

GENERAL COMPARISON OF CHAPTER 7 AND CHAPTER 13 BANKRUPTCY

Chapter 7

Straight Bankruptcy Liquidation

Basic operation

Obtain mandatory credit counseling within 180 days before filing bankruptcy petition. File bankruptcy petition with court. Trustee appointed to administer bankruptcy. All non-exempt assets surrendered for liquidation and distribution. Debtor retains only exempt assets. Money from liquidation is split among creditors, according to priority established by the Bankruptcy Code.

Limitations

Debtor must pass the "means test" which determines eligibility for Chapter 7. People with incomes higher than state median income will have difficulty being eligible for Chapter 7. Discharge not available if debtor was discharged in Chapter 7 bankruptcy within past eight years.

Percentage of consumer filings

71.2% There were 1,159,462 consumer bankruptcy filings in 2004 and 1,113,958 were Chapter 7 filings.

Frequency

Can be used effectively only if not used to completion during previous eight years. New law may make it harder to file Chapter 7 for many people.

Effect on debts

With exceptions noted in text (e.g., student loans, support obligations, taxes), most pre-petition debts are discharged (extinguished) upon conclusion of bankruptcy. Liability to creditors ends with court-entered discharge order.

Effect on home

In all cases, you must keep up with mortgage payments to preserve your home. If you do, home may be preserved under homestead exemption if there is not substantial non-exempt equity. Marital ownership law may also preserve home.

However, new law provides for maximum homestead exemption of \$125,000 if home acquired 40 months before filing or if debtor engaged in certain fraudulent conduct.

Chapter 13

Payment Plan for People with Regular Income

Obtain mandatory credit counseling within 180 days prior to bankruptcy. If a debt management plan is proposed, that should be filed as well. File bankruptcy petition and proposed payment plan with court. Payment plan provides payments over a period of three to five years. As a result of new law, more plans will be for five years. Payments are made from disposable income (i.e., whatever is left over after necessities [food, shelter, etc.] have been allowed for), while debtor retains assets.

For debtors owing less than \$307,675 in unsecured debt and less than \$922,975 in secured debt.

There were 449,129 chapter 13 filings in 2004, about 29% of the total. Chapter 13 filings likely to increase in the wake of the 2005 bankruptcy law.

Chapter 13 discharge won't be granted if debtor received discharge in Chapter 7, 11, or 12 four years earlier or more or a previous Chapter 13 discharge two years before.

All or a portion of debts paid off over a period of time under a specific plan. With exceptions noted in text (e.g., student loans, support obligations) debts are discharged. Liability to creditors ends when plan is successfully completed and the court enters a discharge order.

Home will be preserved if plan is successfully completed and if there is not substantial non-exempt equity. If not preserved in this way, home may be preserved under homestead exemption or marital ownership law. However, the new bankruptcy law provides for homestead exemption of no more than \$125,000 if home acquired 40 months before filing or if debtor engaged in certain fraudulent conduct.

Effect on car or truck

Vehicle might be taken by creditors (unless necessary for work or arrangements are made to pay off lien by redemption or reaffirmation).

Vehicle will be preserved if plan is successfully completed and appropriate payments made. If not, it might be taken by creditors (unless arrangements are made to pay off lien).

Effect on nonexempt assets

All non-exempt assets must be surrendered for distribution

No effect if plan is successfully completed. If not, non-exempt assets are sold to pay creditors, as in Chapter 7 bankruptcy.

Time to repay Not applicable.

Usually three years, sometimes up to five years.

Payments

Most forms of debt discharged; however other debts, such as taxes, student loans, and child support, will have to be paid.

All “disposable income” is available for payments; that is, whatever remains after necessities (food, shelter, etc.) are taken care of. New law changes Chapter 13 by providing that what is reasonable to pay will be determined in large part by IRS regulations

Portion of debt repaid

Will depend on the value of non-exempt assets surrendered to pay off debts.

May allow for payment of less than the full amount of debts

Result at conclusion of bankruptcy

Bankruptcy court enters a discharge order, ending enforceability of all pre-petition debts that can be discharged in bankruptcy.

Borrower is no longer liable for most debts if plan is successfully completed and discharge is ordered by court

Requirement for bankruptcy proceedings to end

Court must have entered a discharge order.

Borrower must have made all payments in accordance with court-approved plan, after which court enters discharge order.

Effect on credit

Record of bankruptcy remains on credit record for up to ten years from the date of filing.

Record of bankruptcy filing may remain on your credit report for up to ten years from the date of filing, although some creditors will report a Chapter 13 bankruptcy for only seven years.. Creditors may prefer to see this form of bankruptcy, since successful completion of plan may pay more debts than will be paid under a Chapter 7 filing.