How does the court determine how much I pay in a Chapter 13 bankruptcy?

Secured Debt: Generally speaking, a Chapter 13 plan requires you to continue to make payments on your secured debts, such as a car loan or a home mortgage, for the life of the plan. For home mortgages the payment schedule under a Chapter 13 case must be the same as the original terms governing the contract. Thus, if you are paying $1500 per month on your mortgage when you enter Chapter 13, you will continue to make the same $1500 payment. For other secured property, in most cases your car, you may be able to stretch out your car payments over a longer period of time to reduce the amount you are paying per month. For example, say you bought a car for $20,000 in 2008. Based on a 5 year loan, and not including interest, your monthly payment would be $333. Two years later you owe $12,000 on your car when you enter bankruptcy. Assuming a 5 year plan you may be able to reduce your monthly payment to $200, spreading out the remaining $12,000 over the 5 year plan.

Priority Debt: Furthermore, under a Chapter 13 plan, any debts considered "priority" must be paid in full over the life of the plan. Priority claims include such debts as domestic support obligations (child support), unpaid taxes, and claims for death or personal injury resulting from use of a motor vehicle while intoxicated. For example, if you owe $2000 in past due taxes and you enter into a 5 year plan, you must pay $33 per month in order to pay off the claim in full.

Unsecured Debt: With unsecured claims, the calculation is a little more complicated as there are two tests which help determine how much you must pay unsecured creditors in a Chapter 13 case. At a minimum unsecured creditors must be paid the same amount of money that they would have received had you chosen to proceed with Chapter 7 bankruptcy. This is called the "best interests test". This means that if unsecured creditors would have received $10,000 total in Chapter 7, you must pay AT LEAST this much in Chapter 13. Assuming a 5 year plan this would total approximately $167 per month. However, in most Chapter 7 cases, unsecured creditors receive nothing because Arizona's exemption laws allow you to protect most of your assets. Overall, the "best interests test" does not apply if your disposable income per month is greater than what you would pay under the "best interests test".

Under the second test, known as the "disposable income test", you must pay what the court considers to be your monthly disposable income. Basically, if your income is above the median for your State and family size, you generally must complete a 5 year plan, while if your income is below median you have the option of completing a 3 year plan. But how much must you pay each month? It is hard to say because each person has different expenses and income. Furthermore, different expenses are allowed depending on whether you are an above median debtor or a below median debtor. This is why it is crucial to consult an attorney, who can determine exactly how much you will have to pay your unsecured creditors each month.

Contact our firm today for more information. (520) 327-4800

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