

Delta Law Basic Outline of a Chapter 13 Bankruptcy and Restrictions

NOTE: This is just a summary of the basic events and issues related to bankruptcy. There are many other considerations than those presented here. There are many exceptions and a skilled attorney can develop strategies to accomplish your goals despite apparent roadblocks.

Effect of Chapter 13 Bankruptcy:

- Elimination or discharge of unsecured debt such as credit cards, medical bills, old utility bills, unpaid loans, some types of judgments and some types of old tax debt. Most secured debts such as mortgages, car loans and tax liens must be paid through the bankruptcy plan. **NOTE: A secured debt is an obligation to repay a debt that is tied to an asset such that if you fail to pay the debt the creditor can go after the asset in order to pay the debt.**
- The bankruptcy plan is the main difference between a Chapter 7 and a Chapter 13 bankruptcy. In most cases, a Chapter 13 is for those who have fallen behind in payments on secured loans and the lender is foreclosing or repossessing the property. The plan allows you to stop the lender's actions and repay the arrears on secured loans over a period of 36 months to 60 months and in some cases related to COVID-19 issues, 84 months. Thus, the plan allows you to keep secured property/assets that you would lose in a Chapter 7.
- Sometimes you can modify the loan/mortgage terms during the bankruptcy.
- Stops creditors from pursuing you to pay discharged debts. **NOTE: During the bankruptcy case there is a bankruptcy stay in place that stops creditors from contacting you. For the creditors holding discharged claims, the stay continues after the case is over.**
- Reported on your credit report for 10 years as a public record.
- Some credit providers/lenders may limit access to credit for a period of time. This includes mortgage and auto loan lenders.
- Some landlords may not rent property to you with a bankruptcy filing on your credit report.
- You may pay higher rates for certain kinds of insurance.

Chapter 13 Qualifications:

- There are no specific income limitations for filing a Chapter 13 bankruptcy. The key is that you must pay back some or all of your creditors in a plan that is feasible (i.e., you must show you have enough income or source of money to make the plan payment each month over the length of the plan).
- The plan must be fair to all the creditors although often times a plan will provide for repayment and payment of secured creditors but not to unsecured creditors. Thus, credit card lenders will often times be discharged in a Chapter 13 after receiving a small percentage or nothing from the plan.
- Any individual, even if self-employed or operating an unincorporated business, is eligible for chapter 13 relief as long as the individual's unsecured debts are less than \$394,725 and secured debts are less than \$1,184,200. These amounts are adjusted periodically to reflect changes in the consumer price index. A corporation or partnership may not be a Chapter 13 debtor.

Chapter 13 Players:

- The Debtor(s): That's you, and/or your spouse, if married. Married individuals can file as an individual or with their spouse.
- The Creditors: These are the people or entities that you owe money to.
- The Chapter 13 Trustee: This person is employed by the government to ensure that the bankruptcy estate is managed in accordance with the bankruptcy law. The bankruptcy estate is created when you file bankruptcy and is a pot where your debts and assets are placed until the case is complete. All plan payments are taken out of your pay via a wage attachment or are sent directly to the Trustee. The Trustee then pays the creditors in the plan.
- The Chapter 13 Bankruptcy Judge: This person oversees the whole bankruptcy process and is the referee in a forum (i.e., the court) where disputes between the Chapter 13 Players are resolved.

-Lawyers: Most of the other Chapter 13 Players are represented by lawyers or are lawyers due to their special knowledge of the bankruptcy law and procedures that are needed.

Chapter 13 Timeline:

-The whole process requires over 36 months to 60 months in most cases, but can be as long as 84 months if there are issues related to COVID-19.

-Preparation of bankruptcy filing: A few weeks are required to prepare the paperwork (Petition and Schedules and Plan). This paperwork outlines all of your assets and debts and income and expenses and other information about you. A credit report can be ordered to assist preparation. A Plan is then created that allows for the repayment of creditors.

-Debtor education class: Required prior to filing the case. There is a small fee for the class and it can be taken over the phone or on-line. This "class" basically a questionnaire about your current financial status.

-Meeting of Creditors: This takes place approximately 30 days after you file your documents. The meeting is a chance for creditors and the Chapter 13 Trustee to question you about the filing. In fact, most meetings are just the Debtor, the Debtor's Lawyer and the Chapter 13 Trustee and are complete in 10 minutes. Your lawyer should fully prepare you for this meeting.

-Financial Management Course: This is a second "class" the Debtor must take before the case is complete. There is a small fee for this and consists of you being given tips and recommendations on how to budget your spending going forward after the bankruptcy.

-Final Plan Approval: The creditors, the Trustee and Judge must review the Plan and ensure that it is feasible and fair. Once the plan is approved the Trustee receives the payments and pays the creditors. The Plan may be modified over the term of the plan due to changes in employment or income.

-Discharge Order and Order closing case: These are orders that the judge issues discharging (removing) your unsecured debt, declaring that the arrears on secured loans are paid and the loan is in good standing and closing the case.

Rules of The Road:

-Chapter 13 Bankruptcy is governed by Title 11 of the United States Code (Federal Law) or Bankruptcy statutes, Bankruptcy Rules of Procedure and case law (i.e., prior decisions of courts). The Bankruptcy Court is a Federal Court as opposed to a state court.