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1. How Chapter 13 Works

Chapter 13 Bankruptcy could be the best way to resolve your debt problems. When you file for Chapter 13, you agree to repay all or a portion of your debts over time, under the supervision of the Bankruptcy court. Chapter 13 allows you to keep your property while using your anticipated income to repay some or all of your debts.

Anyone who files for Chapter 13 Bankruptcy after December 1, 2017 will use either the official plan form 113 or a local plan form that complies with newly adopted federal standards.

2. An Overview of Chapter 13 Bankruptcy

Chapter 13 can be a good solution for people who need time to pay off certain debts and who have enough income to meet the Chapter 13 requirements. In Chapter 13, you get to keep all of your property, regardless of its value. But, you will have to pay your unsecured creditors (those to whom you owe credit card debts, medical debts, and most court judgments, for example) at least as much as they would have received had you filed for Chapter 7 Bankruptcy. Typically, this amount would be the value of the property you would have lost in a Chapter 7 Bankruptcy, minus sales costs. This is a minimum amount, however. Your monthly Chapter 13 payment might be higher, depending on your other bills. If you can afford to make the required payment over the course of three- to five-years, you can keep the property.

Chapter 13 has many other benefits (discussed in “Reasons to Choose Chapter 13” on pgs. 15 & 16), but some of the most powerful can help you save your home. Chapter 13 Bankruptcy allows you to catch up on mortgage payments through your plan so that you can avoid foreclosure. (See Ch. 8.) And if you have second mortgages that are no longer secured by the equity in your property because your home’s value has decreased (your home is significantly “underwater”) you can eliminate them.

3. Costs

Like everyone who files for Chapter 13 Bankruptcy, you have to pay the filing fee of $310, due either when you file your initial Bankruptcy paperwork or in up to four installments (with the court’s permission). You’ll also have to pay a fee—typically less than $60 total—to a credit counseling agency for prefiling credit counseling and post filing debt management counseling. If you decide to hire a lawyer to help you with your case, you can expect to pay an additional $3,000 or more in legal fees, depending on the prevailing rate in your area. In most cases, you won’t have to come up with the entire legal fee all at once. Many attorneys will ask you to make an initial payment—which could be as low as $100 but likely more—and allow you to pay the rest over the course of your plan.

4. Do You Need a Lawyer?

For the vast majority of Chapter 13 filers, the answer is “yes.” In fact, most Bankruptcy courts strongly suggest that filers retain counsel.

It’s not that people can’t understand how Chapter 13 Bankruptcy works. And most people can fill out the petition and accompanying schedules and forms. The problem is that Chapter 13 law can be tricky, and most people don’t understand what will happen to their income and assets, how much they’ll have to repay creditors, and other complicated Chapter 13 repayment plan requirements. Calculating plan payments is especially difficult without the assistance of computer software, which is expensive and generally requires Bankruptcy knowledge to complete properly. It is also not uncommon for the trustee or creditors to challenge or object to various aspects of your plan. You may have to argue against objections, negotiate with creditors, or modify your plan. In fact, most Chapter 13 plans need at least one modification before the court approves them, even when prepared by an attorney. Experienced Chapter 13 Bankruptcy lawyers have software to prepare your Chapter 13 plan and the expertise to handle objections and to modify your plan as needed.

Even when you have an attorney, it’s still important to understand the Chapter 13 process, including options for dealing with debts and property, the possibility of reducing loan amounts (called cramdown), and what you can expect to pay in your Chapter 13 plan. Having this knowledge, you’ll be in a better position to help your attorney represent you.

It’s also helpful to run some preliminary numbers yourself to determine if Chapter 7 is an option for you or if funding a Chapter 13 plan is possible given your income and expenses.

5. Filing Your Papers
To begin a Chapter 13 Bankruptcy, you fill out a packet of forms in which you disclose your property and debts, as well as your financial transactions for the years immediately before your filing. Many of the official forms for Chapter 13 Bankruptcy are the same as those for Chapter 7.

6. In addition, you must prepare:
A). two forms (Form 122C-1: Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period and Form 122C-2, Chapter 13 Calculation of Your Disposable Income) that determine whether your income is more or less than the median income in your state. The calculation determines how long your repayment plan must last. If your income is more than the median for your state, your plan, with a few exceptions, must last five years; if your income is less than the median, you can propose a three-year plan. If your income is more than the median, Form 122C-2 calculates how much disposable income you will have available to pay your unsecured creditors over the five-year period.

B). your Chapter 13 repayment plan, which shows how you propose to pay certain mandatory debts (child support, tax arrearages, and so on), secured debts on property you intend to keep, and, if you have sufficient income, at least a portion of your other unsecured debts over the three- to five-year period.

C). a certificate showing you have participated in a credit counseling program during the 180-day period before filing for Bankruptcy. If the credit counseling agency comes up with a proposed repayment plan that would allow you to pay your debts outside of Bankruptcy, you must submit this as well.

D). a certificate regarding child support obligations and your residence.

E). You’ll also have to submit documents that will verify the figures in your paperwork. You’ll either file those documents with your paperwork or submit them to the Bankruptcy trustee appointed to oversee your case, depending on the rules of your local jurisdiction. Such documents can include:

1). pay stubs from the 60-day period before you file, along with a cover sheet.

2). proof that you’ve filed your federal and state income tax returns for the previous four years.

3). a copy of your most recent IRS income tax return (or a transcript of that return).

4). if you're a sole proprietor, profit and loss statements.

7). The Repayment Plan
The repayment plan you submit with your other Bankruptcy papers (or shortly after your initial filing) shows the judge how you will devote your disposable income to pay off all or some of your debt over the life of your plan.

8). Which Debts Must Be Repaid
Chapter 13 requires you to pay particular, high-priority debts in full over the course of the life of the plan, including recent income tax debt, domestic support obligations, and mortgage and car loan arrearages (if you want to keep the car or home). You also must pay as much of your remaining debts as you can from the income you have available.

But that's not all. You'll have to show that you can keep up on your other obligations, too, such as a mortgage or car note and other monthly living expenses. And, your plan also has to allow for total payments to your unsecured creditors that are at least as much as they would have received had you filed for Chapter 7 Bankruptcy instead of Chapter 13. In other words, these payments must be at least equal to the value of the property you'd have to give up in a Chapter 7 case, less the costs, commissions, and fees that would have to be paid to sell that property.

9). Length of the Repayment Period
You must propose a repayment plan that lasts for either three or five years, depending on your income. A filer whose average gross monthly income over the six months before filing is more than the median income in their state must propose a five-year repayment plan unless the plan proposes to pay 100% of the filer's unsecured debt.

Filers whose average gross monthly income for the six-month period is less than the median usually have the choice of filing for either Chapter 7 or Chapter 13 Bankruptcy. If they use Chapter 13, these filers may propose a three-year repayment plan and may use their actual expenses to calculate how much income they will have to devote to that plan. Such filers sometimes opt to pay a smaller payment over five years if it will increase their chances of getting their plan approved by the court.

Filers must use certain standard expense amounts set by the IRS—rather than their actual expenses—to calculate their plan payments. This ensures that higher-income filers with excessive monthly expenses don't receive an advantage as the result of living a lavish lifestyle.

10). Coming Up With a Plan the Judge Will Approve
You can't proceed with a Chapter 13 Bankruptcy unless a Bankruptcy judge approves (confirms) your plan. As mentioned, some creditors are entitled to receive 100% of what you owe them, while others may receive a much smaller percentage or even nothing at all if you have insufficient disposable income left over after the mandatory debts are paid. For example, a Chapter 13 plan must propose that any child support you owe to a spouse or child (as opposed to a government agency) will be paid in full over the life of your plan. If you can't prove that you have enough income to do so, the judge will not confirm it. On the other hand, the judge can confirm a plan that doesn't repay any portion of your credit card debts if you won't have any disposable income left after paying your child support obligations and other required debts.

TIP
You may have more—or less—disposable income than you think. Chapter 13 requires you to commit your "projected disposable income" to repaying your debts over the life of your plan. Initially, you calculate your projected disposable income by subtracting your allowable expenses from your average income during the six months before you file for Bankruptcy. But if this does not give an accurate picture of your current income and expenses and given certain

circumstances, you might be allowed to use your current income and expenses at the time you file, if those figures more accurately reflect your finances going forward.

11).The Automatic Stay
When you file for Chapter 13 Bankruptcy, the automatic stay goes into effect right away. The stay prevents most creditors from taking action to collect a debt against you or your property. So, for example, if a foreclosure sale of your home or vehicle repossession is in the works, the stay stops the sale or repossession dead in its tracks. (However, the automatic stay doesn't apply if you've had two previous Bankruptcy cases dismissed in the past year and it may be limited in time if you had one case dismissed.)

12).The Meeting of Creditors
A). As soon as you file your Bankruptcy papers, the court will schedule a meeting of creditors (also called a 341 hearing) which will take place within 20 to 40 days after your filing date—and send notice of this meeting to you and the creditors listed in your Bankruptcy papers. You (and your spouse if you have filed jointly) are required to attend. You'll each need to bring two forms of identification—a picture ID and proof of your Social Security number.

B). The creditors' meeting is conducted by the Chapter 13 Bankruptcy trustee for your court. No judge is present, and the meeting is held outside of court, usually in the nearest federal building. Although the Bankruptcy trustee is not a judge, you still have a duty to cooperate with the trustee as a condition of receiving a discharge.

C). Keep in mind that if your meeting will be held in a federal building, there may be restrictions on what you can and cannot bring with you, and those restrictions might include a cell phone. Check beforehand.

D). A typical creditors' meeting lasts less than 15 minutes. The trustee will briefly go over any questions raised by the information you entered in the forms. The trustee is likely to be most interested in the fairness and legality of your proposed repayment plan and your ability to make the payments you have proposed. The trustee has a vested interest in your plan being approved because the trustee gets paid a percentage of all payments your creditors receive.

E). The trustee will also require proof that you have filed your tax returns for the previous four years. If you can't show that you filed returns, the trustee may continue the meeting to give you a chance to file these returns. Ultimately, you will not be allowed to proceed with a Chapter 13 Bankruptcy unless and until you bring your tax filings up to date.

F). When the trustee is finished asking questions, any creditors who show up will have a chance to question you. It's unlikely that a creditor will appear, but if one does, you'll be required to answer questions related to your past and present financial circumstances. The creditors most likely to show are often disgruntled and are either suing you (or are planning to sue you) or plan to fight the discharge of your debt on fraud grounds. Such creditors use the meeting to gather evidence in support of their case, much like litigants do in a deposition. They'll likely evaluate what they learn before deciding whether to proceed against you and, if they do, you can expect your answers to be used against you later.

G). By contrast, it's common to use the meeting to discover whether the trustee has an objection to your plan and why. You may be able to make changes to accommodate the trustee (which would require you to modify the plan). Keep in mind, though, that if you're unable to resolve the issue, the trustee (or creditors) will raise the objection and then the Bankruptcy judge (who is not at the meeting) will make a decision.

13). Plan Objections
A). A creditor who has an objection to the plan you have proposed is unlikely to voice that objection at the meeting of creditors. Instead, the creditor will file a motion with the court. If you're unable to resolve a concern held by the trustee, you can expect the trustee to file a motion, as well.

B). A trustee or creditor might claim, for example, that your plan isn't feasible (you don't have enough income to make the required plan payment), that you're giving yourself too much time to pay your arrears on your car note or mortgage, or that your plan proposes to pay an amount that's less than what the creditor is entitled to receive.

C). An unsecured creditor who is scheduled to receive very little under your plan might object if that creditor thinks you should cut your living expenses and thereby increase your disposable income (the amount from which unsecured creditors are paid). This is more likely to happen if you are using your actual expenses to compute your disposable income (as filers whose income is less than the state median are allowed to do) instead of standard expense figures set by the IRS.

D). As a general rule, the judge will go along with the trustee unless your lawyer can make a good case that the trustee (or creditor) is wrong.

14). The Confirmation Hearing
Chapter 13 Bankruptcy requires at least one appearance by you or your attorney before a Bankruptcy judge. (In some districts, the judge comes into the courtroom only if the trustee or a creditor objects to your plan, and you want the judge to rule on the objection.) At this "confirmation hearing," which is usually held a few weeks after the creditors' meeting, the judge either confirms (approves of) your proposed plan or sends you back to the drawing board for various reasons—usually because your plan doesn't meet Chapter 13 requirements. For example, a judge might reject your plan because you don't have enough income to pay off your priority creditors (those creditors you're required to pay in full) while staying current on your secured debts, such as a car note or mortgage.

You are entitled to amend your proposed plan until you get it right or the judge decides that it's hopeless. During this time though, you must make payments to the trustee under your proposed plan. Each amendment requires a new confirmation hearing and appropriate written notice to your creditors. Once your plan is confirmed, it will govern your payments for the three- to five-year repayment period.

15. Possible Additional Court Appearances
If your plan is prepared perfectly from the beginning, your confirmation hearing will probably be the only time the Bankruptcy judge deals with your case. However, additional appearances in court by you or your attorney may be necessary to:

A). confirm your repayment plan if you need to modify or change your plan

B). value an asset, if your plan proposes to pay less for a car or other property and the creditor objects to the valuation (this might happen if you try to cram down the debt to the item's current value)

C). respond to requests by a creditor or the trustee to dismiss your case or amend your plan

D). respond to a creditor who opposes your right to discharge a particular debt (perhaps claiming that you incurred the debt through fraud)

E). discharge a type of debt that can be discharged only if the judge decides that it should be (for example, to discharge a student loan because of undue hardship)

F). eliminate a lien on your property that will survive your Chapter 13 Bankruptcy unless the judge removes it, or

G). reaffirm a debt owed on a car or other secured property or that would otherwise not survive your Bankruptcy.

16. Making Your Payments Under the Plan
A). You are required to make your first payment under your proposed repayment plan within 30 days after you file for Bankruptcy. If the Bankruptcy court ultimately confirms your plan, your payment will be distributed to your creditors in accordance with the plan's terms. If your Chapter 13 Bankruptcy never gets off the ground, in most instances, the trustee will return the money to you, less administrative expenses. If the judge has ordered the trustee to make payments to your secured creditors before the confirmation of your plan, the trustee will deduct the amount of these payments from the total returned to you.

B). Once your plan is confirmed, you will continue to make payments, usually monthly, to the Bankruptcy trustee, an official appointed to oversee your case. In some jurisdictions, the trustee will require you to agree to an order that takes the payments directly out of your bank account or paycheck (this option isn't available everywhere, although many filers would like to take advantage of it). The trustee uses your monthly payments to pay the creditors in accordance with the payment order contained in your plan. The trustee also collects a statutory fee (roughly 8% to 10% of the amount you will pay under your plan, but it might be less).

C). If you can show that you have a history of regular income spread out in uneven payments over the year—for example, quarterly royalty payments or predictable seasonal income fluctuations (for instance, if you do construction work in a location that has severe winters)—your plan may provide for payments when you typically earn income, rather than every month, but in most cases it will be monthly.

17. If Something Goes Wrong
A). What happens if you can't make a payment or it becomes apparent—perhaps because of a change in your income or life circumstances —that you won't be able to complete your plan? If you miss only a payment or two, you can usually arrange with the trustee to make up the difference. If you lose your income stream, however, and you definitely won't be able to complete the plan, you might be able to convert your Bankruptcy to Chapter 7 (if that makes sense), obtain a "hardship" discharge from the court, or modify the plan. Whether one of these options will make sense will depend on several factors, such as the type of debt you have and whether you'd lose property if you converted to a Chapter 7 case. For that reason, in many cases, Chapter 13 bankruptcies that don't work out are dismissed entirely.

B). If your case is dismissed, you'll owe your creditors the balances on your debts from before you filed your Chapter 13 case, less the payments you made, plus the interest that accrued while your case was open

18. Personal Financial Management Counseling
Before you make your last plan payment, you'll have to complete a personal financial management counseling course (called budget counseling)—and file an official form certifying that you did so—in order to get your discharge. This counseling covers basic budgeting, managing your money, and using credit responsibly.

19. After You Complete Your Plan
Once you complete your plan, certify that you've remained current on your ongoing child support or alimony obligations, and file proof that you've completed your personal financial management counseling, your remaining debts will be discharged, if they are the type of debts that can be discharged in Chapter 13. (See "Which Debts Are Discharged

in Chapter 13 Bankruptcy," below, for more information.) For instance, if you have $40,000 in credit card debt, and you pay off $10,000 through your repayment plan, the remaining $30,000 will be discharged once you complete the plan. However, you will still owe whatever is left on the debts that you can't, by law, discharge in Chapter 13. Practically speaking, most people will emerge from Chapter 13 Bankruptcy current on domestic support obligations and debt free otherwise, except for student loan and mortgage balances (you're not required to repay long-term obligations fully).

Example: Karen owes $60,000 in credit card debts, $60,000 in student loans, and $2,000 in alimony. Karen pays off the alimony in full (as required by law) and 10% of her credit card debts and student loans. The remainder of the credit card debts will be discharged, but she will still owe the rest of her student loan debt ($54,000) unless she can convince the judge to order it discharged because of undue hardship.

20. Which Debts Are Discharged in Chapter 13 Bankruptcy?
Not all debts are discharged in Chapter 13Bankruptcy. Of course, if you will repay all of your unsecured debts in full over the life of your plan, no discharge is necessary. But if your plan provides for less than full repayment of your unsecured debts, whatever you still owe at the end of your plan may or may not be discharged.

21. Debts That Are Discharged
As a general rule, whatever you still owe on most credit card debts, medical bills, and lawyer bills is discharged, as are most court judgments and loans. Also, under Bankruptcy law, debts you owe to an ex-spouse arising from a divorce or separation agreement that are not for support are discharged in Chapter 13 (but not in Chapter 7), as are debts incurred for the purpose of paying taxes.

22. Debts That Are Not Discharged
Debts that survive a Chapter 13 Bankruptcy (unless you pay them in full during the life of your plan) include:

A). debts that you don't list in your Bankruptcy forms

B). court-imposed fines and restitution

C). back child support and alimony

D). student loans (unless you can show hardship)

E). recent back taxes

F). taxes for years in which you did not file a return (or, in some jurisdictions, for years in which you filed a late return)

G). debts you owe because of a civil judgment arising out of your willful or malicious acts, or for personal injuries or death caused by your drunk driving.

23. Debts That Are Not Discharged If the Creditor Successfully Objects
Some types of debts will survive your Bankruptcy only if the creditor files papers and goes to court to prove that the debt shouldn't be discharged. For example, if a creditor successfully objects to a debt arising from your fraudulent actions or recent credit card charges for luxuries, those debts will be waiting for you after your Bankruptcy, unless you managed to pay them all off during your repayment plan.

24. Chapter 13 Bankruptcy and Foreclosure
If you are behind on your mortgage payments or facing Foreclosure, Chapter 13 Bankruptcy might be able to help you keep your home. It can do this by allowing you to temporarily (or permanently) stop the Foreclosure, catch up on back

mortgage payments through your plan, get rid of certain junior liens thus freeing up more money to pay your first mortgage (although this option isn't being used much as real estate appreciates in value), and perhaps work out a Foreclosure alternative with your lender through a Bankruptcy Foreclosure Mediation program.

25. The Automatic Stay Can Stop a Foreclosure
If you are facing Foreclosure, in most situations, filing a Chapter 13 Bankruptcy will immediately stop the Foreclosure process, at least temporarily. There are exceptions, however, if you filed Bankruptcy within the previous two years, or if the Bankruptcy Court lifted the stay and allowed your lender to proceed with the Foreclosure in a dismissed Bankruptcy case.

26. Catching Up on Mortgage Arrears Through Your Chapter 13 Plan
A). You must remain current on a secured debt, such as your house payment, if you want to keep the property. When you signed your loan documents, you agreed that the bank could take the house if you failed to live up to your obligation.

B). Your contract remains in place even if you file for Bankruptcy. So, to stay in the home, you must continue paying for it. One of the benefits of Chapter 13 Bankruptcy is that it allows you to include your past-due mortgage debt in your Chapter 13 plan. This means you can continue making your monthly payment, pay the arrears back over the length of your plan, and remain in the house.

C). The same is true of past due homeowners' association assessments—you can catch up through your plan. As long as you keep making your regular mortgage payments (and your ongoing HOA assessments) and your Chapter 13 plan payments, your lender cannot Foreclose. Chapter 7 Bankruptcy, on the other hand, does not provide a way to get current on mortgage arrears. For this reason, Chapter 13 Bankruptcy is often the best avenue for saving your home if you are behind in your mortgage or HOA assessments.

27. Getting Rid of Second Mortgages, HELOCs, and Other Junior Liens
Chapter 13 Bankruptcy has another helpful remedy—lien stripping. Lien stripping allows you to remove second mortgages, home equity lines of credit (HELOCs), and other junior liens from your home if they are wholly unsecured. (See "Lien Stripping: Getting Rid of Second Mortgages and Other Liens on Real Estate," below, to learn what wholly unsecured means.) By getting rid of some or all these payments, a homeowner is often better positioned to afford the remaining mortgages.

28. Foreclosure Mediation Programs in Bankruptcy
A). After the 2008 recession and subsequent Foreclosure crisis, an increasing number of Bankruptcy courts instituted programs to help debtors, particularly in Chapter 13, resolve Foreclosure issues with their lenders. These programs (often called "Loss Mitigation programs") vary by district. Most involve some form of Foreclosure mediation in which the homeowner and the lender meet in the presence of a neutral mediator and try to work out an alternative to Foreclosure. Possible workouts might include a loan modification, short sale, or deed in lieu of foreclosure. Most of these Bankruptcy court programs apply only to residential property. But a few also include income-producing residential property (rental property) and second homes.

B). Deficiency balances are discharged in Bankruptcy. A deficiency occurs when the amount you owe on your home exceeds the value of the home. In many states, after Foreclosing on your home, the mortgage lender can sue you for the deficiency (in some states the lender can get the deficiency judgment through the Foreclosure itself without filing a separate lawsuit). But Chapter 7 and Chapter 13 Bankruptcies discharge all mortgage deficiencies. Knowing this provides an incentive for the mortgage lender to work out a deal with you if your property is worth less than the amount you owe.

29. Special Chapter 13 Features: Cramdowns and Lien Stripping

In Chapter 13 Bankruptcy, you may be able to reduce the amount of a secured loan (for example, your car loan) to the actual value of the property; this is called a cramdown. And you might be able to get rid of second or third mortgages, HELOCs, or home equity loans if they are no longer secured by the equity in your home. This is called lien stripping.

Although these provisions are powerful, they don't apply to the first mortgage of your residential real property. Some people believe they can "modify" the first mortgage on their home through Chapter 13 Bankruptcy. For the most part, this is a myth, although there are a few exceptions, such as for vacation and rental properties.

CAUTION

You lose the benefit of cramdown or lien stripping if your case is dismissed or converted to Chapter 7. Loan reductions or lien eliminations you get through cramdown or lien stripping are only good if you complete all of your payments under the Chapter 13 plan (or under a Chapter 11 Bankruptcy). If your case is dismissed or converted to a Chapter 7, the secured creditors get their full lien amounts back, less any amounts you have paid through your plan.

TIP

You may be able to modify your mortgage through non-Bankruptcy avenues. Although you can't modify a first mortgage on a residential home through Bankruptcy, you may be able to negotiate with your lender directly to reduce your interest rate, payments, or more. Or, you might be able to take advantage of government programs designed to help homeowners modify their mortgages.

A). Cramdowns: Reducing Secured Loans to the Value of the Collateral

1). If the amount you owe on a secured loan is more than the value of the collateral (the collateral is the property you pledge to guarantee payment of the loan), you may be able to take advantage of Chapter 13 provisions that result in what is commonly known as a cramdown. When you cram down a loan, you reduce the amount owed to equal the value of the collateral—and this happens without having to get the lender's agreement.

2). While a cramdown sounds great, there's a catch—you have to pay off the entire reduced balance in your Chapter 13 repayment plan. So, while it works well to reduce a car payment (assuming you meet the 910-day rule) only high-earning filers will be able to use a cramdown for property with high loan balances, such as a vacation home.

3). Property That Is Eligible for Cramdown

You can only use a cramdown on loans secured by certain types of property. Significantly, you cannot cram down mortgages on your personal residence. But you may be able to use it on a mobile home mortgage or a mortgage for a multiunit building if you live in one of the units. Mortgages on your investment properties, such as rental property, a second home, or commercial property, are eligible. A cramdown is also available, subject to certain limitations, for car loans and other personal property loans.

4). Car loans: Cramdowns are often used for car loans. There are a few restrictions to keep in mind, however. For cars, in order to cram down the loan, one of the following must apply:

a). You incurred the debt at least 910 days before you filed for Bankruptcy.

b). The loan is not a purchase money loan (that is, you secured the debt with a car you already owned, not a car you bought with the loan).

c). The car secured by the loan is not a personal vehicle (that is, you bought it for your business).

B). Other personal property loans: You may cram down debts for personal property (other than motor vehicles) only if you took out the loan at least a year before you filed for Bankruptcy, or if the loan was not used to purchase the property that you pledged to secure repayment (that is, you owned the property before you took out the loan).

5). Real estate loans. You may be able to cram down mortgages secured by the following types of properties:

a). multiunit buildings (even if you live in one of the units)

b). vacation or rental homes

c). buildings or lots adjacent to your home that are not likely to be considered part of your residence, such as farmland

mobile homes (these are considered to be personal property)

d). property that is not your residence

C). Cramming Down Negative Equity in the 9th Circuit
If you bought a car within 910 days of your Bankruptcy filing (which means your loan is ineligible for cramdown), you might be able to cram down part of the loan if you traded in a car to buy the new car. You can only do this in the 9th Circuit (all other circuits have rejected this interpretation of the law).

1). Here's how it works:
If, when you purchase a car, you trade in a car that is underwater (you owe more on the car than the car is currently worth), the lender often adds the difference between the trade-in value of your car and the remaining balance on the loan to your new car loan. For example, say your old car is worth $5,000 but you still owe $8,000 on the car loan. The lender for your current car purchase takes your old car as a trade-in, and adds $3,000 ($8,000 balance on loan minus the $5,000 value of car) to your new car loan. This amount is called negative equity.

2). In the 9th Circuit, if you file for Bankruptcy, you can treat the $3,000 as unsecured debt, even if you bought the second car within 910 days of your Bankruptcy filing. (In re Penrod, 611 F.3d 1158 (9th Cir. 2010).)

D). How Cramdown Works
In Bankruptcy, when a loan is undersecured (which means the amount you owe is greater than the value of the property pledged to secure repayment), the debt can be broken down into secured and unsecured portions. The amount equal to the value of the property is the secured portion and any amount over the value of the property is unsecured.

1). The first step in a cramdown is coming up with an accurate value for the property. Under Rule 3012, you can ask the court to value your property through the plan or in a separate motion. If the creditor objects to your valuation, you'll present your proof of value, such as an appraisal, and the creditor is provided with an opportunity to present its own valuation. If the values are not the same and you are unable to reach a compromise with the secured creditor, the court will hold an evidentiary hearing. You and the creditor bring your appraisers to testify, and the Bankruptcy judge makes a decision.

2). After the judge determines the value (and thereby the amounts of the secured and unsecured claims), in most cases, you must pay the entire amount of the secured portion through your plan, with interest. The appropriate interest is also determined as part of your motion and is generally set at prime plus one to three points. For example, if the prime rate is 3.25%, an appropriate interest rate may be between 4.25% and 6.25%.

3). The unsecured portion of the claim is lumped in with your other unsecured debts. Because of the way unsecured debt is treated in a Chapter 13 Bankruptcy, many Bankruptcy filers pay pennies on the dollar on the unsecured portion.

4). Here's an example of how this works: You owe $20,000 on a car you bought three years ago. The car is now worth $15,000 (which means only $15,000 of the car loan is secured by the property). You can cram down the loan to $15,000 and pay this amount through your Chapter 13 plan. The remaining amount—$5,000—will be added to your unsecured debt and treated like all of your other unsecured debt.

E). Determining the Value of the Property
The appropriate methods of valuation depend on the type of property you are valuing.

1). Real estate and mobile homes. For real estate and mobile homes, use the current market value of the property. This is best accomplished through a formal appraisal—especially if you think the value may be contested by the secured creditor. If you don't anticipate a fight, you may be able to use comparable sales in your area. This will be less expensive than paying for a full appraisal.

2). Personal property. For personal property, use the replacement value of the property. Replacement value is not the amount it would cost to replace the item with a new item. Rather, it's the amount a merchant could get for a used item of similar age and in a similar condition in a retail environment (as opposed to a fire sale or an auction). You can have the property appraised or use some other method to determine its replacement value.

3). For motor vehicles, you may be able to use an automotive industry guide, such as the Kelley Blue Book. Start with the retail value (rather than the wholesale value) and adjust that amount for the car's condition and mileage. If the car lender disputes the figure, you may need to have the vehicle appraised.

F). Lien Stripping: Getting Rid of Second Mortgages and Other Liens on Real Estate
With lien stripping, you may be able to eliminate certain second mortgages, HELOCs, and other liens on your real property. Unlike cramdowns, lien stripping can be used to reduce your secured debt payments on your personal residence as well as other real property. Like a cramdown, it involves valuing the property.

1) Here's how it works.
A). If you have more than one mortgage on your property, you can ask the court to value the property and eliminate or "strip off" any mortgage that is determined to be wholly, or completely, unsecured. To figure out if a mortgage is completely unsecured, start with the value of the property and subtract the amount of any mortgages or liens that are more senior (meaning they must be paid off first) to the mortgage you are trying to strip. If the value of the property is less than the total amount of the senior mortgages and liens, then there is no equity left to secure the mortgage you are trying to strip. This means it's wholly unsecured and eligible for stripping. To get the lien stripped, you must file a motion with the court. If the court grants your motion, the lien is removed from your property and the debt will be treated as an unsecured debt.

B). Lien stripping is generally not available for first mortgages. A first mortgage, being the most senior lien on the property, will never be completely unsecured. A second or third mortgage, or a HELOC, is usually eligible for lien stripping if it is wholly unsecured. A mortgage is wholly unsecured if, after selling the property, the sales proceeds are insufficient to pay any portion of the junior mortgage.

C). If you have a homeowners' or condominium association lien, however, you might not be able to strip it, even if it's wholly unsecured. Whether you can depends on state law and the way the lien was created. (Consult with a local attorney to find out.)

1). Example: John and Ellen own a home currently worth $100,000. They have three mortgages—the first is $80,000, the second is $27,000, and the third is $50,000. The first mortgage is entirely secured because it is less than the value of the home. The second mortgage is partially secured since the value of the house less the first mortgage ($100,000 – $80,000 = $20,000) is enough to cover part of the second mortgage. Since it is not completely unsecured, it cannot be stripped. John and Ellen have more luck with their third mortgage, which is completely unsecured. When you deduct the amount owed on the first two mortgages from the value of the house ($100,000 – $80,000 – $27,000 = -$7,000), the result is less than zero. There is no equity left to pay any portion of the third mortgage. John and Ellen can strip the entire $50,000 third mortgage.

D). Like a cramdown, when a mortgage is stripped, the underlying debt becomes unsecured and is paid in your Chapter 13 plan along with your other unsecured creditors, such as credit cards and medical bills. These creditors get paid out of your disposable income, which for most people is minimal. Therefore, a stripped mortgage is often paid very little through the plan. Once you've completed your plan, any remaining balance gets wiped out with other dischargeable unsecured debt.

E). CAUTION
Lien stripping is not the same as lien avoidance. In Chapter 13 Bankruptcy, you may also be able to "avoid" liens, or get rid of them, if the property is exempt. Although the end result may be the same, or similar, lien avoidance is different from lien stripping because it hinges on property exemptions (the law that allows you to protect certain property in Bankruptcy).

30. Is Chapter 13 Right for You?
A). For most people, the two choices for Bankruptcy relief are Chapter 7 and Chapter 13. In Chapter 7 Bankruptcy, you immediately wipe out many debts, but in exchange you must give up any property you own that isn't protected by state or federal exemption laws.

B). Some of you won't have a choice between Chapter 7 and Chapter 13 Bankruptcy. If your income exceeds Chapter 7 Bankruptcy qualifications, you will have to use Chapter 13 and repay some of your debt. Likewise, if you don't have a steady income, your only Bankruptcy choice is Chapter 7. Many people who can choose between the two decide to file under Chapter 7, but there are some situations when Chapter 13 will be the better option.

C). Upper-Income Filers Must Use Chapter 13
If your average monthly income during the six months prior to filing is higher than the state median, you won't qualify for a discharge if your total five-year disposable income would be:

1). $77,000 or more and satisfy at least 25% of your unsecured debt

2). $12,850 or more, regardless of the percentage of unsecured debt that amount would pay.

31). Reasons to Choose Chapter 7
A). Most people who have a choice traditionally have opted to file for Chapter 7 Bankruptcy because it is relatively fast, effective, easy to file, and doesn't require payments over time. It also doesn't require you to be current on your income tax filings (although you might run into a problem if the trustee believes that you're not filing because you're entitled to a significant tax refund). In the typical situation, a case is opened and closed within three to four months, and the filer emerges debt free except for a mortgage, car payments, and certain types of debts that survive Bankruptcy (such as student loans, recent taxes, and back child support).

B). If you have any secured debts, such as a mortgage or car note, Chapter 7 allows you to keep the collateral as long as you are current on your payments. However, if your equity in the collateral substantially exceeds the exemption available to you for that type of property—meaning that you have more equity than you're allowed to protect in Bankruptcy—the trustee can sell the property, pay off the loan, pay you your exemption amount, and pay the rest to your unsecured creditor. If you are behind on your payments, the creditor can come into the Bankruptcy court and ask the judge for permission to repossess the car (or other personal property) or foreclose on your mortgage. Or, the lender can wait until the Bankruptcy is over to recover the property. As a general rule, however, most Chapter 7 filers can keep all their property, either because they don't own much to begin with or because any equity they own is protected by an exemption. But this isn't always the case—especially as the economy improves and people regain equity in their homes.

C). Nevertheless, assuming you qualify, that you can protect all or most of your property, and that you have the type of debt that is wiped out in Chapter 7 Bankruptcy, you likely will find it easier—and more effective—to file for Chapter 7 than to keep up with a long-term payment plan under Chapter 13.

32. Reasons to Choose Chapter 13
A). Although Chapter 7 is easier and doesn't require repayment, there are many good reasons why people who qualify for both types of Bankruptcy choose Chapter 13 instead. Each chapter solves different problems.

B). Generally, Chapter 13 Bankruptcy might make sense if you will have adequate, steady income to fund your plan, and are in any of the following situations (this isn't an exclusive list—additional situations exist):

1). You are facing Foreclosure on your home or your car is being repossessed, and you want to keep your property. Using Chapter 13, you can make up the missed payments over time and reinstate the original agreement. You cannot do this in Chapter 7 Bankruptcy which means you'll likely lose the property.

2). You owe more on vacation or investment property than the property is worth, and you can reduce the mortgage to the value of the property in Chapter 13. This is possible only if:

a). you are not using the real estate as your primary residence and you can afford to repay the entire reduced mortgage balance through your plan. (See "Special Chapter 13 Features: Cramdowns and Lien Stripping," above.)

b). You have more than one mortgage and are facing Foreclosure because you can't make all the payments. If your home's value is less than or equal to what you owe on your first mortgage, you can use Chapter 13 to change the additional mortgages into unsecured debts—which don't have to be repaid in full—and lower the amount of your monthly payments. (See "Special Chapter 13 Features: Cramdowns and Lien Stripping," above.)

c). Your car is reliable and you want to keep it, but it's worth far less than you owe. You can take advantage of Chapter 13 Bankruptcy's cramdown option (for cars purchased more than 2½ years before filing for Bankruptcy) to keep the car by repaying its replacement value in equal payments over the life of your plan, rather than the full amount you owe on the contract. (See "Special Chapter 13 Features: Cramdowns and Lien Stripping," above.).

d). You have a codebtor who will be protected under your Chapter 13 plan but who would not be protected if you used Chapter 7 (the creditor won't be able to collect against the codebtor while you're in Chapter 13).

e). You have a tax obligation, student loan, or another debt that cannot be discharged in Bankruptcy, but can be paid off over time in a Chapter 13 plan (you can avoid a wage garnishment by paying in Chapter 13).

f). You owe debts that can be discharged in a Chapter 13 Bankruptcy but not in a Chapter 7 Bankruptcy. For instance, debts incurred to pay taxes can't be discharged in Chapter 7 but can be discharged in Chapter 13.

g). You have a sole proprietorship business that you would have to close down in a Chapter 7 Bankruptcy but that you could continue to operate in Chapter 13.

h). You have valuable personal property or real estate that you would lose in a Chapter 7 case, but could keep if you file for Chapter 13 (you'll need to have enough income to pay the unprotected value over the course of the plan).

33. Alternatives to Bankruptcy
By now, you should have a pretty good idea about what you can hope to get out of a Chapter 13 Bankruptcy. Before you decide whether a Chapter 13 or Chapter 7 Bankruptcy is the right solution for your debt problems, however, you should consider some basic options outside of the Bankruptcy system. Although Bankruptcy is the only sensible remedy for some people with debt problems, an alternative course of action makes better sense for others. This section explores some of your other options.

A). Do Nothing
Surprisingly, the best approach for some people who are deeply in debt is to take no action at all. You can't be thrown in jail for not paying your debts (with the exception of child support), and your creditors can't collect money from you that you just don't have. If you don't have income and property that a creditor could take, and you don't foresee having any in the future, you're likely considered "judgment proof." People who are judgment proof rarely file for Bankruptcy. Here's why.

1). Creditors Must Sue to Collect
Except for taxing agencies and student loan creditors, creditors must sue you in court and get a money judgment before they can go after your income and property. The big exception to this general rule is that a creditor can take collateral—Foreclose on a house or repossess a car, for example—when you default on a debt that's secured by that collateral. (Although in some states, mortgage servicers must file a lawsuit in order to Foreclose on your house.)

2). Under the typical security agreement (a contract involving collateral), the creditor can repossess the property without first going to court. But the creditor will not be able to go after your other property and income for any "deficiency" (the difference between what you owe and what the repossessed property fetches at auction) without first going to court for a money judgment.

3). To get a money judgment, a creditor must have you personally served with a summons and complaint. In most states, you will have 30 days to file a response in the court where you are being sued. If you don't respond, the creditor can obtain a default judgment and seek to collect it from your income and property. If you do respond—and you are entitled to do so even if you think you owe the debt—the process will typically be set back several months until the court can schedule a trial where you can be heard. In most courts, you respond by filing a single document in which you deny everything in the creditor's complaint (or, in some courts, admit or deny each of the allegations in the complaint).

4). Much of Your Property Is Protected
Even if creditors get money judgments against you, they can't take away such essentials as:

i). basic clothing
ii). ordinary household furnishings
iii). personal effects
iv). food

v). Social Security or SSI payments necessary for your support
vi). unemployment benefits
vii). public assistance
viii). bank accounts with direct deposits from government benefit programs
ix). 75% of your wages (but more can be taken to pay child support judgments).

5). The general state exemptions apply whether or not you file for Bankruptcy. Even creditors who get money judgments against you can't take these protected items. (However, neither the federal Bankruptcy exemptions nor the state Bankruptcy-only exemptions available in California and a few other states apply if a creditor sues you in state civil court.)

34). When You Are Judgment Proof
A). A judgment is good only if the person who has it—the judgment creditor—can seize income or property from the debtor. If you have no property or income that can be taken to pay the judgment, you are said to be "judgment proof." For example, if your only income is from Social Security (which can be seized only by the IRS and federal student loan creditors) and all your property is exempt under your state's exemption laws, your judgment creditor can't take your income. Your life will continue as before, although one or more of your creditors may get pushy from time to time. While money judgments last a long time and can be renewed, this won't make any difference unless your fortune changes for the better. If that happens, or is likely to happen, you might reconsider Bankruptcy.

B). If your creditors know that their chances of collecting judgments from you any time soon are slim, they probably won't sue you in the first place. Instead, they'll simply write off your debts and treat them as deductible business losses for income tax purposes. After some years have passed (usually between four and ten), the debt will become legally uncollectible, under state laws known as statutes of limitation.

C). These statutes of limitation won't help you if the creditor sues or renews its judgment within the time limit. Lawsuits typically cost thousands of dollars in legal fees. If a creditor decides, on the basis of your economic profile, not to go to court at the present time, it is unlikely to seek a judgment down the line to extend its claims. In short, because creditors are reluctant to throw good money after bad, your poor economic circumstances might shield you from trouble.

D). You should take this with a grain of salt, however. Creditors have been known to change course and pursue more tenuous claims as the economy tightens. Before making your decision, it's a good idea to research the current collection climate.

***CAUTION
Don't restart the clock. A creditor has only a set amount of time—known as the statute of limitations—to sue you on a delinquent debt. Be careful, however. The statute of limitations can be renewed (restarted all over again) if you revive an old debt by, for example, admitting that you owe it or making a payment. The specifics vary by state. Savvy creditors are aware of this loophole and may try to trick you into reviving the debt so they can sue to collect it. So unless you are planning to make good on the debt or try to negotiate a new payment schedule (perhaps with a local merchant you'd like to continue doing business with), you should avoid any admissions.