

CHAPTER 13

“Adjustment of Debts of an Individual with Regular Income”

This booklet contains general information about chapter 13 of the United States Bankruptcy Code, frequently referred to as a “wage earner” chapter, although it actually applies to individuals with regular income from any source, not just wages. While the information presented is accurate as of the date of publication, it should not be cited or relied upon as legal authority. It should not be used as a substitute for reference to the United States Bankruptcy Code (Title 11, United States Code) and the Federal Rules of Bankruptcy Procedure (Bankruptcy Rules), both of which may be reviewed at local law libraries, and any local rules or practices adopted and disseminated by each bankruptcy court. Finally, this brochure should supplement, not substitute for, advice of competent legal counsel.



UNITED STATES BANKRUPTCY COURT
Central District of California

January 2002

Background

Chapter 13 is designed for individuals with regular income who desire to pay their debts but are currently unable to do so. The purpose of chapter 13 is to enable financially distressed individual debtors, under court supervision and protection, to propose and carry out a repayment plan under which creditors are paid over an extended period of time. Under this chapter, debtors are permitted to repay creditors, in full or in part, in installments over a three-year period, during which time creditors are prohibited from starting or continuing collection efforts. A plan providing for payment over more than three years must be “for cause” and be approved by the court. In no case may a plan provide for payments over a period that is more than five years. 11 U.S.C. § 1322(d). Any individual, even if self-employed or operating an unincorporated business, is eligible for chapter 13 relief as long as the individual’s unsecured debts are less than \$290,525 and secured debts are less than \$871,550. 11 U.S.C. § 109(e). A corporation or partnership may not be a chapter 13 debtor. Id.

An individual cannot file under chapter 13 or any other chapter if, during the preceding 180 days, a prior bankruptcy petition was dismissed due to the debtor’s willful failure to appear before the court or comply with orders of the court, or was voluntarily dismissed after creditors sought relief from the bankruptcy court to recover property upon which they hold liens. 11 U.S.C. § 109(g); 11 U.S.C. § 362(d) and (e).

How Chapter 13 Works

A chapter 13 case begins with the filing of a petition with the bankruptcy court serving the area where the debtor lives. (Refer to addresses listed at the back of this brochure for Clerk’s office locations throughout the Central District of California.) Unless the court orders otherwise, the debtor shall file with the court:

- schedules of assets and liabilities,
- a schedule of current income and expenditures,
- a schedule of executory contracts and unexpired leases, and
- a statement of financial affairs.

Bankruptcy Rule 1007(b).

A husband and wife may file a joint petition or individual petition. 11 U.S.C. § 302(a). (Petition packages may be purchased at the Bankruptcy Court.)

Fees

Currently, the courts are required to charge a \$155 filing fee and a \$30 miscellaneous administrative fee. The administrative fee is assessed and collected at the time the case is filed. The case filing fee should be paid to the clerk of court upon filing or may, with the court's permission, be paid in up to four installments. 28 U.S.C. § 1930(a); Bankruptcy Rule 1006(b). The final installment shall be payable not later than 120 days after filing the petition. For cause shown, the court may extend the time of any installment, provided that the last installment is paid not later than 180 days after the filing of the petition. Bankruptcy Rule 1006(b). If a joint petition is filed, only one filing fee and one administrative fee are charged.

In order to complete the official bankruptcy forms which make up the petition, statement of financial affairs, and schedules, the debtor will need to compile the following information:

- A list of all creditors and the amount and nature of their claims;
- The source, amount, and frequency of the debtor's income;
- A list of all of the debtor's property; and
- A detailed list of the debtor's monthly living expenses, i.e., food, clothing, shelter, utilities, taxes, transportation, medicine, etc.

When a husband and wife file a joint petition or each spouse files an individual petition, they should be sure to gather the above detailed data for both spouses. In order to assess accurately financial responsibilities, however, when only one spouse files, the income and expenses of the non-filing spouse should be included.

Chapter 13 Trustee

Upon the filing of the petition an impartial trustee is appointed by the court or the United States trustee to administer the case. 11 U.S.C. § 1302; 28 U.S.C. § 586(b). A primary role of the chapter 13 trustee is to serve as a disbursing agent, collecting payments from debtors and making distributions to creditors. 11 U.S.C. § 1302.

Automatic Stay

The filing of the petition under chapter 13 “automatically stays” most actions against the debtor or the debtor’s property. 11 U.S.C. § 362. As long as the “stay” is in effect, creditors generally cannot initiate or continue any lawsuits, wage garnishment, or even telephone calls demanding payments. Creditors receive notice of the filing of the petition from the clerk or trustee. Further, chapter 13 contains a special automatic stay provision applicable to creditors. Specifically, after the commencement of a chapter 13 case, unless the bankruptcy court authorizes otherwise, a creditor may not seek to collect a “consumer debt” from any individual who is liable with the debtor. 11 U.S.C. § 1301.

By virtue of the automatic stay, an individual debtor faced with a threatened foreclosure of the mortgage on his or her principal residence can prevent an immediate foreclosure by filing a chapter 13 petition. Chapter 13 then affords the debtor a right to cure defaults on long-term home mortgage debts by bringing the payments current over a reasonable period of time. The debtor is permitted to cure a default with respect to a lien on the debtor’s principal residence up until the completion of a foreclosure sale under state law. 11 U.S.C. § 1322(c).

Repayment Plan

The debtor must file a plan of repayment with the petition or within 15 days thereafter, unless extended by the court for cause. Bankruptcy Rule 3015. The chapter 13 plan must provide for the full payment of all claims entitled to priority under section 507¹ of the Bankruptcy Code (unless the holder of a particular claim agrees to different treatment of the claim); if the plan classifies claims, provide the same treatment of each claim within each class; and provide for the submission of such portion of the debtor’s future income to the supervision of the trustee as is necessary for the execution of the plan. 11 U.S.C. § 1322. Other plan provisions are permissive. *Id.* Plans, which must be approved by the court, provide for payments of fixed amounts to the trustee on a regular basis, typically bi-weekly or monthly. The trustee then distributes the funds to creditors according to the terms of the plan, which may offer creditors less than full payment on their claims. If the trustee or a creditor with an unsecured claim² objects to confirmation of the plan, the debtor is obligated to pay the amount of the claim or commit to the proposed plan all projected “disposable income” during the period in which the plan is in effect. 11 U.S.C. § 1325(b). Disposable income is defined as income not reasonably necessary for the maintenance or support of the debtor or dependents. If the debtor operates a business, disposable income is defined as excluding those amounts which are necessary for the payment of ordinary operating expenses. 11 U.S.C. § 1325(b)(2)(A) and (B).

Within 30 days after the filing of the plan, even if the plan has not yet been approved by the court, the debtor must start making payments to the trustee. 11 U.S.C. § 1326(a)(1).

Meeting of Creditors

A 341(a) “meeting of creditors” is held in every case, during which the debtor is examined under oath. It is usually held 20 to 50 days after the petition is filed. If the United States trustee or bankruptcy administrator³ designates a place for the meeting which is not regularly staffed by the United States trustee or bankruptcy administrator, the meeting may be held no more than 60 days after the order for relief. Bankruptcy Rule 2003(a). The debtor must attend this meeting, at which creditors may appear and ask questions regarding the debtor’s financial affairs and the proposed terms of the plan. 11 U.S.C. § 343. If a husband and wife have filed one joint petition, they both must attend the creditors’ meeting. The trustee also will attend this meeting and question the debtor on the same matters. In order to preserve their independent judgment, bankruptcy judges are prohibited from attending. 11 U.S.C. § 341(c).

If there are problems with the plan, they are typically resolved during or shortly after the creditors’ meeting. Generally, problems may be avoided if the petition and plan are complete and accurate and the trustee has been consulted prior to the meeting.

In a chapter 13 case, unsecured creditors who have claims against the debtor must file their claims with the court within 90 days after the first date set for the meeting of creditors. Bankruptcy Rule 3002(c). A governmental unit, however, may file a proof of claim until the expiration of 180 days from the date the case is filed. 11 U.S.C. § 502(b)(9).

After the meeting of creditors is concluded, the bankruptcy judge must determine at a confirmation hearing whether the plan is feasible and meets the standards for confirmation set forth in the Bankruptcy Code. 11 U.S.C. §§ 1324 and 1325. Creditors, who will receive 25 days notice of the hearing, may appear and object to confirmation. While a variety of objections may be made, the most frequent ones 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 disposable income for the three-year period of the plan.

Within 30 days after the filing of the plan, even if the plan has not yet been approved by the Court, the debtor must start making payments to the trustee. 11 U.S.C. § 1326(a)(1). If the plan is confirmed by the bankruptcy judge, the chapter 13 trustee commences distribution of the funds received in accordance with the plan “as soon as practicable.” 11 U.S.C. § 1326(a)(2). If the plan is not confirmed, the debtor has a right to file a modified plan. 11 U.S.C. § 1323. The debtor also has a right to convert the case to chapter 7. 11 U.S.C. § 1307. If the plan or modified plan is not confirmed and the case is dismissed, the court may authorize the trustee to retain a specified amount for costs, but all other funds paid to the trustee are returned to the debtor. 11 U.S.C. § 1326(a)(2).

On occasion, changed circumstances will affect a debtor’s ability to make plan payments, a creditor may object or threaten to object to a plan, or a debtor may inadvertently have failed to list all creditors. In such instances, the plan may be modified either before or after confirmation. 11 U.S.C. § 1323 and 1329. Modification after confirmation is not limited to an initiative by the debtor but may be at the request of the trustee or an unsecured creditor. 11 U.S.C. § 1329(a).

Making the Plan

The provisions of a confirmed plan are binding on the debtor and each creditor. 11 U.S.C. § 1327. Once the court confirms the plan, it is the responsibility of the debtor to make the plan succeed. The debtor must make regular payments to the trustee, which will require adjustment to living on a fixed budget for a prolonged period. Alternatively, the debtor's employer can withhold the amount of the payment from the debtor's paycheck and transmit it to the chapter 13 trustee. Furthermore, while confirmation of the plan entitles the debtor to retain property as long as payments are made, the debtor may not incur any significant new credit obligations without consulting the trustee, as such credit obligations may have an impact upon the execution of the plan. 11 U.S.C. §§ 1305(c), 1322(a)(1) and 1327.

A debtor may consent to the deduction of the plan payments from the debtor's paycheck. Experience has shown that this practice increases the likelihood that payments will be made on time and that the plan will be completed. In any event, failure to make the payments may result in dismissal of the case or its conversion to a liquidation case under chapter 7 of the Bankruptcy Code. 11 U.S.C. § 1307(c).

The Chapter 13 Discharge

The bankruptcy law regarding the scope of the chapter 13 discharge is complex and has recently undergone major changes. Therefore, debtors should consult competent legal counsel prior to filing regarding the scope of the chapter 13 discharge.

The chapter 13 debtor is entitled to a discharge upon successful completion of all payments under the chapter 13 plan. 11 U.S.C. § 1328(a).⁴ The discharge has the effect of releasing the debtor from all debts provided for by the plan or disallowed (under section 502), with limited exceptions. Those creditors who were provided for in full or in part under the chapter 13 plan may no longer initiate or continue any legal or other action against the debtor to collect the discharged obligations.

In return for the willingness of the chapter 13 debtor to undergo the discipline of a repayment plan for three to five years, a broader discharge is available under the chapter 13 than in a chapter 7 case. As a general rule, the debtor is discharged from all debts provided for by the plan or disallowed except certain long term obligations (such as a home mortgage) on which payments will not be completed until after the last payment under the chapter 13 plan is due, debts for alimony or child support, debts for most government funded or guaranteed educational loans or benefit overpayments, debts arising from death or personal injury caused by driving while intoxicated or under the influence of drugs, debts for restitution or a criminal fine included in a sentence on the debtor's conviction of a crime. 11 U.S.C. § 1328(a). To the extent that these types of debts are not fully paid pursuant to the chapter 13 plan, the debtor will still be responsible for these debts after the bankruptcy case has concluded.

The Chapter 13 Hardship Discharge

After confirmation of a plan, there are limited circumstances under which the debtor may request the court to grant a “hardship discharge” even though the debtor has failed to complete plan payments. 11 U.S.C. § 1328(b). Generally, such a discharge is available only to a debtor whose failure to complete plan payments is due to circumstances beyond the debtor's control and through no fault of the debtor; after creditors have received at least as much as they would have received in a chapter 7 liquidation case; and when modification of the plan is not possible. Injury or illness that precludes employment sufficient to fund even a modified plan may serve as the basis for a hardship discharge. The hardship discharge is more limited than the discharge described above, and does not apply to any debts that are nondischargeable in a chapter 7 case. 11 U.S.C. § 523.

References/Footnotes

¹ Section 507 sets forth nine categories of unsecured claims which Congress has, for public policy reasons, given priority of distribution over other unsecured claims.

² Unsecured debts generally may be defined as those for which the extension of credit was based purely upon an evaluation by the creditor of the debtor's ability to pay, as opposed to secured debts, which are based upon the creditor's right to seize pledged property on default, in addition to ability to pay.

³ Bankruptcy administrators, rather than U.S. trustees, serve in the judicial districts in the states of Alabama and North Carolina.

⁴ The Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat.4106, Sec. 501 (d)(38) (October 22, 1994), contains a “technical correction” which deletes 11 U.S.C. § 1328 (a)(3). In the absence of legislative action to restore the section, it would appear that debts for restitution or criminal fines may be discharged in chapter 13 cases.

List and Order of Required Documents - Chapter 13

- An original and four copies are required at the time of filing.
- Papers must be assembled into complete sets.
- Pursuant to Local Bankruptcy Rule 1002-1(g)(2), even if certain of the schedules or statement of Official Forms 6 and 7 are not applicable to a debtor's particular situation, they shall be filed with either the notation "None" marked thereon or the applicable box checked indicating that there is nothing to report for that particular schedule or statement.
- The first set must be the signed original.
- Pursuant to Local Bankruptcy Rule 1002-1, papers presented to the Court for filing or lodging should be on white paper, single-sided, pre-punched and backed. (The backing shall be flush at the top and extend no more than 1 inch below the bound pages and have the short title of the document typed in the low lower right-hand corner. Example: Chapter 13 Petition.) Copies do not require backing.
 1. Voluntary Petition (first two pages)*
 2. Exhibit "C" to Voluntary Petition (if Exhibit "C" "yes" box is checked on page two of the Voluntary Petition)
 3. Statement of Related Cases [required by Local Bankruptcy Rule 1015-2(b)(2)]*
 4. Notice of Available Chapters [required for individuals whose debts are primarily consumer debts (11 U.S.C. § 342(b)]*
 5. Summary of Schedules
 6. Schedules A through J
 7. Declaration Concerning Debtor's Schedules (included with schedules)
 8. Statement of Financial Affairs
 9. Chapter 13 Plan and Motion to Avoid Liens

***Required at the time of emergency filing**

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10. Statement of Assistance of Non-Attorney with Respect to the Filing of This Petition (for persons not represented by counsel)*
 11. Disclosure of Compensation of Attorney for Debtor (for Petitions of persons who are represented by counsel or where an attorney has prepared the paperwork)
 12. Disclosure of Compensation of Bankruptcy Petition Preparer (for persons not represented by counsel and where a bankruptcy petition preparer prepared the paperwork)
 13. Verification of Creditor Mailing List [Local Bankruptcy Rule 1007-2(d)]*
 14. Master Mailing List (in format required by Local Bankruptcy Rule 1007-2)*
 15. Computer Readable Diskette (required for Petition with over 100 creditors) [Local Bankruptcy Rule 1007-2(c)]

*Required at the time of emergency filing

United States Bankruptcy Court
Central District of California
Office Locations

LOS ANGELES

Office of the Clerk
Edward R. Roybal Federal Building
and Courthouse
255 East Temple Street
Los Angeles, California 90012

Clerk's Office Operations
United States Federal Building
300 North Los Angeles Street
Los Angeles, California 90012

General Information (213) 894-3118

RIVERSIDE DIVISION

3420 Twelfth Street
Riverside, California 92501-3819

General Information (909) 774-1000

SANTA ANA DIVISION

411 West Fourth Street, Suite 2-030
Santa Ana, California 92701-4593

General Information (714) 338-5300

NORTHERN DIVISION

1415 State Street
Santa Barbara, California 93101

General Information (805) 884-4800

SAN FERNANDO VALLEY DIVISION

21041 Burbank Boulevard
Woodland Hills, California 91367

General Information (818) 587-2900

Bankruptcy Appellate Panel - Ninth Circuit

125 South Grand Avenue
Pasadena, California 91105