

Chapter 13 Bankruptcy

For those who have been struck by short-term financial hardships like illness, job loss or significant unexpected expenses, Chapter 13 bankruptcy can be an effective way to reestablish financial stability. For those who have been knocked off balance by a crisis, but have regular income with which to make monthly payments, Chapter 13 bankruptcy can provide a powerful safety net.

Chapter 13 bankruptcy combines the automatic stay feature with a 3-5 year payment plan for catching up on payments, which makes it an attractive option for those seeking to avoid repossession or stop foreclosure.

The Chapter 13 bankruptcy process is detailed and complex. Making mistakes can mean the loss of the automatic stay, the rejection of a payment plan, or extensions and delays for the bankruptcy filer. If you're not sure if Chapter 13 bankruptcy is the right choice for you, you should consider consulting a bankruptcy lawyer in your area.

If you do choose to file under Chapter 13 bankruptcy, your bankruptcy attorney will be able to advise you during your filing process and help you navigate the various filing requirements and deadlines involved. Your lawyer can make sure your proposed plan will leave room for regular expenses as well as payments and affirm that you've accounted for all your allowable expenses.

Chapter 13 Bankruptcy Cases: Pre-Filing Requirements

New legislation enacted in October, 2005 dictated that all those filing personal bankruptcy under Chapter 13 or Chapter 7 of the United States Bankruptcy Code must complete a Credit Counseling Briefing approved by the U.S. Trustee. When your bankruptcy lawyer files your bankruptcy petition, he will also file your Credit Counseling certificate.

Those who attempt to file bankruptcy without a Credit Counseling certificate may not be accepted, which can be disastrous. A dismissal might give creditors an opportunity to take collection action, including foreclosure proceedings and repossessions, since the automatic stay would not be in effect.

You can either ask your bankruptcy lawyer to direct you to an approved Credit Counseling agency or opt for the approved Credit Counseling briefing available online at Start Fresh Today.

The Process of Chapter 13 Bankruptcy

Chapter 13 bankruptcy cases officially start when the bankruptcy petition is filed. Most of the time, the court will enact the automatic stay immediately after the case is filed, which prevents creditors from making any collection efforts while the bankruptcy is pending or until the bankruptcy court gives further notice. The bankruptcy court will then provide notice of the filing to all creditors named in the Chapter 13 petition, and assign a bankruptcy trustee to the case.

The court will send a Notice of Commencement of Case to the petitioner and all creditors named in the petition within approximately 15 days of the petition being filed. In this notice will be key information like deadlines for claims and/or objections from creditors and the details about the creditors' meeting (date, time, location).

Schedules detailing the petitioner's assets, debts, expenses and income have to be filed within 15 days of the case's start. In many cases, these schedules are filed at the same time as the petition, but in emergency situations (as when a bankruptcy filer is trying to prevent repossession or foreclosure), they can be filed separately so that bankruptcy protection isn't delayed by the collection of information.

The Chapter 13 repayment plan must also be filed within 15 days.

The Repayment Plan in Chapter 13 Bankruptcy

One of the main contrasts between Chapter 7 bankruptcy and Chapter 13 bankruptcy is that Chapter 13 involves neither liquidation of assets

nor quick completion. Intended to allow those who are struggling financially to maintain ownership of their property, Chapter 13 filers develop a plan to catch up on their past due balances while staying current on new payments. A typical Chapter 13 bankruptcy repayment plan includes 36 to 60 months of payments during which debts are paid based on their priority. Secured creditors receive payment first, and remaining disposable income is funneled toward paying unsecured creditors. The hierarchy of payment has been established by U.S. Bankruptcy Code. If all payments are made on time, any unsecured debt left over at the end of the plan can be discharged.

Chapter 13 Bankruptcy's Pre-Discharge Requirements

Besides making the payments outlined in the Chapter 13 bankruptcy repayment plan, Chapter 13 petitioners must complete a financial management course ("Debtor Education") approved by a U.S. Trustee to be eligible for a discharge. Your bankruptcy lawyer can recommend a Debtor Education course for you, or you can buy an approved Debtor Education course online at Start Fresh Today.

Who Is Eligible for Chapter 13 Bankruptcy?

Not everyone qualifies for Chapter 13 bankruptcy. To be eligible, a debtor must:

- ♦ Have a steady source of income from which to make pre-established payments to the bankruptcy trustee to benefit creditors;
- ♦ Have adequate disposable income for these payments after covering necessary living expenses; and
- ♦ Fall between the acceptable limits established for secured and unsecured debts.

These limits are periodically updated, and a bankruptcy lawyer in your area can let you know what exact current limits are. As of April, 2007, the limit for secured debt was just over \$1 million, and the limit for unsecured debts was about \$337,000.

If you do not qualify for Chapter 13 bankruptcy, you may still be eligible to file for Chapter 7 bankruptcy.

Chapter 13 Bankruptcy Benefits

As yet, no "cure-all" has been discovered for financial difficulties. The best alternative, whether it's Chapter 13 bankruptcy, Chapter 7 bankruptcy, or some other alternative entirely, depends upon the debtor's circumstances, amount and nature of debt, current income, and many other variables. Many people find Chapter 13 bankruptcy beneficial in the following situations:

- ♦ They've fallen behind on payments for secured property they want to keep. Many Chapter 13 bankruptcy petitions are filed specifically to stop vehicle repossession or foreclosure, but Chapter 13 can also be used to catch up on secured debts while keeping the property that secures those debts.
- ♦ They're facing tax debts that are non-dischargeable through Chapter 7 bankruptcy. Some tax debts cannot be discharged, but can be included in a Chapter 13 repayment plan to be paid off over time.
- ♦ They have non-exempt property they wish to keep. Non-exempt property can be sold (liquidated) to benefit creditors in Chapter 7 bankruptcy, but Chapter 13 allows debtors to maintain ownership of their property while making scheduled payments.
- ♦ They've already filed for Chapter 7 in the past eight years and so are ineligible to file under Chapter 7.
- ♦ They want to protect cosigners on some debts. In Chapter 7 bankruptcy filings, cosigners who do not file bankruptcy are still liable for debts even if that debt has been discharged to the primary debtor. In Chapter 13 repayment plans, though, cosigners are protected as long as the debtor adheres to the plan.
- ♦ They have overdue student loan debt. Student loans are only dischargeable in Chapter 7 bankruptcy in very rare cases, but they can be included in Chapter 13 repayment plans.

Could Chapter 13 Bankruptcy Be the Choice for You?

Discussing your situation with a bankruptcy lawyer is not a final decision; it's a step on the way to learning about bankruptcy. Too many people wait until they are in dire straits to contact a bankruptcy attorney, and then realize they have only a few days to stop vehicle repossession, foreclosure or other collection actions. Sound decisions can only be made with complete and accurate information. A Chapter 13 bankruptcy lawyer may be the best source for such information.