

CHAPTER 13 BANKRUPTCY

Chapter 13 of the Bankruptcy Code is known as a "wage earner's" bankruptcy and it involves the repayment of part of your debts. Many people find this to be a more palatable alternative than Chapter 7 where most debtors pay little or nothing back to their creditors. Although it is called a wage earner's bankruptcy, the money you use to repay creditors doesn't have to be wages. What you earn from your business or what you receive in pension or retirement income can fund a Plan if you like.

A Chapter 13 case is driven by your Plan. You submit a Plan to the Court to make provision for your secured debts (house, car and the like), to repay part of your debts, and to obtain discharge of the rest – to be forgiven under the law with no prospect of future collection. If the Court approves your Plan, you will be allowed to keep all of your possessions. If you make all the payments you propose under the Plan, you will receive a discharge at the end of the Plan which means that you are no longer liable for those debts.

There are two basic requirements. First, you have to show that you can afford to make the payments. Second, you have to show that you are dedicating all of your "disposable income" to the Plan.

Depending on how much money you make the Plan may be for either three years or five years. Sometimes a Plan can be for some period in between if specifically approved by the Court.

Unless you commit a fraud or some bad act against the Court or a particular creditor, the creditors do not have a say in the approval of your Plan provided that it follows the law.

Each secured creditor, lenders to whom you owe for a car, a house, or other item that would have to be surrendered on default, must be specifically addressed in your Plan. You can choose to do one of the following in your Chapter 13 Plan:

- Surrender
- Pay monthly payment per terms of agreement, outside the Plan
- Value collateral and redeem
- Catch up arrears and pay otherwise per terms of agreement, inside the Plan

Depending on your circumstances you can either pay your unsecured creditors (credit cards, medical bills, and the like) as little as a penny on the dollar, or pay them in full while keeping all of your possessions. You may also be able to restructure past due amounts on secured debts and force reasonable interest rates on secured debts. In addition, if for other than a home you owe more than the secured property is worth, you may be able to "strip" off the excess amount owed and pay a fraction of the excess back in the repayment plan as an unsecured debt.

Because of the payments and the auditing process by the trustee, which ensures that you

qualify and that your creditors are getting the best deal possible under the law, it takes months for the Court to approve your Plan and years to obtain a discharge. Chapter 13 is much more flexible than Chapter 7 but more complicated and takes longer to complete than a chapter 7.

Please consult an attorney before filing Chapter 13. While bankruptcy law is straightforward there are many pitfalls. It is nearly a certainty that the money you will spend on a lawyer will pay for itself over the life of your bankruptcy Plan.