

Summary of the Burdens of Chapter 13 Bankruptcy

- Debtor has to go through credit counseling
- Debtor has to have financial management training
- Debtor has to testify under oath about his or her finances and personal matters
- Debtor has to fill out extensive statements that are as complex if not more so than tax returns
- Debtor has to provide extensive documentation of income and expenses
- Debtor is subject to audit
- Debtor is subject to criminal penalties for any fraudulent statement supplied in connection with the case
- Many courts issue wage garnishment orders to ensure that the debtor pays his or her creditors pursuant to the court-approved repayment plan
- The bankruptcy filing remains on the debtor's credit report for 10 years
- Filing for bankruptcy may affect the debtor's ability to seek or retain employment
- Filing for bankruptcy may result in the debtor having to pay higher interest rates
- Court has to find that the filing was in good faith
- Court has to find that the plan was in good faith
- Under our legislation, court has to find that the modification was in good faith
- The debtor has to propose a repayment plan and commence payments thereunder within 30 days
- Expenses cannot exceed stringent IRS guidelines
- In most cases, must commit to a repayment plan for up to 5 years
- Trustee monitors compliance with the plan
- Trustee or any creditor can move to dismiss the case or seek its conversion to chapter 7 for liquidation
- Chapter 13 is expensive – on average, debtor has to pay \$3,000 in attorney's fees; a chapter 13 trustee commission of up to 10 percent; approximately \$300 in filing fees; and \$100 for credit counseling and financial management training
- Chapter 13 debtor has to file all missing tax returns for the 4 years preceding the bankruptcy case filing
- To obtain court approval, the repayment plan must satisfy a long list of requirements
- The creditors want debtors to file for chapter 13 over chapter 7 per the 2005 amendments
- Chapter 13 debtors file for relief for a lot of serious reasons, including medical expenses, divorce, lost job

Detailed Background on the Impact of Chapter 13 Bankruptcy on Individual Debtors

Chapter 13 of the Bankruptcy Code¹ provides relief for an individual debtor through a payment plan of 3 - 5 years duration which is approved by the by the Bankruptcy Court. In exchange for a discharge of certain debts, the debtor must commit all future “disposable income”² (as determined by the means test enacted as part of the 2005 amendments) to the repayment of all prepetition (and certain post-petition) debts.³

Individuals seek relief in bankruptcy for a variety of reasons. Among the most common reasons are job loss and catastrophic medical expenses. Chapter 7 and chapter 13 each offer the debtor different forms of relief. A debtor with few assets, little income, and mostly unsecured debts would be most likely to choose chapter 7. Chapter 13 is more appropriate for a debtor who has sufficient income and needs to rehabilitate secured debts that are in default or that have substantial arrears (such as a home or a car). A debtor with inadequate resources will be unable to choose chapter 13, even if it is necessary to save the family home, because the debtor will be unable to provide, as required to meet the stringent repayment requirements.

Recall that one of the principal stated goals of the 2005 amendments to the Bankruptcy Code was to push a higher percentage of debtors into chapter 13 repayment plans. The reason creditors found this more appealing is because the debtor must devote future income to the repayment of debts. In chapter 7, debts are repaid by liquidating the debtor’s non-exempt assets. Most debtors have no such assets, so unsecured creditors get nothing.

The plan must meet certain criteria spelled out in the Bankruptcy Code, giving priority to certain creditors. Secured creditors come first, followed by priority unsecured creditors, and, finally general unsecured creditors. In addition to making payments on secured debts, the debtor must provide for payment in full of all priority unsecured debts. Priority unsecured debts include child and spousal support, certain tax debts, and debts arising out of death of personal injury caused by the debtor’s intoxicated operation of a motor vehicle or boat. As part of the plan, the debtor must cure any defaults, and make up arrears, on secured debts.

If the debtor is unable to propose a plan that complies with the requirements of the Bankruptcy Code, is feasible, and propose that plan in good faith, the Court may not confirm the plan (i.e. permit the debtor to seek relief under chapter 13). If the debtor fails to comply with the

¹11 USC §1301 et. seq.

²11 USC §1325(b)(2), (3).

³The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005; Pub.L.No. 109-8, 119 STAT. 23 (2005). One of the principal stated goals of the 2005 amendments was to compel a greater proportion of debtors to file for ch. 13, rather than ch. 7.

requirements of the plan, the court will either dismiss the case or convert it to a chapter 7 liquidation in which the trustee liquidates all the debtor's non-exempt assets in exchange for a discharge of some of the debtor's debts.

A discharge in bankruptcy only discharges the debtor of personal liability. To the extent that a creditor holds a valid lien on the property, that lien remains in effect notwithstanding the discharge.

Monetary cost of chapter 13

By law, the entire bankruptcy system: the courts, the U.S. Trustee or Bankruptcy Administrator programs, the private trustees, are all paid out of filing fees miscellaneous fees, and commissions paid from the debtor's estate. These costs can be significant in even the simplest cases.

The cost to file a case is typically in the range of \$3,000 for a standard chapter 13 case. In addition to the attorney fee, the filing fee is \$274.00.

The private trustee appointed to administer the case over the 3-5 years it takes to complete receives a commission of up to 10%.

Debtors are also required to participate in credit counseling prior to filing a case⁴ and take a financial management training course prior to receiving a discharge.⁵ The average cost of each of these requirements is \$50.

In addition to these charges, the miscellaneous fee schedule provides charges for such things as amending the debtor's schedules, list of creditors, etc. (\$26), certification of a document (\$9), and reproduction of recordings of proceedings, regardless of medium (\$26, including costs).⁶

Any further legal activity, such as a creditor motion or a proceeding to value property is charged at an attorney's usual rate for such services. For example, a creditor, or the trustee, may seek to dismiss the case, or convert it to chapter 7, at any time. These extra charges become significant policy considerations any time the Bankruptcy Code is amended in a way that could subject a debtor to litigation or more complex legal proceedings.

In 2008, just over 6% of chapter 13 debtors nationally file *pro se*. However, in some jurisdictions, the number is much higher. For example, in the Central District of California, 26%

⁴11 USC §109(h).

⁵11 USC §1328(g).

⁶http://www.uscourts.gov/fedcourtfees/bankruptcyfee_January2007.pdf

of debtors in Woodland Hills, and 24% in Los Angeles, filed *pro se*. In the District of Arizona, 23% of debtors filed *pro se*.⁷

Public disclosure of personal finances

A bankruptcy case is a public record. A debtor must file documents disclosing all assets and liabilities. Forms require an itemized list of all sources of income, personal property, all debt, unexpired leases, domestic support and child support obligations, student loans, real property, vehicles, etc.

A debtor must also file IRS tax returns for the previous four years.

Official Form 6B requires the debtor to provide an itemized list of all personal property of the debtor, including wearing apparel, firearms, insurance policies, bank accounts, household goods and furnishings, education IRAs, jewelry, alimony and child support to which the debtor is entitled, animals including family pets, among other items.

Schedule J of the bankruptcy petition requires the debtor to provide an itemized list of every expenditure the debtor makes, including food, clothing, laundry, medical and dental care, tithes to the church, among other items.

Official Form 7 requires an itemization of the debtor's personal and business affairs, including repossessions and foreclosures, law suits, wage garnishments, gifts to friends and relatives, the names of a debtor's spouse and any former spouses.

Because of the breadth of the information required, the petition will also include information about the debtor's spouse and children and their personal information.

The names, addresses of each creditor, as well as the amount owed, and the source of the debt must be filed as part of the petition.

Paperwork burden

The 2005 amendments to the Bankruptcy Code greatly increased the paperwork burden on a debtor. A few examples include:

There are six separate schedules that must be filed with the petition listing different types of property, debts, creditors, codebtors, income and expenditures.

The required Statement of Financial Affairs runs 12 pages and has 25 separate items.

⁷Ed Flynn, Phil Crewson, Executive Office of the United States Trustees, DATA SHOW TRENDS IN POST-BAPCPA FILINGS at 4. http://www.usdoj.gov/ust/eo/public_affairs/articles/docs/2008/abi_200808.pdf

In addition to the schedules I and J, listing income, a debtor must file Official Form 22C, the “Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income.” The form has 61 separate sections and is more complex than the IRS Form 1040.

Although debtors in chapter 13 are not subjected to the chapter 7 “means test,”⁸ the form they are required to fill out is similar to the means test form and requires them to list expenses according to the Internal Revenue Services guidelines for debt collection.

Each creditor is entitled to several notices throughout the case.

Credit history

A bankruptcy remains on a person’s credit report for 10 years.⁹

As a result, a bankruptcy may make it difficult or impossible for a debtor to obtain credit in the future, or obtain credit only at a much higher cost.

It will also affect a debtor’s ability to engage in other economic activities, for example, renting an apartment.

Future employment

Bankruptcy is a public record. While it cannot be carried on a person’s credit report for longer than 10 years, it remains a public record in perpetuity. It often affects an individual’s ability to obtain future employment, to retain current employment, or to obtain a security clearance.

Penalties for making a false statement or bad faith

A debtor is subject to certain sanctions for making a false statement in the course of a bankruptcy case.

All documents are filed under penalty of perjury.

The court may revoke a discharge if it was obtained through fraud.¹⁰

Bankruptcy fraud, the concealment of assets, false oaths and claims, and bribery, are

⁸11 USC §707(b).

⁹15 USC §1681c(a)(2).

¹⁰11 USC §1328(e).

crimes punishable by a fine and imprisonment of up to five years.¹¹

If the court finds that the chapter 13 plan was not filed in “good faith,” the court may reject the entire plan.¹²

Debtors are under close supervision throughout the entire process. In addition to the Bankruptcy Court, a private trustee is responsible for administering the debtor’s affairs, taking in funds and paying them to creditors. The Office of the United States Trustee of the U.S. Department of Justice also supervises every aspect of the case. Creditors, who are sometimes most familiar with the debtor’s affairs, have a right to examine the debtor under oath, and make motions to dismiss the case. The Bankruptcy Code also requires random audits of debtors.

Additional requirements of the Conyers legislation

1. In addition to the Bankruptcy Code’s existing requirement that the case be filed in good faith, and that the plan be proposed in good faith, the bill requires that the modification be proposed in good faith, and that the debtor did not commit fraud in obtaining the credit.
2. The debtor is required to contact the mortgagee regarding modification of the mortgage under non-bankruptcy law at least 15 days prior to filing for bankruptcy unless a foreclosure sale will occur within 30 days. The debtor may not submit a repayment plan to the court proposing modification of the mortgage unless the debtor first contacts the mortgagee regarding a modification under non-bankruptcy law.

¹¹18 USC §§152, 157.

¹²11 USC §1325(a)(3).