

When an individual or a business faces difficult financial times, it often becomes necessary to consider filing for bankruptcy protection. In order to assist in selecting the best bankruptcy option for a client, the effective advocate must be aware of and understand the advantages or disadvantages in choosing one bankruptcy selection over another. Generally speaking, bankruptcy allows people who are unable to pay all bills due to get a fresh start by jumping through various procedural obstacles. There are four kinds of bankruptcy protection provided for by statute:

- **Chapter 7:** known as “straight” bankruptcy or “liquidation.” Chapter 7 requires that a debtor give up property which exceeds certain limits so that the property can be sold to pay creditors.
- **Chapter 11:** known as a “reorganization.” Chapter 11 is used by businesses and some individual debtors whose debts are very large.
- **Chapter 12:** is reserved for family farmers.
- **Chapter 13:** known as a “wage earners plan.” Chapter 13 requires a debtor to file a plan to pay debts (or parts of debts) from current income.

Most individuals who can afford to make some payments to creditors will elect Chapter 13 bankruptcy protection. When filing for Chapter 13 bankruptcy, the individual files an interest free debt repayment plan, generally over a 3-5 year period, which consolidates (and often reduces) the debt, and must be approved by a federal bankruptcy court. While in a Chapter 13 debt repayment plan, creditors are barred from collecting, and they are required by the presiding Court order to adhere to the terms of the plan. To qualify for Chapter 13 though, the individual must be working or have a consistent source of income that will allow them monthly living expenses in addition to the required debt payments. The repayment plan is the centerpiece of Chapter 13 bankruptcy, and is essentially an agreement between an individual and their creditors. The creditors usually agree to forgive a portion of the debts owed them in exchange for a commitment to repay the reduced debts over time. Most plans require monthly payments to the bankruptcy trustee, which is a federal official appointed by the court to oversee the case. The trustee then makes distributions to the creditors. While making payments under a repayment plan, the creditors listed in that individual’s plan cannot take any collection actions against them, and they are required by law to abide by the terms of the repayment plan.

An online creditor’s ability to collect money after the initiation of a Chapter 13 filing by the debtor, like other creditors, will largely depend on the nature of the debt. Due to the speed and anonymity of electronic commerce, most online creditors will be unsecured. In order to participate in the bankruptcy process to ensure some level debt recovery, any unsecured creditors must file their claims with the court within 90 days after the first date set for the meeting of creditors. With general creditors this does not present an issue, but because of jurisdictional barriers created by electronic commerce, this requirement is often not met.

An online creditor must exercise an extra level of due diligence when attempting to collect on past due accounts. While Chapter 13 requires that a debtor list all debts and creditors at the beginning of the process, it is possible for a creditor to not be notified due

to distance or other jurisdictional issues. Failure to take notice of a claim may preclude the creditor from collecting any of the money due.

Chapter 13 is often a viable alternative to Chapter 7 bankruptcy for those people who can maintain a certain level of income. Whether attempting to collect on a Chapter 13 bankruptcy filing, or contemplating seeking the protection offered by filing, only an experienced bankruptcy lawyer can accurately guide you through the difficult process. A qualified bankruptcy attorney is both the creditor's and the individual's most useful tool in being able to navigate the bankruptcy process. As electronic commerce continues to expand, Chapter 13 online creditors will only increase in proportion. Due to the unique obstacles and challenges presented by the online creditor collection process, an experienced attorney may be the only way to ensure Chapter 13 protection or collection.