

Sale Means Sold – The Colon Decision

Chapter 13 of the bankruptcy code is a powerful tool. It has been used by numerous debtors to save property from repossession and foreclosure. Debtors, who are on the verge of losing their real property, have filed cases pursuant to Chapter 13 to stop further foreclosure action in order to repay or redeem the default on their mortgages. The burning question in this District has traditionally been: "When is it too late to stop the loss of property?" We now have a definitive answer to this question by the 7th Circuit Court of Appeals. The case of *Colon v. Option One Mortgage Corporation* (2003 WL 282580 (7th Cir. (III))) was decided on February 11, 2003. In that case, the 7th Circuit Court of Appeals decided that upon the act of the foreclosure sale, debtors lose their right to redeem or save real property.

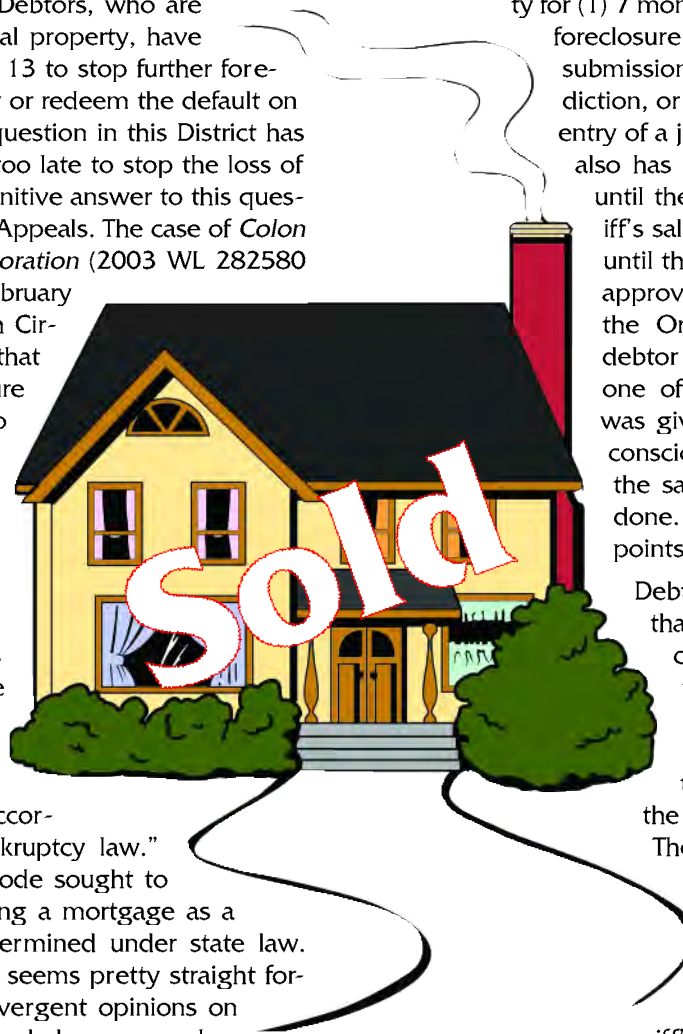
The issue has always been the interpretation of the Bankruptcy Code 11 USC §1322 (c)(1) which states in part "a default with respect to, or that gave rise to, a lien on the debtor's principal residence may be cured under paragraph (3) or (5) of subsection (b) until such residence is sold at a foreclosure sale that is conducted in accordance with applicable nonbankruptcy law." Congress via the bankruptcy code sought to fix the outer limits in redeeming a mortgage as a state right that should be determined under state law. Though the language of §1322 seems pretty straight forward, there have been two divergent opinions on how one determines when the sale has occurred.

In order to decide what constitutes the sale point, the 7th Circuit looked to Illinois state law for guidance. The fore-

closure process under state law is fairly simple. After a default, a debtor has a statutory right to redeem the property for (1) 7 months from the date of service of the foreclosure complaint, or (2) the debtor's submission to the foreclosure court's jurisdiction, or (3) three months from the date of entry of a judgment of foreclosure. A debtor also has an equitable right to redeem up until the foreclosure sale. Once the sheriff's sale occurs, the sale is not complete until the Chancery Court enters an Order approving the sale. Under Illinois law, the Order will be entered unless the debtor can show the sale was flawed in one of four ways: (1) improper notice was given, (2) the sale terms were unconscionable, (3) fraud was involved in the sale, (4) justice was not otherwise done. From this framework two viewpoints emerged.

Debtors favored and argued in *Colon* that the language of the bankruptcy code is clear and that the sale had to take place before the right to redeem was lost. They argued that the sale was complete upon the entry of the Order Approving the sale as prescribed in state law. The creditor in *Colon* argued that they were relying on the clear language of the bankruptcy code as well and that it says the right of redemption is lost upon the sale, meaning the sheriff's sale, nothing more.

The Court's holding in *Colon* found both sides somewhat
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Sale Means Sold – The Colon Decision

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right but decided the cutoff point more definitively. The decision tells us that the foreclosure sheriff's sale is the last point for a debtor to redeem the property. The Court noted that Illinois law should not be interpreted as giving debtors more rights than they have under the bankruptcy code and that the code says sale. We now have the answer to the burning question and the race to the bankruptcy courthouse has a clearer finish line. After the sheriff's sale occurs, the debtor's redemption rights are lost.



However, with that said, the Court also noted that the Order Approving sale was not just a ministerial act but was part of the required procedure to validate a foreclosure action. This key component gives debtors a means to void the sale and reclaim their redemption right, provided they can show the sale was invalid or flawed for one of the reasons aforementioned. If the debtor cannot show a flawed sale, the sale is the end point. If the debtor can show a flawed sale, the right to redeem is still present and the debtor can then try to use the Chapter 13 case to redeem the mortgage.

Anthony Olivadoti

INFORMATION SERVICES

CFM: Not Just Another TLA (Three Letter Acronym)



Picture this: in a mid-case audit, it's discovered that an unsecured claim was filed but was not entered into CaseNET. Funds have been disbursed to all the other unsecured creditors for that case for more than a year. Now we have to make sure the newly found unsecured claim catches up to the others and all unsecured creditors get paid at the same rate.

That's a tough problem. It doesn't happen very often, but when it does it's a real pain to fix. CaseNET does a great job allocating the vast majority of cases where everything goes according to the plan, but there are enough oddball situations that arise where we'd like a little more help from CaseNET to diagnose and fix problems. The beauty of CaseNET, of course, is that when we think up a way it could do its job better, we can change the program to make it work that way.

We're working on some big changes right now. Many of you have been in meetings to help design the CashFlow Module. If you haven't been in those meetings, you may have heard the CashFlow Module mentioned in one of our monthly staff meetings. No matter how much you have (or have not) heard about it, at this point you may be wondering: what the heck is the CashFlow Module?

The CashFlow Module (or CFM) is an idea that's in the process of becoming a reality. The seeds of the CFM go back several years. It began with the intention of making it easier to discover the unsecured disbursement rates for pot plans. That's difficult because a lot of variables factor into it. CaseNET was written to calculate the appropriate unsecured disbursement rate for each case every time the allocation job runs. This makes it flexible, and potentially able to adapt to changing circumstances. In practice, however, we've had odd cases that CaseNET couldn't handle. Because the logic of the allocation process is buried in hidden, inscrutable code, it is difficult to verify, and all but impossible to troubleshoot. So we decided to take a different approach. We would store the unsecured disbursement rate in the case record. Then it would be easier to see whether a claim was being allocated correctly, and to make adjustments to correct for errors.

Simple decisions like this can lead to big programming projects. The CFM is a "module" because taking this new approach has far-reaching effects, and because so many other questions depend on how a case will be allocated. Need to know a case payoff balance? Want to do a pro-

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THE MARSHALL CHRONICLES

The Editorial Staff:

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Trustee Matters

Model Rights And Responsibilities Agreement Between Chapter 13 Debtors And Their Attorneys



Although the Bankruptcy Court of the Northern District of Illinois adopted a model "Rights and Responsibilities Agreement between Chapter 13 Debtors and their attorneys, our office has not seen a significant change in the fee charges submitted by debtor attorneys.

The Model Retention Agreement ordered that requests for awards of compensation to debtors attorneys in Chapter 13 cases, pursuant to 11 U.S.C. § 330(a)(4)(B), will be allowed without submission of an itemization of services rendered provided that:

1. The application for award of compensation is set forth on the form adopted by the court for that purpose, statement that the Model Retention Agreement has been entered into, and identifying which compensation options the agreement includes (flat fee for services through confirmation or flat fee for services through case closing) and
2. The compensation sought does not exceed \$2200 for services rendered through confirmation or \$2700 for services rendered through the entire case.

Since the Trustee's office is not required to receive a signed copy of the agreement executed between the parties, the Trustee assumes that the debtor and their attorneys have reviewed and are familiar with the rights and responsibilities under the Model Retention Agreement. The date the parties signed the agreement should appear on the application, so that the Trustee knows that the parties are bound by its terms.

I direct the attorneys, staff and phone service representatives to Number 9 under the agreement which reads: "AFTER THE CASE IS FILED – THE ATTORNEY AGREES TO... 9. Be available to respond to the debtor's questions throughout the term of the plan."

Although, we pride ourselves in providing excellent customer service, a considerable amount of our time is spent answering questions that should be handled by the debtor's attorney. Remember, we cannot give legal advice. Under this agreement, the debtor's attorney should respond to the debtors and answer their questions, even after the case is confirmed. Our procedure is to forward an e-mail to the Trustee when a debtor complains that he/she has been unable to reach their attorney or the attorney will

not return calls. I can direct the attorneys to this section of the agreement.

Additionally, the Model Plan will be revised to reflect the change in the distribution of fees to the attorneys under the plan after confirmation. Debtor attorneys can now receive an initial installment of one-half of the funds collected by the Trustee prior to confirmation and subsequent monthly installments of one-half of the fund disbursed by the Trustee during that month (net of amounts distributed pursuant to Paragraph 3 of that section of the plan).

Most will agree that the committee meetings with the Judges, debtor's attorney bar, the UST's and Chapter 13 Trustees resulted in a workable plan for all—The Model Retention Agreement.

Marilyn O. Marshall, Standing Trustee

Inquiring Minds

QUESTION:

What does our office do with all those "written in" comments in the Model Plan?

ANSWER:

The simple answer is ignore them. The entire concept of the Model Plan was to create a uniform plan for the District as to eliminate uncertainty in plan administration. The Model Plan is mandatory in this District and the body of the plan cannot be changed. A debtor must use "section G" in order to deviate from the standard provisions of the Model Plan. All other written in, lined out or manual alterations are impermissible and inapplicable. In other words, any deviations from the standard model plan are to be ignored and do not constitute a part of the plan UNLESS they are contained in section G and the box on page one indicating that section G is applicable is checked.



DO YOU HAVE A BANKRUPTCY RELATED QUESTION THAT NEEDS ANSWERING? IF YOU DO, SUBMIT IT VIA E-MAIL TODAY AT:

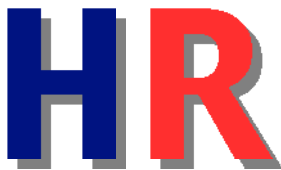
NEWSLETTER@CHI13.COM

Daylight Saving Time Begins

Just a reminder, every year Daylight Saving Time begins on the first Sunday of April at 2:00 am. So don't forget to set your clocks ahead on Sunday, April 6th.



**HUMAN RESOURCES
Workplace Security**



Security measures are continuously being improved upon in our workplace. One priority in the HR department is to deter workplace violence and ensure that our employees are protected. Changes in how employees can access parts of our suite is a recent enhancement made by the Trustee.

Each employee is assigned to a key card security level appropriate to his or her job function. These changes allow the Trustee greater control over business property and reduce the employee's exposure to workplace violence by non-staff members. Key card security levels are designated as follows:

- 🐕 24 hour access to the suite, storage room and computer room;
- 🐕 24 hour access to the suite and storage room. No access to computer room;
- 🐕 Limited access to the suite and storage room. No access to the computer room;
- 🐕 Limited access to the suite. No access to the storage room or computer room.

All staff members have been informed of the common areas they can access, and the days and hours they have access to those areas. Staff were also informed of the procedures regarding card use, card replacement and fees for replacement, and how to report lost or stolen cards.

All these changes have been established with the assistance of the Sante Fe office of the building. Employees are allowed or denied access to our suite based on their security privileges.

Any questions about privileges, problems with your key card and/or any concerns about safety on our premises should be addressed with the Human Resources department.

Robin Dirksen



CFM: Not Just Another TLA

(continued from page 2)

jection to see if a proposed plan is feasible? To get these answers we need to know how the case will allocate from now until the plan is completed.

One benefit of the CFM is that for the first time we will have one set of routines that will project the cash flow whether it's for doing this month's allocation, calculating a payoff balance or doing a plan projection. To date, all these functions have been carried out by separate routines that are similar, but can provide inconsistent results. Another objective for the CFM is to make the program code more easily understood and maintained.

From an operational point of view, the CFM will bring changes to our workflow. Now we'll need a new job for setting the unsecured disbursement rates. Our office may have to look at cases again, because things happen that can require changing the rate. We've determined the kinds of changes that can affect the rate — such as adding a claim, adding an interest charge, or turning off a claim's "OK to Allocate" switch. CaseNET will have to detect such changes and flag cases for a disbursement rate review if it appears that a previously set rate might need to be changed.

There are a lot of parts to this thing. We expect it to solve many of our most difficult problems. Our goal is to have the major pieces in place and functional by June 30.

Cliff Tarrance

April Birthdays, Anniversaries And Other Notable Events

- April Fool's Day** on April 1st.
- Happy 3rd Anniversary to **Laura Mendoza** on April 3rd!
- Happy 10th Anniversary to **Dave Latz** on April 5th!
- Happy Birthday to **Rosalind Lanier** on April 6th!
- Daylight Saving Time Begins** on April 6th.
- National Workplace Napping Day** on April 7th.
- Happy 4th Anniversary to **Shanika Thomas** on April 12th!
- Income Tax Day** on April 15th.
- Passover Begins** on April 17th.
- Happy Birthday to **Angela Hope-Davis** on April 20th!
- Easter Sunday** on April 20th.
- Earth Day** on April 22nd.
- Happy Birthday to **Cliff Tarrance** on April 25th!



CASE ADMINISTRATION – CLAIMS**Duplicate Notices**

A duplicate notice is mailed to a creditor when a second claim is submitted for the same debt but the disbursement address, amount due or debt treatment is different from the original claim that was filed. In some cases, our office has found the need to customize the duplicate notices that we send out based on the circumstances surrounding the claim filed. Below is a list of customized notices that have been added as templates in CaseNET:

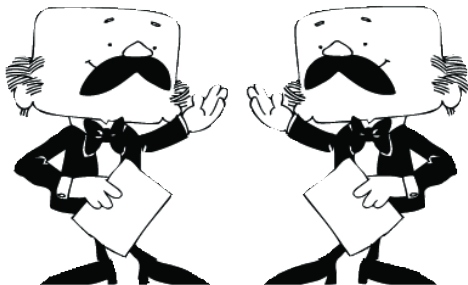
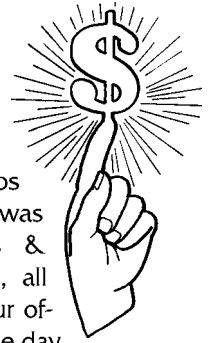
Deficiency claims – This is a courtesy notice to inform the creditor that a duplicate claim was received, but will not be paid due to late filing. In cases where the stay has been modified on the vehicle, the secured claim will continue to be paid unless the order modifying the stay has language to withdraw the claim. The creditor is supposed to amend the claim for the deficiency balance after the car has been sold. Usually, the creditor will just file a new claim that can't be paid due to late filing. The purpose of the notice is to have the claim amended from secured to unsecured, so the debtor can satisfy the remaining balance at the correct percentage.

Audit – If a duplicate claim is found during a final audit, the notice will be mailed to the creditor with a deadline for responding. If the creditor does not respond by the expiration date, the court will be notified to discharge the debtor.

Attorney Fees – The debtor's attorney is notified that our office has received a second fee order that appears to be a duplicate. The attorney must respond to the notice or vacate the duplicate order, otherwise disbursements will not be issued until the matter has been resolved.

Address Changes – If the creditor needs to change their address on the original claim that was filed, it can be done by filing a claim assignment with the court or by sending a letter to our office. This notice is mailed when the only change noted on the duplicate claim is the address. The notice informs the creditor of the correct procedure to change addresses rather than resubmitting claims for every case that they want to change the address.

Rosalind Lanier

**FINANCIAL • COMPTROLLER****Creditor Disbursement Returns – An Enhanced Process**

The creditor disbursement return procedures have changed. The new process helps eliminate the potential for fraud and also was recommended by our auditors, Tans & McAfee, P.C. Effective February 24, 2003, all creditor disbursement returns received at our office are being deposited to our lockbox on the day they are received.

The creditor disbursement return checks go into a separate envelope and two stickers stating "Special Handling – Separate Deposit" are adhered to the envelope. Additionally, on the envelope received in our office, this sticker is also applied. All backup that is with the check is also sent to the bank.

It usually takes two days from the day the checks are mailed for them to get into our lockbox deposit. These two days give the Closing Specialists time to investigate what case the funds are applicable to and why. The Closing Specialist will docket the information and create a form for the creditor disbursement with information on the creditor, account number, claim amount, case number, and the amount of the creditor disbursement return. This information is supplied to the Receipts Specialist so that when the batch comes back from the bank, after being deposited, it can be matched and the deposit can be credited to the correct case with the proper creditor disbursement code.

A lot of brainstorming and coordination went into this procedure, and it is working well. It is an improvement over the previous process, in that the potential for fraud is lessened.

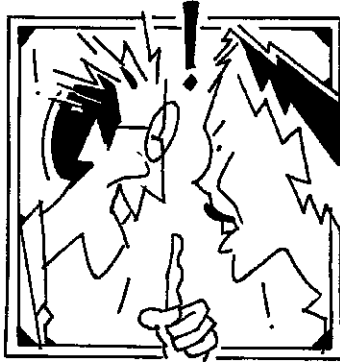
DonnaLynn Zimmerman

LEGAL**Pointers For A Successful Petition With The Model Plan**

Do not ever use "unknown" as a value in schedules or a plan. The debtor has the burden to show code compliance of a case. Listing a value of "unknown" is fatal to confirming a plan because it does not allow the determination of feasibility, eligibility and code compliance. If an asset has a scheduled value of "unknown", assume it has a value of millions and watch how it makes the plan fail. Do yourself a favor and avoid having to amend schedules over and over by taking the time to assess the proper values. This will help the trustees help you in determining compliance with the bankruptcy code. After all, it's the debtor's burden.

To Whom It May Concern:

Our office's answer to "Dear Abby" from the perspective of both female and male employees.



Dear Whomever,

How do you "make time" when you don't have time?

From: Need More Time

HER RESPONSE...

Dear Need More Time,

My advice to you is a common answer. Basically, you should just plan ahead. Here are a few things you could do: take your clothes out to wear the previous night and have them ironed and ready to go; in the morning decide on what your dinner will be and if necessary, take those food items out to reduce your preparation time; better yet, if you and your family like instant meals, stock up on those for a quick dinner. Other than that, I have about the same insight as others. Everyone wants the same answer, so if I find it I'll be certain to let you know.

HIS RESPONSE...

Dear Need More Time,

Time is money. Money is a precious commodity. Precious commodities are bartered and traded for other commodities. Following this logic, it should follow that more time can be traded for something else like beans or coal. If you want more time, you need to hold a special garage sale. Instead of passing your junk onto another person for a few dollars, sell it to them in exchange for a few of their minutes. 5 minutes for an old toy, 10 minutes for a bicycle, 2 hours for the dining room table your aunt left you.

For those who don't believe in the power of illogical logic, here are a few more suggestions:

- ◆ The Theory of Relativity states that the closer you approach the speed of light, the slower time passes. However, the same theory also states that the closer you approach the speed of light, the more space you take up (intergalactic bloating). If you want to try this method, you'll need a space shuttle and a *really* good diet program.
- ◆ *Carpe diem* is an old Latin phrase meaning "seize the day". This phrase has many subtle meanings; I choose to take it literally. If you want more time, start stealing daylight. With millions of rays shining down, no one will notice a few missing. When it becomes cold and gray, you

EMPLOYEE BIO: Juliana Jones



Birth date: September 30th.

Birthplace: Atlanta, GA.

Family: Yes, I'm a mother with two teenagers, one boy and one girl.

Position: Payroll Specialist.

Years with the Office: Two.

Favorite Food: Pepperoni Pizza and Shrimp.

Favorite TV program: Disappearing Acts and Girlfriends.

Favorite Color: Purple.

Favorite expression: Who are you talking to?

Favorite Smell: My mom's fried chicken and collard greens.

Favorite Childhood memory: Riding in my daddy's red convertible with the top down.

If you could meet one person in the world, either dead or alive, who would it be? Martin Luther King, Jr.

What's most important in life? Family, health and how you treat others.

Is the glass half full or half empty? Half empty – there is always room for more.

What's guaranteed to make you smile? My mother, my kids, other children and gifts.

First thing you do in the morning when you wake? Tell the Lord thank you.

My friends would describe me as: A lot of fun, trustworthy, and competitive.

A perfect day for me would be: In Atlanta, talking with family on one of our boats. Then, going bungee jumping as the sun is going down.

Most embarrassing moment: I forgot it was Presidents' Day, got dressed and left for work. I didn't realize it was a holiday until I got to the daycare center and it was closed. I said "that's why there was hardly any traffic".

Proudest moment: Giving birth to my daughter and son.

In 5 years I see myself: As trustee, recording my third CD and owning my own yacht.

can pull out your jar of sunbeams (not to be confused with moonbeams) and go about your errands.

- ◆ My best suggestion is to stop sleeping. Eight hours spent in slumber is eight hours you could be using more productively, like watching TV or developing a good caffeine addiction. I use this method personally and have yet to encounter any...ZZZZZZZZ.

DO YOU HAVE A PERSONAL QUESTION THAT YOU'D LIKE TO ASK? SUBMIT ONE TODAY IN OUR ANONYMOUS DROP BOX LOCATED IN THE MAIL ROOM.

Noodles & Nincompoopery

On April 1st, the world will go mad. Pigs will fly, rivers will flow backwards, and your neighbor will leave a flaming bag of feces on your front steps. As children love Halloween, April Fool's Day belongs to the adolescents and perpetually immature. As each of us ages and passes from prankster to pranked, we wonder: how did a day made for practical jokes work its way into our culture.



The origins of April Fool's Day lie far in the ancient past. At least 30 or 40 years. Spaghetti farmers invented it. Seriously. Or the French if you prefer. Perhaps the Egyptians enjoyed a good joke (I hear the pharaohs were huge fans of egging each others' tombs).

All kidding aside, April Fool's is a celebration of wanton mischief that can be traced back to a single man: Lord Wallace Fool. Lord Wallace was an English philosopher who coined the term "I know you are but what am I?" (Paul "Pee Wee Hermann" Reuben's is a descendant of his). Fool was spending some time on a spaghetti farm (in France...or Cairo) and noticed that everyone was celebrating the beginning of the New Year in late March. Fool tried to explain they were nearly 3 months slow but they wouldn't listen. By the time he gave up explaining, it was April 1st.

The spaghetti farmers then decided to call anyone talking crazy a "fool". They declared April 1st to be "Fool's Day" but since there was another "Fool's Day" in August (Willard's grand uncle John Fool managed to irritate the entire Ottoman Empire with his bad Alexander the Great impressions), they had to clarify it as "April Fool's Day". The rest is history.

Since this is an April Fool's Day article there might be some suspicion as to the accuracy of my reporting. As an Eagle Scout, I cannot lie: it's all true. I may have made a slight error in detail a time or two, but my intentions were good. I am a man of my word and my word for today is "bull-flop". Yet every good lie contains a great deal of truth. The real roots of April Fool's are in this article; the fun is in the finding. Have fun!

Kyle Issleb

"The first of April is the day we remember what we are the other 364 days of the year."

– Mark Twain

Protect Yourself From Slamming

"Slamming" is the term used to describe the practice of switching a customer's telephone service, local or long-distance, without permission.



It has become increasingly common, and often a customer doesn't know it has happened until the phone bill arrives. This is an illegal practice and you do have rights to protect yourself.

Many instances of slamming occur during a telemarketing call. To protect yourself, make sure that if you are not interested in switching services, you explicitly let the caller know that you are not interested in their services. Many unscrupulous companies will take an "I don't know" as an acceptance.

Remember, never sign anything without reading it first. If you receive a letter or notice saying that it is verifying that you have switched services, notify them immediately that you are not verifying the switch.

Check your phone bill carefully each month, and notify your local phone company if you see any strange charges or unfamiliar names on your bill. If you feel you have been slammed, let your local phone company know you want your former service provider reconnected, and that any "change charges" should be taken off of your bill. You are not required to pay any extra charges imposed by the slamming company. If any of your complaints are not resolved, you can file a complaint with the FCC (1-202-418-0960).

You can also protect yourself by asking that your local phone company make a note on your account that all changes must be authorized by you directly first. If you are shopping around for other phone service, ask to see all offers in writing first and be sure you know what you are agreeing to.

To check which service provider you currently have on your phone, call toll-free 1-700-555-4141 for long distance and 1-your area code-700-4141 for local service. You will hear a recording that states the name of the company providing your service.



Newsletter F Y I s

If you would like to contact us or submit ideas or articles for the newsletter, you can do so by:

- ✓ e-mailing us at newsletter@chi13.com
- ✓ dropping your submission or idea in the anonymous newsletter folder located in the mail room, or
- ✓ leaving them with Amanu

Please remember when making a submission to the newsletter, it must be:

- ✓ type-written and
- ✓ submitted by the 1st Wednesday of the month via e-mail, a Word document or an ASCII file.

We also ask that anyone who goes to a seminar please be prepared to furnish the committee with a detailed article on its subject.

You may also view this edition of the Chronicle and previous issues on the Chapter 13 Trustee website at <http://www.chicago13.com/>.

Get Ready!

GET READY for this year's WALK & ROLL CHICAGO with the AMERICAN CANCER SOCIETY!



Take a 5-mile walk, a 10-mile in-line skate or a 15-mile bike ride on Sunday May 18, 2003 starting at 10:00 a.m.

Please contact Juliana Jones for your pledge forms. There is a \$50 minimum donation to receive a T-shirt. These donations will be collected no later than May 9, 2003. You will have until June 18th to turn in all pledge monies.

The American Cancer Society is a community based volunteer health organization dedicated to eliminating cancer as a major health problem by preventing cancer, saving lives and diminishing suffering from cancer through research, education, advocacy and service.

Let's all join forces and have the best team ever for 2003!

**OFFICE OF THE
CHAPTER 13 TRUSTEE
MARILYN O. MARSHALL**
224 S MICHIGAN AVE • STE 800 • CHICAGO IL 60604-2500

Fun With Taxes

Will Rogers directed his wit at many topics. Some of his funniest quips concern his frustration with the government, particularly taxes. Since everyone needs a chuckle around tax time, enjoy these fun quotes from Will Rogers.

I don't make jokes; I just watch the government and report the facts.

The Income Tax has made more Liars out of the American people than golf has.

The difference between death and taxes is death doesn't get worse every time Congress meets.

Alexander Hamilton started the U.S. Treasury with nothing – and that was the closest our country has ever been to being even.

We got a long-sighted government. When everybody has got money they cut the taxes, and when they're broke they raise 'em.

It costs ten times more to govern us than it used to, and we are not governed one-tenth as good.

Rogers was not able to keep himself completely above the fray, however. Having paid too much income tax one year, he tried in vain to claim a rebate. He wrote repeatedly, but his letters went unanswered. Eventually the form for the next year's return arrived. In the section marked "Deductions," Rogers listed: "Bad debt, US Government--\$40,000."

