

## CHAPTER 7 OR CHAPTER 13: WHAT CHAPTER IS RIGHT FOR YOU?<sup>1</sup>

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In assessing which chapter under the Bankruptcy Code will best serve you, the first question that must be asked is what your goal is. Are you trying to stop a home foreclosure, discharge significant credit card debt or medical bills, or discharge a significant tax debt? Whether Chapter 7 or Chapter 13 is best suited for you will depend on an analysis of the nature of your income, assets, and liabilities.

A major concern for many people today is stopping a home foreclosure. If that is your goal, Chapter 13 will be best suited for your situation. In a Chapter 13 bankruptcy, a plan is proposed that allows for repayment to creditors. Your plan payment is based on your disposable income. Chapter 13 would allow you three to five years to pay the arrearage on your mortgage; however, it will not affect your obligation to pay current payments, and you cannot modify a home mortgage that is secured only by the home in a Chapter 13 bankruptcy. A Chapter 7 bankruptcy would be of no real benefit to anyone trying to stop a foreclosure, since the creditor can request that the Bankruptcy Court grant it permission to continue the foreclosure process. Similarly, many people in today's economy are facing significant tax liability and it is important to note that most taxes are not dischargeable in Chapter 7 with some exceptions. Chapter 13 can be a mechanism to pay IRS debts over a three to five year period depending on your income. It is important to note that there are certain debt limitations when considering Chapter 13, and if the debt levels are exceeded, then consideration of an individual Chapter 11 case may be warranted.

If you are not trying to stop a foreclosure or repay IRS debts and are looking to quickly discharge mostly unsecured credit card or medical debt, then Chapter 7 may be better suited for you. Chapter 7 does not involve any repayment of debt. Chapter 7 is typically referred to as a "liquidation" bankruptcy; however, there are allowed exemptions for most types of property, including equity in a home or vehicle. If you have significant equity in your home or other assets, you may want to evaluate filing under Chapter 13 which would allow you three to five years to pay the "nonexempt" equity value of your assets into your Chapter 13 plan which would allow you to retain those assets.

In deciding which bankruptcy chapter is best suited for you, this will involve an analysis of not only your goals but your income, assets, and liabilities. DelCotto Law Group can assist in an assessment and analysis of all the available options, and in making the best choice for your particular situation. If you would like to discuss your options, please contact Jamie L. Harris or any of the other attorneys at DelCotto Law Group PLLC.

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