

## CHAPTER 7 & 13 BANKRUPTCY (New York)

### **Differences between Chapter 7 and Chapter 13**

Under Chapter 7, all the Debtor's non-exempt property becomes property of the trustee, the trustee then liquidates that property and distributes the proceeds to creditors. The Debtor receives a discharge, which usually results in the discharge of all credit cards and medical bills. Under Chapter 13, the Debtor remains in possession of ALL their property and must pay to creditors over a 3 to 5 year period what they would have received if the debtor were to liquidate in chapter 7 plus any disposable income. The Debtor receives a discharge of most remaining debts after completion of the plan.

### **When to enter Chapter 13**

Chapter 13 is usually preferable for a Debtor who:

1. Has valuable non-exempt property.
2. Is not eligible for a discharge under Chapter 7 (i.e. received a chapter 7 discharge within a 6 year period, or committed certain acts considered to be fraud by the Bankruptcy Code).
3. Has one or more substantial debts that are not dischargeable under Chapter 7 but are dischargeable under Chapter 13 (i.e. some tax claims).

### **What is a Trustee in bankruptcy?**

Trustees are Attorneys appointed by the Office of the United States Trustee of The Department of Justice to oversee the Bankruptcy Estate.

1. **Chapter 13 Trustee** - A chapter 13 trustee is an officer of the Court appointed to oversee the bankruptcy estate, make sure the debtor's plan is in compliance with the Bankruptcy Code, and ultimately collect and distribute all payments to be made by the debtor. The chapter 13 trustee is compensated by collecting a commission on the debtor's payments.

2. **Chapter 7 Trustee** - A chapter 7 trustee is also an officer of the Court appointed to oversee the bankruptcy estate, investigate as to whether the debtor has any assets or has committed any fraudulent acts, collect and sell those assets and distribute them to the debtor's creditors. The chapter 7 trustee is compensated by receiving a percentage of any assets collected for the bankruptcy estate and in attorney's fees incurred in collecting those assets.

### **The Chapter 13 Plan**

A debtor must pay to creditors in the chapter 13 plan, what creditors would receive if the debtor were to liquidate pursuant to chapter 7. Thus, creditors receive the value of the debtor's non-exempt equity in assets over the course of a 3 to 5 year plan. If the debtor is not paying 100% to all claims, the debtor must also place any additional disposable income into the plan.

**Secured Creditors** - Arrears owed to secured creditors can be cured within the chapter 13 plan. It is important to understand that a creditor has a secured claim only to the extent of the value of its security, which cannot exceed the value of the property that is secured by the claim.

A Debtor's payments are expected to begin exactly 30 days after filing for relief under chapter 13.

### Special eligibility rules for Chapter 13

The Code considers chapter 13 a privilege rather than a right. Thus, the benefits of Chapter 13 are only granted to certain individuals who meet these requirements:

1. Have regular income sufficient to support their plan.
2. Have unsecured debts of less than \$250,000.
3. Have secured debts of less than \$750,000.

### When does a Debtor have to appear in Court?

**Meeting of the Creditors** - Both chapter 7 and chapter 13 debtors have to appear at this meeting with the trustee. This meeting is part of the investigative process of the trustee where they ask any questions pertinent to administering the estate. A chapter 7 trustee typically asks questions aimed at uncovering assets of the debtor. A chapter 13 trustee typically asks questions aimed at assessing the feasibility of the chapter 13 plan.

**Hearing on Confirmation** - A chapter 13 debtor is normally expected to appear at the Hearing on Confirmation of their Plan. This takes place in the Bankruptcy Court in front of the Bankruptcy Judge and if all applicable requirements are met, the debtor's plan is confirmed and the trustee begins distributing the proceeds to creditors.

### Court filing fees

The current filing fees are \$200 for chapter 7 and \$185 for chapter 13. Unlike chapter 13 where the debtor is required to pay commissions to the chapter 13 trustee, this is the only non-attorney fee that the chapter 7 debtor will incur through the bankruptcy process.

### The Automatic Stay

Filing for Bankruptcy under any chapter immediately and automatically stays (stops) all lawsuits, attachments, garnishments, foreclosures, and other actions by creditors against the debtor or the debtor's property. Within a few days after the case is filed, the Court will mail a notice to all creditors advising them of the automatic stay. Certain creditors should be notified by the debtor's attorney sooner (such as a mortgagee with an impending foreclosure action).

### The role of the Debtor's Attorney

Typical functions of the Debtor's Attorney for Chapter 7 and 13 Debtors might include:

1. Examining the debtor's financial situation and determining which chapter makes more sense for the Debtor;
2. Assisting the Debtor in the preparation of a monthly budget;
3. Examining the liens or security interests of secured creditors to ascertain their validity or avoidability, and taking the legal steps necessary to protect the Debtor's interest in such matters;
4. Developing and implementing methods of dealing with secured creditors;
5. Assisting the Debtor in developing a Chapter 13 Plan that meets the needs of the Debtor and is acceptable to the Court;

6. Preparing the necessary pleadings including schedules of the debtor's assets, liabilities, income, and expenses, statement of financial affairs and all other documents required by the Court;
7. Filing the appropriate documents with the Court;
8. Attending the Meeting of Creditors, the Confirmation Hearing, and any other Court hearings required by the Case;
9. Assisting the Debtor in obtaining Court approval of a Chapter 13 Plan;
10. Monitoring the claims filed in the case, filing objections to improper claims, and attending the Court hearings thereon;
11. Assisting the Debtor in overcoming any legal obstacles that may arise during the course of the case including challenges to confirmation of their chapter 13 plan or assertions of non-dischargeability of certain debts of the chapter 7 debtor;
12. Assisting the Debtor in obtaining a discharge.