

Chapter 13

Based on the circumstances, an individual may opt to file a Chapter 13 proceeding. The main reasons are:

- A house, condo or co-op in foreclosure
- To save a non-exempt asset from being sold in a Chapter 7
- To pay part or all of a debt which would be non-dischargeable in a Chapter 7

In exchange for stopping a foreclosure proceeding, or protecting a non-exempt asset, we would propose a Plan under which you would pay a portion of your unsecured debts over time. The maximum plan is 5 years. It is like a debt consolidation where you make one payment to the Court appointed Trustee and the Trustee then distributes the money to all creditors. Many people pay as little as 1 percent of their unsecured debts in their plan. Some people are required to pay 100%. There are several factors which can influence the amount to be paid and requires individual analysis. The exemptions, described in the Chapter 7 information, is one factor.

Some debts are always paid in full under the Plan, such as the mortgage arrears and income taxes. The regular payments on your secured debts, such as mortgages and car loans, are simply paid directly to the lender, outside of the bankruptcy. Like a Chapter 7, you can choose to surrender the collateral on a secured debt. In Chapter 13, surrender may be accepted as full payment of the debt; or any balance due (after sale of the collateral by the lender) would be paid under the Plan.

There are some qualifications for Chapter 13:

You must have a regular income. However, wages are only one possible source of "regular" income. Further, the income does not have to be consistent to be regular. So, self-employed people can file.

Debt limits: To file Chapter 13, there are maximum amounts you can owe. There is one limit for secured debts and a separate limit for unsecured debts. The limits change annually. If you exceed these limits, you cannot file a Chapter 13; you would have to consider a Chapter 11.

Only an individual can file a Chapter 13. A corporation cannot.

Procedure:

After filing you will have to make at least two (2) appearances at the Bankruptcy Court. The Trustee examines you regarding your petition, to be sure you have listed everything accurately and can make the payments proposed in the Plan. The second appearance is before the judge, and is for the purpose of confirming (approving) the payment plan. If we are not ready to confirm, the hearing will be adjourned, and your future appearance excused, if you have made all payments to that date; and all required paperwork has been supplied.