Information & Instructions: Overview Of The Chapter 13 Bankruptcy Process

The United States bankruptcy code provides for several types of bankruptcy relief. One common type of bankruptcy relief is known as a Chapter 13 bankruptcy.

Chapter 13 allows individuals, couples or sole proprietorship businesses to obtain relief from their creditors if they are in financial difficulty and unable to pay their debts on time.

An employee whose job is threatened by collection efforts and creditor contacts can obtain relief and protection by filing a Chapter 13 bankruptcy.

Upon the initial filing of a Chapter 13 bankruptcy, the court automatically issues a restraining order that prohibits all creditors from contacting the debtor or the employer.

This stay also stops all legal action against the debtor. It is referred to as "the automatic stay". The stay prohibits creditors from trying to collect from the debtor by telephone, in writing or by instituting or pursuing lawsuits.

The debtor, his family and the employer are immediately relieved from collection contacts as long as the stay remains in effect. The stay even applies to the Internal Revenue Service. In order to keep the stay in effect, under a Chapter 13 bankruptcy, the debtor must be current in his or her Chapter 13 plan obligations.

Chapter 13 stops collection efforts and contact by your creditors; this includes but is not limited to repossessions and foreclosures. Note that in a chapter 7 bankruptcy creditors may more easily foreclose or repossess the debtor's property. Under a Chapter 13 bankruptcy, foreclosures and repossessions can be delayed or prevented depending upon the confirmation of a Chapter 13 plan.

Another benefit of a chapter 13 proceeding is that some future service charges, late charges, collection charges, fees, penalties and some court costs can be eliminated, reduced or delayed. A properly confirmed plan can also reduce or eliminate some future interest on many debts.

One of the most important benefits of a Chapter 13 plan is the ability to allow the debtor to retain or keep exempt property such as equity in non Homestead real estate, stocks, bonds, savings accounts and insurance policies which could be used to pay for the debtor's debts and paid to creditors under a Chapter 7 bankruptcy. Because the debtor is paying his or her debts, most debtor's do not lose any of their assets even though he or she are severely behind in making the pre-petition bankruptcy payments, therefore a Chapter 13 can protect your belongings.

Another benefit of a Chapter 13 bankruptcy is that, unlike a Chapter 7 bankruptcy, Chapter 13 has the ability to protect co-signers by stopping the creditors' collection efforts. The co-maker must not have benefited from the co-obligation, the debt must be a consumer debt and the plan must provide for adequate payment of the debt.

Chapter 13 allows the debtor to cancel contracts and return merchandise which was purchased by under a contract. The debtor can also discontinue services which are based on a contract.

Another benefit of a Chapter 13 bankruptcy is that the court may hold a hearing to consider the validity of creditors' claims. The court can rule on disputed bills and deny any claims that are unfair or unfounded. This may be considerably cheaper than filing lawsuits or defending lawsuits to dispute numerous creditors' claims.

They key to a Chapter 13 bankruptcy is the Chapter 13 plan. The plan is a budget which allows the debtor to consolidate and reduce his or her debt into a monthly payment which is paid to the Chapter 13 trustee. The plan allows financially overburdened debtors' to pay their debts in a court supervised situation. One of the most significant benefits of a Chapter 13 plan is that back taxes, property and Internal Revenue Service taxes, can be paid in a confirmed Chapter 13 plan.

The plan can allow a debtor to pay his or her bills up to 60 months. By eliminating creditors' charges and interest a Chapter 13 plan can save the debtor significant monies.

All of the payments that are made into the Chapter 13 plan are made to a court-appointed trustee. The trustee receives the debtor's plan payments and then the trustee pays the allotted payments to the debtors' creditors.   The trustee can help the debtor with financial problems that may arise during the plan.

Costs and attorneys fees for a Chapter 13 are controlled by the court. Part of the attorney's fees for filing the bankruptcy may be included in the proposed Chapter 13 plan.

In order to be eligible to obtain relief under a Chapter 13 bankruptcy, there are certain requirements which must be met. Chapter 13 is available to individuals or single owner and businesses unless they are stock or commodity brokers. The debtor must have enough income to support a three to five-year repayment plan after allowing for reasonable living expenses. The debtor must owe no more than $269,250 in unsecured debts and $807,750 in secured debts.

An important part of a Chapter 13 bankruptcy is the confirmation or approval of the Chapter 13 plan. The plan must be confirmed by the court before it has the ability to bind the creditors. Creditors may object to the confirmation of the Chapter 13 plan and a hearing can be held to determine whether or not the objection will be allowed. If an objection is filed, the debtor through his or her attorney may be able to negotiate an acceptable resolution so that the plan can be confirmed.

The drafting of a Chapter 13 plan can be a difficult task. It may require the use of an experienced Chapter 13 attorney. It is recommended that a potential bankruptcy filer meet with a skilled bankruptcy attorney to review the types of bankruptcy relief available. The attorney can help the potential bankruptcy filer choose the most appropriate relief for that person's situation.

If a Chapter 13 plan does not provide enough relief, the debtor is not able to or the debtor does not qualify for Chapter 13 relief, then other bankruptcy alternatives can be discussed with the attorney.

This letter contains general information about Chapter 13 bankruptcies 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 or as legal authority.