Chapter 13 Explanations[1]

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GENERAL OVERVIEW

Chapter 13 bankruptcy, which is applicable to individuals (no business entities) only and sometimes referred to as a wage earner's plan, differs from Chapter 7 bankruptcy (which is commonly referred to as a liquidation bankruptcy). In Chapter 13, the debtor submits a plan to repay creditors in a three to five year period depending on their amount of income and debt. Unsecured creditors must receive at least as much in a Chapter 13 as they would in a Chapter 7. The debtor commits their disposable income to the supervision of the Chapter 13 Trustee as part of the repayment to creditors. Once the debtor's plan is confirmed by the Bankruptcy Court, all creditors are bound by the terms of the plan.

ELIGIBILITY

- <u>No Business Entities:</u> Individuals may file for Chapter 13 (may file jointly with spouse); sole proprietors may file and include business debts with personal liability; however, a business entity cannot file a Chapter 13 petition.

- <u>Regular Income:</u> Must be an individual with regular income to commit to a Chapter 13 plan/must have positive disposable income to commit to Chapter 13 plan.

- <u>Previous Discharge:</u> Can't receive a discharge in Chapter 13 if you received discharge in previous 2 years in Chapter 13 or Chapter 7 within last four years (aren't barred from filing but can't receive discharge).

- <u>Debt Limitations:</u> Cannot exceed 1,010,650 in non-contingent, liquidated, secured debt or 336,900 in non-contingent, liquidated unsecured debt.

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- <u>Current on Tax Filings:</u> Must be able to provide Trustee evidence of state and federal income tax filing for four years prior to filing.

- <u>Submit Confirmable Plan:</u> Debtor's plan must be confirmed by the Bankruptcy Court and comply with all the requirements of 11 U.S.C. § 1325.

<u>REASONS TO CHOOSE CHAPTER 13 OVER CHAPTER 7</u>

- <u>Stop Foreclosure/Repossession</u>

- <u>Back Taxes:</u> Pay arrears to taxing authorities over the life of a three to five year plan.

- <u>Retain Non-Exempt Property:</u> In a Chapter 7 bankruptcy case, non-exempt property can be liquidated for the benefit of creditors, but in a Chapter 13 plan, the debtor retains the property as long as unsecured creditors receive the value of the non-exempt portion of the property over the life of the plan.

- <u>Not Able to Pass Chapter 7 "Means Test" or U.S. Trustee Has Filed to Dismiss or Convert Pending Chapter 7 Case</u>

- <u>Ability to "Cramdown" Certain Debts</u> The value of secured collateral may be paid in the plan at replacement value which is what it would cost to replace the property from a dealer or vendor in like goods, taking into account the age and condition of the property (not liquidation value).

- <u>Restrictions on Cramdown:</u> Cramdowns are not allowed for vehicle purchases made within 30 months of filing bankruptcy [11 U.S.C. §1325 (a) (9)].

- <u>Personal Property:</u> Cramdowns are not allowed for other personal property purchased within a year prior to filing bankruptcy [11 U.S.C. §1325 (a) (9)].

- <u>Strip Off a Wholly Unsecured Mortgage</u>

- <u>Ineligible for Chapter 7:</u> If you have filed a Chapter 7 bankruptcy within the previous eight years and thus are not eligible to file Chapter 7.

- <u>Co-Signer Protection:</u> In a Chapter 7 bankruptcy case, a co-signer remains liable for a debt even if that debt has been discharged for the primary debtor; however, if a debt is included in a Chapter 13 plan, the co-signer is protected so long as the debtor complies with the plan. This exception does not apply to commercial debts.

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