the case unless the entire case is dismissed. I further realize that if my spouse and I have joint debts and do not file together, the creditor may pursue the non-joining spouse to collect any unpaid balance.

## 8.3 CHAPTER 7 vs. 11 vs. 12 vs. 13

\_\_\_\_\_ I know I have the right to file a Chapter 7 (unless I have filed another Chapter 7 in the last eight years; or I have filed another Chapter 13 in the last six years which paid less than 70% to unsecured creditors) or I can file a Chapter 13 (unless I am a stockbroker; have over \$307,675\* in unsecured debt; have over \$922,975\* in secured debt; or have completed another Chapter 13 filed in the last two years; or have filed a Chapter 7, 11, or 12 bankruptcy within 4 years.) I cannot file any bankruptcy if I have had a case dismissed “with prejudice” and the prejudice time has not run. The differences between all the forms of Bankruptcy (Chapter 7, 11, 12, and 13) have been explained to me. I understand that a Chapter 7 is a liquidation where my dischargeable unsecured debts are discharged, a Chapter 11 is a business reorganization, a Chapter 12 is a family farmer debt repayment plan, and a Chapter 13 is a debt consolidation and repayment plan.

\* dollar amounts are adjusted periodically to keep up with inflation and may be different than what is listed

## 8.4 COURT HEARINGS

\_\_\_\_\_ I understand that if I fail to attend any hearing ordered by the Court that I may lose the hearing and/or my case may be dismissed and the creditors will be allowed to proceed against me and my property. I understand I may not be allowed to re-file any type of bankruptcy for 180 days. I understand 180 days is time allowed for my creditors to start and finish any foreclosures, repossessions, garnishments, etc. I should always attend a hearing unless specifically excused by the Court. I also understand that I may have several hearings and that being excused from one or more hearings does not excuse me from the other hearings. When in doubt I will contact my attorney to verify when I have court.

## 8.5 CHANGE OF ADDRESS AND OTHER CHANGES

\_\_\_\_\_ I understand that I will be notified by mail of all hearings and other important matters concerning my case and that I must keep Gary Cunha, P.C. and the Trustee in my case informed of any address change. I understand that some urgent matters may arise where Gary Cunha, P.C. may need to contact me immediately by telephone, so I must provide Gary Cunha, P.C. at least two phone numbers where I can be reached AND I need to contact Gary Cunha, P.C. immediately if one of those phone numbers changes. I realize that I must also notify Gary Cunha, P.C. and the trustee if I change employment or my income changes by more than 10%.

## 8.6 DISCHARGE & FILING CLAIMS ON BEHALF OF A CREDITOR

\_\_\_\_\_ I understand that a discharge in a Chapter 13 will not discharge (get rid of) child support, alimony, long-term debts (houses, extended month vehicle payments, etc.), student loans, or any debt listed in §§507 & 523 of the bankruptcy code. Of course, if I pay these debts in full through my Plan, I will no longer be liable for these debts. I will make sure that any non-dischargeable debt is included in my plan by inquiring as to whether or not a proof of claim has been filed by such a creditor. If a proof of claim has not been filed, I will make sure a proof of claim is filed on behalf of such a creditor within the time allowed by the Court’s rules and/or “Notice of Bankruptcy.” The time limit for filing Proofs of Claim is 90 days (180 days for governmental agencies) after my first scheduled 341(a) meeting. Rescheduling my 341(a) meeting will not extend the time limit.

8.7 SUIT ON DISCHARGED DEBTS

\_\_\_\_\_ I know that if I am granted a discharge under Chapter 13 and a creditor files a suit against me for a discharged debt, **I must raise this as a defense** within the proper legal time or I may lose this defense and the creditor may proceed against me to collect the debt. I understand that this defense is my responsibility and that Gary Cunha, P.C. is under no obligation to defend me in the Court that the action was brought in (however, since the creditor is breaking the law, we may be able to sue them). Because of this, I know I am to keep a copy of my Discharge, because my file at Gary Cunha, P.C. will be placed in storage and will not be readily available and there will be a service charge to retrieve copies of my file if my file is available at all. I know after five years Gary Cunha, P.C. will destroy my file.

9. OTHER MATTERS

9.1 COPIES OF THIS DOCUMENT

\_\_\_\_\_ I understand that I should keep a copy of this document and it is my responsibility to make a copy. I should sign this copy and return the signed copy to Gary Cunha, P.C. at or before my signing appointment. I understand that Gary Cunha, P.C. charges \$0.25 per page for photocopies.

9.2 MY BUDGET

\_\_\_\_\_ I understand that items on my budget, such as 401K deductions, may not be “allowed” by the court, and that I may have to stop them, or I may have to pay more money to my creditors to offset the deductions.

9.3 HARDSHIP DISCHARGE

\_\_\_\_\_ I understand that if my financial situation worsens after filing my case I should IMMEDIATELY contact my attorney. It is my responsibility to make my Chapter 13 Plan Payments and if I cannot make them, I must take action in the court. My options might include a Motion for Moratorium of Plan Payments, a Motion to Modify My Plan, a Conversion to Chapter 7, or a Motion for Hardship Discharge. I realize that I may be charged an additional attorney fee if I need to take any of those actions.

9.4 POST CONFIRMATION

\_\_\_\_\_ I understand once my case is Confirmed by the court, any action required on my behalf (such as Motions, Objections, Appeals, and so forth) will likely require the payment of additional attorney fees.

**I DO HEREBY STATE THAT I HAVE READ THE FOREGOING RIGHTS AND DUTIES AND MY QUESTIONS HAVE BEEN ANSWERED BY GARY CUNHA, P.C.**

Date: \_\_\_\_\_

Signature(s): \_\_\_\_\_ Print \_\_\_\_\_  
\_\_\_\_\_ Print \_\_\_\_\_