

# **The Different Chapters Available to Individuals Under the Bankruptcy Code**

Individuals who meet the qualifications may file under one of four different chapters of the Bankruptcy Code:

- Chapter 7 – Liquidation
- Chapter 11—Reorganization
- Chapter 12—Voluntary repayment plan for family farmers or fisherman
- Chapter 13 – Voluntary repayment plan for individuals with regular income

## **Chapter 7**

Chapter 7 is for individuals who have financial difficulty preventing them from paying their debts and who are willing to allow their non-exempt property to be used to pay their creditors. The primary purpose of filing under chapter 7 is to have debts discharged. A bankruptcy discharge eliminates the individual's responsibility to pay many, if not most, of her pre-bankruptcy debts.

## **Chapter 11**

Chapter 11 is often used for reorganizing a business, but it is also available to individuals.

Chapter 11 is notoriously complex and even the court does not attempt to summarize it on some of its disclosures. However, in brief: The debtor in Chapter 11 usually remains in possession of its assets, and operates the business under the supervision of the court and for the benefit of creditors.

The debtor in possession is a fiduciary for the creditors. If the debtor's management is ineffective or dishonesty is involved, a trustee may be appointed.

A creditors committee is usually appointed by the U.S. Trustee from among the 20 largest, unsecured creditors who are not insiders. The committee represents all of the creditors in providing oversight for the debtor's operations and a body with whom the debtor can negotiate an acceptable plan of reorganization.

A Chapter 11 plan is confirmed only upon the affirmative votes of the creditors, who are divided by the plan into classes based on the characteristics of their claims, and whose votes are a function of the amount of their claim against the debtor. If the debtor can't get the votes to confirm a plan, the debtor can attempt to "cram down" a plan on creditors and get the plan confirmed despite creditor opposition, by meeting certain statutory tests.

Chapter 11 is probably the most flexible of all the chapters, and as such, it is the hardest to generalize about. Its flexibility makes it more expensive to the debtor.

The rate of successful Chapter 11 reorganizations is extremely low, sometimes estimated at 10% or less.

## **Chapter 12**

Similar to chapter 13, chapter 12 permits family farmers and fisherman to repay their debts over a period of time using future earnings and to discharge some debts that are not paid.

## **Chapter 13**

Chapter 13 is for individuals who have regular income and would like to pay all or part of their debts in installments over a period of time and to discharge some debts that are not paid. There are debt limits for chapter 13 set forth in 11 U.S.C. § 109(e) (unsecured debts of less than \$394,725 and secured debts of less than \$1,184,200).

Under a Chapter 13, the debtor files a plan to repay creditors all or part of the money that is owed, usually using the debtor's future earnings. IF the court approves the plan, the court will allow the debtor to repay the debts, as adjusted by the plan, within three or five years, depending on the individual's income and other factors.

After the debtor makes all payments under the plan, many of the debts are discharged.

## **“Chapter 20”**

**Not a real chapter.** Some debtors have financial problems that are not completely solved by either a Chapter 7 or Chapter 13 bankruptcy. In certain situations, filing a Chapter 13 bankruptcy immediately after completing a Chapter 7 bankruptcy, informally referred to as "Chapter 20," might provide more relief than filing a Chapter 7 or Chapter 13 alone. For example, a client may have a debt limit problem to initially file a Chapter 13. Or they may need to obtain a discharge first in a Chapter 7 and then catch up mortgage payments or avoid a fully unsecured mortgage loan in a Chapter 13 case immediately following the Chapter 7.