

Arizona Bankruptcy Essentials: What You Should Know About Chapter 13

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For many individuals, mere mention of filing for bankruptcy protection under a Chapter 13 individual debt reorganization is met with apprehension and resistance. We blame this on the many myths and misconceptions associated with bankruptcy in general, as perpetuated by corporate creditors and the media. In truth, [Chapter 13](#) is the best way out of debt for many of those consumers who choose to keep as many of their nonexempt assets as is lawfully feasible.

In this article from our ***Arizona Bankruptcy Essentials*** series, we discuss three components of the [Chapter 13 bankruptcy filing](#), making it an appealing option for wage-earning debtors who need debt relief and desire a fresh financial start.

1. Who Is Eligible for Chapter 13 Bankruptcy Protection?

The very first question involves the debtor's eligibility for Chapter 13 protection under the U.S. Bankruptcy Code.

The Dollar Amounts. An individual debtor can file a Chapter 13 bankruptcy so long as the *unsecured debts* are below \$360,475 and *secured debts* are below \$1,081,400. These dollar restrictions hold true in the aggregate for married debtors filing jointly. 11 U.S.C. § 9(e). Be aware, though, that the Chapter 13 dollar limits are revised periodically. The current dollar limits became effective April 1, 2010, and will remain in effect until March 31, 2013.

The Debtors. Every chapter in bankruptcy is directed toward providing debt relief for a certain kind of debtor. Chapter 9 debtors must be municipalities, for example, and Chapter 12 debtors must be family farmers or fishermen. In Chapter 13, the petitioner must be an individual with a regular income, which is why this bankruptcy is often referred to as a *wage-earner reorganization*. An unincorporated enterprise, or sole proprietorship, is eligible to file under Chapter 13. Corporations and partnerships, however, must look to Chapter 7 Liquidation and Chapter 11 Reorganization for bankruptcy protection.

Immediately upon filing the Chapter 13 petition, the automatic stay goes into effect. This statutory injunction gives the debtor much-needed relief from creditor collections and lawsuits, so that a reasonable repayment plan can be developed and submitted.

2. What Goes into a Chapter 13 Repayment Plan?

Many people have misguided notions about how Chapter 13 repayment plans provide debt relief in bankruptcy. They may believe that a repayment plan requires that they pay back everything owed, all while under the scrutiny of the bankruptcy judge. *In truth, the scheduled plan payments are not determined by what is owed, but by what the debtor can regularly afford to pay.*

The Repayment Plan. The debtor's proposed repayment plan is filed with the petition, or within 14 days thereafter. Fed. R. Bankr. P. 3015(b). Here is a brief content summary of what is included in the debtor's proposed Chapter 13 plan:

- **Creditor Claims.** The debtor includes a complete list of creditors, their claims and priority, the amount and interest the creditors will receive with each installment (if anything), and the duration of the payments.
- **Payout to Creditors.** The debtor details the proposed payout to creditors by their respective priority, class, payment, interest, principal, and balance.
- **Liquidation Comparison.** This essential comparative analysis establishes what funds would be available to unsecured creditors under a Chapter 7 liquidation scenario.
- **Split Claims.** This is a breakdown of a secured creditor's claim when the amount owed is greater than the value of the collateral. The unsecured amount may be split from the total claim.
- **Debtor's Wage Detail.** This employment income detail is required to establish the debtor's ability to comply with the terms of the plan.
- **Chapter 13 Debt Limits.** This establishes that the creditors' claims against the debtor are within the statutory debt limits for a Chapter 13 case.

The plan period is from 36 to 60 months and provides for regular payments, usually monthly. The plan's three-year or five-year commitment period depends upon the petitioner's monthly income. When the debtor's earnings are above Arizona's median income level, a five year plan is proposed. But if the debtor's earnings are below Arizona's median income level, then the plan period is for three years. (If you were wondering about a shorter exit plan, it is possible to commit to a period of less than three or five years, but all unsecured creditors must be paid in full.)

The plan will include priority claims, secured claims, and unsecured claims. These creditors are entitled to payment according to the following priority:

- **Priority Claims.** Any priority claims, such as taxes and domestic support obligations, will be paid in full, unless the priority creditor agrees otherwise.
- **Secured Claims.** In most cases, if the debtor chooses to retain the collateral that is security for a loan, as with a vehicle, then the secured creditor must at least be paid the value of the property. With a home loan, any arrearage is paid over the course of the plan, but the original underlying mortgage loan continues.
- **Unsecured Claims.** Credit card companies and other unsecured creditors in the plan typically receive a small portion of what they are owed, but only during the repayment period. The petitioner pays his or her “disposable income” during the three-year or five-year commitment period to unsecured creditors. At a minimum, the plan gives these creditors as much as they would have been paid had the debtor’s assets been liquidated in Chapter 7. (Child support paid to the debtor, by the way, is not disposable income.)

The Court’s Approval of the Plan. Although the petitioner must start making payments within 30 days of filing the petition, the plan may not be confirmed until after the §341 Meeting of Creditors. Once the confirmation hearing has taken place and the plan has been confirmed by the court, the debtor makes the scheduled payments directly to the case trustee. The trustee, in turn, makes pro rata distributions to all plan creditors.

3. Will There Be a Discharge?

When the Chapter 13 debtor makes that last payment under the repayment plan, the judge grants the discharge. A Chapter 13 discharge eliminates the need for the debtor to repay any discharged unsecured debts, including credit card balances, payday loans, most judgments, certain taxes, and more.

In the event, however, that the debtor does not complete the plan, then a discharge will not be granted. A missed payment can result in the court’s dismissal of the case. Don’t avoid the debt relief that Chapter 13 provides out of fear that the payments may become overly burdensome after a job loss, medical problem, or divorce. *A Chapter 13 plan may be modified for good cause.* When the circumstances are such that payments under any plan would create a genuine hardship for the debtor, then the Chapter 13 case may be converted to a Chapter 7 straight liquidation.

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