

bankruptcy basics / WHAT IS A CHAPTER 13?



How Chapter 13 Works

What is filed?

A chapter 13 case begins by filing the following forms:

- Petition
- Schedules A-G which include all assets and liabilities, including a list of all creditors and the amounts and nature of their claim and a list of all of the debtor's property;
- Schedules I-J which include current income and expenditures, including the source, amount, and frequency of the debtor's income; and a detailed list of the debtor's monthly living expenses (food, clothing, shelter, utilities, taxes, transportation, medicine, etc.);
- Schedule H which includes executory contracts and unexpired leases;
- Statement of financial affairs;
- A certificate of credit counseling;
- Social Security Number Statement;
- Statement of Current Monthly Income

There is a \$313 filing which must be paid at the time of filing or, with the court's permission, paid in up to four installments.

What is the trustee?

When an individual files a chapter 13 petition, a trustee is appointed to the case. The chapter 13 trustee evaluates the case, collects payments from the debtor and makes distributions to creditors.

continued →

bankruptcy basics / WHAT IS A CHAPTER 13?

What is the “automatic stay”?

Filing the petition under chapter 13 “automatically stays” (stops) most collection actions, including initiating or continuing lawsuits, wage garnishments, or even making telephone calls demanding payments.

What is “341” hearing? (also “trustee” or “creditors” hearing)

After the debtor files the chapter 13 petition, the chapter 13 trustee will hold a meeting of creditors. During this meeting, the debtor testifies under oath, and both the trustee and creditors may ask questions. Before the hearing with the bankruptcy trustee, a debtor must submit any paystubs received 60 days before filing and a copy of the tax return or transcripts for the four (4) most recent tax years.

What is a proof of claim?

To participate in distributions from the bankruptcy estate, creditors must file their claims with the court.

There are three types of claims: priority, secured, and unsecured.

- **Priority claims** are those granted special status by the bankruptcy law, such as child support and most taxes. These claims must be paid in full.
- **Secured claims** are those for which the creditor has the right to take back certain property, such as a car or home, if the debtor does not pay

the underlying debt.

- **Unsecured claims** are generally those for which the creditor has no special rights to collect against particular property owned by the debtor.

What is a Chapter 13 plan?

The debtor must file a repayment plan with the petition or within 14 days after the petition is filed. The plan must provide for payments of monthly fixed amounts to the trustee and is subject to court approval or confirmation.

What is the Confirmation Hearing?

The bankruptcy judge must hold a confirmation hearing and decide whether the plan is feasible and meets the standards for confirmation set forth in the Bankruptcy Code. Creditors will receive notice of the hearing and may object to confirmation. Common objections are that payments offered under the plan are less than creditors would receive if the debtor’s assets were liquidated or that the debtor’s plan does not commit all of the debtor’s projected disposable income for the three or five year applicable commitment period.

What is Ch. 13 payment?

The Chapter 13 payment is calculated by determining what your disposable

income is – income minus reasonable expenses. Payments must be made over 3-5 years depending on whether you are over median income. 3 years if you are under median income and 5 years if you are over. The payment period can be less than 3 years if you are paying all of your debts in full.

When must I make the first Ch. 13 payment?

Within 30 days after filing the bankruptcy case, even if the plan has not yet been approved by the court.

What about my ongoing mortgage or car payments?

If any secured loan payments or lease payments come due before confirmation, you must make those payments directly to the secured lender or lessor.

What is liquidation analysis?

Creditors in a Chapter 13 bankruptcy must receive as much as they could in a Chapter 7. For example, if in a Chapter 7, the debtor had \$5,000 in the bank that was not exempt, those \$5,000 must be paid out to unsecured creditors in a Chapter 13. Or, if the debtor has a home which is worth \$50,000 with no lien or mortgage, they must pay out \$50,000 in a Chapter 13.