

A CLIENT'S GUIDE TO CHAPTER 13 BANKRUPTCY



BANKRUPTCY

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I. Is Chapter 13 Right for You?



Once you decide that bankruptcy is the best way to deal with your debt problems, you will have to decide which Chapter of the Bankruptcy Code to file under: Chapter 7, Chapter 13, or Chapter 11. Most individuals choose Chapter 7 because it's fast and relatively simple. Some people choose Chapter 13 because it offers certain advantages not available in Chapter 7 or because they are not eligible for Chapter 7. Chapter 11 is rarely used by individuals because it's very expensive and complex.



For the vast majority of people, the choice is between Chapter 7 and Chapter 13. The two types of bankruptcy have some similarities and some significant differences.

How Chapter 13 Works

In a Chapter 13 bankruptcy, you develop a plan to repay some or all of your debts over three to five years. The object is to reduce the amount of your

monthly payments so that they are more affordable or to eliminate some of your debt so that you are able to manage to pay the rest.

Your repayment plan must meet certain requirements and be approved by a bankruptcy judge. The amount you'll have to repay depends on how much income you have, how much you owe, and how much your unsecured creditors would have received if you'd filed for Chapter 7 bankruptcy. Once your plan is approved, you make regular payments to a trustee, who then pays your creditors.

You get to keep all your property. None of it will be sold to pay your creditors. However, if you want to keep property that is security for a debt (e.g., a mortgage), you will need to be current on your payments and continue to make the payments after your bankruptcy. Most of your unpaid unsecured debts will be eliminated. Typically included are medical bills and credit card balances. Some debts, like child support, student loans, and some tax liabilities cannot be discharged. A Chapter 13 case lasts for the length of your repayment plan, i.e., three to five years.



How Chapter 7 Differs

In a Chapter 7 bankruptcy, the bankruptcy trustee sells your “non-exempt” assets (if you have any), then uses the money to repay your unsecured creditors a portion of the amount that you owe. If you have secured debts, as in

Chapter 13 bankruptcy, you will need to keep up your payments if you want to keep the property.

You can keep any property that is classified as exempt (items like your clothes, household furnishings, and perhaps a modest car). Most or all of your unsecured debts will be eliminated. As with Chapter 13, some debts, like student loans and support obligations, are not dischargeable. A Chapter 7 bankruptcy takes about five months to complete.

Are You Eligible for Chapter 13?

To qualify for Chapter 13, you must meet these requirements:

Income. You must have regular and reliable income for at least six months before filing. The income can come from any source including a pension, Social Security benefits, or a job.

Debt limits. Your debts must be within limits set by the federal government. As of April 1, 2013 and for all of 2014 and 2015, the Chapter 13 debt limits are \$383,175 of unsecured debt and \$1,149,525 of secured debt. The unsecured debt limit includes the total of all amounts owed on credit cards and other consumer debts and taxes. The secured debt limit includes the total of all debt that is secured by your personal property such as car loans and real estate mortgages.

These limits are adjusted periodically every three years according to the consumer price index and the next debt limits adjustment will be in 2016.

If you have too much debt, you may still have the option to file under Chapter 7 or Chapter 11.

Taxes. You have to have paid your income taxes for the four years before you file for bankruptcy.

Are You Also Eligible for Chapter 7?

Not everyone will be eligible for both Chapter 13 and Chapter 7. You must pass a “means test” to qualify for Chapter 7 if over half of your debts are consumer (as opposed to business) debts.

You will be eligible for Chapter 7 if (a) your average annual income is equal to or less than the median income for households your size in your state; or (b) you don’t have sufficient income (after deductions for living expenses) to repay at least a minimum amount of your debt (as specified in the bankruptcy laws) over five years.

If your income is above the state median, the means test takes your average monthly income over the previous six months and deducts certain allowable expenses set by the IRS, as well as some of your actual expenses and actual payments for certain debts. The result determines how much disposable income you have left each month that could be used to pay your debts. The higher your monthly disposable income, the less likely you are to qualify for Chapter 7 bankruptcy.

Your bankruptcy lawyer can explain the details, tell you what financial records you need to gather, and perform the calculations for you.

Why Choose Chapter 13 if You Can File Under Chapter 7?

Most people choose Chapter 7 to get their bankruptcy over in a matter of months, rather than years. But, depending on your circumstances, Chapter 13 may offer you these advantages not available under Chapter 7:

- ◆ You can retain all your property so long as you fulfill the terms of your plan.
- ◆ You can catch up with delinquent payments on property like a car or home by spreading the missed payments through the term of your plan.
- ◆ You can reduce the amount you owe on some types of secured claims to the value of the property securing the debt (a “cram-down”).
- ◆ If you have multiple mortgages and your home is worth less than your first mortgage, you can convert the additional mortgages to unsecured debts, which don’t have to be repaid in full.
- ◆ If you have an unincorporated business, you may continue to operate your business but include the business’ debts in your Chapter 13 plan.
- ◆ If friends or family co-signed for any of your debt, they are protected by your automatic stay.
- ◆ You can discharge some debts that are not dischargeable in a Chapter 7 bankruptcy, especially certain debts that are part of a divorce.

On the other hand, Chapter 13 has certain disadvantages:

- ◆ You must pay a trustee’s commission of roughly 10% of the plan disbursements over the three or five-year life of the plan.
- ◆ Attorney’s fees are higher for Chapter 13 than for Chapter 7.
- ◆ For the life of your plan, the trustee will review your finances and you will need to get the trustee’s approval to incur more debt.

- ◆ If your income or assets increase during the life of your plan, the trustee can seek increased payments.
- ◆ If you fail to make a payment, the trustee and creditors can seek to dismiss your case and thus block your discharge.

On balance, Chapter 13 is probably best if you:

- ◆ Have mostly non-dischargeable debts (alimony, child support, taxes, fines and penalties, student loans).
- ◆ Want to keep non-exempt assets.
- ◆ Want to cure a mortgage or car loan default.
- ◆ Have high disposable income (and do not qualify for Chapter 7).

Chapter 7 is probably best if:

- ◆ Your debts are primarily unsecured and dischargeable (credit cards, medical bills, personal loans).
- ◆ You have little or no non-exempt property.
- ◆ You need not cure defaults to retain secured property.
- ◆ You do not have sufficient disposable income to fund a Chapter 13 repayment plan.

Your bankruptcy lawyer will review your situation and advise you on the better choice. If you decide on Chapter 13, you will want the help of an experienced bankruptcy attorney. It is very difficult to devise a repayment plan that complies with the requirements of Chapter 13 without special software and expertise. Most people who try to handle their own Chapter 13 cases run into trouble.

II. An Overview of Chapter 13 Proceedings



If you are eligible for and decide to proceed with a Chapter 13 bankruptcy, here is an overview of what you can expect.

Step 1: You Complete Credit Counseling

Before you can file for bankruptcy, you must complete a credit counseling session provided by an approved agency. The counseling must be completed at least one day but no more than 180 days before you file. You can receive the counseling by phone, in person, or online. It usually takes an hour or two. When you finish, you will receive a certificate of completion that will need to be filed with the bankruptcy court.

The goal of the pre-filing counseling course is to explore all available solutions to your financial problems and to discuss alternatives to filing for bankruptcy. Even if the counselor suggests alternatives to bankruptcy, you do not need to follow the recommendations.

Step 2: You Complete and File Your Petition and Other Papers

These papers include your bankruptcy petition; schedules listing all your property, your creditors, and your current income and expenses; and your debt repayment plan. After you review and sign the papers, your lawyer files them with the bankruptcy court. You will need to pay a filing fee.

Step 3: The Automatic Stay Issues

On receipt of your papers, the court clerk prepares an “order for relief” and sends it to all your creditors. The order tells your creditors that they must stop all attempts to collect the debt from you.

As a general rule, the stay remains in effect until your bankruptcy case is concluded, but the court can lift it under certain circumstances.

Step 4: The Trustee Is Appointed

A trustee will be appointed to represent the interests of your creditors. The trustee runs the meeting of creditors, reviews your repayment plan, advises you of modifications needed to get the plan confirmed, and objects to the plan if he or she believes it should not be confirmed.

Once your plan is approved by the court, the trustee is the person to whom you make payments. The trustee will then pay your creditors from your funds according to the plan. The trustee will advise and assist you in performing the terms of the plan.

Some trustees will require you to start making payments under your plan 30 days after your bankruptcy petition is filed, even though the plan has not been confirmed. Others will require you to bring your initial plan payment to the meeting of creditors.

Step 5: You Attend the Meeting of Creditors

Around five or six weeks after you file for bankruptcy, you will need to attend the meeting of creditors. Most meetings last only ten to fifteen minutes and are held in the trustee's hearing room. Your lawyer will be with you. The trustee will put you under oath and ask you some questions about your finances. Typically the trustee



will want you to confirm that all the information in your bankruptcy papers is accurate and that your proposed repayment plan meets legal requirements and is feasible for you to complete. Your creditors will be notified of the hearing and have the right to attend and ask your questions.

Step 6: You Attend the Confirmation Hearing

After the meeting of creditors, the court will schedule a confirmation hearing to confirm your repayment plan. The court will rule on any objections that the trustee or your creditors have made to your plan. The court will confirm your plan or may allow you additional time to modify it to satisfy objections.

Step 7: Creditors File Proofs of Claim

To receive any money from your plan, your creditors must file proofs of claim specifying what they are owed with the bankruptcy court. The trustee reviews the claims and objects to any that appear improper. The court rules on the objections.

Step 8: You Make Payments and File Reports

For the duration of your repayment plan, you must make regular payments to the trustee, who will then distribute the funds to your creditors. You may make the payments through a payroll deduction. If you don't make all your payments on time, the court



may dismiss your case without discharging your debts or may convert it to a Chapter 7 if you qualify.

Periodically, the trustee sends you statements showing how much has been paid to each creditor and what you still owe. You file annual income and expense reports and copies of your income tax returns.

Step 9: You Complete a Financial Management Course

You must complete a financial management course approved by the U.S. Trustee before the court will grant you a discharge. After finishing the course, you file a certification of completion with the court. The certificate must be filed before the last payment required under the plan.

Like the pre-filing counseling requirement, the pre-discharge education course must be taken with an approved organization. The course will address a variety of issues including how to use credit responsibly and how to develop a manageable budget. The course will last from one to two hours, and the fee for the course may be slightly higher than the fee for the pre-filing course.

Step 10: Your Debts Are Discharged

After the plan has been administered, the trustee will file a final report and accounting and request a discharge. After a hearing, you will be discharged from all dischargeable debts.



III. Filing for Chapter 13 Bankruptcy



Checklist of Documents to Gather

The first step in filing for bankruptcy is preparing your bankruptcy petition and the schedules and other materials that must be filed with the petition. You will need you to gather a number of documents so your lawyer can prepare your bankruptcy filing.

Start gathering these documents now even if you haven't made a final decision to file. The more organized you are, the more quickly your lawyer can prepare your papers if you decide to proceed. Here's a checklist that will help. It's a good idea to make copies of all documents just in case any get lost.

Income

- ✓ Pay stubs for yourself and your spouse, even if your spouse may not be filing with you, for the preceding six months.
- ✓ Records of other sources of income your household received in the preceding 6 months, such as gifts, sales of property, rent, and support.
- ✓ Your tax returns for the preceding 3 years.
- ✓ Your most recent bank statements.

Debts

- ✓ Your most recent bills from every creditor.
- ✓ Any divorce decree or court order requiring you to pay child or spousal support.
- ✓ Any judgments entered against you or pending suits.
- ✓ All correspondence between you and your creditors or collection agencies.

- ✓ Any other documents showing debts you owe others, such as promissory notes.
- ✓ Any documents showing money owed to you.

Property

- ✓ Real estate deeds.
- ✓ All your insurance policies, including home and auto.
- ✓ Vehicle titles.



- ✓ Your lease or mortgage.
- ✓ A list of all assets in your possession.
- ✓ You may also want to begin saving receipts for items you purchase.

Proof of Identity

- ✓ Your driver's license
- ✓ Your Social Security card or other proof of your Social Security number.

The Bankruptcy Petition

Your bankruptcy petition provides the court with basic information, such as your name and address; the type of bankruptcy you are filing; how many creditors you have; how much you owe; how much your property is worth; and whether you have any non-exempt assets.



In addition to the petition, you must file a list of all your creditors and their mailing addresses (the creditor matrix) and a form showing your complete Social Security number.

Schedules A Through C: Your Assets

On Schedule A, you list all real property you own, its current value, and the amount of the mortgage still owed. On Schedule B, you list all personal property, such as cash, investments, household furnishings, and vehicles, and each item's value. On Schedule C, you list all property you claim as exempt.

Schedules D Through G: Your Debts and Creditors

In Schedule D, you list all creditors that hold secured claims and the amount you owe them. These are creditors who have liens on property used as collateral for the debt. On Schedule E, you list creditors having unsecured priority claims and the amount you owe. Priority claims are claims that must be paid in full during your repayment plan. The most common of these are domestic support obligations (alimony and child support) and taxes. On Schedule F, you list all other unsecured creditors and the amount of their claims against you. It's important to be thorough and list all your debts. Failure to list a debt could mean it is not discharged.

If you are involved in a partially unperformed contract (an executory contract), you must list this contract and any unexpired leases in Schedule G.

Schedules H Through J: Your Personal and Financial Information

Schedule H asks you to provide information about co-debtors including both individuals and corporations that are also liable for any debts included in your schedules.

Your current income and expenditures must be listed in Schedules I and J.

Statements of Financial Affairs and Currently Monthly Income

The Statement of Financial Affairs requires you to answer questions about financial transactions such as payments to creditors and other transfers of property that occurred in the year or two before filing. Sometimes the



trustee can void these transactions and get the money or property back to distribute among your creditors.

The Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income shows whether your income is above or below the median for households your size in your state (which determines the length of your repayment plan) and the amount of disposable income you have to fund your repayment plan.

Your Repayment Plan

Your Chapter 13 repayment plan is an essential part of your bankruptcy filing. You can submit your repayment plan with your bankruptcy petition, or within 14 days of when you filed your bankruptcy petition.

IV. Developing a Confirmable Chapter 13 Repayment Plan

Requirements

Before your repayment plan can take effect, it must be confirmed by the bankruptcy court. To be confirmed, your plan must:

- ◆ Pay your net disposable income to the trustee for a period of at least three, but not more than five, years.

- ◆ Pay your priority creditors in full.
- ◆ Pay your secured creditors the full value of their claims.
- ◆ Pay your unsecured creditors at least as much as they would receive in a Chapter 7 bankruptcy.
- ◆ Provide a percentage of plan payments for the trustee's compensation.
- ◆ Be proposed in good faith.
- ◆ Be feasible.

Developing a repayment plan that meets all these legal requirements can be challenging.

How Long Will Your Plan Be in Effect?

If your current monthly income (CMI) is above the median monthly income for a household your size in your state, your repayment plan will last for five years. If your CMI is below the state median, your plan will last for three years, although it may last longer if necessary to make all required payments.

Your plan can be shorter than these periods if you will be paying your unsecured debts in full.

CMI isn't actually your currently monthly income. It's your average monthly income over the six months before you file, which may be more or less than your actual monthly income.

Paying Your Priority Creditors

As a general rule, your repayment plan must pay your priority debts in full. Priority debts are:

- ◆ Child support and alimony arrearages owed directly to an ex-spouse or child.
- ◆ Back taxes incurred in the last three years.
- ◆ Wages, salaries, and commissions you owe to employees.
- ◆ Contributions you owe to an employee benefit fund.

Paying Your Secured Creditors

In general. Secured debt is debt for which you have pledged property as collateral (e.g., a car loan or mortgage). Your Chapter 13 repayment plan must provide that you will stay current on your secured debts that will last longer than your plan (e.g., your home mortgage). All other secured debt must be paid in full under the plan if you want to keep the property.

If you are incapable of paying these mandatory debts during your plan, you may have to give up some secured property on which you are making payments. Alternatively, you will need to reduce your living expenses.

Making up past due payments. If you are behind on your mortgage, car loan, or other secured debt, you can make up missed payments over the term of your plan.

Lien stripping. If you have a second mortgage and you are underwater on your first mortgage (the amount of your mortgage exceeds the value of

your home), you can remove the second mortgage (called “lien stripping”). The balance due on the second mortgage will be treated as unsecured debt.

Cramdowns. You may be able to reduce your secured debt on assets, other than your home, to the current value of the property (called a “cram-down”). For example, if you owe \$15,000 on a car that has a current value of \$9,000, you can propose a plan that pays your creditor \$9,000 instead of \$15,000 over the life of your plan. You can't do a cramdown on any property that you purchase within 30 months before filing for bankruptcy or for your residence.

Surrendering the asset. If you don't want to keep the property or can't afford to do so, you can surrender it to the creditor. Any balance that you still owe on the mortgage or loan above the value of the property will be treated as unsecured debt.

Paying Your Unsecured Creditors

Unsecured debts are debts that are not supported by any collateral. The amount of non-priority unsecured debt that your plan must repay depends on three things:

1. How much disposable income you have each month to put toward your plan payments.
2. How long your plan will last.
3. How much non-exempt property you have, if any.

The total amount you could be required to repay could be anywhere from zero to all of your unsecured debt.

Your Chapter 13 repayment plan must devote all your projected disposable income over the term of the plan to pay your unsecured creditors. Your “disposable income” is income (other than child support payments you receive) less amounts reasonably necessary to support you and your dependants and less charitable contributions up to 15% of your gross income.

Your unsecured creditors must receive at least as much as they would have received if you were to file for Chapter 7 bankruptcy. In a Chapter 7 bankruptcy, your unsecured creditors would receive the proceeds from the sale of your non-exempt property less the costs of the sale and trustee's commission.



The greater the value of your non-exempt property, the more you will need to pay unsecured creditors. If you have no non-exempt property, your unsecured creditors would receive nothing if you filed for Chapter 7. In this case, your plan does not need to provide for payment of any of your unsecured debts.

What Property Is Non-Exempt?

State law determines what property is exempt and what property is non-exempt. Most states exempt from creditors property up to a specified value in various categories such as a home, vehicles, household goods, clothing, tools used in your profession, insurance policies, and retirement benefits. In some places, certain categories of property are exempt no matter what the value. Property that you own beyond the specified amount is non-exempt.

The types of property that tend to be non-exempt include:

- ◆ Real estate, other than a home.
- ◆ Luxury vehicles.
- ◆ Valuable collectibles and art.
- ◆ Antiques.
- ◆ Expensive jewelry and designer clothing.
- ◆ Cash and investments.
- ◆ Business assets other than tools of your trade.



V. The Automatic Stay

How It Protects You

The automatic stay stops collection efforts by virtually all of your creditors. Immediately after you file your bankruptcy petition, the clerk of the bankruptcy court will send a notice to all your creditors that the stay is in effect. Individuals who are liable with you for consumer debts are also protected by the automatic stay in Chapter 13.

A creditor that violates the automatic stay after receiving notice of your bankruptcy filing can face harsh penalties. You may be able to recover actual and punitive damages and attorneys' fees from the creditor.

Activities Prohibited by the Stay

Once a creditor receives notice of the stay, the creditor cannot:

- ◆ Contact you seeking payment.
- ◆ Ask you to furnish security (collateral) for an unsecured debt.
- ◆ Bring a lawsuit against you.
- ◆ Pursue a pending suit against you.
- ◆ Attempt to enforce a judgment against you.
- ◆ Continue with any debt enforcement efforts that are already begun, such as wage garnishments and sales of your property.
- ◆ Perfect a lien against your property.
- ◆ Repossess or foreclose on your property.

Your monthly bills for your home mortgage and car loan will stop. If you plan to continue to pay them to avoid foreclosure or repossession, you'll have to make a note of the payment amount, due date, and the creditor's address so that you can send in the payment on your own.

The automatic stay does not stop all collection efforts against you. For example, alimony and child support can still be collected. The stay won't stop an eviction if the landlord obtained a judgment of possession before you filed for bankruptcy or you are using illegal drugs or otherwise endangering the property. The IRS can continue with some IRS auditing and tax assessment activities, but it can't put a lien against your property or seize it.

When the Stay Ends

The automatic stay remains in effect until your case is concluded. Once you receive a discharge from the bankruptcy court, the stay ends, but your creditors cannot collect on any discharged debts.

However, if you had a pending case dismissed within one year of the current filing, the automatic stay will terminate in 30 days unless the court finds that you are refiling in good faith. The case will be deemed to be filed in bad faith if you had more than one case under Chapters 7, 11, or 13 dismissed within the previous year for failure to provide the court with essential documentation and there has been no change in your financial condition. If you filed two or more cases in the previous one-year period, the stay will not go into effect. This rule prevents you from repeatedly filing for bankruptcy just to keep your creditors at bay.



Lifting the Stay

The bankruptcy court may lift the automatic stay for a particular creditor before your case is concluded if the creditor gives the bankruptcy court good cause. For example, the bankruptcy court will often lift the stay to allow your home mortgage lender to foreclose if you are behind on your payments and appear unable to catch up.

VI. The Meeting of Creditors



Everyone who files for bankruptcy has to attend a meeting of the creditors (also called the section 341 meeting after the applicable section of the Bankruptcy Code). If you skip it, the court could dismiss your case without discharging your debts.

Time and Place

After your lawyer files your bankruptcy papers with the court, the bankruptcy clerk will send you a notice of the date, time, and place for the meeting. Generally, the meeting is scheduled for about six weeks after you file for bankruptcy. (It must be held at least 21, but not more than 50 days after you file.) The meeting is usually held around a table in a conference room.

Before the Meeting

At least seven days before the meeting of creditors, you must file with the bankruptcy court your tax returns for the preceding year. If requested by the trustee or a creditor, you must file additional tax returns going back three years. The trustee may extend the meeting of creditors for up to 120 days to give you time to obtain the tax returns. If a creditor requests a copy of your tax return, you must provide it. If you fail to file the tax returns, your case may be dismissed. In addition, you must authorize release of tax transcripts for the future four years to the trustee.

What to Bring

You must bring proof of your Social Security number and a government issued photo ID. The meeting will need to be rescheduled if you forget these items. Your trustee may ask that you bring additional documents to the meeting such as:

- ◆ Pay stubs for the 60-day period preceding the filing date.
- ◆ Bank statements for all financial accounts, including investment accounts.
- ◆ A statement disclosing any changes in your income or expenses you expect to occur in the 12-months after you filed your petition.

Your lawyer will tell you if you need to bring any of these items.

Who Will Be There

You are required to attend, as is your spouse if he or she filed with you. Your lawyer will accompany you. The bankruptcy trustee runs the meeting. Your creditors will be notified about the meeting and are entitled to attend and ask you questions. Creditors are more likely to attend when you file under Chapter 13 than under Chapter 7.

Purpose of the Meeting

The meeting of the creditors gives your bankruptcy trustee and any of your creditors that wish to appear the chance to ask you questions about your property and debts. The trustee wants to make sure that your repayment plan satisfies all legal requirements and that you are able to make the payments. The trustee also wants to make sure you have filed your tax returns for the four preceding years.



What Will Happen at the Meeting?

The trustee will place you under oath and ask you questions. Typically, the trustee will want to know whether the information about your income, assets, debts, and expenses in your bankruptcy petition and schedules is accurate. The trustee may ask you some additional questions such as how you determined the values of your property, what are the sources of your income and how stable are they, whether your expenses are reasonable, and what obligations you have to support dependants.

The questioning by the trustee is typically brief lasting between ten and fifteen minutes. After your bankruptcy trustee is finished asking you questions, your creditors will have an opportunity to ask questions, if any are present. Secured creditors are typically concerned about whether you'll be able to catch up with missed loan payments or whether you are offering to pay them the full value of the collateral on a cramdown. Unsecured creditors want to know whether you can cut your expenses and pay them more during the term of your plan.

If the trustee objects to any part of your repayment plan, the trustee will let you know what needs to be done to satisfy the objection. If you fail to comply, the Trustee will file objections to confirmation of the plan. Creditors may also file objections.

After your creditors are finished questioning you, the trustee will conclude the meeting. The meeting could be continued to a future date if the trustee has asked you to submit additional documents or amend your bankruptcy papers or your plan.

VII. Confirmation Hearing for Your Repayment Plan

When and Where

After the meeting of creditors, the court will schedule a confirmation hearing to confirm your plan. The hearing will be in a courtroom before a judge. The hearing will be held between 20 and 45 days of the meeting of creditors, unless the court orders otherwise. The clerk of court will give 28 days' notice of the date of the confirmation hearing and the date when all objections to your plan are due.

Objections to Your Chapter 13 Repayment Plan

The trustee or any of your creditors may file objections to your plan with the court. Objections must be in writing and filed with the court in sufficient time to allow you and the trustee to respond. They must be supported by

admissible evidence and must set forth specific reasons why the plan does not comply with the Bankruptcy Code and should not be confirmed. You may file a written response to the objections in time for the court to consider the response.

Overcoming Common Objections

Some of the most common objections to Chapter 13 repayment plans include:

- ◆ **Your plan does not commit all your projected disposable income to paying your debts.** This objection is more likely if your plan will pay your non-priority unsecured creditors a small fraction of what they are owed or nothing. To overcome it, you'll need to show that your plan requires you to live a modest lifestyle on a tight budget.
- ◆ **Your plan does not pay your unsecured creditors as much as they would receive in a Chapter 7 bankruptcy.** This objection is likely to come up if creditors or the trustee believe you have undervalued your non-exempt property. To overcome it you may need to produce proof (e.g., an appraisal or Blue Book value of a vehicle) of the valuation.
- ◆ **Your plan is not feasible.** The trustee or creditors are likely to raise this objection if it doesn't appear that you have enough income to make your monthly payments or if the source of your income (e.g. your job) appears unstable.
- ◆ **Your plan discriminates among creditors.** The objection may be raised if your plan proposes to pay some non-priority unsecured creditors a greater percentage of what they are owed than others. They should all be treated equally.

- ◆ **Your plan was not proposed in good faith.** This objection shouldn't be a problem if your purpose in filing for bankruptcy is to solve your debt problems and you were truthful in your bankruptcy papers and testimony to the trustee.

Secured creditors might also make minor objections to your plan: your proposed interest rate is too low, the schedule takes too long to pay your arrearage, or, if you are proposing a cramdown, that the value you assigned the collateral is wrong.

What to Expect at the Hearing

If there are no objections, the court will approve the plan at the confirmation hearing. Some courts will confirm a plan without a hearing if there are no objections and the trustee recommends confirmation.

If the trustee or any creditor objects to your plan, the judge may ask you to submit a modified plan that addresses the objections and adjourn the hearing until you do so. If the judge believes that you simply can't come up with an appropriate plan, the judge may dismiss your case. Alternatively, you may be able to convert it to a Chapter 7 bankruptcy if you are eligible for Chapter 7.

VIII. Chapter 13 Bankruptcy Discharge



Requirements



When you have made all payments pursuant to your Chapter 13 repayment plan, you may request a discharge by making a motion to the bankruptcy court. After your discharge, creditors provided for in full or in part under your plan may no longer initiate or continue any legal or other action against you to collect the discharged obligations.

You are entitled to a discharge from the court if you:

- ◆ Are current with domestic support obligations (child support and alimony) as provided in your plan. You must file a certification that you have met all domestic support obligations.
- ◆ Did not receive a Chapter 13 discharge within two years before you filed your bankruptcy petition.
- ◆ Did not receive a Chapter 7, 11 or 12 discharge within four years before you filed your petition.
- ◆ Have remained current on your income taxes.
- ◆ Have provided the court with proof that you have filed your annual federal income tax returns.
- ◆ Have attended a personal financial management course as approved by the U.S. trustee and filed the required certificate.

Hardship Discharge

After your plan is confirmed, things can happen that make it impossible for you to complete your plan. You may be able to get a hardship discharge from the court if all of the following are true:

- ◆ The circumstances that prevent you from completing the plan are not your fault and beyond your control.
- ◆ Your creditors have received at least as much as they would have received in a Chapter 7 case.
- ◆ You are not able to fund even a modified repayment plan because, for example, you cannot work due to illness or injury.



A. Debts That Are Discharged

In General

If your plan pays all your unsecured debts, then they will all be discharged no matter what they were for. If your plan pays less than 100% of your unsecured debts (as most do), the following types of debts will be discharged.

Credit Card Balances

Credit card debt is probably why most people file for bankruptcy. The bad economy and high rates of unemployment mean that many people are unable to make even their minimum monthly payment. Virtually all credit card debt can be discharged in bankruptcy. The exceptions are credit card debt

incurred recently for luxury items and credit card debt incurred as a result of fraud.

Medical Bills

Medical bills are a common reason for filing for bankruptcy. An accident or illness can easily lead to insurmountable medical bills for the uninsured or underinsured. Fortunately, bankruptcy allows you to discharge this debt. Dischargeable medical bills can be for any form of medical treatment including hospital bills, doctor's bills, rehabilitation services, and emergency services.

Lawsuit Judgments

If you lose a civil lawsuit, the court issues a judgment ordering you to pay money to the winner. If you don't pay voluntarily, the other party may enforce the judgment against you in a number of different ways: seizing a



bank account, garnishing your pay, or placing a lien on your home. Most lawsuit judgments for money can be discharged in bankruptcy. There are, however, a few circumstances in which a judgment may not be discharged, such as judgments arising from a DUI or a willful and malicious act.

Personal Loans and Promissory Notes

Personal loans are dischargeable in bankruptcy. It doesn't matter from whom you borrowed the money. Nor does it matter whether you signed a written promise to pay it back (a promissory note) or whether your repayment promise was oral. The only exception is for fraud.

Leases and Contractual Obligations

With few exceptions, bankruptcy will relieve you of contractual obligations, including a lease of real property (like an apartment) or personal property (like a car). You will not need to complete your obligations under the contract and the other party will not be able to sue you for damages for breaching the contract or lease. However, you have the option of keeping the lease or contract in effect by assuming it.

Debts Discharged in Chapter 13, but Not in Chapter 7

A few types of debts can be discharged in Chapter 13 bankruptcy, but not in Chapter 7. These include:

- ◆ Debts (other than child support or alimony) you owe to your spouse, former spouse, or child that were incurred during a separation or divorce; or as a result of a divorce decree, court order, or separation agreement.

- ◆ Debts that you incur to pay a tax debt (e.g., you get a loan to pay the taxes or charge them on a credit card).
- ◆ Loans from a retirement plan.
- ◆ Court fees.
- ◆ Condo, co-op, and homeowners' association fees incurred after you filed for bankruptcy.

B. Debts That Cannot Be Discharged

Not all debts are eligible for a bankruptcy discharge. Debts that cannot be discharged in Chapter 13 bankruptcy are:

Domestic Support Obligations

Domestic support obligations cannot be discharged. Domestic support obligations are child support and alimony established by:

- ◆ A separation agreement, settlement agreement, or divorce decree.
- ◆ A court support order.
- ◆ A child support enforcement agency determination.

Your repayment plan must require you to pay 100 percent of domestic support obligations owed directly to a child or ex-spouse. You don't have to pay 100 percent of domestic support obligations owed to a government agency through your plan, but you will still owe any balance after your bankruptcy. For example, if you are obligated to pay a credit card debt on a card you held jointly with an ex-spouse, you can discharge your obligation to the creditor *and to your ex-spouse* in a Chapter 13 bankruptcy. In a Chapter 7

bankruptcy, you can discharge your obligation to the creditor, but not to your ex-spouse.

Fines and Restitution Obligations

Fines imposed on you for violating the law cannot be discharged in bankruptcy, nor can obligations to pay restitution to the victim.

Intoxication Related Claims for Personal Injury or Death

Debts incurred for personal injuries as a result of operating a motor vehicle or vessel while intoxicated cannot be discharged in bankruptcy. However, debts for property damage are dischargeable.

Student Loans

Student loans are not dischargeable in a bankruptcy case unless you can show the court that you qualify for a hardship discharge, which is difficult. A hardship discharge requires you to fulfill three criteria.

- ◆ You must be able to show the court that if you were forced to repay the student loans, you would be unable to afford a very minimal standard of living.
- ◆ You must provide evidence that your current financial state will continue for a significant amount of time.
- ◆ You must show the court that you made a good faith effort to repay the loans. A good faith effort is proven if you repaid the loans for at least five years before filing for bankruptcy.

Tax Debts

Income taxes that became due within three years before you filed for bankruptcy are priority debts that must be paid in full through your repayment plan. Fraudulent tax debts are not dischargeable.

You may be able to discharge your older income taxes if you meet five criteria:

- ◆ The due date for filing the tax return must have been at least three years before your file for bankruptcy.
- ◆ The tax return must have been filed at least two years before you file for bankruptcy.
- ◆ The tax assessment must be at least 240 days old.
- ◆ The return must not be fraudulent.
- ◆ You must not be guilty of tax evasion.



Debts Arising From Your Willful or Malicious Actions

A judgment against you for injuries or death caused by your willful or malicious act is not dischargeable in Chapter 13. This exception does not apply to property damage arising from willful or malicious acts, which is dischargeable.

To be non-dischargeable under Chapter 13, the act needs to be either willful or malicious. To be non-dischargeable under Chapter 7, the act needs to be both willful and malicious. Unlike Chapter 7, the creditor need not go to court and prove the debt was caused by a willful or malicious act.

Debts Not Listed in Your Bankruptcy Papers

As a general rule, any debts you don't list in your bankruptcy papers will not be discharged. The problem is that the creditor will not be notified and therefore not have the opportunity to file a proof of claim, which is necessary for the creditor to receive any distributions from your plan. There are two exceptions: (1) the creditor knew or should have known about your bankruptcy by some other means; or (2) the creditor would not have received any payments under your repayment plan.

Fraudulent Debts

As in Chapter 7, debts resulting from fraud, theft, or breach of fiduciary duty are not dischargeable if the creditor objects and proves that the debt fits into one of these categories.

I hope this information has been helpful. If I can provide legal assistance, please contact me at: