

**Information & Instructions: Differences Between Chapter 7 And Chapter 13**

**PREVIEW**

1. This Letter is Used To Confirm the Client's Understanding of the Differences Between a Chapter 7 and a Chapter 13 Filing.
2. It is important that the client understand the options and differences between the two filings.

**Form: Differences Between Chapter 7 And Chapter 13**

[Current date]

[Client's name]  
[Client's address]

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Regarding: Differences between a chapter 7 liquidation and a chapter 13 wage earner plan

Dear [Client's salutation]:

Chapter 7 works well for individuals or businesses that need to make a fresh start and cannot pay their debts from their current income or assets. Depending on the exemptions allowed, the debtor may be able to keep most of his or her property and the exempt property, if any, is sold by a court appointed trustee. Thereafter, the money is used to pay off creditors. In the event there is no unexempt property, then of course no sale or distribution goes to the creditors. The debtor then receives a discharge of his or her debt and after the bankruptcy is completed, they now make a fresh start.

An individual cannot file a Chapter 7 bankruptcy if 180 days prior to filing the Chapter 7 bankruptcy, a prior bankruptcy was dismissed due to the debtor's failure to appear or comply with orders of the court, or was voluntarily dismissed after creditors sought permission from the bankruptcy court to recover property on which they held liens. A discharge may be denied if the debtor received a discharge in a previous Chapter 7 case within the past six years. Therefore each debtor may only receive a Chapter 7 discharge once every six years. Chapter 7 bankruptcy is generally advised for debtors that have more debts than assets and their assets are exempt in nature. The goal being to discharge the debt while retaining the exempt property or assets.

**THANK YOU**

**CHAPTER 13**

Chapter 13 was designed for individuals with regular income and a desire to retain most but not all of their property. These debtors may have insufficient income to pay their current debts. The primary benefit of the Chapter 13 relief is the ability to re pay creditors in installments over a three to five year period during which time the creditors are prohibited from continuing collection efforts. Chapter 13 is also available for business debt.

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# PREVIEW

A Chapter 13 plan allows debtors, subject to confirmation of the plan, to propose to pay a part of the debt, the amount of the debt that equals the fair market value of the collateral in a secured debt rather than the full amount of the debt. Consequently, secured creditors may receive less money under a Chapter 13 plan than they would have received if the debtor had not filed bankruptcy and paid the full amount of moneys owed under the contract or agreement which created the debt.

## REQUIREMENTS

All individuals, even self employed ones or those operating an unincorporated business, are eligible for a Chapter 13. A corporation may not be a Chapter 13 debtor. A corporation may instead file a Chapter 11 bankruptcy. Also, an individual cannot file a Chapter 13 bankruptcy if during the proceeding 180 days a prior bankruptcy petition was dismissed due to the debtor's failure to appear or comply with the bankruptcy courts orders, or a bankruptcy was voluntarily dismissed after creditors sought permission from the bankruptcy court to recover property in which they hold liens.

The debtor must file a Chapter 13 plan to re pay his or her debts either with a petition or then 15 days after the bankruptcy petition has been filed. The plan, which must be approved or confirmed by the court, must provide for payment of fixed amounts to the trustee on a regular basis. This is typically done on bi weekly or monthly basis. The trustee, after receiving the income, then distributes the funds to the creditors according to the terms of the Chapter 13 bankruptcy plan. The plan may offer creditors less than the full amount owed on their claims. If the creditors are offered only partial satisfaction, the debtor is obligated to commit to the proposed plan all projected disposable income over the three to five years that the plan is in effect. Disposable income is income that is not reasonably necessary for the maintenance or support of the debtor or the dependents. If the debtor operates a business, disposable income is defined as those amounts not necessary for the payment of ordinary operating expenses.

Even though the plan may or may not have been approved by the court, the debtor must start making payments under his or her proposed Chapter 13 plan, to the court appointed trustee within 30 days after the filing of the plan.

Shortly after the bankruptcy petition is filed, the meeting of creditor's will be held. The debtor must of course attend, which is the same as the Chapter 7 proceeding. If a husband and wife have filed a joint petition, they both must attend the creditor's meeting. After the creditors meeting, the court will schedule a confirmation hearing to determine whether not the Chapter 13 plan is feasible and meets the standards of the bankruptcy code. Creditors may appear at the creditor's meeting, or at the confirmation hearing and object to the confirmation.

Many types of objections may be made including but not limited to the payment offered under the plan are less than what the creditors would receive if the debtors assets were liquidated, or the debtors plan does not provide for all extra income non disposable income, as discussed above, for the time to five year period. Creditors may object if interest is not provided for. Once the plan is confirmed by the bankruptcy judge, the trustee begins distributing the funds

through the creditors pursuant to the plan. If the plan is not confirmed, the funds paid to the trustee are returned to the debtor after deducting the trustee's costs as authorized by the court.

**PREVIEW**

A debtor may modify the Chapter 13 plan to add creditors or offer circumstances that may arise after the plan has been confirmed.

The debtor must make his or her regular payments in order for the Chapter 13 plan to work, and in order to complete the bankruptcy. This means the debtor must learn to live on a fixed budget for a fixed period of time, three to five years. Once the plan is confirmed, the debtor may retain her or her property as long as the payments are made. The debtor should not incur any significant credit obligations without consulting the bankruptcy trustee since this may have an impact on the execution of the Chapter 13 plan. A debtor may consent to the deduction of the planned payments from the debtor's pay check. If the debtor fails to make the Chapter 13 payments, then the trustee or creditor may file a motion to dismiss the case or convert it to a Chapter 7 bankruptcy.

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Upon completion of the Chapter 13 plan, the debtor receives a discharge which extinguishes the debtor's obligations to pay any unsecured debts or other moneys that were owed prior to filing bankruptcy, but were not paid through the Chapter 13 plan. Creditors who were provided in full or part under the plan may no longer initiate or continue any legal action against the debtor concerning those obligations.

Pre petition debts may be included in the Chapter 13 plan. However, for secured property, current monthly payments must be made in order to preserve the debtors right to keep the secured property. A distinguishing difference between Chapter 13 and Chapter 7 is that some debts that may not be dischargeable under Chapter 7, may be dischargeable under a Chapter 13 plan, including but not limited to some obligations incurred by fraud, embezzlement, larceny, malicious injury, and educational loans. Of course the debtor must meet the prerequisites to filing as discussed above.

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If the debtor cannot make all of the payments owed under the plan, the hardship discharge remedy may be available. This discharge is generally only available to those debtors whose failure to complete the Chapter 13 payment plans are due to circumstances beyond their control and through no fault of the debtor, and after creditors have already received at least as much money as they would have received in a Chapter 7 liquidation proceeding, and when modification of the plan is not feasible or possible. Injury or illness that precludes employment sufficient to fund, even a modified Chapter 13 plan, may serve as a basis for hardship discharge.

**THANK YOU**

Chapters 7, 11, and 13 bankruptcies can be quite complicated; the reader is advised to secure the services of a licensed attorney when considering bankruptcy relief.

This letter contains general information about bankruptcy and while the information presented is accurate as of the date of its publication, this letter should not be cited or relied upon as a substitute for legal advice from a legal authority.

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Very truly yours,  
**PREVIEW**  
[Attorney's name]

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**THANK YOU**

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