

CHAPTERS 7 & 13

... Simplified



Charles J. Schneider, P.C.

CERTIFIED CONSUMER BANKRUPTCY SPECIALIST



Charles J. Schneider represents consumers and small businesses in Chapter 7, Chapter 11 and Chapter 13 bankruptcy actions. With his firm, Charles J. Schneider, PC, located in Livonia, he serves clients throughout Wayne County and the Detroit metropolitan area for the past 40 years.

Mr. Schneider graduated with honors from Wayne State University with degrees in history and political science before earning his law degree from Wayne State University Law School. He has been licensed to practice in all Michigan state courts since 1977. He is admitted to practice before the U.S. District Courts for the Eastern and Western Districts of Michigan, the U.S. Court of Appeals for the 6th Circuit and the Supreme Court of the United States.

He has been a certified in consumer bankruptcy by the American Board of Certification since 1995. He is peer review rated Michigan Super Lawyer (Top 5%) by Thomson Reuters since 2011; "10.0" (Superb) by AVVO.com since 2010; "AV" (Preeminent) by Martindale-Hubbell since 2010 and Michigan Leading Lawyer by Leading Lawyers.com since 2014. He has received both the Clients Choice Award by AVVO.com and the Client Distinction Award by Martindale-Hubbell since 2013 for excellent reviews given by his clients.

Dedicated to professional education, Mr. Schneider has served as a speaker and panelist for a number of legal organizations. He has also contributed to articles on bankruptcy issues for various professional publications.



Charles J. Schneider, P.C.

Common Questions Asked About Chapter 7

1. What is chapter 7 and how does it work?

Chapter 7 is that part (or chapter) of the Bankruptcy Code that deals with liquidation. The Bankruptcy Code is that part of the federal laws that deal with bankruptcy. A person who files under chapter 7 is called a debtor. In a chapter 7 case, the debtor must turn his /her nonexempt property over to a trustee, who then converts the property to cash and pays the debtor's creditors. In return, the debtor receives a chapter 7 discharge, if he/she pays the filing fee, is eligible for such a discharge, and obeys the orders and rules of the court.

2. What is a chapter 7 discharge?

It is a court order releasing a debtor from all of his or her dischargeable debts and ordering the creditors not to attempt 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. Some debts, however, are not dischargeable under chapter 7, and some persons are not eligible for a chapter 7 discharge.

3. What debts are not dischargeable under chapter 7?

- Debts for certain taxes, including taxes that became due within the last three years.
- If the creditor files a complaint and if the court so rules, debts for obtaining money, property, services, or credit by means of false pretenses, fraud, or a false financial statement (included here are certain debts for luxury goods or services over \$675* within 90 days before the case is filed and for cash advances more than \$950* made within 70 days before the case is filed).
- Debts intentionally withheld from the filing that do not allow the creditor time to file a timely claim (unless the creditor had knowledge of the filing and failed to make a claim in a timely manner).
- If the creditor files a complaint and if the court so rules, debts for fraud, embezzlement, breach of fiduciary duty or larceny.
- Debts for alimony, maintenance, or support, with certain very limited exceptions.
- If the creditor files a complaint and if the court so rules, debts for intentional or malicious injury to the person or property of another.
- Debts for certain fines or penalties.
- Debts for educational benefits and student loans, unless a court finds that not discharging the debt would impose an undue hardship on the debtor and his/her dependents.
- Debts for death or personal injury caused by the debtor's operation of a motor vehicle while unlawfully intoxicated.
- Debts that were or could have been listed in previous bankruptcy case of the debtor in which the debtor did not receive a discharge.

4. What persons are not eligible for a chapter 7 discharge?

The following persons are not eligible for a chapter 7 discharge:

- A person who has not received a credit counseling certificate approved by the US Trustee's office within 180 days prior to filing petition.
- A person who has been granted a discharge in a chapter 7 case filed within the last eight years.
- A person who has been granted a discharge in a chapter 13 case filed within the last six years, unless 100 percent was paid to unsecured claims in the prior chapter 13, or, 70 percent or more of the unsecured claims were paid in the prior chapter 13 case and the plan was proposed in good faith and it was the person's best effort.
- A person who files a waiver of discharge that is approved by the court in the chapter 7 case.
- A person who conceals, transfers, or destroys his/her property with the intent to defraud his/her creditors or the trustee in the chapter 7 case.

- A person who conceals, destroys, or falsifies records of his or her financial condition or business transactions.
- A person who makes false statements or claims in the chapter 7 case, or who withholds recorded information from the trustee.
- A person who fails to satisfactorily explain any loss or deficiency of his or her assets.
- A person who refuses to answer questions or obey orders of the bankruptcy court, either in his/her bankruptcy case or in the bankruptcy case of a relative, business associate, or corporation with which he/she is associated.

5. What persons are eligible to file under chapter 7?

Any person who resides in, does business in, or has property in the United States may file under chapter 7, except a person who has been involved in another bankruptcy case that was dismissed within the last 180 days on certain grounds.

6. What persons should not file under chapter 7?

A person who is not eligible for chapter 7 discharge should not file under chapter 7. A person who has substantial debts that are not dischargeable under chapter 7 should not file under chapter 7. It may not be wise for a person with current income sufficient to repay a substantial portion of his or her debts within a reasonable period to file under chapter 7, because the court may dismiss the case as constituting an abuse of chapter 7, or the court may dismiss the case as not passing the means test.

7. What is the means test?

The means test is a complicated formula devised by the Bankruptcy Code to assess the person's ability to pay their unsecured creditors and prevent abuse. It averages the person's last six months of gross income prior to filing bankruptcy ending with the last day of the last calendar month. It then annualizes the average month by multiplying it by twelve. If the annualized income is less than the annual median for the person's state of residence and household size the person's ability to pay will not be presumed to be an abuse of the Bankruptcy Code. If the annualized income exceeds the annual median income, the person's ability is assessed by subtracting the standards or means. The standards or means are the living, housing, transportation and other necessary expenses determined by the Bankruptcy Code. If after subtracting these expenses a person can demonstrate an ability to pay unsecured creditors at least \$214.16* per month or if less than \$214.16, the greater of either \$128.33* per month or 25% of unsecured claims, A person will either have their case dismissed for abuse or be forced into converting to chapter 11 or 13. Annual median family income numbers are taken from the US Census Bureau and based on the number of persons in the household and are subject to change.

8. How much is the chapter 7 filing fee and when must it be paid?

The filing fee is \$335.00** for either a single or a joint case. If a person is unable to pay the filing fee when the case is filed, it may be paid in installments. However, the entire filing fee must ultimately be paid or the case will be dismissed and the person will not receive a discharge. The fee charged by your attorney for handling the chapter 7 case is in addition to the filing fee paid to the court. Your attorney may not receive payment of any fees, beyond the initial down payment, if the filing fee is not paid to the court first. Under certain circumstances of extreme poverty the filing fee may be waived by the court.

9. Where is a chapter 7 case filed?

In the office of the clerk of the bankruptcy court in the district where the debtor has resided or maintained a principal place of business for the last 91 days or more. The bankruptcy court is a federal court and is a unit of the United States district court.

*Amount increases April 1, 2017 and every 3 years thereafter.

** Filing fees may be increased periodically by the Court

10. May a husband and wife file jointly under chapter 7?

Yes. A husband and wife may file a joint petition under chapter 7. If a joint petition is filed, only one set of bankruptcy forms is needed and only one filing fee is charged.

11. Under what conditions should both spouses file under chapter 7?

A husband and wife should file jointly if one or more substantial dischargeable debts are owed by both spouses. If both spouses are liable for a substantial debt and only one spouse files under chapter 7, the creditor may later attempt to collect the debt from the non-filing spouse, even if he/she has no income or assets. A discharge of a debt for one spouse does not discharge the debt for a non-filing spouse or any other co-signor or guarantor of the debt.

12. When should a chapter 7 case be filed?

The answer depends on the status of the debtor's dischargeable debts, the nature and status of the debtor's nonexempt assets, and the actions taken or threatened to be taken by the debtor's creditors. The following rules should be followed:

- Don't file under chapter 7 until all anticipated debts have been incurred, because it will be another eight years before the debtor is again eligible for a chapter 7 discharge. For example, a debtor who has incurred substantial medical expenses should not file under chapter 7 until the illness or injury has either been cured or covered by insurance, as it will do little good to discharge, say, \$50,000.00 of medical debts now and then incur another \$50,000.00 in medical debts in the next few months.
- Don't file under chapter 7 until the debtor has received all nonexempt assets to which he or she may be entitled. If the debtor is entitled to receive a substantial income tax refund, which may be a nonexempt asset, in the near future, he or she should not file under chapter 7 until after the refund or asset has been received and disposed of. Otherwise, the refund or asset will become the property of the trustee.
- Don't file under chapter 7 if the debtor expects to acquire property through inheritance, life insurance or divorce in the next 180 days, because unless such property is exempt, it will become the property of the trustee.
- If hostile creditor action threatens a debtor's exempt assets or future income, the case should be filed immediately to take advantage of the automatic stay that accompanies the filing of a chapter 7 case (see Question 13 below). If a creditor has threatened to attach or garnish the debtor's wages or if a foreclosure action has been instituted against the debtor's residence, it may be necessary to file a chapter 7 case immediately in order to protect the debtor's interest in the property.

13. How does the filing of a chapter 7 case affect collection and other legal proceedings that have been filed against the debtor in other courts?

The filing of a chapter 7 case automatically stays (or stops) virtually all collection and other legal proceedings pending against the debtor. A few days after a chapter 7 case is filed, the court mails a notice to all creditors ordering them to refrain from any further action against the debtor. Any creditor who intentionally violates the automatic stay may be held in contempt of court and may be liable to the debtor in damages. Criminal proceedings and actions to collect alimony, maintenance, or support from exempt property or property acquired by the debtor after the chapter 7 case was filed are not affected by the automatic stay.

14. May a person file under chapter 7 if his or her debts are being administered by a financial counselor?

Yes. A financial counselor has no legal right to prevent anyone from filing under chapter 7.

15. How does filing under chapter 7 affect a person's credit rating?

It depends upon the lender to whom you may apply for credit in the future. Good credit is not what a credit report says about you. It is your ability to repay your loans on a timely basis from your income. If you are unable to do so, you do not have good credit, only a bankruptcy waiting to happen. Bankruptcy will eliminate bad debt to improve your debt to income ratio. Some financial institutions and landlords openly

solicit business from persons who have recently filed under chapter 7, apparently because it will be at least eight years before they can again file under chapter 7 and they have no bad debt which they are unable to pay. If there are compelling reasons for filing under chapter 7 that are not within the debtor's control (such as an illness or an injury), some credit rating agencies may take into account in rating the debtor's credit after filing.

16. Are the names of persons who file under chapter 7 published?

When a chapter 7 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 report or publish the names of consumers who file under chapter 7.

17. Are employers notified of chapter 7 cases?

Employers are not usually notified when a chapter 7 case is filed. However, the trustee in a chapter 7 case may contact an employer seeking information as to the status of the debtor's wages or salary at the time the case was filed. If there are compelling reasons for not informing an employer in a particular case, the trustee should be so informed and he/she may be willing to make other arrangements to obtain the necessary information.

18. Does a person lose any legal or civil right by filing under chapter 7?

No. Filing under chapter 7 is not a criminal proceeding, and a person does not lose any civil or constitutional rights by filing.

19. May employers or governmental agencies discriminate against persons who file under chapter 7?

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 7. It is also illegal for local, state, or federal governmental units to discriminate against a person as to the granting of licenses (including a driver's license), permits, and similar grants because that person has filed under chapter 7.

20. Does a person lose all of his or her property by filing under chapter 7?

Usually not. Certain property is exempt and cannot be taken by creditors, unless it is encumbered by a valid mortgage or lien. A debtor is allowed to retain his/her unencumbered (or unsecured) exempt property in a chapter 7 case. A debtor may also be allowed to retain certain encumbered (or secured) exempt property (see Question 28, below). Depending on the law of the local state, property that is exempt in a chapter 7 case may be either property that is exempt from creditors under state law or under the Bankruptcy Code.

21. Does a debtor have to obtain debtor education to receive a discharge of his or her debts?

Yes. A debtor must obtain a certificate from a US Trustee approved debtor education organization. The certificate must be obtained within 45 days after the meeting of creditors. Failure to file the certificate with the court may result in discharge not being entered by the court and may require the debtor to pay additional fees and costs in order to procure a discharge. A debtor does not have to go to class to obtain a certificate. A certificate can be obtained over the phone or online for a typical fee of \$15.00.

22. When must a debtor appear in court in a chapter 7 case and what happens there?

The first court appearance is for a hearing called the meeting of creditors. This hearing usually takes place about a month after the case is filed. At this hearing the debtor is put under oath and questioned about his or her debts and assets by the hearing officer or trustee. In most chapter 7 consumer cases most creditors do not appear in court; but any creditor that does appear is usually allowed to question the debtor. There are usually five to ten minutes of questioning and you are usually in and out in one hour.

23. What happens after the meeting of creditors?

After the meeting of creditors, the trustee may contact the debtor regarding the debtor's property, and the court may issue certain orders to the debtor. These orders are sent by mail and may require the debtor

to turn certain property over to the trustee, or provide the trustee with certain information. If the debtor fails to comply with these orders, the case may be dismissed and the debtor may be denied a discharge.

24. What is a trustee in a chapter 7 case, and what does he or she do?

The trustee is an officer of the court, appointed to gather the debtor's nonexempt property, convert it to cash, and pay what is called dividends to creditors. In addition, the trustee has certain administrative duties in a chapter 7 case, and is the officer in charge of seeing to it that the debtor performs the required duties in the case. A trustee is appointed in a chapter 7 case even if the debtor has only exempt property.

25. What are the debtor's responsibilities to the trustee?

The law requires the debtor to cooperate with the trustee in the administration of a chapter 7 case, including the collection by the trustee of the debtor's nonexempt property. If the debtor does not cooperate with the trustee, the chapter 7 case may be dismissed or the debtor may be denied a discharge.

26. What happens to the property that the debtor turns over to the trustee?

It is usually converted to cash, which is used to pay the fees and expenses of the trustee and to pay dividends to creditors.

27. What if the debtor has only exempt property?

If, from the debtor's chapter 7 schedules, it appears that the debtor has only exempt property, a notice will be sent to the creditors advising them that there appears to be no assets from which to pay creditors. It will further state that it is unnecessary for them to file claims. If assets are later discovered, the creditors will then be given an opportunity to file claims.

28. How are secured creditors treated within a chapter 7 case?

Secured creditors are creditors with valid mortgages or liens against property of the debtor. Property of the debtor that is encumbered by a valid mortgage or lien is called secured property. A secured creditor is not usually permitted to repossess or foreclose its secured property if the debtor has reaffirmed the secured creditor's mortgage or lien and has exempted the value of the property above the amount owed on the debt. A secured creditor must prove the validity of its mortgage or lien and obtain a court order before repossessing or foreclosing on secured property. The debtor should not turn any property over to a secured creditor until a court order has been obtained. The debtor may be permitted to retain or redeem certain secured personal property (see Questions 30 & 35, below).

29. How are unsecured creditors dealt with in a chapter 7 case?

An unsecured creditor is a creditor without a valid lien or mortgage against property of the debtor. If the debtor has nonexempt assets, unsecured creditors may file claims with the court within 90 days after the first date set for the meeting of creditors. The trustee will examine these claims and file objections to those deemed improper. When the trustee has collected all of the debtor's nonexempt property and converted it to cash, and when the court has ruled on the trustee's objections, the trustee will distribute the funds (i.e., pay dividends) to the unsecured creditors according to the priorities set forth in the Bankruptcy Code. Administrative expenses, claims for alimony and child support, claims for wages, salaries, and contributions to employee benefit plans, claim for the refund of certain deposits, and tax claims, are given priority, in that order, in the payment of dividends by the trustee. If there are funds remaining after the payment of these priority claims, they are distributed pro rata to the remaining unsecured creditors.

30. What secured property may a debtor retain in a chapter 7 case?

A debtor may retain secured personal and household property, such as household furniture, appliances and goods, electronics, jewelry and cars, if the property is both exempt and the secured debt, if required, has been reaffirmed. A reaffirmation is an agreement to keep the debt with the secured creditor (see Questions 28 above & 30 below). Reaffirmation agreements are routinely offered by secured creditors who would rather you pay their debt than repossess the secured property. A debtor may redeem secured personal and household property, such as household furniture, appliances and goods, electronics, jewelry and

cars by paying to the secured creditor an amount equal to the value of the property, regardless of how much is owed to the creditor. The redemption amount is usually paid in a lump sum without installment payments. If the debtor cannot obtain the lump sum to redeem, it may be possible for your attorney to find financing for the redemption amount. The choice on whether to reaffirm or redeem will be dependant upon which is the better deal and the more affordable future payments. However, certain deadlines are imposed on the enforcement of these rights by the debtor.

31. How can a debtor minimize the amount of money or property that must be turned over to the trustee in a chapter 7 case?

In a chapter 7 case the debtor is required to turn over to the trustee only the nonexempt money or property that he or she possessed at the time the case was filed. Many nonexempt assets of consumer debtors are liquid in nature and tend to vary in size or amount from day to day. It is wise, therefore, for the debtor to engage in some negative estate planning so as to minimize the value or amount of these liquid assets on the day and hour that the chapter 7 case is filed. The most common nonexempt liquid assets, and the assets that the trustee will be most likely to look for, include the following:

- cash
- bank accounts
- prepaid rent
- landlord and utility deposits
- accrued earnings and benefits
- tax refunds
- inheritances or trust proceeds
- cash value or life insurance proceeds

It is usually advantageous for the debtor to take steps to insure that the value of each of these assets is as low as possible on the day and hour that the chapter 7 case is filed. By doing this the debtor will not be cheating or acting illegally; the debtor will simply be using the law to his or her advantage, much the same as a person who takes advantage of loopholes in the tax laws.

Cash. If possible, the debtor should have no cash on hand when the chapter 7 case is filed. Further, if the debtor has received cash or the equivalent of cash in the form of a paycheck or the closing of a bank account shortly before the filing of the case, the debtor should obtain receipts when disposing of the funds in order to prove to the trustee and the court that the funds were disposed of prior to the filing of the case. Money possessed by the debtor shortly before the filing of a chapter 7 case may be spent on such items as food and groceries, the chapter 7 filing fee, the attorney's fee in the chapter 7 case, and the payment of up to \$600.00 to creditors in a consumer case whom the debtor intends to continue paying after the filing of the chapter 7 case. Payments should not be made to a friend or relatives, however, as the trustee may later recover these payments.

Bank Accounts. The best practice is to close out all bank accounts before filing under chapter 7. If a bank account is not closed, the balance of the account should be as close to zero as the bank will allow and all outstanding checks must clear the account before the case is filed. If the debtor has written a check to someone for, say, \$50.00 and if the check has not cleared the account when the case is filed, the \$50.00 in the account to cover the outstanding check may be deemed an asset of the debtor and may have to be paid to the trustee.

Prepaid Rent. If the debtor's rent is paid on the first day of the month and if the debtor's chapter 7 case is filed on the tenth day of the month, the portion of the rent covering the last 20 days of the month, if not exempt, will be deemed an asset of the debtor and will later have to be paid to the trustee. If possible, the debtor should make arrangements with the landlord to pay rent only through the date that the case is to be filed and to pay the balance of the rent from funds acquired after the case is filed. If this is not possible, the case should be filed near the end of the rent period.

Landlord and Utility Deposits. Unless they are exempt, the debtor should attempt to obtain the refund of all landlord and utility deposits before filing a chapter 7 case. Otherwise, the deposits, or their cash equivalents, may have to be paid to the trustee. However these deposits may be so trifling that the Trustee may abandon them.

Accrued Earnings and Benefits. In most states, and under the federal

law, only a certain percentage (usually 75%) of a debtor's earnings are exempt. Therefore, the trustee may be allowed to take the nonexempt portion (usually 25%) of any accrued and unpaid wages, salary, commissions, vacation pay, sick leave pay, and other accrued and nonexempt employee benefits. Normally, then, the best time to file a chapter 7 case is the morning after payday. Even then, if the pay period does not end on payday, the debtor may have accrued earnings unless special arrangements are made with the employer. If annual leave or vacation pay is convertible to cash, it should be collected by the debtor before the chapter 7 case is filed, as should any other nonexempt employee benefits that are convertible to cash. However these deposits may be so trifling that the Trustee may abandon them.

Tax Refunds. In most states, a tax refund is not exempt and becomes the property of the trustee if it has not been received by the debtor prior to the filing of a chapter 7 case. If the debtor is scheduled to receive a tax refund, a chapter 7 case should not be filed until after the refund has been received and disposed of unless it can be exempted. Even if the case is filed before the end of the tax year, if the debtor later receives a refund, the trustee may be entitled to the portion of the refund earned prior to the filing of the case. The best practice, then, is to either file the chapter 7 case early in the tax year (but after the refund from the previous year has been received) or make arrangements to insure that there will be no tax refund for that year.

32. May a utility company refuse to provide service to a debtor if the company's utility bill is discharged under chapter 7?

It is illegal for a utility company to refuse to provide future utility service to the debtor, or to otherwise discriminate against the debtor for unpaid past utility services that were discharged in the chapter 7 case. However, within 20 days after a chapter 7 case is filed, the debtor may be required to furnish a utility company with a deposit or other security requested by the utility to insure the payment of future utility services.

33. What should the debtor do if he or she moves before the chapter 7 case is closed?

The debtor should immediately notify his attorney who will notify the bankruptcy court of the new address. Because most communications between a debtor and the bankruptcy court are by mail, it is important that the bankruptcy court always have the debtor's current address. Otherwise, the debtor may fail to receive important notices and the chapter 7 case may be dismissed.

34. How is a debtor notified when his or her discharge has been granted?

Most courts send an order called a Discharge of Debtor to the debtor and to all creditors. This court order discharges the debtor from his or her dischargeable debts. It serves as notice that the debtor's discharge has been granted. It is usually mailed about four months after a chapter 7 case is filed.

35. What if a debtor wishes to repay a discharged debt?

A debtor may repay as many discharged debts as desired after filing under chapter 7. By repaying one creditor, a debtor does not become legally obligated to repay any other creditor. The only debt that a debtor is legally obligated to repay (other than a non-dischargeable debt) is one for which the debtor and the creditor have signed what is called a reaffirmation agreement (see Questions 28 & 30, above). If the debtor was not represented by an attorney in negotiating the reaffirmation agreement with the creditor, the reaffirmation agreement must be approved by the court to be valid. If the debtor was represented by an attorney in negotiating the reaffirmation agreement, the creditor must file the agreement and together with the debtor attorney's statement that the debtor can afford to make the payment with the court in order for the agreement to be valid. If a discharged debt is not covered by a reaffirmation agreement, a debtor is not legally obligated to repay the debt, even if the debtor has made a payment on the debt since filing under chapter 7 and/or has agreed in writing to repay the debt outside of the bankruptcy court.

36. How long does a chapter 7 case last?

A chapter 7 case begins with the filing of the petition and ends with the closing of the case by the court. If the debtor has only exempt assets and nothing therefore for the trustee to collect, the case will most likely be closed shortly after the debtor receives his/her discharge. It is usually about four months after the case is filed. If the debtor has

nonexempt assets for the trustee to collect, the length of the case will depend on how long it takes the trustee to collect the assets and perform his/her other duties in the case.

37. What should a person do if a creditor later attempts to collect a debt that was discharged under chapter 7?

When a chapter 7 discharge is granted, the court enters an order prohibiting the debtor's creditors from later attempting to collect any discharged debt from the debtor. Any creditor who violates this court order may be held in contempt of court and may be liable to the debtor for damages. If a creditor later attempts to collect a discharged debt from the debtor, the debtor should give the creditor a copy of the order of discharge and inform the creditor in writing that the debt has been discharged under chapter 7. If the creditor persists, the debtor should contact an attorney. If a creditor files a lawsuit against the debtor on a discharged debt, it is important not to ignore the matter, because even though a judgment entered against the debtor on a discharged debt can later be voided, voiding the judgment may require the services of an attorney, which could be costly to the debtor.

38. How does a chapter 7 discharge affect the liability of cosigners and other parties who may be liable to a creditor on a discharged debt?

A chapter 7 discharge releases only the debtor. The liability of any other party on a debt is not affected by a chapter 7 discharge.

39. Is a chapter 7 debtor that receives a discharge required to pay taxes on the amount of debt forgiven?

No. Even though the IRS considers debt relief a taxable event, filing bankruptcy protects the debtor from having to claim the amount forgiven as income.

40. What is the role of the attorney for a consumer debtor in a chapter 7 case?

The debtor's attorney performs the following functions in the chapter 7 case of a typical consumer debtor:

- Analyze the amount and nature of the debts owed by the debtor and determine the best remedy for the debtor's financial problems.
- Advise the debtor of the relief available under both chapter 7 and chapter 13 of the Bankruptcy Code, and of the advisability of proceeding under each chapter.
- Assemble the information and data necessary to prepare the chapter 7 forms for filing.
- Prepare the petitions, schedules, statements and other chapter 7 forms for filing with the bankruptcy court.
- Assist the debtor in arranging his or her assets so as to enable the debtor to retain as many of the assets as possible after the chapter 7 case.
- Filing the chapter 7 petitions, schedules, statements and other forms with the bankruptcy court, and, if necessary, notifying certain creditors of the commencement of the case.
- If necessary, assisting the debtor in the redemption of personal property, the setting aside of mortgages or liens against exempt property, and otherwise carrying out the matters set forth in the debtor's statement of intention
- Attending the meeting of creditors with the debtor.
- If necessary, preparing and filing amended schedules, statements, and other documents with the bankruptcy court in order to protect the rights of the debtor.
- If necessary, attending the discharge and reaffirmation hearing with the debtor and assisting the debtor in reaffirming certain debts and in overcoming obstacles to the granting of a chapter 7 discharge.

The fee paid, or agreed to be paid, to an attorney representing a debtor in a chapter 7 case must be disclosed to and approved by the bankruptcy court. The court will allow the attorney to charge and collect only a reasonable fee. Many attorneys collect all or most of their fee before the case is filed.



Chapter 13 Bankruptcy

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First

He saved my home!

I had the pleasure to work with Mr. Schneider about 5 yrs ago and again now. He helped me thru my 1st bankruptcy and now the second. I had no idea what to expect , but they kept me informed and answered all my questions. Mr. Schneider is the most experienced and knowledgeable lawyer I have ever met. If you have to file call this attorney first!

-Marlene

Bankruptcy Journey

I really appreciate Charles Schneider knowledge and handling of my Bankruptcy. With Mr. Schneider's patience and guidance my worries and fear were unfounded. I thank Mr. Schneider and staff for their wonderful support.

-Marguerite

My Bankruptcy

Charles Schneider and his staff provided expert assistance during one the most trying times of our lives. From the beginning, he made us feel comfortable, explained the process, guided us through us each process step and kept us fully informed all a long the way. I highly recommend Charles Schneider to anyone wanting a top-notch attorney!

-Steve

Oustanding Law Firm

This law firm was a calming force during a traumatic time in our lives. The decision to file chapter 13 was a last resort to the economic downturn, and has saved our marriage and taught us both valuable lessons.

-George

Common Questions Asked About Chapter 13

1. What is chapter 13 and how does it work?

Chapter 13 is that part (or chapter) of the Bankruptcy Code under which a person may repay all or a portion of his/her debts under the supervision and protection of the bankruptcy court. The Bankruptcy Code is that portion of the federal laws that deal with bankruptcy. 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. If the court approves the debtor's plan, most creditors will be prohibited from collecting their claims from the 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 disburses it to creditors in the manner called for in the plan. Upon completion of the payments called for in the plan, the debtor is released from liability for the remainder of his/her dischargeable debts.

2. How does chapter 13 differ from chapter 7 for a debtor?

The basic difference between chapter 7 and chapter 13 is that under chapter 7 the debtor's nonexempt property (if any exists) is liquidated (sold and turned into cash) to pay as much as possible of the debtor's debts. While under chapter 13, a portion of the debtor's future income is used to pay as much of the debtor's debts as is feasible considering the debtor's circumstances. As a practical matter, 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 and must pay off as much of his or her debts as the court deems feasible. A chapter 13 case normally lasts much longer than a chapter 7 case and requires payments by the debtor.

3. When is chapter 13 preferable to chapter 7 for a debtor?

Chapter 13 is usually preferable for a person who:

- wishes to repay all or most of his or her unsecured debts and has the income with which to do so within a reasonable time,
- has valuable nonexempt property or has valuable exempt property securing debts, either of which would be lost in a chapter 7 case,
- is not eligible for a discharge under chapter 7,
- has one or more substantial debts that are dischargeable under chapter 13 but not under chapter 7, or
- has sufficient assets with which to repay most debts, but needs temporary relief from creditors to do so.
- has fallen behind on secured debts such as his home or car payments and wishes to compel the secured creditor to accept a catch up payment plan under the protection of the bankruptcy court and has sufficient income to do so.

4. How does chapter 13 differ from a private debt consolidation service?

In a chapter 13 case, the bankruptcy court can provide aid to the debtor that private debt consolidation services cannot provide. For example, the court has the authority to: prohibit creditors from attaching or foreclosing on the debtor's property; to force unsecured creditors to accept a chapter 13 plan that pays only a portion of their claims (and in most cases no interest); and 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:

- a full or successful plan discharge, which is granted to a debtor who completes all payments called for in the plan, and
- a partial or unsuccessful plan discharge, which 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.

6. Who is eligible for a chapter 13 discharge?

The court may grant a discharge of debts if the debtor:

- has not filed a chapter 7 bankruptcy during the 4-year period prior to the filing of the chapter 13; or
- has not filed a previous chapter 13 bankruptcy during the 2-year period prior to the filing of a chapter 13.

7. What types of debts are dischargeable under chapter 13?

A full chapter 13 discharge granted upon the completion of all payments required in the plan discharges a debtor from all debts except:

- debts that were paid outside of the plan and not covered in the plan,
- installment debts whose last payment is due after the completion of the plan,
- debts incurred while the plan was in effect that were not paid under the plan,
- secured debts (i.e. debts secured by mortgages or liens),
- debts for alimony, maintenance, or support
- debts for death or personal injury caused by the debtor's operation of a motor vehicle while unlawfully intoxicated,
- debts for restitution included in a criminal sentence imposed on the debtor,
- debts for educational benefits and student loans, unless a court finds that not discharging the debt would impose an undue hardship on the debtor and his/her dependents,
- debts incurred using false pretenses, a false representation, or actual fraud, breach of fiduciary duty, conversion or larceny and;
- debts that are not dischargeable under chapter 7.

8. 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 to each of the debtor's creditors, which creditors will be paid directly by the debtor, and certain other technical matters.

9. What is a chapter 13 trustee?

A chapter 13 trustee is a person appointed by the United States trustee 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. In some cases the chapter 13 trustee is required to perform certain other duties, and the debtor is always required to cooperate with the chapter 13 trustee.

10. 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 student loans, alimony or child support, may be paid under a chapter 13 plan. However, the debtor may not be protected by the bankruptcy court for debts related to alimony or child support.

11. 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 (unless the creditor agree to less payment), 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 are discharged upon completion of the plan.

12. 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.

13. How much of a debtor's income must be paid to the chapter 13 trustee under a chapter 13 plan?

Usually all of the disposable income of the debtor and the debtor's spouse for a three to five year period must be paid to the chapter 13 trustee. Disposable income maybe determined by the greater of two methods:

- income received by the debtor or his/her spouse that is not reasonably necessary for the support of the debtor and the debtor's dependents, or
- income as calculated under the means test commencing six months prior to the filing of the chapter 13 and ending with the last day of the calendar month minus expenses as provided by the IRS regulations and certain other expenses as provided for in the Bankruptcy code unless there are special circumstances.

14. When must the debtor begin making payments to the chapter 13 trustee under a chapter 13 plan?

The debtor must begin making payments to the chapter 13 trustee within 30 days after the commencement of the debtor's case. The plan must be filed with the court within 15 days after the case is filed unless extended for good cause. The payments must be made regularly, usually on a weekly, bi-weekly, semi-monthly, or monthly basis. If the debtor is employed, most 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. Payments made by the debtor are by an electronic transfer from the debtor's bank account.

15. How long does a chapter 13 plan last?

A chapter 13 plan typically lasts for three to five years unless all debts can be paid in full sooner.

16. 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 17. Also, unsecured creditors are permitted to file objections to the debtor's plan, and these objections must be ruled on by the court before it can approve the debtor's chapter 13 plan.

17. How are secured creditors treated under chapter 13?

There are four methods of dealing with secured creditors under chapter 13:

- the creditor may accept the debtor's proposed plan,
- the creditor may retain its lien and be paid the full amount of its secured claim under the plan,
- the debtor may surrender the collateral to the creditor, or
- the creditor may be paid or dealt with outside the plan.

A debtor may not have to pay the full amount owing on: auto, household, furniture, or jewelry loans that are subject to a lien. 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. However, there are two exceptions to this rule:

- the creditor of a motor vehicle, purchased by the debtor for the debtor's personal use, purchased within the 910-day (2.5 year) period preceding the date of filing chapter 13, or
- the creditor(s) of any collateral purchased by the debtor within a one-year period prior to filing chapter 13.

Thus, a creditor with a lien on a \$1,500.00 automobile cannot have a secured claim for more than \$1,500.00, regardless of how much is owed to the creditor, if the debt is more than 910-days old at the time of filing. If the debtor is in default to a secured creditor, the default must be cured (made current) within a reasonable time. Also, interest must be paid on secured claims. But, the plan may provide for the debtor to pay less than the amount of interest the debtor previously agreed to on the original loan documents.

18. 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. A consumer debt is a non-business debt. Creditors may collect business debts from cosigners or guarantors even if the debts are to be paid in full under the debtor's plan. Personal income taxes are not consumer debts. Personal income taxes may be collected from the non-filing spouse.

19. Who is eligible to file under chapter 13?

Any natural person may file under chapter 13 if the person -

- resides in, does business in, or owns property in the United States
- has regular income
- has unsecured debts of less than \$394,725.00*
- has secured debts of less than \$1,184,200.00*
- is not a stockbroker or a commodity broker as defined under the bankruptcy code,
- has not been a debtor in another bankruptcy case that was dismissed within the last 180 days on certain technical grounds,
- has completed a budget analysis, and obtained credit counseling from an approved non-profit counseling agency during the 180-day period preceding the date of filing.

A person meeting the above requirements may file under chapter 13 regardless of when he or she last filed a bankruptcy case or received a bankruptcy discharge.

20. 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 19 above. Only one of them need have regular income and their combined debts must meet the debt limitations.

21. 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.

22. May a self-employed person file under chapter 13?

Yes. A self-employed person meeting the eligibility requirements listed in the answer to Question 19 above may file under chapter 13. A debtor engaged in business may continue to operate the business during the chapter 13 case.

23. 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.

24. Where is a chapter 13 case filed?

In the office of the clerk of the bankruptcy court in the district where the debtor has resided or maintained a principal place of business for the last 91 days or more. The bankruptcy court is a federal court and a unit of the United States district court.

25. What fees are charged in a chapter 13 case?

There is a \$310.00 filing fee charged when the case is filed, which may be paid in installments if necessary. In addition, the chapter 13 trustee assesses a fee of approximately 7.5 percent (subject to change) on all payments made under the plan. Thus, if a debtor pays a total of \$5,000.00 under a chapter 13 plan, the total amount of fees charged in the case will be \$685.00 (a \$375.00 trustee's fee, plus the \$310.00 filing fee). These fees are in addition to the fee charged by the debtor's attorney.

26. 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 not from the debtor's property. However, if a debtor has valuable nonexempt property and has insufficient income

**Amount increases April 1, 2017 and every 3 years thereafter.*

to pay enough to creditors to satisfy the court, some of the debtor's property may have to be used to pay creditors.

27. How does filing under chapter 13 affect collection proceedings and foreclosures previously filed against the debtor?

The filing of a chapter 13 case automatically stays (stops) all lawsuits, attachments, garnishments, foreclosures, harassment on the telephone and other actions by creditors against the debtor or the debtor's property. 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 prohibited from collecting the discharged debts from the debtor after the case is closed.

A debtor who has had a previously pending chapter 13 case that was dismissed within the past year has an automatic stay for only 30 days after commencement of the case unless the court extends the automatic stay upon request of the debtor for good cause. A debtor who has had two pending and dismissed bankruptcy cases pending within the past year will not have the automatic stay unless the debtor successfully obtains a grant of automatic stay from the bankruptcy court for good cause.

28. May a person whose debts are being administered by a financial counselor file under chapter 13?

Yes. A financial counselor has no legal right to prevent a person from filing any type of bankruptcy case, including a chapter 13 case. The approved credit counseling agency cannot prevent the debtor from filing any type of bankruptcy case. Their sole purpose is to provide a credit counseling payment option if possible.

29. How does filing under chapter 13 affect a person's credit rating?

It may improve it, in the long run. A person's debts are ultimately discharged by completing a chapter 13 plan. A person who owes no debt improves his/her debt payment to income ratio upon which most lenders make their loan determinations.

30. Are the name 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 except in official legal newspapers not widely read by the public. (i.e. Detroit Legal News)

31. Is a person's employer notified when he or she files under chapter 13?

In most cases, yes. 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.

32. Does a person lose any legal rights by filing under chapter 13?

No. Filing under chapter 13 is a civil proceeding and not a criminal proceeding. Therefore, a person does not lose any legal or constitutional rights by filing a chapter 13 case.

33. 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 continued 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.

34. What is required for court approval of a chapter 13 plan?

The court may confirm a chapter 13 plan if:

- the plan complies with the legal requirements of chapter 13
- all required fees, charges and deposits have been paid
- the plan was proposed in good faith
- each unsecured creditor will receive under the plan at least as much as it would have received had the debtor filed under chapter 7
- it appears that the debtor will be able to make the required payments and comply with the plan, and
- each secured creditor has been dealt with in the manner described in the answer to Question 17 above.

35. When does a debtor have to appear in court in a chapter 13 plan?

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. If difficulties or unusual circumstances arise during the course of a case, additional court appearances may be necessary. The confirmation hearing will be held approximately 3-4 months after the filing of the case.

36. 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 amend the plan and seek court approval of the amended 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 amended so as to become acceptable to the court. A debtor who does not wish to amend a proposed plan may either convert the case to chapter 7 or dismiss the case.

37. 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 may be 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.

38. 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.

39. What if the debtor incurs new debts or needs credit during the 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:

- debts for taxes that become payable while the case is pending, and
- 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. Most courts issue an order prohibiting the debtor from incurring new debts during the case unless they are approved in advance by the chapter 13 trustee. The approval

of the chapter 13 trustee in your case must be obtained before incurring credit or new debt for more than \$2,000.00 after the case has been filed. The incurring of regular debts, such as debts for telephone services and utilities, do not require the trustee's approval. It may be possible to pay post petition personal income tax debt in a chapter 13.

40. What should the debtor do if he or she moves while the case is pending?

The debtor, through his attorney, should immediately notify the bankruptcy court and the chapter 13 trustee of the new address. Most communications in a chapter 13 case are by mail. If the debtor fails to receive an order of the court or a notice from the chapter 13 trustee because of an incorrect address, the case may be dismissed.

41. What if the debtor later decides to discontinue the chapter 13 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. The debtor who wishes to discontinue a chapter 13 case should do so through his or her attorney.

42. 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:

- dismiss the chapter 13 case,
- convert the chapter 13 case to chapter 7, or
- 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 a partial chapter 13 discharge as described in the answer to Question 5 above.

43. Is a chapter 13 debtor that receives a discharge required to pay taxes on the amount of debt forgiven?

No. Even though the IRS considers debt relief a taxable event, filing bankruptcy protects the debtor from having to claim the amount forgiven as income.

44. What is the role of the debtor's attorney in a chapter 13 case?

The debtor's attorney performs the following functions in a typical chapter 13 case:

- 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 a joint case should be filed.
- Assisting the debtor in the preparation of a budget.
- Examining the liens or security interests of secured creditors to ascertain their validity or avoidability, and taking the legal steps necessary to protect the debtor's interest in such matters.
- Devising and implementing methods of dealing with secured creditors.
- Assisting the debtor in devising a chapter 13 plan that meets the needs of the debtor and is acceptable to the court.
- Preparing the necessary pleadings and chapter 13 forms.
- Filing the chapter 13 forms and pleadings with the court and paying, or providing for the payment of, the filing fee.
- Attending the meeting of creditors, the confirmation hearing, and any other court hearings required in the case.
- Assisting the debtor in obtaining court approval of a chapter 13 plan.
- Checking the claims filed in the case, filing objections to improperly filed claims, and attending court hearings thereon.
- Assisting the debtor in overcoming any legal obstacles that may arise during the course of the case.
- Assisting the debtor in obtaining a discharge upon the completion or termination of the plan.

- Continuously represent the Debtor in all matters relating to the Debtor's case until otherwise allowed by the Court to withdraw or there is a dismissal of the case.

45. What fees may an attorney charge in a chapter 13 case?

The fee charged by an attorney for representing a debtor in a chapter 13 case must be reviewed and approved by the bankruptcy court. This rule is followed whether the fee is paid to the attorney prior to or after the filing of the case, and whether it is paid to the attorney directly by the debtor or by the chapter 13 trustee. The court will approve only a fee that it finds to be reasonable.

Glossary of Terms

Secured Creditor - A person or entity with a claim for money owed who has a right to repossess or foreclose collateral such as an auto loan with a lien on a title to a car or a bank with a mortgage on a home.

Unsecured Creditor - A person or entity with a claim for money owed but is not secured.

Exempt Property - An amount of property in which the debtor has a right to keep in order to make a fresh start in life after filing chapter 7 bankruptcy.

Non-exempt Property - Property owned by the debtor which is greater than the amount the debtor is allowed to keep after filing chapter 7 bankruptcy.

Reaffirmation Agreement - An agreement provided by a secured creditor to be signed by a debtor in order to retain secured property typically upon the same terms and conditions as provided in the original contract.



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Charles J. Schneider, P.C.
CERTIFIED CONSUMER BANKRUPTCY SPECIALIST