

BANKRUPTCY INFORMATION SHEET

BANKRUPTCY LAW IS A FEDERAL LAW. THIS SHEET GIVES SOME GENERAL INFORMATION ABOUT WHAT HAPPENS IN A BANKRUPTCY CASE. THE INFORMATION HERE IS NOT COMPLETE. YOU MAY NEED LEGAL ADVICE.

WHEN YOU FILE BANKRUPTCY:

You can choose the kind of bankruptcy that best meets your needs:

Chapter 7- A trustee is appointed to take over your property. Any property of value will be sold or turned into money to pay your creditors. You may be able to keep some personal items and possible real estate depending on the law of the state where you live.

Chapter 13- You can usually keep your property, but you must earn wages or have some other source of regular income and you must agree to pay part of your income to your creditors. The court must approve your repayment plan and your budget. A trustee is appointed and will collect the payments from you, pay your creditors, and make sure you live up to the terms of your repayment plan.

Chapter 12- Like chapter 13, but it is only for family farmers.

Chapter 11- This is used mostly by businesses. In chapter 11, you may continue to operate your business, but your creditors and the Court must approve a plan to repay your debts. There is no trustee unless the Judge decides that one is necessary; if a trustee is appointed, the trustee takes control of your business and property.

If you have already filed bankruptcy under chapter 7, you may be able to change your case to another chapter.

Your bankruptcy may be reported on your credit record for as long as ten years. It can affect your ability to receive credit in the future.

WHAT IS A BANKRUPTCY DISCHARGE AND HOW DOES IT OPERATE?

One of the reasons people file bankruptcy is to get a “discharge.” A discharge is a Court order which states that you do not have to pay most of your debts. Some debts cannot be discharged. For example, you cannot discharge debts for-

- most taxes;**
- child support;**
- alimony;**
- most student loans;**
- court fines and criminal restitution; and**
- personal injury caused by driving drunk or under the influence of drugs.**

The discharge only applies to debts that arose before the date you filed.

Also, if the Judge finds that you received money or property by fraud, that debt may not be discharged.

It is important to list all your property and debts in your bankruptcy schedules. If you do not list a debt, for example, it is possible the debt will not be discharged.

The Judge can also deny your discharge if you do something dishonest in connection with your bankruptcy case, such as destroy or hide property, falsify records, or lie, or if you disobey a Court order.

You can only receive a chapter 7 discharge once every six years. No one can make you pay a debt that has been discharged, but you can voluntarily pay any debt you wish to pay. You do not have to sign a reaffirmation agreement or any other kind of document to do this.

Some creditors hold a secured claim (for example, the bank that holds the mortgage on your house or the loan company that has a lien on your car). You do not have to pay a secured claim if the debt is discharged, but the creditor can still take the property.

WHAT IS A REAFFIRMATION AGREEMENT?

Even if a debt can be discharged, you may want to work out a plan with the bank to keep your car. To promise to pay that debt, you must sign and file a reaffirmation agreement with the Court. Reaffirmation agreements are under special rules and are voluntary. They are not required by bankruptcy law or by any other law.

Reaffirmation agreements-

- **must be voluntary;**
- **must not place too heavy a burden on you or your family;**
- **must be in your best interest; and**
- **can be canceled anytime before the Court issues your discharge or within 60 days after the agreement is filed with the Court, whichever gives you're the most time.**

If you are an individual and you are not represented by an attorney, the Court must hold a hearing to decide whether to approve the reaffirmation agreement. The agreement will not be legally binding until the Court approves it.

If you reaffirm a debt and then fail to pay it, you owe the debt the same as though there was no bankruptcy. The debt will not be discharged and the creditor can take action to recover any property on which it has a lien or mortgage. The creditor can also take legal action to recover a judgment against you.

IF YOU WANT MORE INFORMATION OR HAVE QUESTIONS ABOUT HOW THE BANKRUPTCY LAWS AFFECT YOU, YOU MAY NEED LEGAL ADVICE. THE TRUSTEE IN YOUR CASE IS NOT RESPONSIBLE FOR GIVING YOU LEGAL ADVICE

THE MOST COMMON QUESTIONS ASKED ABOUT CHAPTER 13

1. What is Chapter 13 and how does it work?

Chapter 13 is that part of the federal bankruptcy laws that permits a person to repay all or a portion of his or her debts under the supervision and protection of the bankruptcy court. Under chapter 13, the person filing the case, who is called the debtor, submits a plan for the repayment of all or a portion of his debts to the court, which must approve the plan for it to become effective. The court prohibits the creditors from attempting to collect their claims from the debtor and permits the debtor to make regular payments in the amounts called for in the debtor's plan to the chapter 13 trustee for the period of time specified in the plan. The chapter 13 trustee collects the money paid in by the debtor and disburses it to the creditors as set forth in the debtor's plan. Upon the completion of the payments called for in the plan, the debtor is discharged from any liability for the remainder of his debts.

2. What is a Chapter 13 discharge?

It is a court order releasing a debtor from all of his or her dischargeable debts and ordering the creditors not to attempt to collect them from the debtor. A debt that is discharged is one that the debtor is released from and does not have to pay. There are two types of chapter 13 discharges: one that is granted to a debtor who has completed all of the payments called for in his plan, and one that is granted to a debtor who is unable to complete the payments called for in his plan due to circumstances for which he should not justly be held accountable. The discharge granted upon the completion of a chapter 13 plan discharges more debts than the other type of discharge.

3. What debts are not released by a chapter 13 discharge?

The chapter 13 discharge is granted after the completion of all payments under a chapter 13 plan releases a debtor from all debts except:

- 1. Debts that are paid outside of the plan,**
- 2. debts for alimony, maintenance, or support,**
- 3. installment debts whose last payment is due after the completion of payments under the plan, and**
- 4. debts incurred during the time the plan was in effect that were not paid under the plan.**

The chapter 13 discharge is granted when a debtor is unable to complete the payments under a plan due to circumstances for which he should not justly be held accountable releases the debtor from all debts except:

- 1. debts secured by mortgages or liens (secured debts),**
- 2. debts that are paid outside of the plan,**
- 3. installment debts whose last payment is due after completion of payments under the plan,**
- 4. debts incurred during the time the plan was in effect that were not paid under the plan, and**

4. What is a chapter 13 plan?

It is a written plan presented to the bankruptcy court by a debtor that states which of the debtor's debt should be paid, how much should be paid on each debt, how much of the debtor's earnings or other property should be paid to the chapter 13 trustee, How long the payments should be paid to the chapter 13 trustee, how long the payments should continue, which debts should be paid outside of the plan, and certain other technical matter.

5. What is a chapter 13 trustee?

A chapter 13 trustee is an officer of the court appointed to collect payments from the debtor, make payments to creditors in the manner set forth in the debtor's chapter's 13 plan, and administer the chapter 13 case until it is closed. The chapter 13 trustee is required to perform certain other technical duties in a chapter 13 case, and the debtor is required to cooperate with the chapter 13 trustee.

6. Must all debts be completely paid off under a chapter 13 plan?

No. Certain debts, such as debts for certain taxes and fully secured debt, must be paid in full under a chapter 13 plan, but only an amount that the debtor can reasonably afford must be paid on most debts. The unpaid balance of most debts not paid in full under a chapter 13 plan may be discharged upon the completion of the plan.

7. Where is a chapter 13 case filed?

A chapter 13 case is filed in the bankruptcy court in a district where the debtor has lived, had his or her principal place of business located, or had his or her principal assets located, for the greatest portion of the last 180 days. The bankruptcy court is a unit of the federal district court.

8. Does a debtor lose any of this property in a chapter 13 case?

Usually, not. Under chapter 13, debts are normally repaid out of the payments made to the chapter 13 trustee and not out of the debtor's property. However, if the debtor has considerable nonexempt property and cannot make sufficient payments to pay enough of his debts to satisfy the court, some of his property may have to be used to pay creditors. Also, if a secured creditor is not being paid under the plan, he may be permitted to repossess the property securing his claim if the debt owed to him is not paid.

9. How does filing under chapter 13 affect lawsuits and attachments against the debtor?

The filing of a chapter 13 case automatically stays (stops) all lawsuits, attachments, garnishments, and other action by creditors against the debtor and his property for as long as the chapter 13 case lasts. A few days after the case is filed, a notice is mailed by the court to all creditors advising them of the automatic stay. The creditors may be notified sooner by either the debtor or his attorney, if necessary. Creditors are not permitted to file lawsuits or attachments against the debtor during the chapter 13 case, and if the debtor is granted a chapter 13 discharge, they will be prohibited from attempting to collect any discharged debt from the debtor after the case is closed.

10. How may secured creditors be dealt with under chapter 13?

There are four methods of dealing with a secured creditor under chapter 13: (1) he may accept the proposed plan, (2) he may be allowed to retain his lien and be paid the full amount of his secured claim under the plan, (3) his collateral may be surrendered to him, or (4) he may be dealt with outside the plan. It is important to realize that a secured creditor is considered to have a secured claim only to the extent of the value of his secured interest, which cannot exceed the value of the property securing the claim. For example, if a secured creditor has a mortgage on an automobile, and if the automobile is worth \$500, then that creditor has a secured claim of only \$500, regardless of how much is owed to him. If the debtor is in default to a secured creditor, the default must be cured (made current) within a reasonable time. Also, interest must be paid on secured debts.

11. How are debts that have been cosigned, or guaranteed by someone else handled under chapter 13?

If a consumer debt that has been cosigned or guaranteed by another person is being paid in full under a chapter 13 plan, the creditor will be prohibited from collecting the debt from the other person. However, if the debt is not being paid in full under the plan, the creditor will be permitted to collect the unpaid portion of the debt from the other person. A consumer debt is a non business debt.

12. When must the payments to the chapter 13 trustee begin and how often and by whom must they be made?

The chapter 13 payments must begin within 30 days after a chapter 13 plan is filed with the court, and a chapter 13 plan must be filed with the court within 15 days after the cases is filed. The payments must be made regularly, but in most cases they can be made weekly, bi-weekly, or monthly, whichever is most convenient for the debtor. If the debtor is employed, some courts require the chapter 13 payments to be made by the debtor's employer, otherwise, the payments can be made directly by the debtor.

13. How does filing under chapter 13 affect a person's credit rating?

Many people who contemplate filing bankruptcy already have accounts in a charged off status by the creditors, or repossessions, or foreclosures reported against their credit. Other people anticipate their problems and are able to file bankruptcy before any negative marks appear against their credit. The Fair Credit and Billing Standards Act prohibits a creditor from reporting any negative remarks against a persons credit after they file bankruptcy for debts that were incurred prior to the filing date. The fact that your filed bankruptcy must be removed from your credit report after 10 years from the date that you file. Most mortgage companies will make people wait at least 2 years after they have filed bankruptcy before they will consider financing a home. However, some financial institutions openly solicit business from people who have efficiently filed bankruptcy, apparently because of the prohibition against receiving a discharge more than once every 6years and the fact that a person who has recently received a discharge usually has little, if any debt.

14. Are the names of the person who file under chapter 13 published?

When a chapter 13 case is filed, it becomes a public record and the name of the debtor may be published by some credit-reporting agencies. However, newspapers do not usually report or publish the names of person who file under chapter 13.

15. Does a person lose any of his or her legal rights by filing under chapter 13?

No. Filing under chapter 13 is not a criminal proceeding, and a person does not lose any of his civil or constitutional rights by filing. It should be noted that it is illegal for an employer to discriminate against a person as to employment because that person has filed under chapter 13.

16. May employers or government agencies discriminate against person who file under chapter 13?

It is illegal for either private or governmental employers to discriminate against a person as to employment because that person has filed under chapter 13. It is also illegal for local, state, or federal governmental units to discriminate against a person as to the granting of licenses (including a driver's license), permits, and similar grants because that person has filed under chapter 13.

17. What is required for court approval of a chapter 13 plan?

The court will confirm a chapter 13 plan if: (1) the plan complies with the legal requirements of chapter 13, (2) all required fees, charges and deposits have been paid, (3) the plan has been proposed in good faith, (4) each unsecured creditor will receive under the plan a least as much as he would have received had the debtor

filed under chapter 7, (5) it appears that the debtor will be able to make the required payments and comply with the plan, and (6) each secured creditor has been dealt with in the manner described in the answer above.

18. When does a debtor have to appear in court in a chapter 13 case?

All debtors have to appear in court at least once for a hearing called the meeting of creditors. This is where the Trustee who has been appointed to the case will review the paperwork. Attendance at an orientation program set by the trustee's office may be required. Some debtors may have to appear again for a hearing on the confirmation of the debtor's chapter 13 plan. The meeting of creditors is held about a month after the case is filed. The meeting of creditors is held in downtown at the United States Federal Court Building, 515 Rusk Room 3401 on the 3rd floor, Houston, Texas 77002. The confirmation hearing will also be held at the United States Federal Court Building, 515 Rusk, Houston, Texas at a later date. The debtor will receive notice of the dates and times from the court and our office.

19. What if the court does not approve a debtor's chapter 13 plan?

If the court will not approve a chapter 13 plan proposed by a debtor, the debtor is permitted to modify the plan and seek court approval of the modified plan. If the debtor does not wish to change his proposed plan, he may either convert the case to a chapter 7 case or dismiss the case. If the court refuses to approve a plan, it will usually give the reason for its disapproval so that the plan may be appropriately modified so as become acceptable.

20. How are the claims of creditors handled under chapter 13?

Creditors must file their claims with the bankruptcy court within 90 days after the first date set for the meeting of creditors in order for their claims to be allowed. Unsecured creditors who fail to file claims within that period will be barred from filing a claim, and after the completion of the plan their claims will be discharged. A debtor may file a claim on behalf of a creditor if he wishes to do so. When the claims have been filed, the debtor is notified and given an opportunity to file objections to any claims that he disputes. When the objections have been ruled on, and the claims approved by the court, the chapter 13 trustee will begin making payments to unsecured creditors as called for in the chapter 13 plan. Payments to secured creditors and to special classes of unsecured creditors may begin earlier if desired.

21. What if a debtor incurs new debts or needs credit during a chapter 13 case?

Only two types of credit obligations or debts incurred after the filing of the case may be included in a chapter 13 plan. These are: (1) debts for taxes that become payable while the case is pending, and (2) consumer debts arising after the filing of the case that are for property or services necessary for the debtor's performance under the plan and that are approved in advance by the chapter 13 trustee. Any other debts or credit obligations incurred after the case is filed must be

paid by the debtor outside the plan. Some courts issue an order precluding the debtor from incurring any new debts during the case unless they are approved in advance by the chapter 13 trustee. Therefore, if a debtor needs credit or wishes to incur a debt after the case has been filed, he should obtain the approval of the chapter13 trustee beforehand.

22. What should the debtor do if he moves during the course of a chapter 13 case?

He should immediately notify the bankruptcy court and the chapter 13 trustee in writing of his new address. Most communications in a chapter13 case are by mail, and if the debtor fails to receive an order of the court or a notice from the chapter 13 trustee because of a faulty address, the case may be dismissed. Many courts have change-of-address forms that may be used when the debtor changes his address.

23. What if the debtor later decides to discontinue the chapter 13 case?

A debtor has the right to either dismiss a chapter 13 case or convert it to a chapter 7 case at any time, regardless of his reason for doing so. However, if a debtor simply stops making required chapter 13 payments, the court has the power to compel the debtor, or his employer, to make the payments ad to comply with the orders of the court. Therefore, if a debtor wishes to discontinue his chapter 13 case, he should do so in an orderly manner, preferably through his attorney.

24. What happens if a debtor is unable to complete his chapter 13 payments?

A debtor who is unable to complete his chapter 13 payments has three options: (1) he may dismiss the chapter 13 case, (2) he may convert the chapter 13 case to a chapter 7 case, or (3) if he is unable to complete the payments due to circumstances for which he should not justly be held accountable, he may seek to close the case and obtain the second type of discharge which was described above.

THE INFORMATION OBTAINED HEREIN IS GENERAL IN NATURE AND DOES NOT CONSTITUTE AS LEGAL ADVICE. YOU SHOULD CONSULT WITH AN ATTORNEY IN REFERENCE TO YOUR SPECIFIC SITUATION. THE AUTHORS HEREBY EXPRESSLY DISCLAIM ALL WARRANTIES, EITHER EXPRESSED OR IMPLIED, AND MAKE NO REPRESENTATIONS REGARDING THE INFORMATION CONTAINED HEREIN.