

CHAPTER 13 BOOKLET: 2004

Chapter 13 applies mainly where:

1. You have too much equity in your home
2. You have fallen behind in mortgage payments and need more than four months to catch up.
3. You have fraud debts.
4. The excess of income over expenses would make a chapter 7 a “substantial abuse” as you have the means to repay some or all of your debts.

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Your debts must meet the \$922,975 secured debt and \$307,675 unsecured debt limits, and you must have sufficient disposable income to fund a Chapter 13 plan.

PURPOSE: The purpose of this booklet is to answer some of your basic questions about a Chapter 13 bankruptcy. Of course, bankruptcy is a very complex area of the law which is subject to judicial interpretation (in other words, in the final analysis, the law is whatever the judge says it is - not what any individual may think it is). Therefore, your individual questions will be responded to on an individual basis. This booklet will help you, however, understand the fundamental issues at hand.

NOTE: IN BOTH CHAPTER 7 AND 13 PLAN YOUR BUDGET CAREFULLY AS IT MAY BE AUDITED. ODDS OF BEING AUDITED INCREASE SUBSTANTIALLY AS FAMILY INCOME EXCEEDS \$50,000 PER YEAR.

REV. 2/95, 11/95, 9/98, 12/98, 1/01, 6/02, 8/02, 5/03, 12/03, 3/04
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QUESTIONS

1. What are the requirements to file a Chapter 13?

2. How many times must I go to court?

3. Where do I go for these?

4. What does this cost?

5. I understand that "fraud" debts are not dischargeable in a Chapter 7 case but are in a Chapter 13 case. Is this true?

ANSWERS

*Unsecured debts less than \$307,675

*Secured debts less than \$922,975

*You earn a living (wage earner plan)

Two:

*First Meeting of Creditors

*Confirmation Hearing

Other than Kent & Queen Anne's County, in Salisbury. Other areas in Baltimore City.

Depends on your home county. See #2 above.

\$1,500.00, plus court filing fees of \$194.00 or \$1,694.00. If you have previously hired us to do a Chapter 7 (at \$800 or more) and it was converted by you, mid-stream, to a chapter 13, we will credit you with \$700.00 (before first meeting of creditors, \$400.00 after) to your Chapter 13 so you will owe an additional \$800.00 or \$1,100.00.

Generally, yes. An example of a "fraud debt" would be where you were handling someone's money and stole it. Another example would be where you have induced a bank to lend you money but did so by materially misleading the bank as to your true financial situation.

6. What are the key differences between a Chapter 7 bankruptcy and a Chapter 13 bankruptcy?

There are several, but the key differences can best be summarized as follows:

CHAPTER 13

CHAPTER 7

LASTS: 3 to five years

HEARINGS: two

REPAY: 25-40% of unsecured debts (on average)

SECURED LOANS: if you are behind on your home mortgage or car loan, can force lender to allow you to bring current over next 18 months (36 if lender does not object)

COST: \$1,694.00

MONTHLY PAYMENTS: of surplus income to trustee. \$200.00 per month minimum)

FRAUD DEBTS: dischargeable

CAN FILE: anytime, unless you dismissed another case within the last 6 months.

4 to 12 months

one (see locations above #2)

0% of unsecured debts or buyout excess equity

be prepared to bring secured debts current immediately (2-3 months).

\$ 1,009.00.

as long as you are able to exempt all equity (\$6,000.00 single/ \$12,000.00 joint, tools of trade, cash value life insurance, etc.), NO PAYMENTS TO TRUSTEE

NOT dischargeable

once every 6 years.

7. Are debts relating to alimony or child support, malicious destruction to property, criminal restitution orders dischargeable?

No to ALL. Student loans: Undue hardship proceeding required (optional, extra)

8. When do I get my chapter 13 discharge?

After you have:

1. Filed your petition, and
2. Gone to the first meeting of creditors, and
3. Submitted a plan of (partial) repayment to all creditors, and
4. Gone to confirmation hearing, and
5. The plan is confirmed by the court, and
6. All payments are made to the trustee OR you can convince the court later on that you should be discharged even though you didn't make all the payments (that discharge will NOT include fraud if you have not made all payments) due to extreme hardships.

9. Is my budget important?

Yes! If you budget expenses of \$800.00 per month and income of \$1,100.00 per month, you will have to pay the trustee \$300.00 per month for the term of the plan - usually 3 years, so plan your budget VERY CAREFULLY and accurately PROJECT income and expenses for the next three years (planning on any kids during the next three years? medical expenses? etc.?) if your budget shows an income of \$700 and expenses of \$500, you do not qualify for Chapter 13 because you can not make monthly payments.

10. I owe \$25,000.00 in credit card debts but my monthly budget only shows \$100.00 per month available (or \$3,600.00 over the next three years), is that enough?

First, credit card debts are usually wiped out entirely if you file a chapter 7, so these creditors really can't complain. Second, if the plan is submitted in good faith, odds are good, but required minimum monthly payments are usually \$225.00.

11. Will the Chapter 13 stop my creditors from garnishing my wages or foreclosing on my home?

Yes, but a foreclosure will take place if you do not have your plan confirmed. Generally, as long as you pay secured creditors their current monthly payments AND catch up on past due sums within 18 months, the court will confirm your plan and allow you to keep your home and stop foreclosure.

12. What happens if I “forget” to send my monthly payment to the Trustee?

The Court will dismiss your case and your creditors will proceed against you in State court. Call us IMMEDIATELY if you send a bad check or forget to send a check or are unable to send your check. NO EXCEPTIONS.

13. My mother guaranteed my consumer debt with Sears. Can they sue her while I am making payments under the plan?

No, unless the plan does not provide for full payment of the Sears debt and then only if the court signs an order allowing Sears to proceed against your mother, which the court may sign.

14. When I do my budget, what expenses are not permitted?

Repayment of credit card (wiped out)
Repayment of family loans.
Student loans (part of plan)
Repayment to you IRA or retirement Plan loans
Luxury items
Excessive amounts to charities
Questionable: Private school, Second houses
Note: back taxes MUST be paid in full through the plan