

## **Chapter 13 Co-debtor Stay**

What happens if I have Co-Signed for a Loan and the other Party Files for Bankruptcy? What Happens to a Co-Debtor in Chapter 13 Bankruptcy?

If you have a secured debt such as a car loan or mortgage, you may have had a family member or friend co-sign for the loan. What does this mean? When an individual co-signs for a debt, that person is equally responsible for that debt. Therefore, if you default on the loan, the creditor will pursue the co-signor for satisfaction of the debt. The same is true in Chapter 7 bankruptcy. If the principal on the loan files for Chapter 7 bankruptcy protection, the non-filing co-signor will still be responsible for the debt. Fortunately, Chapter 13 affords protection to individuals who have co-signed for the debtor.

In order for the Chapter 13 bankruptcy stay to apply, the following conditions must be met:

1. The primary debtor must have filed Chapter 13 bankruptcy.
2. The debt must be consumer debt incurred by an individual for personal, family, or household purposes.
3. The co-debtor must be an individual.
4. The co-debtor must not become liable on the debt in the ordinary course of business.
5. The Chapter 13 case must not have been closed, dismissed, or converted to a case under Chapter 7 or Chapter 11.

If the above requirements have been met, the Chapter 13 co-debtor stay will continue until completion of the Chapter 13 plan. However, the co-debtor stay can be lifted for the following reasons stated in Section 1301(c) of the Bankruptcy Code:

1. The co-debtor received the consideration for the claim held by the creditor.
2. The co-debtor's plan does not propose to pay the claim in full.
3. The creditor's interest would be irreparably harmed by the continuation of the co-debtor stay.

Therefore, in order to protect the non-filing co-signor, the Chapter 13 debtor must propose to pay the debt in full through the plan. If the debtor attempts to reduce the amount of the loan through a cram down, the creditor can move to modify the stay and collect from the co-debtor. If you

have a debt that was co-signed by a family member or friend, you should consult with an experienced Tucson bankruptcy lawyer in determining the best course of action for protecting the non-filing co-signor. The local Tucson bankruptcy attorneys of Ariano & Reppucci are available around the clock to answer questions regarding Chapter 7 and Chapter 13 bankruptcy.