

THE UNITED STATES BANKRUPTCY COURT MIDDLE DISTRICT OF FLORIDA

Sam M. Gibbons U.S. Courthouse
801 North Florida Avenue
Suite 1620
Tampa, Florida 33602-3899

David K. Oliveria
Clerk of Court

GENERAL INFORMATION

All papers intended by debtors or creditors to have legal effect are to be submitted to the Clerk of the Bankruptcy Court. The mailing addresses of the three Divisions for the Middle District of Florida are as follows:

Tampa

801 N. Florida Avenue
Suite 727
Tampa, Florida 33602-3899
(813) 301-5162

Orlando

135 W. Central Boulevard
Suite 950
Orlando, FL 32801
(407) 648-6365

Jacksonville

300 North Hogan Street
Suite 3-350
Jacksonville, FL 32202
(904) 301-6490

If you have a question about a pending case, call the Clerk's Office **not** Judges' Chambers. It is improper to attempt to communicate with the Judge concerning any case, except through formal Court procedures.

Only an individual (or married couple) may file a personal bankruptcy under any of the Bankruptcy chapters. A business that is not a corporation may be included in an individual bankruptcy petition. A separate petition is required for a corporation. The information provided herewith gives a brief explanation of the differences between chapters of the Bankruptcy Code.

Each debtor filing an individual bankruptcy has a right to represent him or herself; however, the Court recommends the use of an attorney. Ignorance of the law may cost you far more than attorney's fees. An attorney must represent a Corporation.

If you choose to represent yourself, you will not be able to obtain legal advice from Court personnel or from the trustee appointed to your case. You will be responsible for all necessary legal research. A majority of the counties in Florida maintain law libraries for public use.

The Court cannot supply the forms necessary for filing bankruptcy. These forms are available from office supply stores, legal stationary stores and can be accessed for printing from the Federal Judiciary's web site at www.uscourts.gov/bankform/index.html.

The filing fees for bankruptcy petitions are as follows:

Chapter 7	\$209.00	Chapter 9	\$839.00
Chapter 13	\$194.00	Chapter 11	\$839.00

The prescribed filing fee, if paid by the debtor, must be in the form of exact cash, cashier's check or money order.

If you wish counseling about handling your debts outside of bankruptcy, you may find Consumer Credit Counseling Service helpful. In Tampa, the telephone number is (813) 289-8923; in Orlando (407) 895-8886; in Jacksonville (904) 396-4846. Court personnel are not permitted to recommend attorneys or to comment on the competence of an attorney that you have retained or may be considering. The telephone number for Lawyer Referral Services in Tampa is (813) 221-7780; in Orlando (407) 422-4537; in Jacksonville (904) 399-5780 or (904) 356-8371.

Case files maintained by the Clerk's Office are public record. You may review cases, but may not remove original documents from the Court files nor the Court files from the Clerk's Office. You may purchase a copy of any original document from the Clerk's Office, at the cost of fifty cents per page with a five-page limit or use our contract photocopy service. Contact Judicial Research and Retrieval Service, Inc. in Tampa at (813) 228-7200; in Orlando, (407) 999-7717 and in Jacksonville, at (904) 356-9110.

Each Clerk's Office has a case information system for general case inquiries for cases filed within that office called the Voice Case Information System (VCIS). This system is accessible with the use of a touch tone phone and is available 24 hours daily, except when off-line for computer maintenance. The toll-free VCIS number for all three divisions is:

For Tampa / Orlando / Jacksonville cases - 1-866-879-1286

Access to electronic court records through the Internet is available by registering with PACER. To obtain a password contact the PACER Service Center at 1-800-676-6856 or visit their web site at www.pacer.psc.uscourts.gov.

You can find useful information with regard to the United States Bankruptcy Court, Middle District of Florida and its Divisions on the Court's website at www.flmb.uscourts.gov,

October 15, 2003

Liquidation under the Bankruptcy Code - Chapter 7

Public Information Series of the Bankruptcy Judges Division
December 1999

While the information presented herein is accurate as of the date of publication, it should not be cited or relied upon as legal authority. This information should not be used as legal authority. This information should not be used as substitute for reference to the United States Bankruptcy Code (title 11, United States Code) and the Bankruptcy Rules, either of which may be reviewed at local law libraries, or to any local rules of practice adopted and disseminated by each bankruptcy court. Finally, this fact sheet should not substitute for the advice of competent legal counsel. For addition copies of this publication, please contact the Bankruptcy Judges Division, Administrative Office of the United States Courts (202) 502-1900.

Alternatives to Chapter 7

Debtors should be aware that there are several alternatives to chapter 7 relief. For example, debtors who are engaged in business, including corporations, partnerships, and sole proprietorships, may prefer to remain in business and avoid liquidation. Such debtors should consider filing a petition under chapter 11 of the Bankruptcy Code. Under chapter 11, the debtor may seek an adjustment of debts, either by reducing the debt or by extending the time for repayment, or may seek a more comprehensive reorganization. Sole proprietorships may also be eligible for relief under chapter 13 of the Bankruptcy Code.

In addition, individual debtors who have regular income may seek an adjustment of debts under chapter 13 of the Bankruptcy Code. Indeed, the court may dismiss a chapter 7 case filed by an individual whose debts are primarily consumer rather than business debts if the court finds that the granting of relief would be a substantial abuse of the provisions of chapter 7. 11 U.S.C. § 707(b). A number of courts have concluded that a chapter 7 case may be dismissed for substantial abuse when the debtor has the ability to propose and carry out a workable and meaningful chapter 13 plan.

Debtors should also be aware that out-of-court agreements with creditors or debt counseling services may provide an alternative to a bankruptcy filing.

Background

The potential chapter 7 debtor should understand that a straight bankruptcy case does not involve the filing of a plan of repayment as in chapter 13, but rather envisions the bankruptcy trustee's gathering and sale of the debtor's nonexempt assets, from which holders of claims (creditors) will receive distributions in accordance with the provisions of the Bankruptcy Code. Part of the debtor's property may be subject to liens and mortgages that pledge the property to other creditors. In addition, under chapter 7, the

individual debtor is permitted to retain certain "exempt" property. The debtor's remaining assets are liquidated by a trustee. Accordingly, potential debtors should realize that the filing of a petition under chapter 7 may result in the loss of property.

In order to qualify for relief under chapter 7 of the Bankruptcy Code, the debtor must be an individual, a partnership, or a corporation. 11 U.S.C. §§ 109(b); 101(41). Relief is available under chapter 7 irrespective of the amount of the debtor's debts or whether the debtor is solvent or insolvent. An individual cannot file under chapter 7 or any other chapter, however, if during the preceding 180 days a prior bankruptcy petition was dismissed due to the debtor's willful failure to appear before the court or comply with orders of the court or the debtor voluntarily dismissed the previous case after creditors sought relief from the bankruptcy court to recover property upon which they hold liens. 11 U.S.C. §§ 109(g), 362(d) and (e).

One of the primary purposes of bankruptcy is to discharge certain debts to give an honest individual debtor a "fresh start." The discharge has the effect of extinguishing the debtor's personal liability on dischargeable debts. In a chapter 7 case, however, a discharge is available to individual debtors only, not to partnerships or corporations. 11 U.S.C. § 727(a)(1). Although the filing of an individual chapter 7 petition usually results in a discharge of debts, an individual's right to a discharge is not absolute, and some types of debts are not discharged. Moreover, a bankruptcy discharge does not extinguish a lien on property.

How Chapter 7 Works

A chapter 7 case begins with the debtor's filing a petition with the bankruptcy court.¹ The petition should be filed with the bankruptcy court serving the area where the individual lives or where the business debtor has its principal place of business or principal assets. 28 U.S.C. § 1408. In addition to the petition, the debtor is also required to file with the court several schedules of assets and liabilities, a schedule of current income and expenditures, a statement of financial affairs, and a schedule of executory contracts and unexpired leases. Bankruptcy Rule 1007(b). A husband and wife may file a joint petition or individual petitions. 11 U.S.C. § 302(a). (Official Bankruptcy Forms can be purchased at a legal stationery store. They are not available from the court.)

In order to complete the Official Bankruptcy Forms, which make up the petition and schedules, the debtor(s) will need to compile the following information:

1. A list of all creditors and the amount and nature of their claims;
2. The source, amount, and frequency of the debtor's income;
3. A list of all of the debtor's property; and
4. A detailed list of the debtor's monthly living expenses, i.e., food, clothing, shelter, utilities, taxes, transportation, medicine, etc.

Currently, the courts are required to charge a \$155 case filing fee, a \$30 miscellaneous administrative fee, and a \$15 trustee surcharge (a total of \$200). The fees should be paid to the clerk of the court upon filing or may, with the court's permission, be paid by individual debtors in installments. 28 U.S.C. § 1930(a); *Bankruptcy Rule 1006(b)*; *Bankruptcy Court Miscellaneous Fee Schedule, Item 8*. Rule 1006(b) limits to four the number of installments for the filing fee. The final installment shall be payable not later than 120 days after filing the petition. For cause shown, the court may extend the time of any installment, provided that the last installment is paid not later than 180 days after the filing of the petition. *Bankruptcy Rule 1006(b)*. The \$30 administrative fee and the \$15 trustee surcharge may be paid in installments in the same manner as the filing fee. If a joint petition is filed, only one filing fee, one administrative fee, and one trustee surcharge are charged. Debtors should be aware that failure to pay these fees may result in dismissal of the case. 11 U.S.C. § 707(a).

The filing of a petition under chapter 7 "automatically stays" most actions against the debtor or the debtor's property. 11 U.S.C. § 362. This stay arises by operation of law and requires no judicial action. As long as the stay is in effect, creditors generally cannot initiate or continue any lawsuits, wage garnishments, or even telephone calls demanding payments. Creditors normally receive notice of the filing of the petition from the clerk.

One of the schedules that will be filed by the individual debtor is a schedule of "exempt" property. Federal bankruptcy law provides that an individual debtor² can protect some property from the claims of creditors either because it is exempt under federal bankruptcy law or because it is exempt under the laws of the debtor's home state. 11 U.S.C. § 522(b). Many states have taken advantage of a provision in the bankruptcy law that permits each state to adopt its own exemption law in place of the federal exemptions. In other jurisdictions, the individual debtor has the option of choosing between a federal package of exemptions or exemptions available under state law. Thus, whether certain property is exempt and may be kept by the debtor is often a question of state law. Legal counsel should be consulted to determine the law of the state in which the debtor lives.

A "meeting of creditors" is usually held 20 to 40 days after the petition is filed. If the United States trustee or bankruptcy administrator³ designates a place for the meeting that is not regularly staffed by the United States trustee or bankruptcy administrator, the meeting may be held no more than 60 days after the order for relief. *Bankruptcy Rule 2003(a)*. The debtor must attend this meeting, at which creditors may appear and ask questions regarding the debtor's financial affairs and property. 11 U.S.C. § 343. If a husband and wife have filed a joint petition, they both must attend the creditors' meeting. The trustee also will attend this meeting. It is important for the debtor to cooperate with the trustee and to provide any financial records or documents that the trustee requests. The trustee is required to examine the debtor orally at the meeting of creditors to ensure that the debtor is aware of the potential consequences of seeking a discharge in bankruptcy, including the effect on credit history, the ability to file a petition under a different chapter, the effect of receiving a discharge, and the effect of reaffirming a debt. In some courts, trustees may provide written information on these topics at or in advance

of the meeting, to ensure that the debtor is aware of this information. In order to preserve their independent judgment, bankruptcy judges are prohibited from attending the meeting of creditors. *11 U.S.C. § 341(c)*.

In order to accord the debtor complete relief, the Bankruptcy Code allows the debtor to convert a chapter 7 case to either a chapter 11 reorganization case or a case under chapter 13,⁴ as long as the debtor meets the eligibility standards under the chapter to which the debtor seeks to convert, and the case has not previously been converted to chapter 7 from either chapter 11 or chapter 13. Thus, the debtor will not be permitted to convert the case repeatedly from one chapter to another. *11 U.S.C. § 706(a)*.

Role of the Case Trustee

Upon the filing of the chapter 7 petition, an impartial case trustee is appointed by the United States trustee (or by the court in Alabama and North Carolina) to administer the case and liquidate the debtor's nonexempt assets. *11 U.S.C. §§ 701, 704*. If, as is often the case, all of the debtor's assets are exempt or subject to valid liens, there will be no distribution to unsecured creditors. Typically, most chapter 7 cases involving individual debtors are "no asset" cases. If the case appears to be an "asset" case at the outset, however, unsecured creditors⁵ who have claims against the debtor must file their claims with the clerk of court within 90 days after the first date set for the meeting of creditors. *Bankruptcy Rule 3002(c)*. In the typical no asset chapter 7 case, there is no need for creditors to file proofs of claim. If the trustee later recovers assets for distribution to unsecured creditors, creditors will be given notice of that fact and additional time to file proofs of claim. Although secured creditors are not required to file proofs of claim in chapter 7 cases in order to preserve their security interests or liens, there may be circumstances when it is desirable to do so. A creditor in a chapter 7 case who has a lien on the debtor's property should consult an attorney for advice.

The commencement of a bankruptcy case creates an "estate." The estate technically becomes the temporary legal owner of all of the debtor's property. The estate consists of all legal or equitable interests of the debtor in property as of the commencement of the case, including property owned or held by another person if the debtor has an interest in the property. Generally speaking, the debtor's creditors are paid from nonexempt property of the estate.

The primary role of a chapter 7 trustee in an "asset" case is to liquidate the debtor's nonexempt assets in a manner that maximizes the return to the debtor's unsecured creditors. To accomplish this, the trustee attempts to liquidate the debtor's nonexempt property, *i.e.*, property that the debtor owns free and clear of liens and the debtor's property which has market value above the amount of any security interest or lien and any exemption that the debtor holds in the property. The trustee also pursues causes of action (lawsuits) belonging to the debtor and pursues the trustee's own causes of action to recover money or property under the trustee's "avoiding powers." The trustee's avoiding powers include the power to set aside preferential transfers made to creditors within 90 days before the petition, the power to undo security interests and other prepetition

transfers of property that were not properly perfected under nonbankruptcy law at the time of the petition, and the power to pursue nonbankruptcy claims such as fraudulent conveyance and bulk transfer remedies available under state law. In addition, if the debtor is a business, the bankruptcy court may authorize the trustee to operate the debtor's business for a limited period of time, if such operation will benefit the creditors of the estate and enhance the liquidation of the estate. 11 U.S.C. § 721.

The distribution of the property of the estate is governed by section 726 of the Bankruptcy Code, which sets forth the order of payment of all claims. Under section 726, there are six classes of claims, and each class must be paid in full before the next lower class is paid anything. The debtor is not particularly interested in the trustee's disposition of the estate assets, except with respect to the payment of those debts which for some reason are not dischargeable in the bankruptcy case. The debtor's major interests in a chapter 7 case are in retaining exempt property and in getting a discharge that covers as many debts as possible.

Discharge

A discharge releases the debtor from personal liability for discharged debts and prevents the creditors owed those debts from taking any action against the debtor or his property to collect the debts. The bankruptcy law regarding the scope of a chapter 7 discharge is complex, and debtors should consult competent legal counsel in this regard prior to filing. As a general rule, however, excluding cases which are dismissed or converted, individual debtors receive a discharge in more than 99 percent of chapter 7 cases. In most cases, unless a complaint has been filed objecting to the discharge or the debtor has filed a written waiver, the discharge will be granted to a chapter 7 debtor relatively early in the case, that is, 60 to 90 days after the date first set for the meeting of creditors. *Bankruptcy Rule 4004(c)*.

The grounds for denying an individual debtor a discharge in a chapter 7 case are very narrow and are construed against a creditor or trustee seeking to deny the debtor a chapter 7 discharge. Among the grounds for denying a discharge to a chapter 7 debtor are that the debtor failed to keep or produce adequate books or financial records; the debtor failed to explain satisfactorily any loss of assets; the debtor committed a bankruptcy crime such as perjury; the debtor failed to obey a lawful order of the bankruptcy court; or the debtor fraudulently transferred, concealed, or destroyed property that would have become property of the estate. 11 U.S.C. § 727; *Bankruptcy Rule 4005*.

In certain jurisdictions, secured creditors may retain some rights to seize pledged property, even after a discharge is granted. Depending on individual circumstances, a debtor wishing to keep possession of the pledged property, such as an automobile, may find it advantageous to "reaffirm" the debt. A reaffirmation is an agreement between the debtor and the creditor that the debtor will pay all or a portion of the money owed, even though the debtor has filed bankruptcy. In return, the creditor promises that, as long as payments are made, the creditor will not repossess or take back the automobile or other property. Because there is a disagreement among the courts concerning whether a debtor

whose debt is not in default may retain the property and pay under the original contract terms without reaffirming the debt, legal counsel should be consulted to ensure that the debtor's rights are protected and that any reaffirmation is in the debtor's best interest.

If the debtor elects to reaffirm the debt, the reaffirmation should be accomplished prior to the granting of a discharge. A written agreement to reaffirm a debt must be filed with the court and, if the debtor is not represented by an attorney, must be approved by the judge. 11 U.S.C. § 524(c). The Bankruptcy Code requires that reaffirmation agreements contain an explicit statement advising the debtor that the agreement is not required by bankruptcy or non-bankruptcy law. In addition, the debtor's attorney is required to advise the debtor of the legal effect and consequences of such an agreement, including a default under such an agreement. The Code requires a reaffirmation hearing only if the debtor has not been represented by an attorney during the negotiating of the agreement. 11 U.S.C. § 524(d). The debtor may repay any debt voluntarily, however, whether or not a reaffirmation agreement exists. 11 U.S.C. § 524(f).

Most claims against an individual chapter 7 debtor are discharged. A creditor whose unsecured claim is discharged may no longer initiate or continue any legal or other action against the debtor to collect the obligation. A discharge under chapter 7, however, does not discharge an individual debtor from certain specific types of debts listed in section 523 of the Bankruptcy Code. Among the types of debts which are not discharged in a chapter 7 case are alimony and child maintenance and support obligations, certain taxes, debts for certain educational benefit overpayments or loans made or guaranteed by a governmental unit, debts for willful and malicious injury by the debtor to another entity or to the property of another entity, debts for death or personal injury caused by the debtor's operation of a motor vehicle while the debtor was intoxicated from alcohol or other substances, and debts for criminal restitution orders under title 18, United States Code. 11 U.S.C. § 523(a). To the extent that these types of debts are not fully paid in the chapter 7 case, the debtor is still responsible for them after the bankruptcy case has concluded. Debts for money or property obtained by false pretenses, debts for fraud or defalcation while acting in a fiduciary capacity, debts for willful and malicious injury by the debtor to another entity or to the property of another entity, and debts arising from a property settlement agreement incurred during or in connection with a divorce or separation are discharged unless a creditor timely files and prevails in an action to have such debts declared excepted from the discharge. 11 U.S.C. § 523(c); *Bankruptcy Rule 4007(c)*.

The court may revoke a chapter 7 discharge on the request of the trustee, a creditor, or the United States trustee if the discharge was obtained through fraud by the debtor or if the debtor acquired property that is property of the estate and knowingly and fraudulently failed to report the acquisition of such property or to surrender the property to the trustee. 11 U.S.C. § 727(d).

NOTES

1. An involuntary chapter 7 case may be commenced under certain circumstances by the filing of a petition by creditors holding claims against the debtor. 11 U.S.C. § 303.
2. Each debtor in a joint case (both husband and wife) can claim exemptions under the federal bankruptcy laws. 11 U.S.C. § 522(m).
3. United States trustees and bankruptcy administrators are responsible for establishing a panel of private trustees to serve as trustees in chapter 7 cases and for supervising the administration of cases and trustees in cases under chapters 7, 11, 12, and 13 of the Bankruptcy Code. Bankruptcy administrators serve in the judicial districts in the states of Alabama and North Carolina.
4. A fee of \$645.00 is charged for converting, on request of the debtor, a case under chapter 7 to a case under chapter 11. There is no fee for converting from chapter 7 to chapter 13.
5. Unsecured debts generally may be defined as those for which the extension of credit was based purely upon an evaluation by the creditor of the debtor's ability to pay, as opposed to secured debts, for which the extension of credit was based upon the creditor's right to seize pledged property on default, in addition to the debtor's ability to pay.

Individual Debt Adjustment Bankruptcy - Chapter 13

Public Information Series of the Bankruptcy Judges Division
December 1999

While the information presented herein is accurate as of the date of publication, it should not be cited or relied upon as legal authority. This information should not be used as legal authority. This information should not be used as substitute for reference to the United States Bankruptcy Code (title 11, United States Code) and the Bankruptcy Rules, either of which may be reviewed at local law libraries, or to any local rules of practice adopted and disseminated by each bankruptcy court. Finally, this fact sheet should not substitute for the advice of competent legal counsel. For additional copies of this publication, please contact the Bankruptcy Judges Division, Administrative Office of the United States Courts (202) 502-1900.

Background

Chapter 13 is designed for individuals with regular income who desire to pay their debts but are currently unable to do so. The purpose of chapter 13 is to enable financially distressed individual debtors, under court supervision and protection, to propose and carry out a repayment plan under which creditors are paid over an extended period of time. Under this chapter, debtors are permitted to repay creditors, in full or in part, in installments over a three-year period, during which time creditors are prohibited from starting or continuing collection efforts. A plan providing for payments over more than three years must be "for cause" and be approved by the court. In no case may a plan provide for payments over a period longer than five years. 11 U.S.C. § 1322(d).

Any individual, even if self-employed or operating an unincorporated business, is eligible for chapter 13 relief as long as the individual's unsecured debts are less than \$269,250 and secured debts are less than \$807,750. 11 U.S.C. § 109(e). A corporation or partnership may not be a chapter 13 debtor. Id.

An individual cannot file under chapter 13 or any other chapter if, during the preceding 180 days, a prior bankruptcy petition was dismissed due to the debtor's willful failure to appear before the court or comply with orders of the court or was voluntarily dismissed after creditors sought relief from the bankruptcy court to recover property upon which they hold liens. 11 U.S.C. §§ 109(g), 362(d) and (e).

How Chapter 13 Works

A chapter 13 case begins with the filing of a petition with the bankruptcy court serving the area where the debtor has a domicile or residence. Unless the court orders otherwise, the debtor also shall file with the court (1) schedules of assets and liabilities, (2) a

schedule of current income and expenditures, (3) a schedule of executory contracts and unexpired leases, and (4) a statement of financial affairs. Bankruptcy Rule 1007(b). A husband and wife may file a joint petition or individual petitions. 11 U.S.C. § 302(a). (Official Bankruptcy Forms can be purchased at a legal stationery store. They are not available from the court.)

Currently, the courts are required to charge a \$155 case filing fee and a \$30 miscellaneous administrative fee. The fees should be paid to the clerk of the court upon filing or may, with the court's permission, be paid in installments. 28 U.S.C. § 1930(a); Bankruptcy Rule 1006(b); Bankruptcy Court Miscellaneous Fee Schedule, Item 8. Rule 1006(b) limits to four the number of installments for the filing fee. The final installment shall be payable not later than 120 days after filing the petition. For cause shown, the court may extend the time of any installment, provided that the last installment is paid not later than 180 days after the filing of the petition. Bankruptcy Rule 1006(b). If a joint petition is filed, only one filing fee and one administrative fee are charged.

In order to complete the Official Bankruptcy Forms which make up the petition, statement of financial affairs, and schedules, the debtor will need to compile the following information:

1. A list of all creditors and the amounts and nature of their claims;
2. The source, amount, and frequency of the debtor's income;
3. A list of all of the debtor's property; and
4. A detailed list of the debtor's monthly living expenses, i.e., food, clothing, shelter, utilities, taxes, transportation, medicine, etc.

When a husband and wife file a joint petition or each spouse files an individual petition, the above detailed data must be gathered for both spouses. So that financial responsibilities can be accurately assessed when only one spouse files, the income and expenses of the non-filing spouse should be included in the debtor's schedules and statement of financial affairs.

Upon the filing of the petition, an impartial trustee is appointed to administer the case. 11 U.S.C. § 1302. If the number of cases so warrants, the United States trustee may appoint a standing trustee to serve in all chapter 13 cases in a district. 28 U.S.C. § 586(b). A primary role of the chapter 13 trustee is to serve as a disbursing agent, collecting payments from debtors and making distributions to creditors. 11 U.S.C. § 1302.

The filing of the petition under chapter 13 "automatically stays" most collection actions against the debtor or the debtor's property. 11 U.S.C. § 362. As long as the "stay" is in effect, creditors generally cannot initiate or continue any lawsuits, wage garnishment, or even telephone calls demanding payments. Creditors receive notice of the filing of the petition from the clerk or the trustee. Further, chapter 13 contains a special automatic stay

provision applicable to creditors. Specifically, after the commencement of a chapter 13 case, unless the bankruptcy court authorizes otherwise, a creditor may not seek to collect a "consumer debt" from any individual who is liable with the debtor. 11 U.S.C. § 1301. Consumer debts are those incurred for consumer, as opposed to business, needs.

By virtue of the automatic stay, an individual debtor faced with a threatened foreclosure of the mortgage on his or her principal residence can prevent an immediate foreclosure by filing a chapter 13 petition. Chapter 13 then affords the debtor a right to cure defaults on long-term home mortgage debts by bringing the payments current over a reasonable period of time. The debtor is permitted to cure a default with respect to a lien on the debtor's principal residence up until the completion of a foreclosure sale under state law. 11 U.S.C. § 1322(c).

The debtor must file a plan of repayment with the petition or within fifteen days thereafter, unless extended by the court for cause. Bankruptcy Rule 3015. The chapter 13 plan must provide for the full payment of all claims entitled to priority under section 507¹ (unless the holder of a particular claim agrees to different treatment of the claim); if the plan classifies claims, provide the same treatment for each claim within each class; and provide for the submission of such portion of the debtor's future income to the supervision of the trustee as is necessary for the execution of the plan. 11 U.S.C. § 1322. Other plan provisions are permissive. *Id.* Plans, which must be approved by the court, provide for payments of fixed amounts to the trustee on a regular basis, typically biweekly or monthly. The trustee then distributes the funds to creditors according to the terms of the plan, which may offer creditors less than full payment on their claims. If the trustee or a creditor with an unsecured claim² objects to confirmation of the plan, the debtor is obligated to pay the amount of the claim or commit to the proposed plan all projected "disposable income" during the period in which the plan is in effect. 11 U.S.C. § 1325(b). Disposable income is defined as income not reasonably necessary for the maintenance or support of the debtor or dependents. If the debtor operates a business, disposable income is defined as excluding those amounts which are necessary for the payment of ordinary operating expenses. 11 U.S.C. § 1325(b)(2)(A) and (B).

A meeting of creditors is held in every case, during which the debtor is examined under oath. It is usually held 20 to 50 days after the petition is filed. If the United States trustee or bankruptcy administrator³ designates a place for the meeting which is not regularly staffed by the United States trustee or bankruptcy administrator, the meeting may be held no more than 60 days after the order for relief. Bankruptcy Rule 2003(a). The debtor must attend the meeting, at which creditors may appear and ask questions regarding the debtor's financial affairs and the proposed terms of the plan. 11 U.S.C. § 343. If a husband and wife have filed a joint petition, both must attend the creditors' meeting.) The trustee will also attend the meeting and question the debtor on the same matters. In order to preserve their independent judgment, bankruptcy judges are prohibited from attending. 11 U.S.C. § 341(c). If there are problems with the plan, they are typically resolved during or shortly after the creditors' meeting. Generally, problems may be avoided if the petition and plan are complete and accurate and the trustee has been consulted prior to the meeting.

In a chapter 13 case, unsecured creditors who have claims against the debtor must file their claims with the court within 90 days after the first date set for the meeting of creditors. Bankruptcy Rule 3002(c). A governmental unit, however, may file a proof of claim until the expiration of 180 days from the date the case is filed. 11 U.S.C. § 502(b)(9).

After the meeting of creditors is concluded, the bankruptcy judge must determine at a confirmation hearing whether the plan is feasible and meets the standards for confirmation set forth in the Bankruptcy Code. 11 U.S.C. §§ 1324 and 1325. Creditors, who will receive 25 days' notice of the hearing, may object to confirmation. While a variety of objections may be made, the most frequent ones are that payments offered under the plan are less than creditors would receive if the debtor's assets were liquidated or that the debtor's plan does not commit all of the debtor's projected disposable income for the three-year period of the plan.

Within thirty days after the filing of the plan, even if the plan has not yet been approved by the court, the debtor must start making payments to the trustee. 11 U.S.C. § 1326(a)(1). If the plan is confirmed by the bankruptcy judge, the chapter 13 trustee commences distribution of the funds received in accordance with the plan "as soon as practicable." 11 U.S.C. § 1326(a)(2). If the plan is not confirmed, the debtor has a right to file a modified plan. 11 U.S.C. § 1323. The debtor also has a right to convert the case to a liquidation case under chapter 7. 11 U.S.C. § 1307. If the plan or modified plan is not confirmed and the case is dismissed, the court may authorize the trustee to retain a specified amount for costs, but all other funds paid to the trustee are returned to the debtor. 11 U.S.C. § 1326(a)(2).

On occasion, changed circumstances will affect a debtor's ability to make plan payments, a creditor may object or threaten to object to a plan, or a debtor may inadvertently have failed to list all creditors. In such instances, the plan may be modified either before or after confirmation. 11 U.S.C. §§ 1323 & 1329. Modification after confirmation is not limited to an initiative by the debtor, but may be at the request of the trustee or an unsecured creditor. 11 U.S.C. § 1329(a).

Making the Plan Work

The provisions of a confirmed plan are binding on the debtor and each creditor. 11 U.S.C. § 1327. Once the court confirms the plan, it is the responsibility of the debtor to make the plan succeed. The debtor must make regular payments to the trustee, which will require adjustment to living on a fixed budget for a prolonged period. Alternatively, the debtor's employer can withhold the amount of the payment from the debtor's paycheck and transmit it to the chapter 13 trustee. Furthermore, while confirmation of the plan entitles the debtor to retain property as long as payments are made, the debtor may not incur any significant new credit obligations without consulting the trustee, as such credit obligations may have an impact upon the execution of the plan. 11 U.S.C. §§ 1305(c), 1322(a)(1) & 1327.

A debtor may consent to the deduction of the plan payments from the debtor's paycheck. Experience has shown that this practice increases the likelihood that payments will be made on time and that the plan will be completed. In any event, failure to make the payments in accordance with the confirmed plan may result in dismissal of the case or its conversion to a liquidation case under chapter 7 of the Bankruptcy Code. 11 U.S.C. § 1307(c).

The Chapter 13 Discharge

The bankruptcy law regarding the scope of the chapter 13 discharge is complex and has recently undergone major changes. Therefore, debtors should consult competent legal counsel prior to filing regarding the scope of the chapter 13 discharge.

The chapter 13 debtor is entitled to a discharge upon successful completion of all payments under the chapter 13 plan. 11 U.S.C. § 1328(a). The discharge has the effect of releasing the debtor from all debts provided for by the plan or disallowed (under section 502), with limited exceptions. Those creditors who were provided for in full or in part under the chapter 13 plan may no longer initiate or continue any legal or other action against the debtor to collect the discharged obligations.

In return for the willingness of the chapter 13 debtor to undergo the discipline of a repayment plan for three to five years, a broader discharge is available under chapter 13 than in a chapter 7 case. As a general rule, the debtor is discharged from all debts provided for by the plan or disallowed, except certain long term obligations (such as a home mortgage), debts for alimony or child support, debts for most government funded or guaranteed educational loans or benefit overpayments, debts arising from death or personal injury caused by driving while intoxicated or under the influence of drugs, and debts for restitution or a criminal fine included in a sentence on the debtor's conviction of a crime. 11 U.S.C. § 1328(a). To the extent that these types of debts are not fully paid pursuant to the chapter 13 plan, the debtor will still be responsible for these debts after the bankruptcy case has concluded.

The Chapter 13 Hardship Discharge

After confirmation of a plan, there are limited circumstances under which the debtor may request the court to grant a "hardship discharge" even though the debtor has failed to complete plan payments. 11 U.S.C. § 1328(b). Generally, such a discharge is available only to a debtor whose failure to complete plan payments is due to circumstances beyond the debtor's control and through no fault of the debtor, after creditors have received at least as much as they would have received in a chapter 7 liquidation case and when modification of the plan is not possible. Injury or illness that precludes employment sufficient to fund even a modified plan may serve as the basis for a hardship discharge. The hardship discharge is more limited than the discharge described above and does not apply to any debts that are nondischargeable in a chapter 7 case. 11 U.S.C. § 523.

NOTES

1. Section 507 sets forth nine categories of unsecured claims which Congress has, for public policy reasons, given priority of distribution over other unsecured claims.
2. Unsecured debts generally may be defined as those for which the extension of credit was based purely upon an evaluation by the creditor of the debtor's ability to pay. In contrast, secured debts are those for which the extension of credit was based upon not only the creditor's evaluation of the debtor's ability to pay, but upon the creditor's right to seize pledged property on default.
3. Bankruptcy Administrators, rather than U.S. trustees, serve in the judicial districts in the states of Alabama and North Carolina.