

BASIC INFORMATION ABOUT CHAPTER 13

Summary: Chapter 13 bankruptcy is designed for individuals with regular income who are temporarily unable to pay their debts but who have sufficient income to pay their debts in installments over a period of time. In Chapter 13, the debtor files a plan with the court to repay creditors, in full or in part, over a three to five-year period. The court must approve the debtor's plan. The debtor makes monthly payments to an impartial Chapter 13 trustee who distributes the payments to creditors. At completion of all payments, the debtor receives a discharge of most debts, including some debts that are not discharged in a Chapter 7. Unlike Chapter 7, Chapter 13 also permits the debtor to retain possession of all property, whether or not it is exempt, and allows the debtor to cure defaults and stop foreclosures or repossessions by making payments through the plan.

Filing Chapter 13: A Chapter 13 case begins with the filing of a petition. Generally the petition is filed with the bankruptcy court for the area where the debtor lives. Along with the petition, the debtor must file a list (matrix) containing the names and addresses of all the creditors. Only an individual, or a husband and wife, who have regular income and owe less than \$290,250 in unsecured debt and \$807,750 in secured debt, may file a Chapter 13. The filing fee for Chapter 13 is \$274.00. The fee must be paid by cash, money order, or with an attorney's or certified check at the time of filing. On written request, the court may grant permission to pay the fee in installments, including payment through the Chapter 13 plan.

Schedules and Statement of Affairs: The debtor must also file bankruptcy schedules and a statement of financial affairs. These documents disclose the debtor's financial condition and should be filed with the petition. If these documents are not filed with the petition, they must be filed within 15 days of the petition or the case may be dismissed.

Chapter 13 Plan: Within 15 days of the petition, the debtor must also file a Chapter 13 plan, a plan summary and a certificate of service showing that the debtor mailed the plan to the Chapter 13 trustee and to all creditors on the matrix. The plan must provide for payment of a fixed amount to the trustee on a regular basis. In this jurisdiction, the court requires a minimum monthly payment of \$75.00. Payments must continue for three to five years. The Bankruptcy Code and Local Rules specify how certain types of claims are to be treated. For example, some debts, such as most taxes, alimony and support claims must be paid in full; others may receive partial payment, and still others (such as home loans) cannot be modified. This court generally requires

payment of at least 10% to unsecured creditors. Because drafting a Chapter 13 plan requires familiarity with many rules and procedures, debtors are encouraged to seek legal assistance from an attorney. Attorney fees may be paid in installments through the plan.

Confirmation: The court must approve all Chapter 13 plans. There are three principal requirements for approval. First, the plan must treat claims as required by the Bankruptcy Code and Local Rules. Second, the plan must pay creditors at least as much as they would have received in a Chapter 7, and third, the debtor must devote all of his or her "disposable income" to payments under the plan. "Disposable income" is the amount of money left over after the debtor pays necessary living expenses. The trustee or creditors may object if the plan does not meet the requirements for confirmation.

Plan payments: Within 30 days of filing the plan, even if the court has not yet approved ("confirmed") the plan, the debtor must start making plan payments to the trustee. Most debtors file a motion to have the court issue a wage order directing the debtor's employer to send a portion of the debtor's paycheck directly to the trustee each month. Once the plan is confirmed, it is the debtor's responsibility to complete the plan.

Claims: The trustee will only pay those creditors who have filed a proof of claim. At the beginning of each case, creditors will receive a notice advising of the bankruptcy, the meeting of creditors, and the deadline to file a proof of claim.

Discharge: With limited exceptions, such as alimony, child support, student loans, criminal fines, and such long term debts as home loans, the debtor is discharged from all debts provided for in the plan upon completion of all plan payments. In very limited circumstances, a debtor may receive a "hardship discharge" before completing all plan payments.

Chapter 13 Rights and Restrictions: In Chapter 13 unlike Chapter 7, the debtor may cure a default on a long-term debt secured by the debtor's home by making payments over a reasonable period of time through the plan. The debtor may satisfy other secured debts (such as car loans) by paying the value of the collateral plus interest over time. While a Chapter 13 case is pending, however, the debtor may NOT incur significant new debt or seek to sell substantial assets without court approval. Additionally, if debtor's income or expenses change significantly, the debtor may have to file an amended plan. All future tax refunds must be paid to the plan.

Automatic Stay: As with all bankruptcy petitions, the filing of a Chapter 13 bankruptcy operates as an "automatic stay." As in Chapter 7, the automatic stay prohibits action against the debtor and the debtor's property. However, in a Chapter 13, creditors are also prohibited from pursuing a co-debtor. The "co-debtor stay" protects an individual who is jointly liable with the debtor on a consumer loan.

Meeting of Creditors: Within 20 to 50 days of filing the petition, the Chapter 13 trustee will hold the meeting of creditors. The debtor (both husband and wife in a joint case) must attend, and failure to do so may result in dismissal of the case. The purpose of the meeting is to allow the trustee and creditors to ask questions regarding the debtor's financial affairs and proposed Chapter 13 plan.

Dismissal and Conversion: The debtor may voluntarily dismiss the Chapter 13 case or may convert to a Chapter 7 at any time. A \$15 fee is required for conversion. If the debtor fails to make plan payments, the court will dismiss the case on motion of the trustee or a creditor.

The foregoing is very basic information. A Chapter 13 case may involve many other issues. The Bankruptcy Court cannot give legal advice. Use of competent legal counsel is recommended.