

BANKRUPTCY

CHAPTER 13

(aka "Bill Consolidation" or "Reorganization")

ANSWERS

TO THE MOST COMMONLY
ASKED QUESTIONS

Compliments of:

Sam C. Gregory, PLLC

2742 82nd Street

Lubbock, Texas 79423

(806) 687-4357

1. *What is chapter 13 and how does it work?*

Chapter 13 is that part of the federal bankruptcy law that permits you to repay all or a portion of your debts under the supervision and protection of the bankruptcy court. Under chapter 13, the person filing the case, who is called the debtor, submits a plan for the repayment of all or a portion of his debts to the court. The court must approve the plan for it to become effective. The court prohibits creditors from attempting to collect their claims from the debtor and permits the debtor to make regular payments in the amounts called for in the debtor's plan to the chapter 13 trustee for the period of time specified in the plan. The chapter 13 trustee collects the money paid in by the debtor and disburses it to the creditors as set forth in the debtor's plan. Upon the completion of the payments called for in the plan, the debtor is discharged from any liability for the remainder of his debts (with very limited exceptions).

2. *What is a chapter 13 plan?*

It is a written plan presented to the bankruptcy court by a debtor that states which of the debtor's debts should be paid, how much should be paid on each debt, how much of the debtor's earnings or other property should be paid to the chapter 13 trustee, how long the payments should continue, which debts should be paid outside of the plan, and certain other technical matters.

3. *What is a chapter 13 trustee?*

A chapter 13 trustee is an officer of the court appointed to collect payments from the debtor, make payments to creditors in the manner set forth in the debtor's chapter 13 plan, and administer the chapter 13 case until it is closed. The chapter 13 trustee is required to perform certain other technical duties in a chapter 13 case. The debtor is required to cooperate with the chapter 13 trustee.

4. *What is a chapter 13 discharge?*

A discharge is a court order releasing a debtor from all of his or her dischargeable debts and ordering the creditors not to attempt to collect them from the debtor. A debt that is discharged is one that the debtor is released from and does not have to pay. There are two types of chapter 13 discharges: one that is granted to a debtor who has completed all of the payments called for in his plan, and one that is granted to a debtor who is unable to complete the payments called for in his plan due to circumstances for which he should not justly be held accountable.

5. *How do I get a chapter 13 discharge?*

You must comply with your plan by making all of the payments called for. Additionally, you must show that all “domestic support obligations” (alimony, maintenance & support) coming due during the life of the plan have been made. Lastly, you must have completed an instructional course concerning personal financial management (your attorney can direct you to an approved provider of such courses).

6. *What debts are not released by a chapter 13 discharge?*

The chapter 13 discharge granted after the completion of all payments under a chapter 13 plan generally releases a debtor from all debts except:

- (1) debts that are paid outside of the plan;
- (2) debts for certain types of taxes;
- (3) debts for “domestic support obligations” (alimony, maintenance, or support);
- (4) unlisted debts;
- (5) debts incurred for educational purposes;
- (6) debts incurred in a fraudulent manner;

(7) debts as a result of death or personal injury caused by the debtor's operation of a motor vehicle if debtor was intoxicated;

(8) installment debts whose last payment is due after the completion of payments under the plan;

(9) restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime; and

(10) debts incurred during the time the plan was in effect that were not paid under the plan.

The chapter 13 discharge granted when a debtor is unable to complete the payments under a plan due to circumstances for which he should not justly be held accountable releases the debtor from fewer debts than the discharge granted upon completion of all payments.

7. What debts may be paid under a chapter 13 plan?

Any debts whatsoever, whether they are secured or unsecured. Even debts that are non-dischargeable, such as debts for alimony, maintenance, or support, may be paid under a chapter 13 plan.

8. Must all debts be completely paid off under a chapter 13 plan?

No. while certain debts (such as debts for taxes and fully secured debts) must be paid in full under a chapter 13 plan, only what you are deemed to afford must be paid on most unsecured debts. The unpaid balance of most debts not paid in full under a chapter 13 plan may be discharged upon the completion of the plan.

9. How long does a chapter 13 last?

A typical chapter 13 case will last anywhere from thirty-six (36) months to no longer than sixty (60) months (five years).

10. *Is credit counseling mandatory? Why do I have to get credit counseling if I already know I want to file chapter 13?*

While chapter 13 is a powerful tool to use when you have debt problems, it is not always the only option available to you. Congress wants to make sure you have explored all of the possible options you may have. Therefore, Congress requires that within the 180 day period before filing a bankruptcy you must have completed a briefing session (with very limited exceptions) with an approved credit counseling agency. The agency's duty is to outline the opportunities for credit counseling and assist you in performing a budget analysis. If you do not complete such a briefing, you will most likely be ineligible to file chapter 13. Your attorney can direct you to an approved counselor.

11. *Where is a chapter 13 case filed?*

A chapter 13 case is filed in the bankruptcy court in a federal district where the debtor has lived, had his or her principal place of business located, or had his or her principal assets located, for the greatest portion of the last 180 days. The bankruptcy court is a unit of the United States Federal District Court.

12. *Do I lose any of my property in a chapter 13 case?*

Usually not. Under chapter 13, debts are normally repaid out of the payments made to the chapter 13 trustee and not out of your property. However, if you have considerable non-exempt property and cannot make sufficient payments to pay enough of your debts to satisfy the court, some of your property may have to be used to pay creditors. Also, if a secured creditor is not being paid under the plan, he may be permitted to repossess the property securing his claim if the debt owed to him is not paid.

13. *How does filing under chapter 13 affect lawsuits and attachments against me?*

The filing of a chapter 13 case automatically stays (stops) all lawsuits, attachments, garnishments, and other actions by creditors against you and your property for as long as the chapter 13 case lasts. A few days after the case is filed, a notice is mailed

to all creditors advising them of the automatic stay. The creditors may be notified sooner by either the debtor or his attorney, if necessary. Creditors are not permitted to file lawsuits or attachments against you during the chapter 13 case, and, if the debtor is granted a chapter 13 discharge, they will be prohibited from attempting to collect any discharged debt from you after the case is closed.

14. How are secured creditors treated under chapter 13?

As a general rule, secured creditors' claims must be paid in full under a chapter 13. However, it is important to realize that certain types of secured creditors are considered to have a secured claim only to the extent of the value of its secured interest (which cannot exceed the "replacement" value of the property securing the claim). For example, if a secured creditor has a purchase money mortgage on an automobile incurred more than 910 days before filing, and if the automobile would cost \$500 for debtor to replace, then that creditor has a secured claim for only \$500, regardless of how much is owed. The difference in the amount owed and the value of the property is called a deficiency. The deficiency need not be paid in full if you cannot afford to do so.

15. How are debts that have been co-signed, or guaranteed by someone else, handled under chapter 13?

If a consumer debt (non-business) that has been co-signed or guaranteed by another person is being paid in full under a chapter 13 plan, the creditor will be prohibited from collecting the debt from the other person. However, if the debt is not being paid in full under the plan, the creditor will be permitted to collect the unpaid portion of the debt from the other person.

16. How does filing a Chapter 13 affect my student loan debt?

Student loans are not dischargeable except under very limited circumstances. Therefore, if you have a small balance remaining to be paid on your student loan debt (less than five (5) years of repayment), it is advisable to include it in your chapter 13 plan of reorganization. If you are current on your student loan

payments and have a large balance remaining (more than five (5) years of repayment), it will probably be necessary for you to continue to pay your student loan debt outside of your chapter 13 plan. If your budget will not allow you to make both your chapter 13 plan payment plus your student loan payment, it may be possible to defer payments on your student loan debt until after you complete your chapter 13 plan. However, interest on your student loan debt will continue to accrue during this period.

17. When do I begin making payments to the chapter 13 trustee and how often must they be made?

Your chapter 13 payments begin 30 days after your chapter 13 case is filed with the court and continue to become due on that day of each month thereafter. The payments must be made regularly and timely. If you are employed and work for wages, you will be required to make the payments through a payroll deduction.

18. How does filing under chapter 13 affect my credit rating?

The fact that you filed a chapter 13 will be reflected as a bankruptcy on your credit report and will remain there for up to ten years. This is in contrast to most other negative information remaining on your credit report for seven years. Additionally, you are not allowed to use credit while going through your chapter 13 plan. Notwithstanding the long time that chapter 13 appears on your credit, most debtors are able to qualify for credit soon after completion of their plan.

19. Are the names of persons who file under chapter 13 published?

When a chapter 13 case is filed, it becomes a public record which any one has access to. Credit reporting agencies will reflect in their reports that you have filed a chapter 13. Also, some newspapers will list all filings made in any court on a regular basis. Therefore, it is likely that your name will be published at least once in the local paper.

20. Do I lose any of my legal rights (such as voting) by filing under chapter 13?

No. Filing under chapter 13 is not a criminal proceeding, and a person does not lose any of his civil or constitutional rights by filing.

21. May employers or government agencies discriminate against me if I file under chapter 13?

It is illegal for either private or governmental employers to discriminate against a person as to employment because that person has filed under chapter 13. It is also illegal for local, state, or federal governmental units to discriminate against a person as to the granting of licenses (including a driver's license), permits, and similar grants because that person has filed under chapter 13.

22. What is required for court approval of a chapter 13 plan?

There are many different tests a plan must pass before being approved by the court. In general, the court will confirm (approve) a chapter 13 plan if:

(1) the plan complies with the legal requirements of chapter 13;

(2) all required fees, charges, and deposits have been paid;

(3) the plan has been proposed in good faith;

(4) each unsecured creditor will receive under the plan at least as much as he would have received had the debtor filed under chapter 7; and

(5) it appears that the debtor will be able to make the required payments and comply with the plan.

23. *When do I have to appear in court in a chapter 13 case?*

Each debtor is required to attend the first meeting of creditors held in the case. This is the first opportunity any creditors have to question the debtor about the proposed plan of repayment. Debtors are placed under oath and the meeting is presided over by the trustee. Debtors will receive information about the specific date, time, and location of the first meeting of creditors approximately two weeks after the chapter 13 is filed. Debtors whose plans will pay 70% or more to their unsecured creditors (with limited exceptions) do not have to appear at any other hearings. Debtors whose plans will pay less than 70% to their unsecured creditors must attend a confirmation hearing held approximately one month after the meeting of creditors. The purpose of the confirmation hearing is to allow the court to examine the plan and decide whether it meets the requirements outlined in question 22 above.

24. *What if the court does not approve my chapter 13 plan?*

If the court will not approve a chapter 13 plan proposed by you, you are permitted to modify the plan and seek court approval of the modified plan. If you do not wish to change your proposed plan, you may either convert the case to a chapter 7 case or dismiss the case. If the court refuses to approve a plan, it will usually give the reasons for its disapproval so that the plan may be appropriately modified so as to become acceptable.

25. *What is a Proof of Claim? How are the claims of creditors handled under chapter 13?*

A Proof of Claim is a document filed with the court by creditors which indicates what type of debt you have and the amount owed. Non-governmental creditors must file their claims with the bankruptcy court within 90 days after the first date set for the meeting of creditors in order for their claims to be allowed. Governmental creditors have 180 days after the filing of the case in which to file claims. Creditors who fail to file claims within those periods are typically barred from filing a claim, and after the completion of the plan their claims will be discharged (with some limited exceptions). A debtor may file a claim on behalf of a

creditor if he wishes to do so. Additionally, when the claims have been filed, the debtor is given an opportunity to file objections to any claim that he disputes.

26. *What if I incur new debts or need credit during a chapter 13 case?*

The court will not allow the debtor to incur any new debt during the case unless prior approval by the court is given. Therefore, if a debtor needs credit or wishes to incur a debt after the case has been filed, he should obtain the approval of the court beforehand. Only two types of credit obligations or debts incurred after the filing of the case may be included in a chapter 13 plan. These are: (1) debts for taxes that become payable while the case is pending, and (2) consumer debts arising after the filing of the case that are for property or services necessary for the debtor's performance under the plan and that are approved in advance by the court. Any other debts or credit obligations incurred after the case is filed must be paid by the debtor outside the plan.

27. *What should I do if I move during the course of a chapter 13 case?*

You should immediately notify your attorney, the bankruptcy court, and the chapter 13 trustee in writing of your new address. Most communications in a chapter 13 case are by mail, and if you fail to receive an order of the court or a notice from the chapter 13 trustee because of a faulty address, the case may be dismissed.

28. *What if I later decide to discontinue the chapter 13 case?*

You have the right to either dismiss a chapter 13 case or convert it to a chapter 7 case at any time, regardless of your reason for doing so. However, you should discuss this matter with your attorney to make certain that it is the best course of action.

29. *What happens if I am unable to complete my chapter 13 payments?*

A debtor who is unable to complete his chapter 13 payments has three options:

(1) he may dismiss the chapter 13 case;

(2) he may convert the chapter 13 case to a chapter 7 case;
or

(3) if he is unable to complete the payments due to circumstances for which he should not justly be held accountable, he may seek to obtain the second type of discharge which was described above.

THE INFORMATION CONTAINED HEREIN IS GENERAL IN NATURE AND DOES NOT CONSTITUTE LEGAL ADVICE. THE ANSWERS TO MANY OF THESE QUESTIONS MAY BE DIFFERENT DEPENDING ON WHAT DISTRICT YOUR CASE IS FILED IN. YOU SHOULD CONSULT WITH AN ATTORNEY IN REFERENCE TO YOUR SPECIFIC SITUATION. THE AUTHOR HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, AND MAKES NO REPRESENTATIONS REGARDING THE INFORMATION CONTAINED HEREIN. (Revised 10/2011).