

The Bankruptcy Process : What to Expect in a Chapter 13 Bankruptcy – Part I

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A while back I did a three part series on the bankruptcy process for a Chapter 7 bankruptcy case. Now I thought I would go over process for a Chapter 13 bankruptcy case.

With the melt down in the housing and lending markets many people are at risk of losing their homes and many, in hopes of obtaining a loan modification, have stopped making house payments. My experience is that most people who are applying for the loan modification are not successful. If the bank denies your loan modification request, that leaves most in a “now what” situation, and often results in the loss of the home. Chapter 13 bankruptcy has many tools that a Chapter 7 bankruptcy does not have that will allow you to, among other things, stay in your home and get caught up on payments.

Who is Eligible to File Chapter 13 Bankruptcy?

Unlike Chapter 7 bankruptcy, those wishing to file Chapter 13 bankruptcy must have debts below a statutory threshold. If you want to file Chapter 13 bankruptcy you must have less than \$1,081,400 in secured debt and less than \$360,475 in unsecured debt. A secured debt is a debt to which there is security or collateral attached, such as a home or car. An unsecured debt is usually in the form of a credit card, medical debts, etc. If your debts are above these debt limits, you will not qualify for a Chapter 13 bankruptcy and will have to look to either Chapter 7 bankruptcy or Chapter 11 bankruptcy.

In order to qualify for a Chapter 13 bankruptcy you must have regular income. This income can come from almost any source, but it must be regular and it must be enough to cover your monthly obligations such as your rent, utilities, etc. as they come due. If you do not have income, you cannot file a Chapter 13 bankruptcy.

Why File for Chapter 13 Bankruptcy?

For some, there is not really a choice in their filing of a Chapter 13 bankruptcy case. In 2005 the Bankruptcy Code was amended and part of the amendments was to restrict the number of people filing for Chapter 7 bankruptcy. Now, in order to qualify for a Chapter 7 bankruptcy, you must be at or below the median income in your state for a family of your size. For example, for a family of three in Arizona, you must make less than \$58,696 a year or \$4,891 per month in order to qualify for a Chapter 7 bankruptcy. If you make more than this, you are likely going to have to file a Chapter 13 bankruptcy case.

For others the reason to file a Chapter 13 bankruptcy case is because Chapter 13 bankruptcy cases have many more tools to deal with things such as missed house payments than a Chapter 7 case does. For instance, if you are six months behind on your house payment, but want to stay

in your house and can afford to do so, then in a Chapter 13 bankruptcy you would be provided up to five years to get caught up on your house payments and not have your home foreclosed upon.

Another reason people file Chapter 13 bankruptcy is for the “lien stripping” option for second mortgages. If your home, like most people’s, is upside down, you may be able to remove your second mortgage and discharge it through the bankruptcy. If the value of your home is worth less than what you owe on your first mortgage, then in a Chapter 13 bankruptcy case you can remove all other junior mortgages (i.e., second and third mortgages).

Finally, many want to take advantage of the Chapter 13 cram down. On debts such as your car loans, you may be able to pay the value of the vehicle and discharge the rest through the bankruptcy. For instance, if you had a Ford F150 that you owe \$30,000 on, but now is only worth \$15,000, in a Chapter 13 bankruptcy you would only be required to pay the value, or the \$15,000, that the vehicle is worth. The only caveat to this is that you must have purchased the car at least 910 days prior to your bankruptcy filing.

There are numerous reasons to file a Chapter 13 bankruptcy over a Chapter 7 bankruptcy. In the next installment I will discuss the initial stages of the bankruptcy filing process for Chapter 13 cases.

Attorney John Skiba offers a free bankruptcy consultation. If you would like to discuss your specific case contact Mr. Skiba at (480) 559-8131 or via email at jskiba@jacksonwhitelaw.com .