

What is feasibility in a chapter 13 and why is it important?

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In order to accurately understand the concept of feasibility, it is important to start with a discussion of the basics of filing a chapter 13 bankruptcy. In chapter 13, the debtor needs to present a plan for approval by the bankruptcy court. It is a personal reorganization plan so to speak. Generally, it will include a monthly payment that the debtor must pay to the chapter 13 trustee, who in turn makes payments to creditors, albeit usually less than what creditors would like. Once the plan is approved, the monthly amount will not change unless the debtor's circumstances change.

One of the many requirements of a chapter 13 debtor, with some unlikely exceptions, is that he must pay all of his disposable income to the chapter 13 trustee for the duration of the plan. For those with income below their area's median income, which is most debtors, this means deducting the total of their monthly expenses from the total of their monthly income, and paying what remains. Most plans will be three years, but cannot be more than five years. If a debtor does not have disposable income to pay to the trustee, he cannot present a confirmable chapter 13 plan (there are some exceptions to this rule, however, these exceptions are not available in Massachusetts or Connecticut).

Assuming that a debtor does have disposable income, as described above, the plan must be feasible. In other words, "a debtor's plan must have a reasonable likelihood of success, i.e., that it is likely that the debtor will have the necessary resources to make all payments as directed by the plan." *In re Fantasia*, 211 B.R. 420, 423 (B.A.P. 1st Cir. 1997). When a creditor objects to a debtor's plan, the debtor has the burden of proof to show his plan is feasible. *Id.* Failing to explain discrepancies that appear in bankruptcy filings can constitute grounds to deny approval of the plan. *In re Scott*, No. 98-1866, 1999 WL 644380, at \*1 (6th Cir. Aug. 13, 1999). In addition, having unrealistic expenses, like not budgeting for commonly expected expenses, or amounts that are too low, can be grounds for denial as well. *In re Hockaday*, 3 B.R. 254, 255-56 (Bankr. S.D. Cal. 1980).

Empirical evidence shows that some debtors, in hopes of attaining the benefits of chapter 13, present plans, and sometimes are even successful in having them approved, that are not realistic. They likely have unrealistic expectations of living within a budget that they believe, in their exuberance for a successful chapter 13 plan, is possible. Sometimes it is idealistic income expectations, sometimes unrealistic expense expectations. This is why most plans fail, as the debtor does not reach the end of the plan.

If you are interested in the benefits of chapter 13 and want to be successful, or if you are involved in a chapter 13 that you think may not be feasible, please feel free to call.

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