

# What Foreclosure Prevention Advocates Should Know about Bankruptcy

Presenter: Zachary J. Pike  
Civil Division Director  
The Legal Aid Society of Rochester, NY  
[zpike@lasroc.org](mailto:zpike@lasroc.org)  
(585) 295-5784



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# DISCLAIMER

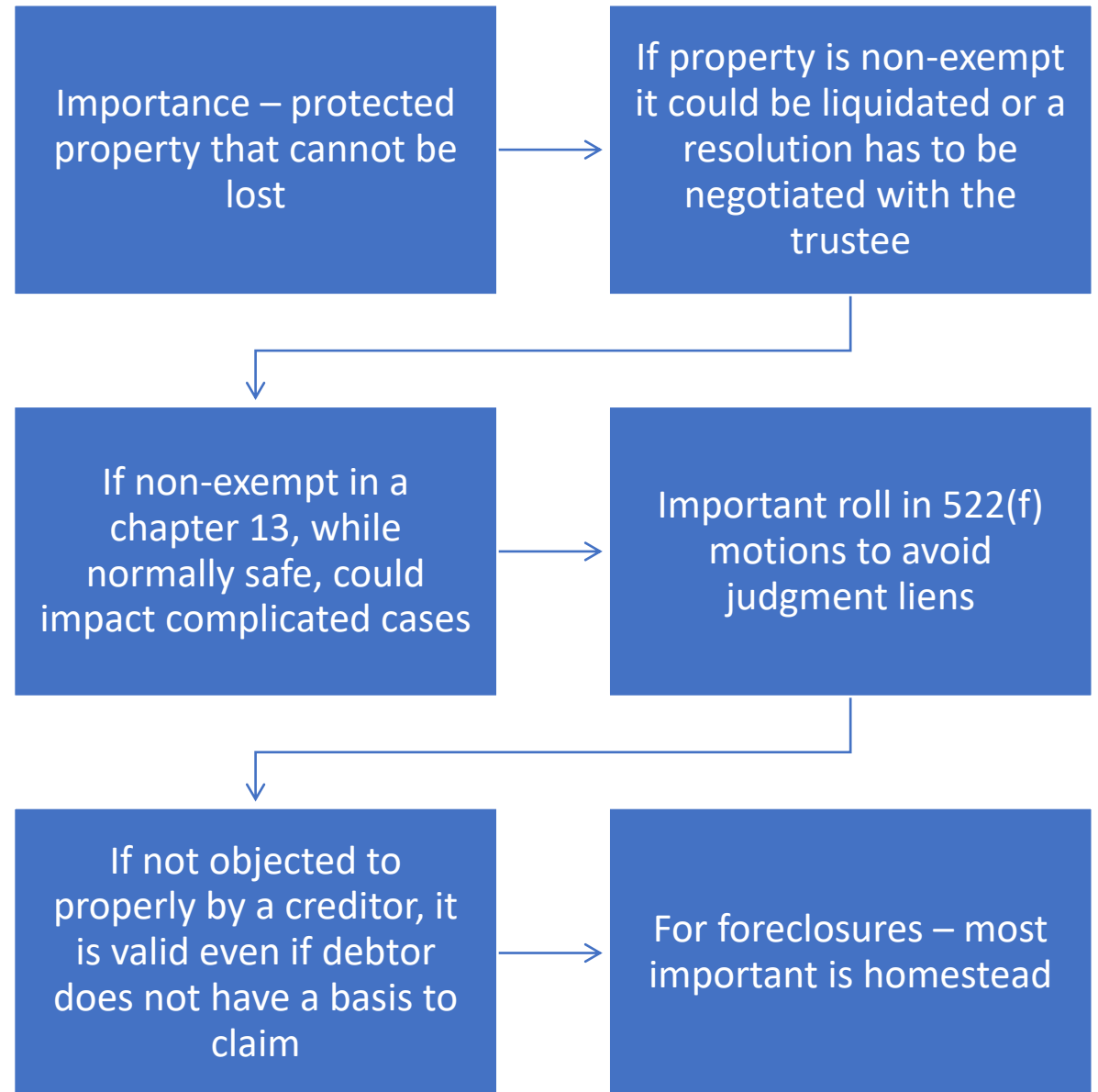
- My experience is only in the Western District of New York
  - No loss mitigation procedure in the Western District of New York
  - National Chapter 13 Plan
  - Have a good relationship with the Judge and Chapter 13 Trustee
  - When discussing possible debtors during presentation, assuming a standard debtor facing foreclosure.

# Bankruptcy Basics/Background

- Different type of bankruptcies: Chapters 7, 9, 11, 12, 13
- Automatic Stay
- Discharge
- Exemptions
- Debt classifications
- Claims (& Objections to Claims)
- 341 Meeting
- Confirmation Meeting
- Trustee



# Exemptions



# Exemptions (cont'd)

	<u>New York State</u>	<u>Federal Exemptions</u>
• Homestead	\$89,875 to \$179,950	\$25,150
• Motor Vehicle	\$4,825	\$4,000
• Household goods	\$11,975*	\$13,400
• Jewelry	\$1,175	\$1,700.00
• Wildcard	\$1,175 but can't claim Homestead exemption	\$1,325 plus up to \$12,575 of unused homestead exemption

# Claims

Creditors, including banks, are forced to file a proof of claim that conforms to the bankruptcy form.

Claim is considered prima facie evidence of validity and amount owed unless objected to.

Debtors can object to claim and make creditor prove what is owed

# Chapter 7- Liquidation

- Overview: debts are discharged in exchange for liquidation of all non-exempt property
- Reality: Most debtors keep all their property through their exemptions
- Liens of secured debts survive discharge but personal liability does not (for most debts including mortgages)
- Can be used to avoid judgment liens if they impact debtor's ability to use their homestead exemption
- Court proceedings normally limited to a 341 hearing with Chapter 7 trustee
- From filing to discharge is normally 90 to 120 days

# Chapter 7 & Foreclosure

- Remove Judgment Liens
  - Not necessary per RPL 291 but banks don't care
- Get rid of other unsecured debts
  - Improve debtor's financial standing for loss mitigation
- Courts do not like when Chapter 7 bankruptcy filing is used to stop foreclosure sale and debtor does not follow through with bankruptcy



# Chapter 13- ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME

- Overview- Debtor can enter into a 36-60 month plan to pay off arrears owed on secured debts, pay off priority debts, pay a dividend to unsecured debts and have remaining unsecured debts discharged
- Chapter 13 Plan – integral part of proceeding and considered a binding agreement between debtor, Court and creditors
- Ability to avoid judgment lines
- Ability to avoid second mortgage and convert to unsecured debt if there is no equity after the first mortgage
- Can be used to pay arrears incurred on secured property whether real property tax arrears, mortgage arrears or other debt
- In addition to 341 meeting with Chapter 13 Trustee, there will be a confirmation hearing to confirm Chapter 13 plan
- Occasionally, debtor has to file a chapter 13 because they filed a chapter 7 within the last 8 years

# Chapter 13 & Foreclosure

Lots of tools to try and keep home, but debtor must be able to afford it – other poor financial decisions that impact plan sometimes make it difficult

Some of the things I have done or attempted with a Chapter 13

- Repay standard mortgage arrears
- Repay real property tax arrears
- 0% plan
- Reverse mortgage with tax arrears and cram downs
- POND 2<sup>nd</sup> & 3<sup>rd</sup> mortgage and pay off first mortgage through plan as a balloon payment due during plan period
- Mixed income (wage, SSD, significant other, children)
- In conjunction with loan modification
- In conjunction with NYS-MAP
- To avoid a real property tax foreclosure and return home to debtor
- Plan including selling the home to preserve proceeds for debtor
- Negotiate with NYS Dept. of Tax to not to accept full amount due
- Post-confirmation plan modifications including hardship discharge
- Conversion to chapter 7

# Chapter 13 & Foreclosures (Cont'd)



Primary – 5 year  
repayment plan



Modification and  
Chapter 13



Tax foreclosures



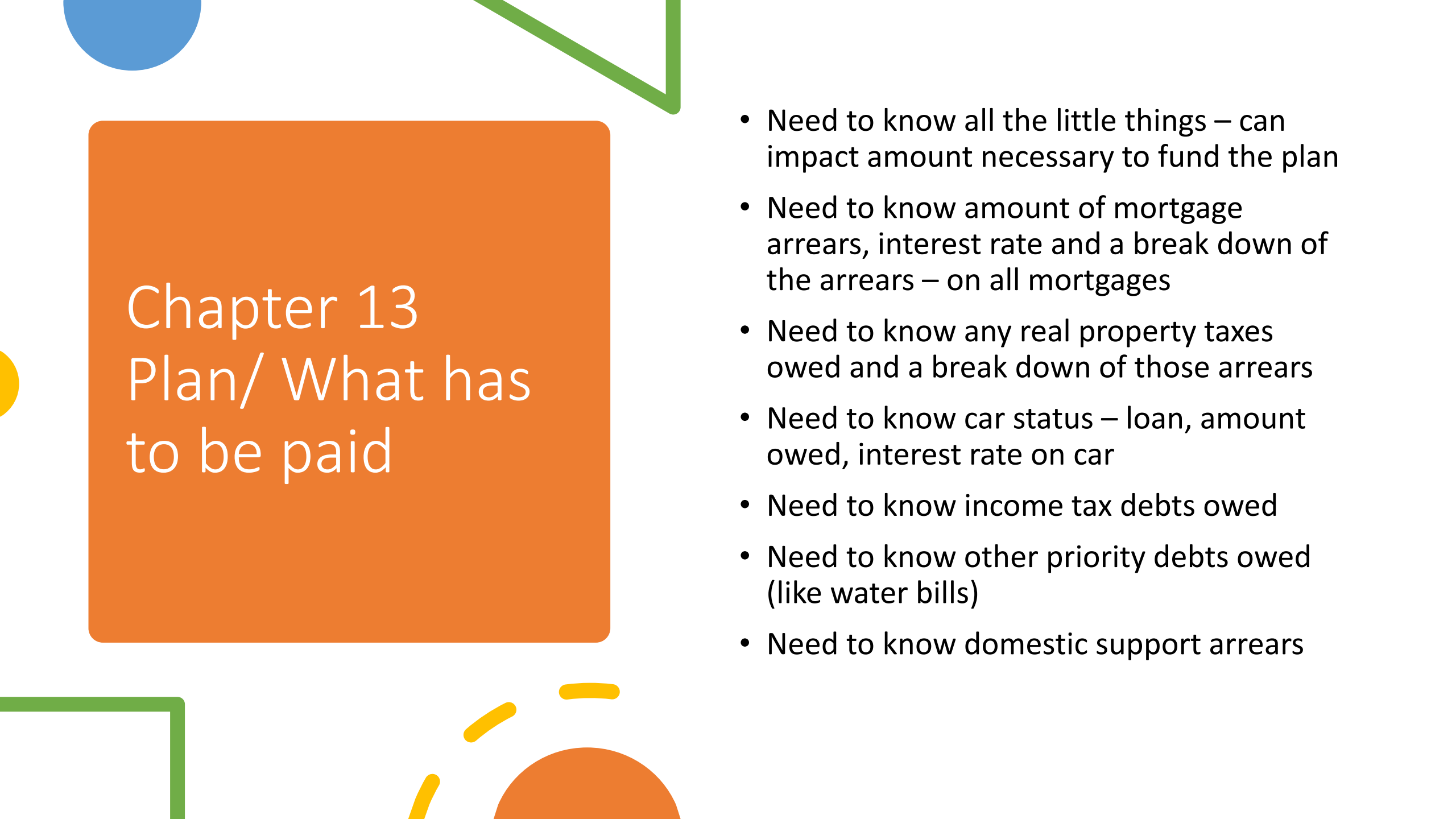
Avoid judgment liens



Pond Motions to avoid  
secondary mortgages



Restructure car loans/  
Cram down of cars



## Chapter 13

### Plan/ What has to be paid

- Need to know all the little things – can impact amount necessary to fund the plan
- Need to know amount of mortgage arrears, interest rate and a break down of the arrears – on all mortgages
- Need to know any real property taxes owed and a break down of those arrears
- Need to know car status – loan, amount owed, interest rate on car
- Need to know income tax debts owed
- Need to know other priority debts owed (like water bills)
- Need to know domestic support arrears

# Chapter 13 Plan Calculation

- First, all disposable income pursuant to Bankruptcy petition I&J are generally used to compose the bankruptcy plan payment
- To calculate the minimum payment necessary for a valid plan, go through section by section and calculate what will be owed for each debt or amounts that has to be paid (e.g., mortgage arrears, income taxes owed, trustee fee)
- Break out amounts that incur interest versus those that do not
- Use amortization formula to calculate amounts that incur interest
- Add all the amounts owed
- Tricky part is trustee fee which is 10% of all plan payments
- Formula to figure out plan payment:  $(\text{total amount owed per month in plan})/0.9$
- The trustee fee would be:  $\text{plan payment} - \text{total amount owed}$

# Example

	Monthly Payment
• Mortgage arrears: \$10,000.00 at 3%	179.69
• Water bill (priority debt) \$1000.00	\$16.67
• Debt to unsecured creditors	\$50.00*
Total amount owed per month :	\$246.36

Plan payment (with trustee fee) =  $246.36 / .9 = \$273.73$

Trustee fee (part of plan payment) =  $\$273.73 - \$246.46 = \$27.37$



Questions?

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Thank You &  
**GO BILLS!**



Contact Information:  
email – [zpike@lasroc.org](mailto:zpike@lasroc.org);  
phone-(585) 295-5784



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