

U.S. Bankruptcy Court  
District of Vermont  
<http://www.vtb.uscourts.gov>

# BANKRUPTCY PROCESS CHAPTERS 7 & 13



11/01/11

## **PREFACE**

The laws, codes and rules governing bankruptcy procedures are complicated and intricate in detail. This guide is not intended to serve as a “how-to” manual, nor is it intended to advise you of your legal rights or responsibilities under bankruptcy. The purpose of this guide simply is to shed light on some common misconceptions and answer frequently asked question posed to this court by debtors filing bankruptcy without the assistance of legal counsel (or pro se debtors).

### **Clerk’s Office**

The Clerk’s Office provides clerical and administrative support to the Court by managing cases, collecting authorized fees, sending notices, entering judgments and orders on the docket, informing parties of scheduled hearings, and handling inquiries from attorneys and the general public.

### **Bankruptcy**

Bankruptcy is a legal process which allows a person (known as a debtor) to either (1) repay a portion of the money over time under chapter 11, 12 or 13, or (2) have the entire debt forgiven (discharged) under chapter 7. Under chapter 7, a debtor may be required to surrender assets to a trustee. Bankruptcy is available to individuals, businesses, corporations, and partnerships. Even municipal governments can file bankruptcy (under chapter 9).

Normally, after a debtor has opened a case by filing a petition, creditors must stop all collection efforts against the debtor and the debtor’s property. Under certain rare circumstances, the stay may be limited to 30 days or not exist at all. For instance, if you have filed for bankruptcy previously, the stay may not occur. Stopping collection efforts is referred to as the automatic stay.

The Bankruptcy Code [Title 11 of the United States Code (11 U.S.C. sections 101-1330)] and Federal Rules of Bankruptcy Procedure determine which chapter a person is eligible to file, which debts can be eliminated, how long repayment must continue, and which possessions can be kept, etc. A debtor must obey these federal laws and rules. These may be found in the larger libraries around Vermont. The Vermont Statutes Annotated describes homestead exemptions in Title 27, Chapter 3, Section 101, and lists other exemptions in Title 12, Chapter 11, Section 2740. These can be found on line at <http://www.vermont.gov>, (select State Statutes and Constitution) or in local libraries.

### **Warning**

A person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury, either orally or in writing, in connection with a bankruptcy case is subject to a fine, imprisonment, or both. All information supplied by a debtor in connection with a bankruptcy case is subject to examination by the Attorney General acting through the Office of the United States Trustee, the Office of the United States Attorney, and other components and employees of the Department of Justice.

Section 521(a)(1) of the Bankruptcy Code requires that you promptly file detailed information regarding your creditors, assets, liabilities, income, expenses and general financial condition. Your bankruptcy case may be dismissed if this information is not filed with the court within the time deadlines set by the Bankruptcy Code, the Bankruptcy Rules, and the local rules of the court.

### **Recent Changes in Bankruptcy Law**

Waiting Periods if Previous Filing: A debtor who previously filed a bankruptcy and obtained a discharge may not receive another discharge unless there has been sufficient time between the two cases. If this is important to you, check it further before filing.

Pre-Bankruptcy Counseling: Within 180 days prior to filing a case, you must attend a briefing from a certified counseling agency concerning the availability of credit counseling. You will receive a certificate of credit counseling to be filed with the court after the counseling has been completed. A list of certified counseling agencies is posted on the United States Trustee Program website at [http://www.usdoj.gov/ust/eo/bapcpa/ccde/cc\\_approved.htm](http://www.usdoj.gov/ust/eo/bapcpa/ccde/cc_approved.htm) .

Financial Counseling After filing: You will not receive a discharge unless you complete a course on personal financial management education and file a certification of completion (Form 23) of this counseling or exemption from the counseling. The certificate is due within 45 days following the first date set for your meeting of creditors. A list of certified financial counselors is posted on the United States Trustee Program website at [http://www.usdoj.gov/ust/eo/bapcpa/ccde/de\\_approved.htm](http://www.usdoj.gov/ust/eo/bapcpa/ccde/de_approved.htm) .

Statement of Monthly Income and Means Test Calculation: Individual debtors who file a chapter 7, 11, or 13 petition must file a new form which will give detailed information about your income for the purpose of determining whether your filing represents an abuse of the bankruptcy system. Some debtors may be prohibited from filing a chapter 7 case if their income would permit them to make payments to their creditors. This form must be filed within 15 days of the filing of the petition.

Tax Return: You must provide a copy of your most recent tax return to the trustee and to any creditor who requests a copy of the return. This must be provided to the parties at least 7 days prior to the date set for the meeting of creditors.

Filing of Wage Statements: You must file with the court copies of all payment advices or wage statements given to you by any employer within 60 days before the date of filing your case. These must be accompanied by the Pay Advices Cover Sheet which is posted on the court's website at <http://www.vtb.uscourts.gov/issues/payadvices.pdf> , and are due 15 days from the date of filing your petition.

Waiver of Filing Fees: the courts may now waive the filing fees for indigent debtors who file an application for waiver of fees. The application must be filed with the petition. If the fee waiver is denied, the debtor will be required to either pay the full fee immediately or will be required to pay the fee in installments over 120 days.

## **CHAPTER 7**

### **Liquidation Under The Bankruptcy Code**

#### **Alternatives to Chapter 7**

Debtors should be aware that there are several alternatives to chapter 7 relief. For example, debtors who are engaged in business, including corporations, partnerships, and sole proprietorships, may prefer to remain in business and avoid liquidation. Such debtors should consider filing a petition under chapter 11 of the Bankruptcy Code. Under chapter 11, the debtor may seek an adjustment of debts, either by reducing the debt or by extending the time for repayment, or may seek a more comprehensive reorganization. Sole proprietorships may also be eligible for relief under chapter 13 of the Bankruptcy Code.

In addition, individual debtors who have regular income may seek an adjustment of debts under chapter 13 of the Bankruptcy Code. Indeed, the Court may dismiss a chapter 7 case filed by an individual whose debts are primarily consumer rather than business debts, if the Court finds that the granting of relief would be a substantial abuse of the provisions of chapter 7. A number of Courts have concluded that a chapter 7 case may be dismissed for substantial abuse when the debtor has the ability to propose and carry out a workable and meaningful chapter 13 plan.

Debtors should also be aware that out-of-court agreements with creditors or debt counseling services may provide an alternative to a bankruptcy filing. The State of Vermont Department of Banking can provide the names of licensed debt counseling services. The telephone number is 802 828-3307.

#### **Background**

The potential chapter 7 debtor should understand that a chapter 7 bankruptcy case does not involve the filing of a plan of repayment as in chapter 13. The chapter 7 Trustee collects and sells the debtor's nonexempt assets, and holders of claims (creditors) will receive payments in accordance with the provisions of the Bankruptcy Code. Part of the debtor's property may be subject to liens and mortgages that pledge the property to other creditors. In addition, under chapter 7, the individual debtor is permitted to retain certain exempt property. The debtor's remaining assets are liquidated by a trustee. Accordingly, potential debtors should realize that the filing of a petition under chapter 7 may result in the loss of property.

In order to qualify for relief under chapter 7 of the Bankruptcy Code, the debtor must be an individual, a partnership, a corporation, or a qualified multilateral clearing organization. Relief is available under chapter 7 no matter what the amount of the debtor's debts or whether the debtor is solvent or insolvent. An individual cannot file under chapter 7 or any other chapter, however, if during the preceding 180 days a prior bankruptcy petition was dismissed due to the debtor's willful failure to appear before the Bankruptcy Court or comply with orders of the Bankruptcy Court, or the debtor voluntarily dismissed the previous case after creditors sought relief from the Bankruptcy Court to recover property upon which they hold liens.

One of the primary purposes of bankruptcy is to discharge certain debts to give an honest individual debtor a fresh start. The discharge has the effect of extinguishing the debtor's personal liability on dischargeable debts. In a chapter 7 case, however, a discharge is available to individual debtors only, not to partnerships or corporations. Although the filing of an individual chapter 7 petition usually results in a discharge of debts, an individual's right to a discharge is

not absolute, and some types of debts are not discharged. Moreover, a bankruptcy discharge does not extinguish a lien on property. (See Attached Detailed Chapter 7 Information.)

## CHAPTER 7 PROCESS

**PRIOR TO FILING BANKRUPTCY, YOU MUST HAVE A CERTIFICATION STATING YOU HAVE PARTICIPATED IN CREDIT COUNSELING AT AN APPROVED COUNSELING SERVICE (See the list at [http://www.usdoj.gov/ust/eo/bapcpa/ccde/cc\\_approved.htm](http://www.usdoj.gov/ust/eo/bapcpa/ccde/cc_approved.htm) ).**

### 1. DEBTOR COMPLETES AND FILES PETITION (Original plus one copy)

The forms and schedules may be downloaded from our website or may be obtained by calling the court. They are also available in some office supply stores. They may be handwritten, but must be legible. In addition to the Bankruptcy Petition, Schedules and other required documents, a typed list of creditors (mailing list) must be filed and the filing fee paid or you must file an application to pay by installment fees or an application for waiver of filing fees in order to commence a bankruptcy case.

Note: The mailing list must be typed with the names and addresses listed in a single column with a space between each creditor. The following addresses need to be included on your mailing list if:

-you owe taxes to the IRS:  
IRS/SPF Insolvency Unit  
JFK Fedl Bldg, Rm 800  
Cambridge Street  
PO Box 9112  
Boston, MA 02203-9112

-the papers filed in your case disclose a debt, other than taxes, to the United States:  
(Name of Federal Agency)  
United States Attorney, District of Vermont  
11 Elmwood Avenue - 3<sup>rd</sup> Floor  
PO Box 570  
Burlington, VT 05402

-the papers filed in your case disclose a tax debt or potential tax claim to the State of Vermont:  
Vermont Department of Taxes  
Bankruptcy Unit  
PO Box 429  
Montpelier, VT 05601-0429

-the papers filed in your case disclose a debt other than taxes to the State of Vermont:  
(Name of State Agency)  
c/o VT Attorney General  
109 State Street  
Montpelier, VT 05609-1001

All paperwork filed with the Clerk must be on 8 1/2 x 11" paper. Your petition and payment of \$306 should be filed by coming to the Clerk's Office (67 Merchants Row, Rutland, VT), or by mailing them to: USBC, PO Box 6648, Rutland, VT 05702-6648. You must pay the filing fee in full by cash, money order or cashier's check at the time of your filing, or submit an application to pay the filing fee in installments or an application for waiver of filing fees (both can be found on the United States Courts website [http://www.uscourts.gov/bkforms/bankruptcy\\_forms.html](http://www.uscourts.gov/bkforms/bankruptcy_forms.html) . The Court does not accept personal checks or credit cards from a person filing bankruptcy.

## 2. TRUSTEE IS ASSIGNED TO YOUR CASE

An impartial trustee is appointed to administer your case. The trustee may collect your non-exempt assets and convert them to cash (liquidation). Any money resulting will be used to make payments to your unsecured creditors.

## 3. MEETING OF CREDITORS IS HELD ("341 Meeting") (Section 341 is the section of the Bankruptcy Code that requires this meeting to be held.)

You will receive a notice with the date, time and location of the creditors meeting. All creditors are also notified of this meeting, but their attendance is not required. You have a duty to appear and testify under oath and answer questions by the trustee. This meeting is presided over by the trustee assigned to your case, and is held 20-60 days after your petition is filed. You are also required to provide photo identification and proof of social security number to the assigned trustee. Your failure to appear may result in dismissal of your case. If you need to change the date of the hearing, the trustee must be contacted.

Potential Requests from the trustee:

- If you own real estate, the trustee will probably request a copy of the warranty deed (the document by which you gained ownership of the property); the mortgage deed (the lien which you granted the bank or lender on your property); and the tax bill or Lister's card or recent appraisal of your property. If you do not have the original or a copy of the recorded deed, a copy can be obtained from the Town Clerk where the property is located. The trustee will only need the first page of the mortgage deed, the description of the property and all signature pages.
- If you own a car, the trustee may request a copy of the title to the car and a statement of the amount owing to the bank or lender. If you do not have the title, you may request it from your bank, or may obtain a copy from the Vermont Department of Motor Vehicles with form TA-VG-116.
- If you have a retirement plan, the trustee will request a copy of the most recent statement for the plan and a letter from the plan administrator to insure ERISA and tax qualifications.

## 4. CREDITORS HAVE 60 DAY PERIOD FOR COMPLAINTS TO BE FILED

Creditors have the opportunity to object to your discharge or to dispute the discharge of their debt within 60 days after the date set for the first meeting of creditors.

## 5. ORDER OF DISCHARGE GRANTED

**BEFORE YOUR DISCHARGE IS GRANTED, YOU MUST FILE A CERTIFICATION THAT YOU HAVE COMPLETED A FINANCIAL MANAGEMENT COURSE, FORM 23 (for listing of approved financial management services, visit the following website [http://www.usdoj.gov/ust/eo/bapcpa/ccde/de\\_approved.htm](http://www.usdoj.gov/ust/eo/bapcpa/ccde/de_approved.htm)) .**

Unless the Court has ruled otherwise, usually due to a lawsuit filed by a creditor, when the deadline for filing objections to your discharge passes, the order of discharge will be issued. This permanently relieves you from having to pay certain debts. Most, but not all, types of debts are discharged if they existed on the date the bankruptcy case was filed and were listed on the schedules in your petition.

## 6. TRUSTEE COMPLETES DUTIES

The trustee continues to distribute any assets and files a report.

## 7. FINAL DECREE ISSUED

Your case is closed. Under the provisions of the Fair Credit Reporting Act, the bankruptcy filing will remain on your credit report for a maximum of 10 years.

## **CHAPTER 13**

### **Individual Debt Adjustment Bankruptcy**

#### **Background**

A chapter 13 bankruptcy is also called a wage earner's plan. It enables individuals with regular income to develop a plan to repay all or part of their debts. Under this chapter, debtors propose a repayment plan to make installments to creditors over three to five years. If the debtor's current monthly income is less than the applicable state median, the plan will be three years unless the court approves a longer period "for cause." If the debtor's current monthly income is greater than the applicable state median, the plan generally must be for five years. During this time the laws forbid creditors from starting or continuing collection efforts.

#### **Advantages of Chapter 13**

Chapter 13 offers individuals a number of advantages over liquidation under chapter 7. Perhaps most significantly, chapter 13 offers individuals an opportunity to save their homes from foreclosure. By filing under this chapter, individuals can stop foreclosure proceedings and may cure delinquent mortgage payments over time. Nevertheless, they must still make all mortgage payments that come due during the chapter 13 plan on time. Another advantage of chapter 13 is that it allows individuals to reschedule secured debts (other than a mortgage for their primary residence) and extend them over the life of the chapter 13 plan. Doing this may lower the payments. Chapter 13 also has a special provision that protects third parties who are liable with the debtor on "consumer debts." This provision may protect co-signers. Finally, chapter 13 acts like a consolidation loan under which the individual makes the plan payments to a chapter 13 trustee who then distributes payments to creditors. Individuals will have no direct contact with creditors while under chapter 13 protection. (See attached Detailed Chapter 13 Information.)

## **CHAPTER 13 PROCESS**

**PRIOR TO FILING BANKRUPTCY, YOU MUST HAVE A CERTIFICATION STATING YOU HAVE PARTICIPATED IN CREDIT COUNSELING AT AN APPROVED COUNSELING SERVICE.**

#### **1. DEBTOR COMPLETES AND FILES PETITION (Original plus one copy)**

The Forms and Schedules are attached (see attachment A). They also may be downloaded from our website or may be obtained by calling the court. They are also available in some office supply stores. They may be handwritten, but must be legible. In addition to the Bankruptcy Petition, Schedules and other required documents, a typed list of creditors (mailing list) must be filed, along with the \$281.00 filing fee or an application to pay by installment fees or an application for Waiver of Filing Fee (both may be found on the court's website [http://www.uscourts.gov/bkforms/bankruptcy\\_forms.html](http://www.uscourts.gov/bkforms/bankruptcy_forms.html)), in order to commence a bankruptcy case.

Note: The mailing list must be typed with the names and addresses listed in a single column with a space between each creditor. The following address needs to be included on your mailing list if:



-you owe taxes to the IRS:  
IRS/SPF Insolvency Unit  
JFK Fedl Bldg, Rm 800  
Cambridge Street  
PO Box 9112  
Boston, MA 02203-9112

-the papers filed in your case disclose a debt, other than taxes, to the United States:  
United States Attorney, District of Vermont  
615 Federal Bldg.  
PO Box 570  
Burlington, VT 05402

-the papers filed in your case disclose a tax debt or potential tax claim to the State of Vermont:  
Vermont Department of Taxes  
Bankruptcy Unit  
PO Box 429  
Montpelier, VT 05601-0429

-the papers filed in your case disclose a debt other than taxes to the State of Vermont:  
(Name of State Agency)  
c/o VT Attorney General  
109 State Street  
Montpelier, VT 05609-1001

All paperwork filed with the Clerk must be on 8 1/2 x 11" paper. Your petition may be filed by coming to the Clerk's Office, or by mailing it to: USBC, PO Box 6648, Rutland, VT 05702-6648. You must also pay the filing fee (\$281.00) in full by cash, money order or cashier's check at the time of filing your petition, or submit an application to pay the filing fee in installments or an application for waiver of filing fee. The Court does not accept personal checks or credit cards from a person filing bankruptcy.

Your chapter 13 plan (how you plan to pay back some of your creditors) may be filed at this time. You have 15 days to file it if you wish to file it separately. Your first plan payment must be paid to the trustee within 30 days of the filing of your plan. Failure to make timely payments to the trustee may result in dismissal of your case.

## 2. TRUSTEE IS ASSIGNED TO YOUR CASE

Jan Sensenich, an impartial trustee, will be appointed to oversee your case. He will collect plan payments and disburse funds to your creditors in a specific order required by law.

## 3. MEETING OF CREDITORS ("341 Meeting")

You will be notified of the date, time and place of the meeting of creditors. All creditors are also notified of this meeting; however, their attendance is not required. You have a duty to appear and testify under oath and answer questions by creditors. This meeting is presided over by the trustee and is held approximately 25-60 days after your petition is filed. You are required to provide photo identification, proof of social security number, and proof of home and auto insurance to the trustee. Your failure to appear may result in dismissal of the case. If you need to change the date of the hearing, you must contact the trustee directly as soon as possible.

#### 4. CONFIRMATION HEARING

This hearing is generally scheduled on the same day as the Meeting of Creditors (the Meeting of Creditors will be held in the morning and the Confirmation Hearing will be held at 1:30 p.m.). Creditors have an opportunity to object to your plan. If this happens, you may ask the Court to overrule the objection, or you may file an amended plan. If your plan is not approved by the Court, you may file an amended plan, convert to a chapter 7, or your case can be dismissed.

#### 5. CREDITORS FILE CLAIMS

Creditors have 90 days from the date you file your case to file a Proof of Claim, which is a form stating the amount they believe you owe to them.

#### 6. PLAN PAYMENTS

You must pay the trustee a sum of money each month, according to your plan. Payments must be made starting within 30 days of filing your plan. You are encouraged to make these payments through a voluntary wage deduction.

#### 7. TRUSTEE'S REPORT

After a plan is confirmed and until your plan is completed, the trustee periodically will file reports with the Court summarizing your payments to him and the payments he has made to your creditors under the plan. Once the plan is completed, the trustee will file a final report and account, which must be approved by the Court.

**BEFORE YOUR DISCHARGE IS GRANTED, YOU MUST FILE A CERTIFICATION THAT YOU HAVE COMPLETED A FINANCIAL MANAGEMENT COURSE (see the following website for list of approved financial management services [http://www.usdoj.gov/ust/eo/bapcpa/ccde/de\\_approved.htm](http://www.usdoj.gov/ust/eo/bapcpa/ccde/de_approved.htm)).**

#### 8. ORDER OF DISCHARGE

The order of discharge relieves you from having to pay certain remaining debts. The order is issued promptly after your plan is completed. Most, but not all types of debts are discharged if they existed on the date the bankruptcy case was filed and were listed on the schedules in your petition, and you made all payments required under your confirmed plan.

#### 9. FINAL DECREE

Your case is closed. Under the provisions of the Fair Credit Reporting Act, the bankruptcy filing will remain on your credit report a maximum of 10 years.

## **ROLE OF THE TRUSTEE**

Upon filing a chapter 7 or a chapter 13 petition, an impartial case trustee is appointed by the United States Trustee to administer the case. In a chapter 7 case, the trustee liquidates the debtor's non-exempt assets. If, as is often the case, all of the debtor's assets are exempt or subject to valid liens, there will be no distribution to unsecured creditors. Typically, most chapter 7 cases involving individual debtors are "no asset" cases. If the trustee determines that the case is an "asset" case, unsecured creditors who have claims against the debtor will be asked to file proof of claims noting what they are owed by the debtor(s) within 90 days after being sent notice to file claims. A governmental unit, however, may file a proof of claim until the expiration of 180 days from the date the case is filed. In the typical no asset chapter 7 case, there is no need for creditors to file proofs of claim. A creditor in a chapter 7 case who has a lien on the debtor's property should consult an attorney for advice.

The commencement of a bankruptcy case creates an "estate". The estate technically becomes the temporary legal owner of all of the debtor's property. The estate consists of all legal or equitable interests of the debtor in property as of the commencement of the case, including property owned or held by another person if the debtor has an interest in the property.

The primary role of a chapter 13 trustee is to receive monthly payments from the Debtor(s) and disburse them according to the court- approved chapter 13 plans. When the plan is completed, the trustee files a report that must be approved by the court before the case can be closed.

## **DISCHARGE**

A discharge releases the debtor from personal liability for most debts and prevents the creditors owed those debts from taking any action against the debtor to collect the debts. The bankruptcy law regarding the scope of a chapter 7 discharge is complex, and debtors should consult competent legal counsel in this regard prior to filing. As a general rule, however, excluding cases which are dismissed or converted, individual debtors receive a discharge in more than 99 percent of chapter 7 cases. In most cases, unless a complaint has been filed objecting to the discharge or the debtor has filed a written waiver, the discharge will be granted to a chapter 7 debtor relatively early in the case, that is, 60 to 90 days after the date first set for the meeting of creditors.

The grounds for denying an individual debtor a discharge in a chapter 7 case are very narrow and are construed against a creditor or trustee seeking to deny the debtor a chapter 7 discharge. Among the grounds for denying a discharge to a chapter 7 debtor are that the debtor failed to keep or produce adequate books or financial records; the debtor failed to explain satisfactorily any loss of assets; the debtor committed a bankruptcy crime such as perjury; the debtor failed to obey a lawful order of the Bankruptcy Court; or the debtor fraudulently transferred, concealed, or destroyed property that would have become property of the estate.

"Reaffirmation" is a voluntary agreement between the debtor and a secured creditor stating that the debtor will assume personal liability for all or a portion of the money owed, even though the debtor has filed bankruptcy and has no obligation to do so. If the debtor elects to reaffirm a debt, the reaffirmation agreement must be accomplished prior to the granting of a discharge. A written agreement to reaffirm a debt must be filed with the Clerk's Office and, if the debtor is not represented by an attorney, must be approved by the judge. The Bankruptcy Code requires that reaffirmation agreements contain an explicit statement advising the debtor that the agreement is

not required by bankruptcy or non-bankruptcy law. In addition, the debtor's attorney is required to advise the debtor of the legal effect and consequences of such an agreement, including a default under such an agreement. The Bankruptcy Code requires a reaffirmation hearing only if the debtor has not been represented by an attorney during the negotiating of the agreement. The debtor may repay any debt voluntarily, however, whether or not a reaffirmation agreement exists.

Most claims against an individual chapter 7 debtor are discharged. A creditor whose unsecured claim is discharged may no longer initiate or continue any legal or other action against the debtor to collect the obligation. A discharge under chapter 7, however, does not discharge an individual debtor from certain specific types of debts listed in § 523 of the Bankruptcy Code. Among the types of debts which are not discharged in a chapter 7 case are alimony and child maintenance and support obligations, certain taxes, debts for certain educational benefit overpayments or loans made or guaranteed by a governmental unit, debts for willful and malicious injury by the debtor to another entity or to the property of another entity, debts for death or personal injury caused by the debtor's operation of a motor vehicle while the debtor was intoxicated from alcohol or other substances, and debts for criminal restitution orders. To the extent that these types of debts are not fully paid in the chapter 7 case, the debtor is still responsible for them after the bankruptcy case has concluded. Debts for money or property obtained by false pretenses, debts for fraud or defalcation while acting in a fiduciary capacity, debts for willful and malicious injury by the debtor to another entity or to the property of another entity, and debts arising from a property settlement agreement incurred during or in connection with a divorce or separation are discharged unless a creditor timely files and prevails in an action to have such debts declared non-dischargeable.

The Court may revoke a chapter 7 discharge on the request of the trustee, a creditor, or the United States Trustee if the discharge was obtained through fraud by the debtor or if the debtor acquired property that is property of the estate and knowingly and fraudulently failed to report the acquisition of such property or to surrender the property to the trustee.

## FORMS

The following is a list of the forms you need to file with the Court in order to commence a case. See the Court's website ([http://www.uscourts.gov/bkforms/bankruptcy\\_forms.html](http://www.uscourts.gov/bkforms/bankruptcy_forms.html)) to download most forms:

3-Page Petition	)
Schedules A thru J*	)
Statement of Financial Affairs	)
Statement of Intention*	)
Summary of Schedules and Statistical Summary	)
Current Monthly Income and Means Test Calculation	)
342 Statements	)
Mailing List	
Declaration of Social Security Number (Form 21)	
Certification that you have received credit counseling	
Copies of all pay stubs within the past 60 days (with only last 4 digits of your social security number showing) with pay advices cover sheet	
Filing fee (or Application to Pay by Installments or Application for Waiver of Filing Fees)	

If you are filing chapter 13, you also need to file a Chapter 13 Plan.

\*Schedules I and J and the Statement of Intention are only required for individual debtors. They are not required when debtor is a corporation, LLC, partnership, etc.

In order to complete the Official Bankruptcy Forms which make up the petition and schedules, the debtor(s) will need to compile the following information:

1. A list of all creditors and the amount and nature of their claims;
2. The source, amount, and frequency of your income;
3. A list of all of your property; and
4. A detailed list of your monthly living expenses, i.e., food, clothing, shelter, utilities, taxes, transportation, medicine, etc.

### Resources for Low-Income Filers

Attorney Richard Scholes, 802-223-1111  
(Will provide telephone assistance on a limited basis)

Vermont Volunteers Lawyers Project (e-mail: [acourt@lawlinevt.org](mailto:acourt@lawlinevt.org))  
802-863-7153 (from the Burlington area)  
800-639-8857 (outside the Burlington area)  
Vermont Bar Association Lawyer Referral Service (Website: [www.vtbar.org](http://www.vtbar.org))  
802-223-2020 (from the Montpelier area)  
800-639-7036 (outside the Montpelier area)  
Consumer Credit Counseling Services of NH and VT, Inc. (800) 327-6778

# DETAILED CHAPTER 7 INFORMATION

## **Chapter 7 Eligibility**

To qualify for relief under chapter 7 of the Bankruptcy Code, the debtor may be an individual, a partnership, or a corporation or other business entity. 11 U.S.C. §§ 101(41), 109(b). Subject to the means test described above for individual debtors, relief is available under chapter 7 irrespective of the amount of the debtor's debts or whether the debtor is solvent or insolvent. An individual cannot file under chapter 7 or any other chapter, however, 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 the debtor voluntarily dismissed the previous case after creditors sought relief from the bankruptcy court to recover property upon which they hold liens. 11 U.S.C. §§ 109(g), 362(d) and (e). In addition, no individual may be a debtor under chapter 7 or any chapter of the Bankruptcy Code unless he or she has, within 180 days before filing, received credit counseling from an approved credit counseling agency either in an individual or group briefing. 11 U.S.C. §§ 109, 111. There are exceptions in emergency situations or where the U.S. trustee (or bankruptcy administrator) has determined that there are insufficient approved agencies to provide the required counseling. If a debt management plan is developed during required credit counseling, it must be filed with the court.

One of the primary purposes of bankruptcy is to discharge certain debts to give an honest individual debtor a "fresh start." The debtor has no liability for discharged debts. In a chapter 7 case, however, a discharge is only available to individual debtors, not to partnerships or corporations. 11 U.S.C. § 727(a)(1). Although an individual chapter 7 case usually results in a discharge of debts, the right to a discharge is not absolute, and some types of debts are not discharged. Moreover, a bankruptcy discharge does not extinguish a lien on property.

## **How Chapter 7 Works**

A chapter 7 case begins with the debtor filing a petition with the bankruptcy court serving the area where the individual lives or where the business debtor is organized or has its principal place of business or principal assets. In addition to the petition, the debtor must also file with the court: (1) schedules of assets and liabilities; (2) a schedule of current income and expenditures; (3) a statement of financial affairs; and (4) a schedule of executory contracts and unexpired leases. Fed. R. Bankr. P. 1007(b). Debtors must also provide the assigned case trustee with a copy of the tax return or transcripts for the most recent tax year as well as tax returns filed during the case (including tax returns for prior years that had not been filed when the case began). 11 U.S.C. § 521. Individual debtors with primarily consumer debts have additional

document filing requirements. They must file: a certificate of credit counseling and a copy of any debt repayment plan developed through credit counseling; evidence of payment from employers, if any, received 60 days before filing; a statement of monthly net income and any anticipated increase in income or expenses after filing; and a record of any interest the debtor has in federal or state qualified education or tuition accounts. *Id.* A husband and wife may file a joint petition or individual petitions. 11 U.S.C. § 302(a). Even if filing jointly, a husband and wife are subject to all the document filing requirements of individual debtors.

The courts must charge a \$306 case filing fee. Normally, the fees must be paid to the clerk of the court upon filing. With the court's permission, however, individual debtors may pay in installments. 28 U.S.C. § 1930(a); Fed. R. Bankr. P. 1006(b); Bankruptcy Court Miscellaneous Fee Schedule, Item 8. The number of installments is limited to four, and the debtor must make the final installment no later than 120 days after filing the petition. Fed. R. Bankr. P. 1006. 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 filing the petition. If a joint petition is filed, only one filing fee is charged. Debtors should be aware that failure to pay these fees may result in dismissal of the case. 11 U.S.C. § 707(a).

If the debtor's income is less than 150% of the poverty level (as defined in the Bankruptcy Code), and the debtor is unable to pay the chapter 7 fees even in installments, the court may waive the requirement that the fees be paid. 28 U.S.C. § 1930(f).

In order to complete the Official Bankruptcy Forms that make up the petition, statement of financial affairs, and schedules, the debtor must provide the following information:

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

Married individuals must gather this information for their spouse regardless of whether they are filing a joint petition, separate individual petitions, or even if only one spouse is filing. In a situation where only one spouse files, the income and expenses of the non-filing spouse is required so that the court, the trustee and creditors can evaluate the household's financial position.

Among the schedules that an individual debtor will file is a schedule of "exempt" property. The Bankruptcy Code allows an individual debtor to protect some property from the claims of creditors because it is exempt under federal bankruptcy law or under the laws of the debtor's home state. 11 U.S.C. § 522(b). Many states have taken advantage of a provision in the Bankruptcy Code that permits each state to adopt its own exemption law in place of the federal exemptions. In other jurisdictions, the individual debtor has the option of choosing between a federal package of exemptions or the exemptions available under state law. Thus, whether certain property is exempt and may be kept by the debtor is often a question of state law. The debtor should consult an attorney to determine the exemptions available in the state where the debtor lives.

Filing a petition under chapter 7 "automatically stays" (stops) most collection actions against the debtor or the debtor's property. 11 U.S.C. § 362. But filing the petition does not stay certain types of actions listed under 11 U.S.C. § 362(b), and the stay may be effective only for a short time in some situations. The stay arises by operation of law and requires no judicial action. As



long as the stay is in effect, creditors generally may not initiate or continue lawsuits, wage garnishments, or even telephone calls demanding payments. The bankruptcy clerk gives notice of the bankruptcy case to all creditors whose names and addresses are provided by the debtor.

Between 20 and 40 days after the petition is filed, the case trustee (described below) will hold a meeting of creditors. If the U.S. trustee or bankruptcy administrator schedules the meeting at a place that does not have regular U.S. trustee or bankruptcy administrator staffing, the meeting may be held no more than 60 days after the order for relief. Fed. R. Bankr. P. 2003(a). During this meeting, the trustee puts the debtor under oath, and both the trustee and creditors may ask questions. The debtor must attend the meeting and answer questions regarding the debtor's financial affairs and property. 11 U.S.C. § 343. If a husband and wife have filed a joint petition, they both must attend the creditors' meeting and answer questions. Within 10 days of the creditors' meeting, the U.S. trustee will report to the court whether the case should be presumed to be an abuse under the means test described in 11 U.S.C. § 704(b).

It is important for the debtor to cooperate with the trustee and to provide any financial records or documents that the trustee requests. The Bankruptcy Code requires the trustee to ask the debtor questions at the meeting of creditors to ensure that the debtor is aware of the potential consequences of seeking a discharge in bankruptcy such as the effect on credit history, the ability to file a petition under a different chapter, the effect of receiving a discharge, and the effect of reaffirming a debt. Some trustees provide written information on these topics at or before the meeting to ensure that the debtor is aware of this information. In order to preserve their independent judgment, bankruptcy judges are prohibited from attending the meeting of creditors. 11 U.S.C. § 341(c).

In order to accord the debtor complete relief, the Bankruptcy Code allows the debtor to convert a chapter 7 case to case under chapter 11, 12 or 13 as long as the debtor is eligible to be a debtor under the new chapter. However, a condition of the debtor's voluntary conversion is that the case has not previously been converted to chapter 7 from another chapter. 11 U.S.C. § 706(a). Thus, the debtor will not be permitted to convert the case repeatedly from one chapter to another.

### **Role of the Case Trustee**

When a chapter 7 petition is filed, the U.S. trustee (or the bankruptcy court in Alabama and North Carolina) appoints an impartial case trustee to administer the case and liquidate the debtor's nonexempt assets. 11 U.S.C. §§ 701, 704. If all the debtor's assets are exempt or subject to valid liens, the trustee will normally file a "no asset" report with the court, and there will be no distribution to unsecured creditors. Most chapter 7 cases involving individual debtors are no asset cases. But if the case appears to be an "asset" case at the outset, unsecured creditors must file their claims with the court within 90 days after the first date set for the meeting of creditors. Fed. R. Bankr. P. 3002(c). A governmental unit, however, has 180 days from the date the case is filed to file a claim. 11 U.S.C. § 502(b)(9). In the typical no asset chapter 7 case, there is no need for creditors to file proofs of claim because there will be no distribution. If the trustee later recovers assets for distribution to unsecured creditors, the Bankruptcy Court will provide notice to creditors and will allow additional time to file proofs of claim. Although a secured creditor does not need to file a proof of claim in a chapter 7 case to preserve its security interest or lien, there may be other reasons to file a claim. A creditor in a chapter 7 case who has a lien on the debtor's property should consult an attorney for advice.

Commencement of a bankruptcy case creates an "estate." The estate technically becomes the temporary legal owner of all the debtor's property. It consists of all legal or equitable interests of

the debtor in property as of the commencement of the case, including property owned or held by another person if the debtor has an interest in the property. Generally speaking, the debtor's creditors are paid from nonexempt property of the estate.

The primary role of a chapter 7 trustee in an asset case is to liquidate the debtor's nonexempt assets in a manner that maximizes the return to the debtor's unsecured creditors. The trustee accomplishes this by selling the debtor's property if it is free and clear of liens (as long as the property is not exempt) or if it is worth more than any security interest or lien attached to the property and any exemption that the debtor holds in the property. The trustee may also attempt to recover money or property under the trustee's "avoiding powers." The trustee's avoiding powers include the power to: set aside preferential transfers made to creditors within 90 days before the petition; undo security interests and other prepetition transfers of property that were not properly perfected under nonbankruptcy law at the time of the petition; and pursue nonbankruptcy claims such as fraudulent conveyance and bulk transfer remedies available under state law. In addition, if the debtor is a business, the bankruptcy court may authorize the trustee to operate the business for a limited period of time, if such operation will benefit creditors and enhance the liquidation of the estate. 11 U.S.C. § 721.

Section 726 of the Bankruptcy Code governs the distribution of the property of the estate. Under § 726, there are six classes of claims; and each class must be paid in full before the next lower class is paid anything. The debtor is only paid if all other classes of claims have been paid in full. Accordingly, the debtor is not particularly interested in the trustee's disposition of the estate assets, except with respect to the payment of those debts which for some reason are not dischargeable in the bankruptcy case. The individual debtor's primary concerns in a chapter 7 case are to retain exempt property and to receive a discharge that covers as many debts as possible.

### **The Chapter 7 Discharge**

A discharge releases individual debtors from personal liability for most debts and prevents the creditors owed those debts from taking any collection actions against the debtor. Because a chapter 7 discharge is subject to many exceptions, though, debtors should consult competent legal counsel before filing to discuss the scope of the discharge. Generally, excluding cases that are dismissed or converted, individual debtors receive a discharge in more than 99 percent of chapter 7 cases. In most cases, unless a party in interest files a complaint objecting to the discharge or a motion to extend the time to object, the bankruptcy court will issue a discharge order relatively early in the case – generally, 60 to 90 days after the date first set for the meeting of creditors. Fed. R. Bankr. P. 4004(c).

The grounds for denying an individual debtor a discharge in a chapter 7 case are narrow and are construed against the moving party. Among other reasons, the court may deny the debtor a discharge if it finds that the debtor: failed to keep or produce adequate books or financial records; failed to explain satisfactorily any loss of assets; committed a bankruptcy crime such as perjury; failed to obey a lawful order of the bankruptcy court; fraudulently transferred, concealed, or destroyed property that would have become property of the estate; or failed to complete an approved instructional course concerning financial management. 11 U.S.C. § 727; Fed. R. Bankr. P. 4005.

Secured creditors may retain some rights to seize property securing an underlying debt even after a discharge is granted. Depending on individual circumstances, if a debtor wishes to keep certain secured property (such as an automobile), he or she may decide to "reaffirm" the debt. A reaffirmation is an agreement between the debtor and the creditor that the debtor will remain liable and will pay all or a portion of the money owed, even though the debt would otherwise be

discharged in the bankruptcy. In return, the creditor promises that it will not repossess or take back the automobile or other property so long as the debtor continues to pay the debt.

If the debtor decides to reaffirm a debt, he or she must do so before the discharge is entered. The debtor must sign a written reaffirmation agreement and file it with the court. 11 U.S.C. § 524(c). The Bankruptcy Code requires that reaffirmation agreements contain an extensive set of disclosures described in 11 U.S.C. § 524(k). Among other things, the disclosures must advise the debtor of the amount of the debt being reaffirmed and how it is calculated and that reaffirmation means that the debtor's personal liability for that debt will not be discharged in the bankruptcy. The disclosures also require the debtor to sign and file a statement of his or her current income and expenses which shows that the balance of income paying expenses is sufficient to pay the reaffirmed debt. If the balance is not enough to pay the debt to be reaffirmed, there is a presumption of undue hardship, and the court may decide not to approve the reaffirmation agreement. Unless the debtor is represented by an attorney, the bankruptcy judge must approve the reaffirmation agreement.

If the debtor was represented by an attorney in connection with the reaffirmation agreement, the attorney must certify in writing that he or she advised the debtor of the legal effect and consequences of the agreement, including a default under the agreement. The attorney must also certify that the debtor was fully informed and voluntarily made the agreement and that reaffirmation of the debt will not create an undue hardship for the debtor or the debtor's dependants. 11 U.S.C. § 524(k). The Bankruptcy Code requires a reaffirmation hearing if the debtor has not been represented by an attorney during the negotiating of the agreement, or if the court disapproves the reaffirmation agreement. 11 U.S.C. § 524(d) and (m). The debtor may repay any debt voluntarily, however, whether or not a reaffirmation agreement exists. 11 U.S.C. § 524(f).

An individual receives a discharge for most of his or her debts in a chapter 7 bankruptcy case. A creditor may no longer initiate or continue any legal or other action against the debtor to collect a discharged debt. But not all of an individual's debts are discharged in chapter 7. Debts not discharged include debts for alimony and child support, certain taxes, debts for certain educational benefit overpayments or loans made or guaranteed by a governmental unit, debts for willful and malicious injury by the debtor to another entity or to the property of another entity, debts for death or personal injury caused by the debtor's operation of a motor vehicle while the debtor was intoxicated from alcohol or other substances, and debts for certain criminal restitution orders. 11 U.S.C. § 523(a). The debtor will continue to be liable for these types of debts to the extent that they are not paid in the chapter 7 case. Debts for money or property obtained by false pretenses, debts for fraud or defalcation while acting in a fiduciary capacity, and debts for willful and malicious injury by the debtor to another entity or to the property of another entity will be discharged unless a creditor timely files and prevails in an action to have such debts declared nondischargeable. 11 U.S.C. § 523(c); Fed. R. Bankr. P. 4007(c).

The court may revoke a chapter 7 discharge on the request of the trustee, a creditor, or the U.S. trustee if the discharge was obtained through fraud by the debtor, if the debtor acquired property that is property of the estate and knowingly and fraudulently failed to report the acquisition of such property or to surrender the property to the trustee, or if the debtor (without a satisfactory explanation) makes a material misstatement or fails to provide documents or other information in connection with an audit of the debtor's case. 11 U.S.C. § 727(d).

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# DETAILED CHAPTER 13 INFORMATION

## **Background**

A chapter 13 bankruptcy is also called a wage earner's plan. It enables individuals with regular income to develop a plan to repay all or part of their debts. Under this chapter, debtors propose a repayment plan to make installments to creditors over three to five years. If the debtor's current monthly income is less than the applicable state median, the plan will be for three years unless the court approves a longer period "for cause." If the debtor's current monthly income is greater than the applicable state median, the plan generally must be for five years. In no case may a plan provide for payments over a period longer than five years. 11 U.S.C. §1322(d). During this time the law forbids creditors from starting or continuing collection efforts.

Following are six aspects of a chapter 13 proceeding: the advantages of choosing chapter 13, the chapter 13 eligibility requirements, how a chapter 13 proceeding works, what may be included in chapter 13 repayment plan and how it is confirmed, making the plan work, and the special chapter 13 discharge.

### **Advantages of Chapter 13**

Chapter 13 offers individuals a number of advantages over liquidation under chapter 7. Perhaps most significantly, chapter 13 offers individuals an opportunity to save their homes from foreclosure. By filing under this chapter, individuals can stop foreclosure proceedings and may cure delinquent mortgage payments over time. Nevertheless, they must still make all mortgage payments that come due during the chapter 13 plan on time. Another advantage of chapter 13 is that it allows individuals to reschedule secured debts (other than a mortgage for their primary residence) and extend them over the life of the chapter 13 plan. Doing this may lower the payments. Chapter 13 also has a special provision that protects third parties who are liable with the debtor on "consumer debts." This provision may protect co-signers. Finally, chapter 13 acts like a consolidation loan under which the individual makes the plan payments to a chapter 13 trustee who then distributes payments to creditors. Individuals will have no direct contact with creditors while under chapter 13 protection.

### **Chapter 13 Eligibility**

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), 362(d) and (e). In addition, no individual may be a debtor under chapter 13 or any chapter of the Bankruptcy Code unless he or she has, within 180 days before filing, received credit counseling from an approved credit counseling agency either in an individual or group briefing. 11 U.S.C. §§ 109, 111. There are exceptions in emergency situations or where the U.S. trustee (or bankruptcy administrator) has determined that there are insufficient approved agencies to provide the required counseling. If a debt management plan is developed during required credit counseling, it must be filed with the court. A chapter 13 debtor must have a monthly income.

### **How Chapter 13 Works**

A chapter 13 case begins by filing a petition with the bankruptcy court serving the area where the debtor has a domicile or residence. Unless the court orders otherwise, the debtor must also file with the court: (1) schedules of assets and liabilities; (2) a schedule of current income and expenditures; (3) a schedule of executory contracts and unexpired leases; and (4) a statement

of financial affairs. Fed. R. Bankr. P. 1007(b). The debtor must also file a certificate of credit counseling and a copy of any debt repayment plan developed through credit counseling; evidence of payment from employers, if any, received 60 days before filing; a statement of monthly net income and any anticipated increase in income or expenses after filing; and a record of any interest the debtor has in federal or state qualified education or tuition accounts.

11 U.S.C. § 521. The debtor must provide the chapter 13 case trustee with a copy of the tax return or transcripts for the most recent tax year as well as tax returns filed during the case (including tax returns for prior years that had not been filed when the case began). A husband and wife may file a joint petition or individual petitions. 11 U.S.C. § 302(a).

The courts must charge a \$281 case filing fee. Normally the fees must be paid to the clerk of the court upon filing. With the court's permission, however, they may be paid in installments. 28 U.S.C. § 1930(a); Fed. R. Bankr. P. 1006(b); Bankruptcy Court Miscellaneous Fee Schedule, Item 8. The number of installments is limited to four, and the debtor must make the final installment no later than 120 days after filing the petition. Fed. R. Bankr. P. 1006(b). For cause shown, the court may extend the time of any installment, as long as the last installment is paid no later than 180 days after filing the petition. If a joint petition is filed, only one filing fee is charged. Debtors should be aware that failure to pay these fees may result in dismissal of the case. 11 U.S.C. § 1307(c)(2). In order to complete the Official Bankruptcy Forms that make up the petition, statement of financial affairs, and schedules, the debtor must compile the following information:

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

Married individuals must gather this information for their spouse regardless of whether they are filing a joint petition, separate individual petitions, or even if only one spouse is filing. In a situation where only one spouse files, the income and expenses of the non-filing spouse is required so that the court, the trustee and creditors can evaluate the household's financial position.

When an individual files a chapter 13 petition, an impartial trustee is appointed to administer the case. 11 U.S.C. § 1302. In some districts, the U.S. trustee or bankruptcy administrator appoints a standing trustee to serve in all chapter 13 cases. 28 U.S.C. § 586(b). The chapter 13 trustee both evaluates the case and serves as a disbursing agent, collecting payments from the debtor and making distributions to creditors. 11 U.S.C. § 1302(b).

Filing the petition under chapter 13 "automatically stays" (stops) most collection actions against the debtor or the debtor's property. 11 U.S.C. § 362. Filing the petition does not, however, stay certain types of actions listed under 11 U.S.C. § 362(b), and the stay may be effective only for a short time in some situations. The stay arises by operation of law and requires no judicial action. As long as the stay is in effect, creditors generally may not initiate or continue lawsuits, wage garnishments, or even make telephone calls demanding payments. The bankruptcy clerk gives notice of the bankruptcy case to all creditors whose names and addresses are provided by the debtor.

Chapter 13 also contains a special automatic stay provision that protects co-debtors. Unless the bankruptcy court authorizes otherwise, a creditor may not seek to collect a "consumer debt"

from any individual who is liable along with the debtor. 11 U.S.C. § 1301(a). Consumer debts are those incurred by an individual primarily for a personal, family, or household purpose. 11 U.S.C. § 101(8).

Individuals may use a chapter 13 proceeding to save their home from foreclosure. The automatic stay stops the foreclosure proceeding as soon as the individual files the chapter 13 petition. The individual may then bring the past-due payments current over a reasonable period of time. Nevertheless, the debtor may still lose the home if the mortgage company completes the foreclosure sale under state law before the debtor files the petition. 11 U.S.C. § 1322(c). The debtor may also lose the home if he or she fails to make the regular mortgage payments that come due after the chapter 13 filing.

Between 20 and 50 days after the debtor files the chapter 13 petition, the chapter 13 trustee will hold a meeting of creditors. If the U.S. trustee or bankruptcy administrator schedules the meeting at a place that does not have regular U.S. trustee or bankruptcy administrator staffing, the meeting may be held no more than 60 days after the debtor files. Fed. R. Bankr. P. 2003(a). During this meeting, the trustee places the debtor under oath, and both the trustee and creditors may ask questions. The debtor must attend the meeting and answer questions regarding his or her financial affairs and the proposed terms of the plan. 11 U.S.C. § 343. If a husband and wife file a joint petition, they both must attend the creditors' meeting and answer questions. In order to preserve their independent judgment, bankruptcy judges are prohibited from attending the creditors' meeting. 11 U.S.C. § 341(c). The parties typically resolve problems with the plan either during or shortly after the creditors' meeting. Generally, the debtor can avoid problems by making sure that the petition and plan are complete and accurate, and by consulting with the trustee prior to the meeting.

In a chapter 13 case, to participate in distributions from the bankruptcy estate, unsecured creditors must file their claims with the court within 90 days after the first date set for the meeting of creditors. Fed. R. Bankr. P. 3002(c). A governmental unit, however, has 180 days from the date the case is filed to file a proof of claim. 11 U.S.C. § 502(b)(9).

After the meeting of creditors, the debtor, the chapter 13 trustee, and those creditors who wish to attend will come to court for a hearing on the debtor's chapter 13 repayment plan.

### **The Chapter 13 Plan and Confirmation Hearing**

Unless the court grants an extension, the debtor must file a repayment plan with the petition or within 15 days after the petition is filed. Fed. R. Bankr. P. 3015. A plan must be submitted for court approval and must provide for payments of fixed amounts to the trustee on a regular basis, typically biweekly 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.

There are three types of claims: priority, secured, and unsecured. Priority claims are those granted special status by the bankruptcy law, such as most taxes and the costs of bankruptcy proceeding. Secured claims are those for which the creditor has the right to take back certain property (*i.e.*, the collateral) if the debtor does not pay the underlying debt. In contrast to secured claims, unsecured claims are generally those for which the creditor has no special rights to collect against particular property owned by the debtor.

The plan must pay priority claims in full unless a particular priority creditor agrees to different treatment of the claim or, in the case of a domestic support obligation, unless the debtor contributes all "disposable income" - discussed below - to a five-year plan. 11 U.S.C. § 1322(a).



If the debtor wants to keep the collateral securing a particular claim, the plan must provide that the holder of the secured claim receive at least the value of the collateral. If the obligation underlying the secured claim was used to buy the collateral (e.g., a car loan), and the debt was incurred within certain time frames before the bankruptcy filing, the plan must provide for full payment of the debt, not just the value of the collateral (which may be less due to depreciation). Payments to certain secured creditors (*i.e.*, the home mortgage lender), may be made over the original loan repayment schedule (which may be longer than the plan) so long as any arrearage is made up during the plan. The debtor should consult an attorney to determine the proper treatment of secured claims in the plan.

The plan need not pay unsecured claims in full as long it provides that the debtor will pay all projected "disposable income" over an "applicable commitment period," and as long as unsecured creditors receive at least as much under the plan as they would receive if the debtor's assets were liquidated under chapter 7. 11 U.S.C. § 1325. In chapter 13, "disposable income" is income (other than child support payments received by the debtor) less amounts reasonably necessary for the maintenance or support of the debtor or dependents and less charitable contributions up to 15% of the debtor's gross income. If the debtor operates a business, the definition of disposable income excludes those amounts which are necessary for ordinary operating expenses. 11 U.S.C. § 1325(b)(2)(A) and (B). The "applicable commitment period" depends on the debtor's current monthly income. The applicable commitment period must be three years if current monthly income is less than the state median for a family of the same size - and five years if the current monthly income is greater than a family of the same size. 11 U.S.C. § 1325(d). The plan may be less than the applicable commitment period (three or five years) only if unsecured debt is paid in full over a shorter period.

Within 30 days after filing the bankruptcy case, even if the plan has not yet been approved by the court, the debtor must start making plan payments to the trustee. 11 U.S.C. § 1326(a)(1). If any secured loan payments or lease payments come due before the debtor's plan is confirmed (typically home and automobile payments), the debtor must make adequate protection payments directly to the secured lender or lessor - deducting the amount paid from the amount that would otherwise be paid to the trustee.

No later than 45 days after the meeting of creditors, 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. 11 U.S.C. §§ 1324, 1325. Creditors will receive 25 days' notice of the hearing and may object to confirmation. Fed. R. Bankr. P. 2002(b). 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 of the debtor's projected disposable income for the three or five year applicable commitment period.

If the court confirms the plan, the chapter 13 trustee will distribute funds received under the plan "as soon as is practicable." 11 U.S.C. § 1326(a)(2). If the court declines to confirm the plan, the debtor may file a modified plan. 11 U.S.C. § 1323. The debtor may also convert the case to a liquidation case under chapter 7. 11 U.S.C. § 1307(a). If the court declines to confirm the plan or the modified plan and instead dismisses the case, the court may authorize the trustee to keep some funds for costs, but the trustee must return all remaining funds to the debtor (other than funds already disbursed or due to creditors). 11 U.S.C. § 1326(a)(2).

Occasionally, a change in circumstances may compromise the debtor's ability to make plan payments. For example, a creditor may object or threaten to object to a plan, or the 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, 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 Work**

The provisions of a confirmed plan bind the debtor and each creditor. 11 U.S.C. § 1327. Once the court confirms the plan, the debtor must make the plan succeed. The debtor must make regular payments to the trustee either directly or through payroll deduction, which will require adjustment to living on a fixed budget for a prolonged period. Furthermore, while confirmation of the plan entitles the debtor to retain property as long as payments are made, the debtor may not incur new debt without consulting the trustee, because additional debt may compromise the debtor's ability to complete the plan. 11 U.S.C. §§ 1305(c), 1322(a)(1), 1327.

A debtor may make plan payments through payroll deductions. This practice increases the likelihood that payments will be made on time and that the debtor will complete the plan. In any event, if the debtor fails to make the payments due under the confirmed plan, the court may dismiss the case or convert it to a liquidation case under chapter 7 of the Bankruptcy Code. 11 U.S.C. § 1307(c). The court may also dismiss or convert the debtor's case if the debtor fails to pay any post-filing domestic support obligations (*i.e.*, child support, alimony), or fails to make required tax filings during the case. 11 U.S.C. §§ 1307(c) and (e), 1308, 521.

## **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.

A chapter 13 debtor is entitled to a discharge upon completion of all payments under the chapter 13 plan so long as the debtor: (1) certifies (if applicable) that all domestic support obligations that came due prior to making such certification have been paid; (2) has not received a discharge in a prior case filed within a certain time frame (two years for prior chapter 13 cases and four years for prior chapter 7, 11 and 12 cases); and (3) has completed an approved course in financial management (if the U.S. trustee or bankruptcy administrator for the debtor's district has determined that such courses are available to the debtor). 11 U.S.C. § 1328. The court will not enter the discharge, however, until it determines, after notice and a hearing, that there is no reason to believe there is any pending proceeding that might give rise to a limitation on the debtor's homestead exemption. 11 U.S.C. § 1328(h).

The discharge releases the debtor from all debts provided for by the plan or disallowed (under section 502), with limited exceptions. Creditors 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.

As a general rule, the discharge releases the debtor from all debts provided for by the plan or disallowed, with the exception of certain debts referenced in 11 U.S.C. § 1328. Debts not discharged in chapter 13 include certain long term obligations (such as a home mortgage), debts for alimony or child support, certain taxes, 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, and debts for restitution or a criminal fine included in a sentence on the debtor's conviction of a crime. To the extent that they are not fully paid under the chapter 13 plan, the debtor will still be responsible for these debts after the

bankruptcy case has concluded. Debts for money or property obtained by false pretenses, debts for fraud or defalcation while acting in a fiduciary capacity, and debts for restitution or damages awarded in a civil case for willful or malicious actions by the debtor that cause personal injury or death to a person will be discharged unless a creditor timely files and prevails in an action to have such debts declared nondischargeable. 11 U.S.C. §§ 1328, 523(c); Fed. R. Bankr. P. 4007(c).

The discharge in a chapter 13 case is somewhat broader than in a chapter 7 case. Debts dischargeable in a chapter 13, but not in chapter 7, include debts for willful and malicious injury to property (as opposed to a person), debts incurred to pay nondischargeable tax obligations, and debts arising from property settlements in divorce or separation proceedings. 11 U.S.C. § 1328(a).

### **The Chapter 13 Hardship Discharge**

After confirmation of a plan, circumstances may arise that prevent the debtor from completing the plan. In such situations, the debtor may ask the court to grant a "hardship discharge." 11 U.S.C. § 1328(b). Generally, such a discharge is available only if: (1) the debtor's failure to complete plan payments is due to circumstances beyond the debtor's control and through no fault of the debtor; (2) creditors have received at least as much as they would have received in a chapter 7 liquidation case; and (3) 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.