

# **BANKRUPTCY LAW OFFICE OF MICHAEL J. O'CONNELL**

**FAIRFAX, VIRGINIA**



## **QUESTIONS AND ANSWERS ABOUT CHAPTER 13**

### **1. What is chapter 13 and how does it work?**

Chapter 13 is that part (or chapter) of the Bankruptcy Code under which a person may repay all or a portion of his or her debts under the supervision and protection of the bankruptcy court. The Bankruptcy Code is that portion of the federal laws that deal with bankruptcy. A person who files under chapter 13 is called a debtor. In a chapter 13 case, the debtor must submit to the court a plan for the repayment of all or a portion of his or her debts. This plan must be approved by the court to become effective. If the court approves the debtor's plan, most creditors will be prohibited from collecting their claims from the debtor during the course of the case. The debtor must make regular payments to a person called a chapter 13 trustee, who collects the money paid by the debtor and disburses it to creditors in the manner called for in the plan. Upon completion of the payments called for in the plan, the debtor is released from liability for the remainder of his or her dischargeable debts.

### **2. How does chapter 13 differ from chapter 7 for a debtor?**

The basic difference between chapter 7 and chapter 13 is that under chapter 7 the debtor's nonexempt property (if any exists) is liquidated to pay as much as possible of the debtor's debts, while in most chapter 13 cases a portion of the debtor's future income is used to pay as much of the debtor's debts as is feasible considering the debtor's circumstances. As a practical matter, under chapter 7 the debtor loses all or most of his or her nonexempt property and receives a chapter 7 discharge, which releases the debtor from liability for most debts. Under chapter 13, the debtor usually retains his or her nonexempt property, must pay off as much of his or her debts as the court deems feasible, and receives a chapter 13 discharge, which is broader than a chapter 7 discharge and releases the debtor from liability for several types of debts that are not dischargeable under chapter 7. However, a chapter 13 case normally lasts much longer than a chapter 7 case and is usually more expensive for the debtor.

### **3. When is chapter 13 preferable to chapter 7 for a debtor?**

Chapter 13 is usually preferable for a person who— (1) wishes to repay all or most of his or her unsecured debts and has the income with which to do so within a reasonable time, (2) has valuable nonexempt property or has valuable exempt property securing debts, either of which would be lost in a chapter 7 case, (3) is not eligible for a discharge under chapter 7, (4) has one or more substantial debts that are dischargeable under chapter 13 but not under chapter 7, or (5) has sufficient assets with which to repay most debts, but needs temporary relief from creditors in order to do so.

### **4. How does chapter 13 differ from a private debt consolidation service?**

In a chapter 13 case, the bankruptcy court can provide aid to the debtor that private debt consolidation services cannot provide. For example, the court has the authority to prohibit creditors from attaching or foreclosing on the debtor's property, to force unsecured creditors to accept a chapter 13 plan that pays only a portion of their claims, and to discharge a debtor from unpaid portions of debts. Private debt consolidation services have none of these powers.

### **5. What is a chapter 13 discharge?**

It is a court order releasing a debtor from all dischargeable debts and ordering creditors not to

## **QUESTIONS AND ANSWERS ABOUT CHAPTER 13 cont.**

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: (1) a full or successful plan discharge, which is granted to a debtor who completes all payments called for in the plan, and (2) a partial or unsuccessful plan discharge (often called a hardship discharge), which is granted to a debtor who is unable to complete the payments called for in the plan due to circumstances for which the debtor should not be held accountable. A full chapter 13 discharge is broader and discharges more debts than a chapter 7 discharge, while a partial chapter 13 discharge is similar to a chapter 7 discharge.

### **6. What types of debts are dischargeable under chapter 13?**

A full chapter 13 discharge granted upon the completion of all payments required in the plan discharges a debtor from all debts except:

- (1) debts that were paid outside the plan and not covered in the plan,**
- (2) debts for alimony, maintenance, or support,**
- (3) debts for death or personal injury caused by the debtor's operation of a motor vehicle while unlawfully intoxicated,**
- (4) debts for restitution or criminal fines included in a criminal sentence imposed on the debtor,**
- (5) debts for student loans or educational obligations unless a court rules that not discharging the debt would impose an undue hardship on the debtor and his or her dependents,**
- (6) installment debts whose last payment is due after the completion of the plan, and**
- (7) debts incurred while the plan was in effect that were not paid under the plan.**

A partial chapter 13 discharge granted when a debtor is unable to complete the payments under the plan due to circumstances for which the debtor should not be held accountable, discharges the debtor from all debts except:

- (1) secured debts (i.e. debts secured by mortgages or liens),**
- (2) debts that were paid outside the plan and not covered by the plan,**
- (3) installment debts whose last payment is due after the completion of the plan,**
- (4) debts incurred while the plan was in effect that were not paid under the plan, and**
- (5) debts that are not dischargeable under chapter 7 (see Question 3 under chapter 7 Questions and Answers).**

### **7. What is a chapter 13 plan?**

It is a written plan presented to the bankruptcy court by a debtor that states how much money or other property the debtor will pay to the chapter 13 trustee, how long the debtor's payments to the chapter 13 trustee will continue, how much will be paid to each of the debtor's creditors, which creditors will be paid outside of the plan, and certain other technical matters.

## **QUESTIONS AND ANSWERS ABOUT CHAPTER 13 cont.**

### **8. What is a chapter 13 trustee?**

A chapter 13 trustee is a person appointed by the United States trustee to collect payments from the debtor, make payments to creditors in the manner set forth in the debtor's plan, and administer the debtor's chapter 13 case until it is closed. In some cases the chapter 13 trustee is required to perform certain other duties, and the debtor is always required to cooperate with the chapter 13 trustee.

### **9. What debts may be paid under a chapter 13 plan?**

Any debts whatsoever, whether they are secured or unsecured. Even debts that are nondischargeable, such as debts for student loans, alimony or child support, may be paid under a chapter 13 plan.

### **10. Must all debts be paid in full under a chapter 13 plan?**

No. While priority debts, such as debts for alimony, maintenance, and support, debts for taxes, and fully secured debts, must be paid under a chapter 13 plan, only an amount that the debtor can reasonably afford must be paid on most debts. The unpaid balances of most debts that are not paid in full under a chapter 13 plan are discharged upon completion of the plan.

### **11. Must all unsecured creditors be treated alike under a chapter 13 plan?**

No. If there is a reasonable basis for doing so, unsecured debts can be divided into separate classes and treated differently. It may be possible, therefore, to pay certain unsecured creditors in full, while paying little or nothing to others.

### **12. How much of a debtor's income must be paid to the chapter 13 trustee under a chapter 13 plan?**

Usually all of the disposable income of the debtor and the debtor's spouse for a three-year period must be paid to the chapter 13 trustee. Disposable income is income received by the debtor and his or her spouse that is not reasonably necessary for the support of the debtor and the debtor's dependents.

### **13. When must the debtor begin making payments to the chapter 13 trustee and how must they be made?**

The debtor must begin making payments to the chapter 13 trustee within 30 days after the debtor's plan is filed with the court, and the plan must be filed with the court within 15 days after the case is filed. The payments must be made regularly, usually on a weekly, bi-weekly, or monthly basis. If the debtor is employed, some courts require the payments to be made by the debtor's employer; otherwise, the payments can be made by either the debtor or the debtor's employer.

### **14. How long does a chapter 13 plan last?**

A chapter 13 plan must last for three years, unless all debts can be paid off in full in less time. However, a chapter 13 plan can last for as long as five years, if necessary.

### **15. Is it necessary for all creditors to approve a chapter 13 plan?**

No. To become effective, a chapter 13 plan must be approved by the court, not by the creditors. The court, however, cannot approve a plan unless secured creditors are dealt with in the manner described in the answer to Question 16. Also, unsecured creditors are permitted to file objections to the debtor's

## **QUESTIONS AND ANSWERS ABOUT CHAPTER 13 cont.**

plan, and these objections must be ruled on by the court before it can approve the debtor's chapter 13 plan.

### **16. How are secured creditors dealt with under chapter 13?**

There are four methods of dealing with secured creditors under chapter 13: (1) the creditor may accept the debtor's proposed plan, (2) the creditor may retain its lien and be paid the full amount of its secured claim under the plan, (3) the debtor may surrender the collateral to the creditor, or (4) the creditor may be paid or dealt with outside the 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 securing the debt. Thus, a creditor with a mortgage on, say, a \$1500 automobile cannot have a secured claim for more than \$1500, regardless of how much is owed to the creditor. If the debtor is in default to a secured creditor, the default must be cured (made current) within a reasonable time. Interest must be paid on secured claims.

### **17. How are cosigned or guaranteed debtors handled under chapter 13?**

If a cosigned or guaranteed consumer debt is being paid in full under a chapter 13 plan, the creditor may not collect the debt from the cosigner or guarantor. However, if a consumer debt is not being paid in full under the plan, the creditor may collect the unpaid portion of the debt from the cosigner or guarantor. A consumer debt is a nonbusiness debt. Creditors may collect business debts from cosigners or guarantors even if the debts are to be paid in full under the plan.

### **18. Who is eligible to file under chapter 13?**

Any natural person may file under chapter 13 if the person– (1) resides in, does business in, or owns property in the United States, (2) has regular income, (3) has unsecured debts of less than \$290,525, (4) has secured debts of less than \$871,550, (5) is not a stockbroker or commodity broker, and (6) has not been a debtor in another bankruptcy case that was dismissed within the last 180 days on certain technical grounds. A person meeting the above requirements may file under chapter 13 regardless of when he or she last filed a bankruptcy case or received a bankruptcy discharge. Corporations, partnerships, and limited liability companies may not file under chapter 13.

### **19. May a husband and wife file jointly under chapter 13?**

A husband and wife may file jointly under chapter 13 if each of them meets the requirements listed in the answer to Question 18 above, except that only one of them need have regular income and their combined debts must meet the debt limitations described above in the answer to Question 18 above.

### **20. When should a husband and wife file jointly under chapter 13?**

If both spouses are liable for any significant debts, they should file jointly under chapter 13, even if only one of them has income. Also, if both of them have regular income, they should file jointly.

### **21. May a self-employed person file under chapter 13?**

Yes. A self-employed person meeting the eligibility requirements listed in the answer to Question 18 above may file under chapter 13. A debtor engaged in business may continue to operate the business during the chapter 13 case.

### **22. May a chapter 7 case be converted to chapter 13?**

A pending chapter 7 case may be converted to chapter 13 at any time at the request of the debtor, if the case has not been previously converted to chapter 7 from chapter 13.

## **QUESTIONS AND ANSWERS ABOUT CHAPTER 13 cont.**

### **23. Where is a chapter 13 case filed?**

A chapter 13 case is filed in the bankruptcy court in the district where the debtor has lived or maintained a principal place of business for the greatest part of the last 180 days. The bankruptcy court is a unit of the federal district court.

### **24. What fees are charged in a chapter 13 case?**

There is a \$185 filing fee charged when the case is filed, which may be paid in installments if necessary. In addition, the chapter 13 trustee assesses a fee of 10 percent on all payments made under the plan. Thus, if a debtor pays a total of \$5,000 under a chapter 13 plan, the total amount of fees charged in the case will be \$685 ( a \$500 trustee's fee, plus the \$185 filing fee). These fees are in addition to the fee charged by the debtor's attorney.

### **25. Will a person lose any property if he or she files under chapter 13?**

Usually not. Under chapter 13, creditors are usually paid out of the debtor's income and not from the debtor's property. However, if a debtor has valuable nonexempt property and has insufficient income to pay enough to creditors to satisfy the court, some of the debtor's property may have to be used to pay creditors.

### **26. How does filing under chapter 13 affect collection proceedings and foreclosures previously filed against the debtor?**

The filing of a chapter 13 case automatically stays (stops) all lawsuits, attachments, garnishments, foreclosures, and other actions by creditors against the debtor or the debtor's property. 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 may be notified sooner, if necessary. Most creditors are prohibited from proceeding against the debtor during the entire course of the chapter 13 case. If the debtor is later granted a chapter 13 discharge, the creditors will then be prohibited from collecting the discharged debts from the debtor after the case is closed.

### **27. May a person whose debts are being administered by a financial counselor file under chapter 13?**

Yes. A financial counselor has no legal right to prevent a person from filing any type of bankruptcy case, including a chapter 13 case.

### **28. How does filling a chapter 13 case affect a person's credit rating?**

It may worsen it, at least temporarily, However, if most of a person's debts are ultimately paid off under a chapter 13 plan, that fact may be taken into account by credit reporting agencies. If very little is paid on most debts, the credit- rating effect of a chapter 13 case may be similar to that of a chapter 7 case.

### **29. Are the names of persons 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 publish the names of persons who file under chapter 13.

### **30. Is a person's employer notified when he or she files under chapter 13?**

In most cases, yes. Many courts require a debtor's employer to make payments to the chapter 13

## **QUESTIONS AND ANSWERS ABOUT CHAPTER 13 cont.**

trustee on the debtor's behalf. Also, the chapter 13 trustee may contact an employer to verify the debtor's income. However, if there are compelling reasons for not informing an employer in a particular case, it may be possible to make other arrangements for the required information and payments.

**31. Does a person lose any legal rights by filing under chapter 13?**

**No. Filing under chapter 13 is a civil proceeding and not a criminal proceeding. Therefore, a person does not lose any legal or constitutional rights by filing a chapter 13 case.**

**32. May employers or government agencies discriminate against persons who file under chapter 13?**

**No. 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 agencies to discriminate against a person as to the granting of licenses, permits, student loans, and similar grants because that person has filed under chapter 13.**

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

**The court may 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) all priority claims will be paid in full under the plan, (4) the plan was proposed in good faith, (5) each unsecured creditor will receive under the plan at least as much as it would have received had the debtor filed under chapter 7, (6) it appears that the debtor will be able to make the required payments and comply with the plan, and (7) each secured creditor has been dealt with in the manner described in Question 16 above.**

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

**Most debtors have to appear in court at least twice: once for a hearing called the meeting of creditors, once for a hearing on the confirmation of the debtor's chapter 13 plan. The meeting of creditors is usually held about a month after the case is filed. The confirmation hearing may be held on the same day as the meeting of creditors or at a later date. The debtor's testimony should not be lengthy at either hearing, however. If difficulties or usual circumstances arise during the course of a case, additional court appearances may be necessary.**

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

**If the court will not approve the plan proposed by the debtor, the debtor may modify the plan and seek court approval of the modified plan. If the court does not approve a plan it will usually give a reason for refusing to do so, and the plan may be appropriately modified so as to become acceptable to the court. A debtor who does not wish to modify a plan may either convert to a chapter 7 or dismiss the case.**

**36. How are the claims of unsecured creditors handled in a chapter 13 plan?**

**Unsecured 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 within that period are barred from doing so, and upon completion of the plan their claims will be discharged. The debtor may file a claim on behalf of a creditor, if desired. After the claims have been filed, the debtor may file objections to any claim that he or she disputes. When the claims have been approved by the court, the chapter 13 trustee begins paying unsecured creditors as provided in the chapter 13 plan. Payments to secured creditors, priority creditors, and special classes of unsecured creditors may begin earlier if desired.**

## **QUESTIONS AND ANSWERS ABOUT CHAPTER 13 cont.**

### **37. What if the debtor is temporarily unable to make the chapter 13 payments?**

If the debtor is temporarily out of work, injured, or otherwise unable to make the payments required under a chapter 13 plan, the plan can usually be modified so as to enable the debtor to resume the payments when he or she is able to do so. If it appears that the debtor's inability to make the required payments will continue indefinitely or for an extended period, the case may be dismissed or converted to chapter 7.

### **38. What if the 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. All 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 prohibiting the debtor from incurring new debts during the case unless they are approved in advance by the chapter 13 trustee. Therefore, the approval of the chapter 13 trustee should be obtained before incurring credit or new debts after the case has been filed. The incurrence of regular debts for telephone service and utilities, do not require the trustee's approval.

### **39. What should the debtor do if he or she moves while the case is pending?**

The debtor should immediately notify the bankruptcy court and the chapter 13 trustee in writing of the new address. Most communications in a chapter 13 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 an incorrect address, the case may be dismissed. Many courts have change-of-address forms that may be used if the debtor moves.

### **40. What if the debtor later decides to discontinue the chapter 13 case?**

The debtor has the right to either dismiss a chapter 13 case or convert it to chapter 7 at any time for any reason. However, if the debtor simply stops making the required payments, the court may compel the debtor or the debtor's employer to make the payments and to comply with the orders of the court. Therefore, the debtor who wishes to discontinue a chapter 13 case should do so through his or her attorney.

### **41. What happens if a debtor is unable to complete the chapter 13 payments?**

A debtor who is unable to complete the chapter 13 payments has three options: (1) dismiss the chapter 13 case, (2) convert the chapter 13 case to chapter 7, or (3) if the debtor is unable to complete the payments due to circumstances for which he or she should not be held accountable, close the case and obtain a partial chapter 13 discharge (or hardship discharge) as described in the answer to Question 6 above.

### **42. Is the fee charged by an attorney for representing a debtor in a chapter 13 case subject to the review and approval of the bankruptcy court?**

Yes. The fee charged by an attorney for representing a debtor in a chapter 13 case must be reviewed and approved by the bankruptcy court. This rule is followed whether the fee is paid to the attorney prior to or after the filing of the case, and whether it is paid to the attorney directly by the debtor or by the chapter 13 trustee. The court will only approve a fee that it finds to be reasonable.