

## IS CHAPTER 7 OR CHAPTER 13 BEST FOR YOU?

The protection we have described is available to persons who file petitions under both Chapter 7 and Chapter 13 of the Bankruptcy Code. There are several other chapters which provide various kinds of Bankruptcy relief. However, Chapter 7 and Chapter 13 are the ones most frequently used by individuals and families. They offer solutions for many kinds of problems. Chapter 11 is business reorganization. It is also available to individuals with very large debts. Chapter 12 is for farmers.

To understand Bankruptcy better, you need to understand these legal terms:

- **Assets** are property having monetary value
- **Liquid assets** are cash or property that can readily be converted to cash
- **Liquidation** is the process of converting assets to cash.
- **Reorganization** is the process of changing the terms of financial obligations so as to bring them under control.
- **Exempt property** is property creditors are not allowed to take from you in satisfaction of their claims. The law of your state specifies what property you may keep free of the demands of your creditors.
- A **secured debt** is an obligation secured by property owned by the debtor or another person. Examples of secured indebtedness are real-estate mortgages and liens against motor vehicles. If you fail to pay your secured debts, the creditor can simply repossess the property and sell it to satisfy its claim.
- An **unsecured debt** is a debt for which there is no security except the debtor's personal obligation. Charge-cards and medical bills are examples of unsecured debt.
- A **composition** is a plan of reorganization which pays less than all of a person's debts

**Chapter 7** is a liquidation proceeding under the Bankruptcy Code. If you have any *non-exempt* assets, these may be sold by the Trustee in Bankruptcy to yield a dividend for creditors whose debts are discharged. However, in a great many Chapter 7 cases, all the debtor's property is exempt. Therefore he/she is not required to surrender any assets.

Chapter 7 is an attractive remedy for people whose property is totally exempt and who cannot afford to make meaningful payments to reduce or pay off their debts. The debtor pays nothing out of pocket except the attorney fee and the filing fee required by the Court. The debtor typically emerges from Bankruptcy free of all his unsecured debt. Chapter 7 does not release most liens against property. Debtors who wish to retain property which is subject to a lien may reaffirm the debt involved or redeem the property by paying its value to the creditor.

Also, Chapter 7 does not discharge obligations for alimony or child support, some taxes, student loans and certain other debts. If you owe debts of this nature, or if you have gotten behind on payments for property you wish to keep, you should explore the possibility of devising a Chapter 13 Plan to address these problems.

**Chapter 13** permits reorganization of financial obligations. Here the debtor may change the terms of his contracts so as to pay them in a way he can afford. A well-drawn Chapter 13 Plan may make it possible to pay all debts in full within a reasonable period of time. Those who cannot afford to pay one hundred per cent of their debt may qualify for a composition plan. In a composition, a portion of the debt is paid, and whatever is not paid is discharged. Chapter 13 is also very helpful for people whose assets exceed the amount they would be allowed to keep in a Chapter 7 case. Property that is not exempt may be retained by paying creditors its value in a Chapter 13 Plan. This is an effective way of protecting assets from the demands of creditors.

In a Chapter 13 case, the debtor and the attorney work together to formulate a Plan. Normally, you make payments at regular intervals depending upon how your income is received. Your Chapter 13 Trustee will collect these funds and disburse them as you have directed him to do in your Plan. Any kind of debt may be paid in a Chapter 13 Plan. Also, you may use your Plan to pay income and other taxes, to reduce payments on your furniture or car, to bring house payments current over a period of time, and to pay overdue child support. Creditors are allowed to object to the Plan, and their objections will be resolved either by negotiation or by a decision of the Bankruptcy Court.

The Plan you and your attorney create will be confirmed by the Court if it is feasible and otherwise complies with the requirements of the law. After the Plan has been confirmed by the Court, no creditor can demand any different or better treatment than the Plan provides. Unsecured debts are normally paid free of interest in a Chapter 13 Plan. In the case of secured debts, interest is paid only to the extent of the value of the collateral. For example, if you owe \$7500.00 on a car valued at \$6000.00, interest will accrue only on the first \$6000.00 of the debt. The remaining \$1500.00 will be paid without interest and will be treated as an unsecured debt in other respects.

It is even possible to reduce the rate of interest on secured debts. In practical terms, this means that it takes much less money to pay your debts than if you continue trying to deal with your creditors outside of Bankruptcy. In Chapter 13, secured creditors can be compelled to accept payments over a period of time.

The Bankruptcy Code provides that some debts are non-dischargeable. This means that after your case is completed with the issuance of a discharge, you will remain responsible for the debts that cannot be discharged. These debts include (but are not limited to) child support, alimony, certain other debts related to divorce, some student loans, criminal restitution, fines, and some taxes. Some debts that are non-dischargeable in Chapter 7 may be discharged by partial payment in Chapter 13. This is known as the Chapter 13 Super Discharge.

Straight Bankruptcy (Chapter 7) will not protect cosigners on your debts. If a relative or friend has co-signed a loan for you, and you discharge the debt in bankruptcy, the creditor may collect the debt from the cosigner. However, co-makers can be protected in Chapter 13 case by providing in the Plan the debt be paid in full. It is even possible to pay cosigned debts in full while paying only a portion of other debts. However, co-makers can be protected in a Chapter 13 case by providing in the Plan that the debt be paid in full.

**As a general rule, Chapter 7 does not discharge debts that arise after the bankruptcy petition has been filed. However, these may frequently be dealt with in a Chapter 13 case.**