

## **COMMON QUESTIONS ABOUT CHAPTER 13**

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

Chapter 13 is that part (or Chapter) of the federal 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. 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. The Plan must be approved by the Court in order to become effective. If the Court approves the Debtor's Plan, it will prohibit Creditors from collecting their claims from the Debtor or any Co-Debtor during the course of the case. The Debtor must make regular payments to a person called the Chapter 13 Trustee, who collects the money paid by the Debtor and then disburses it to Creditors as called for in the Plan. Upon completion of the payments called for in the Plan, the Debtor is discharged from liability for the remainder of his or her debts.

### **2. How does Chapter 13 differ from Chapter 7 for a Debtor?**

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.

### **3. When is Chapter 13 preferable to Chapter 7 for a Debtor?**

Chapter 13 is usually preferable for a Debtor 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 amount of 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 not dischargeable under Chapter 7 but are dischargeable under Chapter 13, 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?**

Under Chapter 13, the Court has powers to aid the Debtor that private debt consolidation services do not have. For example, the Court has the power to prohibit Creditors from attaching or foreclosing on the Debtor's property, the power to force unsecured Creditors to accept a Chapter 13 Plan that pays only a portion of their claims (perhaps, for example, as little as 5-10%), and the power 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 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 **successful Plan discharge** that is granted to a Debtor who completes all payments called for in the Plan, and (2) an **unsuccessful Plan discharge** that 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 successful Plan discharge is broader and discharges more debts than either an unsuccessful Plan discharge or a Chapter 7 discharge.

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

The 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 of the Plan and not covered in the Plan;
- (2) debts for alimony, maintenance, or support;
- (3) installment debts whose last payment is due after the completion of the Plan; and
- (4) debts incurred while the Plan was in effect that were not paid under the Plan.

The Chapter 13 discharge granted when a Debtor is unable to complete the payments under a 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 of the Plan and not covered in 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) the ten types of debts that are not dischargeable under Chapter 7.

**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 on each

of the Debtor's debts, which debts will be paid "outside" of the Plan, and certain other technical matters.

**8. 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 Plan, and administer the Debtor's Chapter 13 case until it is closed. The Chapter 13 Trustee is also required to perform certain other duties, and the Debtor is 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 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 certain debts, such as debts for taxes and fully secured debts, must be paid in full under a Chapter 13 Plan, only an amount that the Debtor can reasonably afford must be paid on most debts. The unpaid balance of most debts that are not paid in full under a Chapter 13 Plan is discharged upon completion of the Plan. Under a Chapter 13 Plan, all Creditors must receive at least as much as they would have in a case of liquidation of assets under Chapter 7 of the Bankruptcy Code.

**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 surplus 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, if not filed with the petition already. The payments must be made regularly, usually on a 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. In our experience, payments are nearly always to be made directly by the Debtor to the Trustee's office.

**14. How long must 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 be extended to last for as long as five years, if the Debtor has a valid reason for such a period and the Court approves.

**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. Unsecured Creditors may file objections to the Plan which the Court will consider in deciding whether or not to approve a proposed 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 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. (That is, Pre-Petition payments would be made directly by the Debtor, not the Trustee, as to this particular Creditor.) 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 claim.

If the Debtor is in default prior to filing a Chapter 13 to a secured creditor, the default must be cured (made current) within a reasonable time. Also, interest must be paid on secured debts.

**17. How are cosigned or guaranteed debts 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 after the conclusion of the Chapter 13 case. A consumer debt is a nonbusiness debt. Creditors may collect business debts from cosigners or guarantors.

**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 \$250,000, (4) has secured debts of less than \$750,000, (5) is not a stockbroker or a commodity broker; and (6) has not been a Debtor in another bankruptcy case that was dismissed within the last previous 180 days on certain technical grounds. A person meeting the above requirements may file under Chapter 13 regardless of when he or she last received a bankruptcy discharge under any Chapter.

**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. There is no legal requirement that both spouses must file, however.

**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. You should discuss this decision with your attorney.

**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. As with any Chapter 13 Debtor, documentation of current earnings and previous years' tax returns will be necessary.

**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. A case may be involuntarily converted to a Chapter 7 upon motion of the Trustee, as, for example, where the Debtor has defaulted on making payments under the Chapter 13 Plan.

**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 portion of the last 180 days. The Bankruptcy Court is a unit of the Federal District Court. There are three branches of the Bankruptcy Court in the Eastern District of New York, which covers Brooklyn, Queens and

Nassau and Suffolk Counties. These courts are located at: 75 Clinton Street, Brooklyn; 601 Veterans Memorial Highway, Hauppauge; and 1635 Privado Road, Westbury (located one block from the offices of Brady & Hurst, LLP).

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

There is currently a court-required filing fee of \$160 charged when the case is filed. 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 \$660 (a \$500 Trustee's fee, plus the \$160 filing fee). These court filing fees are in addition to the fee charged by the Debtor's attorney, and are paid directly to the Court. The fee charged by an attorney for representing a Debtor in any bankruptcy case must be reviewed and approved as "reasonable fees" by the Bankruptcy Court.

**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 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 immediately and automatically stays (stops) all lawsuits, attachments, garnishments, foreclosures, and other actions by Creditors against the Debtor or the Debtor's property. Within 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 forever 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 or credit counselor file under Chapter 13?**

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

**28. How does filing under Chapter 13 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. In our experience, no newspapers in the New York/Long Island area bother to print this information.

**30. Is a person's employer notified when he or she filed under Chapter 13?**

In most cases, no. Many Courts require a Debtor's employer to make payments to the Chapter 13 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 not a criminal proceeding, and a person does not lose any civil or constitutional rights by filing.

**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 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) the Plan was proposed in good faith; (4) each unsecured creditor will receive under the Plan at least as much as it 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 to 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, and 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 Debtor's testimony should not be lengthy at either hearing, however. This Office finds that in routine matters, the client's testimony is completed in less than five minutes. If difficulties or unusual circumstances arise during the course of a case, additional Court appearances may be necessary, and in that event, there may be additional legal fees required, as will be fully outlined in our Retainer Agreement.

**35. What if the Court does not approve a Debtor's Chapter 13 Plan?**

If the Court will not approve the Plan proposed by a 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 its reasons for refusing to do so, and the Plan may then be appropriately modified so as become acceptable to the Court. A Debtor who does not wish to modify a proposed Plan may either convert the case to Chapter 7 or dismiss the case.

**36. How are the claims of unsecured Creditors handled under Chapter 13?**

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 claims 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 claims that he or she disputes. When the claims have been approved by the Court, the Chapter 13 Trustee begins paying unsecured Creditors as provided for in the Chapter 13 Plan. Payments to secured Creditors and to special classes of unsecured Creditors may begin earlier, if desired.

**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 any 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, such as 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 Brady & Hurst, LLP, 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, there is a risk the case may be dismissed.

The Bankruptcy Court has change-of-address forms to be used if the Debtor moves: These forms are available from Brady & Hurst, LLP. It is important that you notify Brady & Hurst, LLP of any change of phone number also.

**40. What if the Debtor later decides to discontinue the Chapter 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 Chapter 13 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 the second type of discharge described in answer to Question 6 above.

**42. What is the role of the Debtor's attorney in a Chapter 13 case?**

The Debtor's attorney will typically perform some or all of the following functions in Chapter 13 cases:

- (1) Examining the Debtor's financial situation and determining whether Chapter 13 is a feasible alternative for the Debtor, and if so, whether a single or joint case should be filed;
- (2) Assisting the Debtor in the preparation of a monthly budget;

- (3) Examining the liens or security interests of secured Debtors to ascertain their validity or avoidability, and taking the legal steps necessary to protect the Debtor's interest in such matters;
- (4) Developing and implementing methods of dealing with secured Creditors;
- (5) Assisting the Debtor in developing a Chapter 13 Plan that meets the needs of the Debtor and is acceptable to the Court;
- (6) Preparing the necessary pleadings and Chapter 13 forms;
- (7) Filing the Chapter 13 forms and pleadings with the Court and forwarding the filing fee (currently \$160, to be paid by the Debtor);
- (8) Attending the Meeting of Creditors, the Confirmation Hearing, and any other Court hearings required in the case;
- (9) Assisting the Debtor in obtaining Court approval of a Chapter 13 Plan;
- (10) Checking the claims filed in the case, filing objections to improper claims, and attending Court hearings thereon;
- (11) Assisting the Debtor in overcoming any legal obstacles that may arise during the course of the case; and
- (12) Assisting the Debtor in obtaining a discharge upon the completion or termination of the Plan.

Finally, please keep in mind that Brady & Hurst, LLP is here to help you in your Chapter 13, and we aim to make the process as smooth and understandable to you as possible. If you have other questions along the way, please ask us. We are glad for the opportunity to be of service.