

What is good faith and why is it important in a chapter 13 bankruptcy?

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The term “good faith” is not defined in the bankruptcy code. Nonetheless, the code expressly requires that your chapter 13 *petition* be *filed* in “good faith” and that your chapter 13 *plan* be *proposed* in “good faith” (your petition is different than your plan); and your case may be dismissed if a creditor can show that you have not operated in good faith. Needless to say, good faith is required every step of the way in bankruptcy. It is becoming so important that there is a trend in bankruptcy law to not allow a chapter 13 debtor to exercise certain rights expressly stated in the code, that we used to take for granted, unless they are operating in good faith. For example, the code says that a chapter 13 debtor has the right to dismiss the case at any time. That used to mean if circumstances changed so that the chapter 13 was no longer beneficial to you, then you could dismiss it and carry on without the benefits (or obligations under your changed financial circumstances) of chapter 13. But if not operating in good faith, this trend indicates that these rights may no longer be available to you. What does that really mean? It could mean that you will not be allowed to dismiss the case and have to stay in chapter 13, or worse, you may have to convert to chapter 7. Why does it matter if you have to convert to chapter 7? Well the reason many people file a chapter 13 is because they get to keep their non-exempt assets, which is not permitted in chapter 7. Also, many people file a chapter 13 to save their homes from foreclosure, and chapter 7 does not contain the same protections to make that possible. So, failing to operate in good faith in chapter 13 could have devastating consequences.

OK, so it's important, but what is it? Initially, understand that good faith includes both pre- and post-filing acts. Some factors that are considered include: accuracy in stating debts and expenses, lack of effort/ability to pay debts, honesty in disclosing assets and financial affairs (no surprise), manipulation of the bankruptcy code, the type of debts, the motivation, the amount proposed to be paid to creditors, and prior filings. Courts have generally employed a “totality of the circumstances approach.” *In re Sullivan*, 326 B.R. 204, 211 (B.A.P. 1st Cir. 2005). That is legal speak for “we will consider just about anything reasonable and use our commonsense.” But, the determination about whether good faith is lacking still needs to be made by an experienced practitioner. This is for many reasons, including that many people feel that bankruptcy is inherently unfair, so a lay person may not be able to put aside those feelings from their analysis. Also, an experienced judge will make the decision if good faith is challenged. So, it pays to consult a trained eye to discern what a court could determine is not good faith, and what is permitted under the law.

If you are planning on filing a chapter 13 and would like to meet the requirements, including good faith, or if you have become involved in a chapter 13 someone else has filed and think it is not done in good faith, feel free to give us a call for a free initial consultation.

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