



CHAPTER 13 BANKRUPTCY IN A NUTSHELL

Chapter 13 bankruptcy is a process that allows you to reorganizes your debt. It is different from Chapter 7 for many reasons. The biggest difference is that Chapter 13 is a three to five-year process during which you repay at least some portion of your debts, as opposed to having them discharged after a few months with no repayment. There are numerous reasons why you might file Chapter 13, but it is a big commitment and not a decision that should be made without consulting an attorney.

Unlike Chapter 7, a Chapter 13 bankruptcy is designed to allow you to keep all of your property (although this may vary in certain situations). Chapter 13 can also be used as an effective tool to handle certain types of debt or real property issues. Some of the reasons your bankruptcy attorney might recommend Chapter 13 bankruptcy include:

- You have too much income to qualify for Chapter 7, so Chapter 13 is your only available option.
- Chapter 13 can be used to provide relief from mortgage or car loan arrears.
- Under special facts, Chapter 13 can be used as a mechanism to “lien strip” a wholly unsecured junior mortgage loan.
- Chapter 13 can be an effective way to handle your tax debt.

Norwell Office

167 Washington Street
Norwell, MA 02632
781.660.8665

Cape Cod Office

1550 Falmouth Road, Ste 10
Centerville, MA 02632
866.263.5972

CHAPTER 13 ELIGIBILITY

Do you have too much income? If you make too much money to file under Chapter 7, you will have to file under Chapter 13 if you want bankruptcy relief. In 2005, Congress made it more difficult to qualify for Chapter 7 by creating income requirements and the Means Test. If your income is over the median income for households your size in your state, you will be required to take the Means Test. The Means Test takes your monthly expenses, such as mortgage loans, car payments, taxes, insurance and child care among other expenses and puts them in a formula that will determine whether you pass or fail the test. If you fail the Means Test, your only bankruptcy option is Chapter 13. (Chapter 11 bankruptcy may be available, but is typically not a viable option for individuals due to its high expense.)

Do you have enough income? It is important that your income be sufficient if you want to file under Chapter 13. Chapter 13 requires you to make regular monthly debt payments to a Chapter 13 trustee. As a result, not everyone will qualify for Chapter 13. You must be able to prove to the court that you have enough “disposable income” to cover all required payment obligations. If you have irregular income or income that is too low, the court may not approve your repayment plan.

Do you have too much debt? Additionally, if your debt is too high, you may also be ineligible. Through 2019, your secured debts cannot exceed \$1,184,200 and your unsecured debts cannot exceed \$394,725. The limits are adjusted periodically in accordance with the Consumer Price Index. Your bankruptcy lawyer will be able to advise you on the specific limits currently in effect.



Before you file, you must take an approved credit counseling class.

THE CHAPTER 13 PROCEDURE

The procedure for a Chapter 13 bankruptcy is similar to the procedure for a Chapter 7. Before you file, you must take an approved credit counseling class. Next you must prepare your Petition and Schedules and file them with the court. These papers list information about you, your debts and creditors, your real and personal property, and income and expenditures. You must also propose a plan to repay some or all of your debts over a three or five year period.

After you file:

- The automatic stay goes into effect and your creditors must stop all collection efforts against you.
- A trustee will be appointed to oversee your case.
- About a month after you file, the trustee will hold a meeting of the creditors, which you are required to attend. The trustee will ask you some questions about your bankruptcy papers and finances. Your creditors can attend, but typically do not bother. The meeting usually lasts only about 15 minutes.
- After the meeting of creditors, the court will schedule a confirmation hearing to confirm your repayment plan.
- For the duration of your repayment plan, you must make monthly payments to the trustee, who will then distribute the money to your creditors. Failure to make all monthly payments on time may result in the dismissal of your case without discharging your debts.
- At the conclusion of your repayment plan, the bankruptcy court will issue a discharge of the dischargeable debts you listed in your bankruptcy petition.

YOUR CHAPTER 13 REPAYMENT PLAN

The key component to a Chapter 13 bankruptcy is the repayment plan. You file paperwork with the court that proposes a plan to pay your creditors at least some of what you owe them. You must have “disposable income” after allowed expenses to be able to propose a plan. After you file your plan, a court must approve it. Then, instead of making your payments to creditors, you make monthly payments to a Chapter 13 bankruptcy trustee who will pay your creditors. How much you pay and who gets paid first depends on numerous factors. Your bankruptcy attorney will help you develop a plan that meets the legal requirements so that it will be confirmed by the court.

Chapter 13 requires that certain debts must be paid in full, while others can be partially repaid. Specifically:

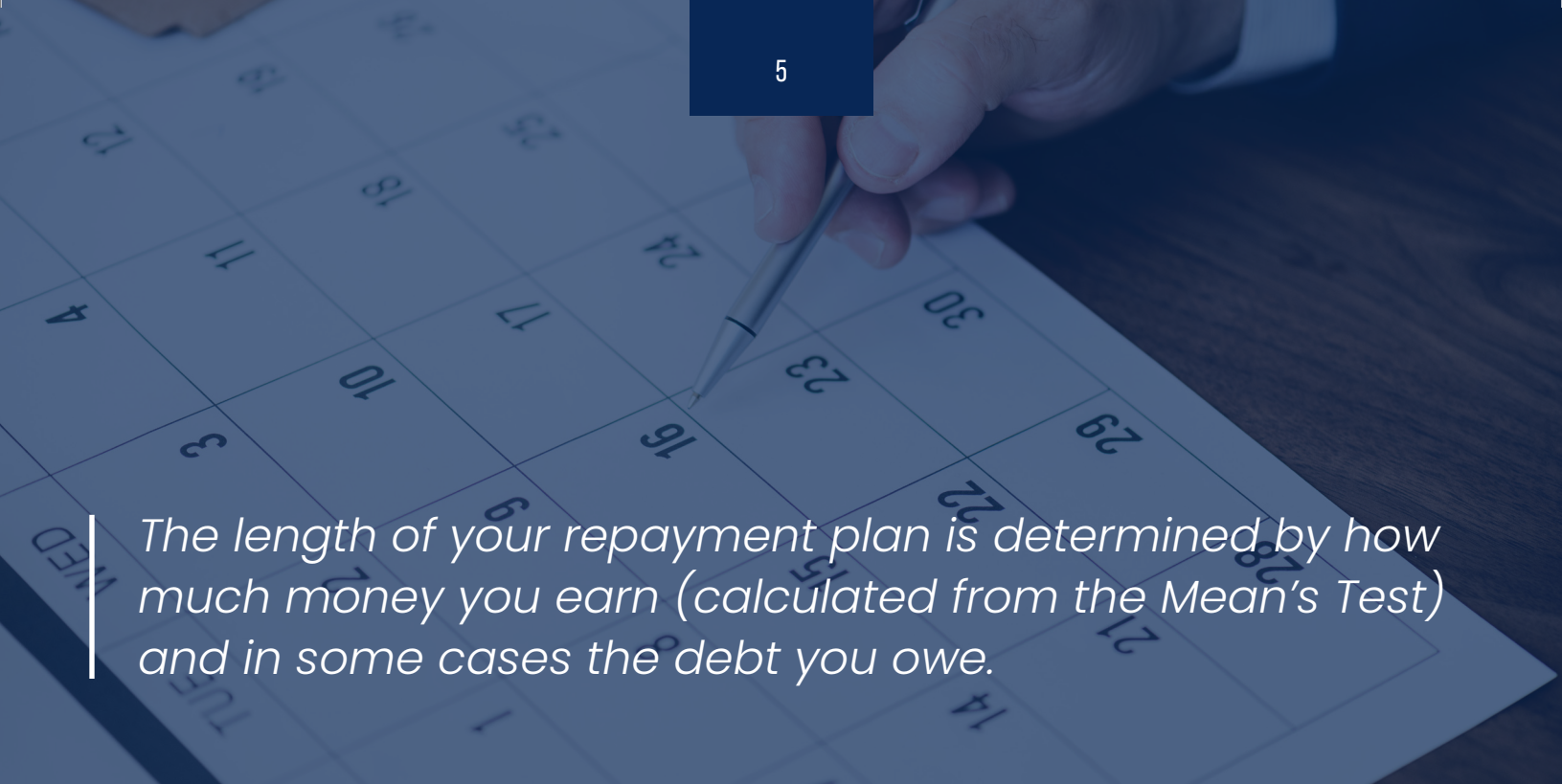
Priority Debts. Certain types of debts must be kept current and any arrears paid in full during the repayment period. These include child support, alimony, wages owed to employees, bankruptcy attorney fees paid through the plan, and certain taxes.

Secured Debts. Secured debts are monies owed that are secured by collateral. The most common examples are a car loan or home mortgage. If you wish to keep the property, your repayment plan must provide for regular, timely payments of all secured debts. Additionally, if you are repaying arrears (late payments) in your plan, these must also be paid in full during the repayment period. Often interest on the arrears is fixed or stayed (put on hold). If a secured loan is paid off in full before the end of your repayment plan, you may have a “step up” in your available income to be paid into the plan.

Unsecured Debts. In most Chapter 13 repayment plans, general unsecured debts are repaid only in part, and the rest are discharged at the end of the repayment plan. The most common types of debt in this category are credit cards, personal loans, medical debt, and utilities.

Nondischargeable Debts. Under the bankruptcy laws, certain types of debts cannot be discharged in bankruptcy. In addition to Priority Debts, discussed above, other nondischargeable debts include student loans (in most cases), government fines, payment of restitution, DUI-related death or personal injuries, unlisted creditors and a few other special categories.

Your creditors are entitled to object to your plan and the bankruptcy court will decide whether to approve it at your confirmation hearing. Common reasons why creditors could object to your repayment plan are that (1) it does not pay them as much as they would have received in a Chapter 7 case; (2) it does not require you to put all of your disposable income toward your debts; or (3) the plan is not feasible for you to complete. Your bankruptcy lawyer can often resolve these objections with your creditors before the confirmation hearing.

A hand holding a pen points to a date on a calendar grid. The calendar is partially visible, showing dates from 1 to 31. The background is a dark blue gradient.

The length of your repayment plan is determined by how much money you earn (calculated from the Mean's Test) and in some cases the debt you owe.

LENGTH OF YOUR REPAYMENT PLAN

The length of your repayment plan is determined by how much money you earn (calculated from the Mean's Test) and in some cases the debt you owe. If your average household monthly income (the average of the six months of income before your filing date) is greater than the median household income for your state, based on your household size, then your repayment plan proposal must be for 60 months. However, if your income is lower than the median, you may propose a 36-month plan. In some cases, a below-median debtor may wish or need to extend the plan beyond the 36 months to allow for affordable monthly payments.

IF YOU STOP MAKING PAYMENTS

You will remain under the protection of the bankruptcy court (from garnishment, collections, etc.) as long as you stay current in your repayment plan and meet other obligations dictated by the plan. However, if life circumstances do not allow you to finish the plan (e.g. job loss, illness), you may have an opportunity to modify the plan or convert to a Chapter 7 bankruptcy. It is best to consult your attorney before you miss any payments. It is much easier to consider options before your plan payment is late. A court can dismiss your case if you don't make payments.

YOUR PROPERTY IN CHAPTER 13

A major reason for filing Chapter 13 is to keep assets that would have to be turned over to the trustee or purchased from the bankruptcy estate in a Chapter 7 bankruptcy. Although you may qualify for Chapter 7, your assets may not be fully exempt. Every state has its own exemption allowances. Assets that can often be kept include: a non-luxury vehicle, jewelry up to a certain value, tools, home furnishing, and personal effects. Most states also provide a homestead exemption that may or may not be sufficient to allow you to keep your home.

Chapter 13 allows you to keep all your assets.



Chapter 13 offers a way for you to prevent foreclosure and keep your home as it provides mortgage mediation programs designed to work out a solution for both you and your lender.

SPECIAL CIRCUMSTANCES IN CHAPTER 13

Foreclosure prevention. One reason to file a Chapter 13 is to keep your home if you are behind on your mortgage or in foreclosure proceedings. Chapter 13 offers a way for you to prevent foreclosure and keep your home as it provides mortgage mediation programs designed to work out a solution for both you and your lender.

The timeline for a Chapter 13 bankruptcy also allows you to pay back the overdue balance owed on the mortgage, as the average Chapter 13 lasts three to five years. Chapter 13 will normally be the best option for debtors who want to save their homes.

Stripping of a second mortgage. In some instances, Chapter 13 bankruptcy allows for a second mortgage or HELOC to be stripped from the property. In order to “strip” a junior lien from a property, or convert to an unsecured debt, your Chapter 13 attorney must file special motions with the Bankruptcy Court.

Cram down of car loans. Car loans can sometimes be “crammed down” in a Chapter 13 bankruptcy, which means that the amount you owe on the car loan is reduced to the value of your car. These situations are very fact specific and not all cases will qualify for a lien strip or “cramdown.” Your bankruptcy attorney can help you determine if these options might be available to you.

Tax debt. If you owe the I.R.S. money, the Chapter 13 process will toll any interest owed during the bankruptcy, which can save you countless dollars. In addition, you will have three to five years to pay off the balance owed, which will make your monthly payments more affordable in most situations.

CASE COMPLETION

Once you have made all the payments under your repayment plan, all the remaining debts, if any, will be wiped out (i.e. discharged). Before your discharge will be granted you must show the court that you are current on any child support and/or alimony payments and that you have completed the required debtor education course.