

Chapter 7 or Chapter 13 - Which Chapter is Right for My Client?

- I. Need for Bankruptcy and Eligibility Questions
 - A. Need - “fresh start”
 - B. Eligibility -
 1. Debtor must not have been a debtor in a case pending under the Bankruptcy Code within the last 180 days if:
 - a. The prior case was dismissed by the court for wilful failure of the debtor to abide by orders of the court or to appear before the court in proper prosecution of the case; See, 11 U.S.C. §109(g).
 - b. The debtor must be an individual who resides in the U.S. or has a domicile, place of business, or property in the U.S.; See, 11 U.S.C. §109(a).
 2. Chapter 7 requires “means test;” See, 11 U.S.C. 707(b).
 3. Chapter 13 requires:
 - a. The debtor must have regular income; See, 11 U.S.C. §109(e).
 - b. The debtor must owe on the date of filing of the bankruptcy petition, noncontingent, liquidated, unsecured debt of less than \$360, 475 and noncontingent, liquidated, secured debts of less than \$1,081,400. See, 11 U.S.C. §109(e).

II. Positive Aspects of Chapter 7

- A. Possible discharge of debts without the loss of property or income;
 - 1. Review of exemptions;
 - 2. Current on secured debts?

III. Negative Aspects of Chapter 7

- A. Liquidation or buy-back of non-exempt property possible;
- B. Loss of property on defaulted secured debt;
- C. Discharge not available in some instances;
 - 1. Current case commenced within eight years of previous Chapter 7 discharge;
 - 2. Certain debts not dischargeable;

IV. Positive Aspects of Chapter 13

- A. The ability to retain property of the bankruptcy estate and make payments based upon future earnings;
See, 11 U.S.C. §1306(b) & §1322(a)(1).
- B. The ability to affect the rights of secured creditors;
See, 11 U.S.C. §1322(b)(2) & §1322(b)(5).
- C. The discharge can possibly be more expansive than in Chapter 7;
See, 11 U.S.C. §1328(a).
- D. The possibility of also protecting co-debtors;
See, 11 U.S.C. §1301.

V. Negative Aspects of Chapter 13

A. Higher costs generally than in a Chapter 7;

1. Legal fees are more expensive;
2. Trustee typically receives 10% of money paid through the Chapter 13 plan;
3. Priority claims must be paid in full in Chapter 13, unlike in Chapter 7;
4. Liquidation analysis requires that creditors receive equal to or greater than what they would receive under a Chapter 7 liquidation.