

Consumer Bankruptcy

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I. General Information

A. Chapter 7 and Chapter 13

For consumers (individuals and married couples, as opposed to businesses): Chapter 7 and Chapter 13 are the most common types of bankruptcy relief.

1. **Chapter 7 (detailed below): liquidation bankruptcy.** Creditors obtain payment through the bankruptcy only if the debtor has property available for liquidation (majority of cases do not) or if the bankruptcy trustee liquidates claims against third parties.
2. **Chapter 13 (detailed below): personal reorganization.** The debtor's plan proposes to make a payment to creditors, through the Chapter 13 trustee, via monthly payments, liquidation of property, or a combination of the two. The plan is subject to court confirmation.

Be aware that Chapter 12 is available for "family farmers" or "family fishermen," very similar to Chapter 13.

B. Signs That a Client May Want to Consider a Bankruptcy Filing

1. Collection activity: calls, texts, e-mails, letters about past-due debts; threats of lawsuits
2. Lawsuits seeking to collect past due debts
3. Judgments for past due debts
4. Client is on a debt management or debt consolidation program
5. Foreclosure has been filed or completed
6. Vehicle has been repossessed
7. Back taxes are owed
8. Behind on child support or alimony payments
9. More than 60 days past due on a debt
10. Significant medical debt
11. Client is current on all debts, but the monthly minimums are overwhelming
12. Credit Cards are used for basic necessities.

C. Will a Bankruptcy Help? It May Depend on the Types of Debts.

Examples of the types of personal liability that are typically dischargeable are:

1. Medical debt
2. Credit card debt
3. Signature loans, unsecured lines of credit, and other general unsecured loans
4. Consumer consolidation loans (such as Lending Club)
5. Unpaid tuition and school fees
6. Vehicle loans and leases
7. Mortgage debt
8. Loans from friends and family
9. Social Security disability overpayments
10. Unemployment benefit overpayments
11. Back rent; rent owed from broken leases
12. Personal guaranties of business loans
13. Some types of tax debt, including certain income tax debt

Examples of some of the types of personal liability that may survive a bankruptcy discharge are:

1. Chapter 7: reaffirmed debts (**See II.E.1**)
2. Certain tax obligations
3. Most educational loans
4. Domestic support obligations (alimony, maintenance, child support, and other domestic obligations in the nature of support)
5. Bankruptcy is available for the honest but unfortunate debtors, so personal liability for debts arising from intentional wrongdoing may survive (such as debts owed due to fraud, embezzlement, intentional injury to person or property, DUI and DWI)

D. How Could a Bankruptcy Help?

1. Discharge of debts: Debts Die, Liens Live.

- a. *Debts die*: Debtors are relieved of personal liability for discharged debts upon the entry of a discharge order. This means that debts of the type eligible for discharge (**see I.C.1-13**) are no longer collectable from the debtor upon the entry of the discharge order. (For example: most educational loans are not dischargeable, so collection activity can resume upon the entry of the discharge order.)
- b. *Liens live*: Unless the lien is satisfied or avoided in the bankruptcy case (for example, a vehicle loan paid in full during a Chapter 13), the lien and the creditor's accompanying rights survive a bankruptcy. This is why, for example, a mortgage creditor can foreclose on real estate after a Chapter 7 discharge.

Some types of liens can be avoided (cancelled) in bankruptcy. This topic is outside of the scope of these materials.

2. Automatic stay. Most types of collection actions against the debtor are immediately halted upon filing a bankruptcy petition (in general, though the stay may only be a short duration for certain types of collection).

Limits to the Stay. The most common types of debts that the stay may not apply to are:

- a. proceedings establishing or modifying **alimony, maintenance, or support** orders
- b. **enforcement of liens**: acts to enforce liens:
 - against or security interests in real property pursuant to orders in a prior bankruptcy case
 - against or security interests in real property where the debtor is ineligible to be a debtor in the present bankruptcy case¹
- c. **eviction proceedings**:
 - pursuant to a judgment obtained before the debtor filed the present case²
 - eviction actions from residential property due to the debtor's endangerment of the property or illegal use of controlled substances on such property³

¹ A debtor is ineligible to be a debtor in the present case if: 1) the debtor was a debtor in prior bankruptcy cases within a specified time frame or 2) the present case was filed in violation of an order in a previous bankruptcy case. 11 U.S.C. § 362(b)(21).

² The debtor can stay the eviction by showing the entire judgment was paid. 11 U.S.C. § 362(l).

³ The eviction will be stayed if the debtor can demonstrate that the situation giving rise to the endangerment or proscribed usage was remedied. 11 U.S.C. § 362(m).

- d. **setoffs of income tax refunds** with respect to tax periods ending before the order for relief against income tax liabilities
- e. **special rights of utility providers.** They can alter or refuse service if the debtor fails to provide adequate assurance (a requested deposit) 30 days after filing the petition.

Relief from the stay. A creditor may seek to lift the stay and collect the debt or exercise lien rights in the financed property. The most common grounds are:

- a. **Lack of adequate protection:** The creditor requesting relief lacks adequate protection. For example, the creditor is secured by the debtor's car and the car is not properly insured, or there is no equity in the property and the debtor has defaulted on the loan payments.
- b. **Hindering creditors:** The court finds that the debtor filed the petition to defraud creditors. Evidence of fraud can include:
 - transfer of real property without the consent of secured creditor or court approval
 - multiple bankruptcy filings affecting real property

E. Must Both Spouses File?

No. Married couples can file one "joint" bankruptcy case, even if they live in separate households, but it is common for only one spouse to file when the other spouse does not have debt problems.

F. What Type of Bankruptcy is Best for the Client? Chapter 7 v. 13

| Chapter 7 (liquidation) | Chapter 13 (reorganization) |
|-------------------------|--|
| No monthly payments. | Three to five years of monthly payments to the local bankruptcy trustee. |
| No income required. | Requires "regular income" demonstrating the ability to make the required payments. Sources can include: <ul style="list-style-type: none"> • Wages from employment • Self-employment income • Social security, disability, or other benefits • Retirement income |

| Chapter 7 | Chapter 13 |
|--|--|
| | <ul style="list-style-type: none"> • Child support or alimony <p>The debtor can also propose to make payments through the court-approved sale of property.</p> |
| The bankruptcy filing does not stop creditor from pursuing collection from a co-debtor (co-borrower or guarantor). | The Chapter 13 plan can include provisions requiring creditors to refrain from attempting to collect <i>consumer debts</i> from co-debtors (those incurred for family, personal or household purposes, rather than for business or investment purposes). |
| The bankruptcy attorney's fee is paid in full prior to the bankruptcy filing (otherwise, the debt is discharged). | The bankruptcy attorney's fee may be paid, in part or in full, via plan payments. |
| No mechanism to unilaterally force the opportunity to catch up on past-due mortgage debts. | The Chapter 13 plan can permanently stop a foreclosure by requiring the cure of all mortgage arrearages plus timely monthly payments (for example: if the debtor is \$10,000 in arrears and in foreclosure, the debtor can permanently stop the foreclosure by paying the \$10,000 in full during the bankruptcy PLUS making current mortgage payments). |
| No mechanism to unilaterally force the opportunity to catch up on past-due payments on financed personal property. | <p>The Chapter 13 plan can force the creditor to return recently repossessed personal property.</p> <p>The Chapter 13 plan can allow the debtor to keep financed personal property while curing pre-petition arrearages.</p> <p>The Chapter 13 plan can allow the debtor to "cram down" some financed personal property: to force the creditor to accept payment equal to the current fair market value of the property in satisfaction of the debt, rather than the (higher) loan balance. Most commonly done with older financed vehicles and with older furniture and appliances.</p> |
| No mechanism to force tax authorities to accept payment of back taxes over time. | The Chapter 13 plan can force tax authorities to accept payment of back income taxes over the plan term, sometimes without penalty or interest. |
| Domestic support obligations (such as alimony and child support) are not modifiable or dischargeable. | Domestic support obligations are not modifiable or dischargeable; however, the Chapter 13 plan can stop collection activity and force the creditor to accept payment of arrears over the plan term. |

| Chapter 7 | Chapter 13 |
|---|---|
| Equitable distribution is not dischargeable. | Equitable distribution is dischargeable. |
| Most educational loans are not dischargeable, but the automatic stay does temporarily stop collection activity. | Most educational loans are not dischargeable, but the Chapter 13 plan can force creditors to accept only what the debtor can afford to pay, during the plan term. Interest continues to accrue. |
| Discharge typically entered 3-5 months after filing. | Discharge typically entered 36-60 months after filing (upon completion of plan payments). |
| Nonexempt property will be liquidated via sale or settlement requiring the debtor to pay a certain amount, typically within less than 6 months. | Nonexempt property can be retained as long as general unsecured creditors will receive at least what they would have in a Chapter 7 liquidation. |

G. Commencing a Voluntary Bankruptcy Case

1. Individual and joint debtors must have received credit counseling from an approved agency within the 180 days **prior** to the bankruptcy filing (the list of approved agencies is available on the website of the district's Bankruptcy Administrator)

2. Decide under which chapter to file

Chapter 7: for liquidations

Chapter 13: for reorganization of debts

3. File a petition (Official Form 101) and required statements and schedules

4. Filing fee: \$338 for Chapter 7, \$313 for Chapter 13

Must be paid in full at the time of filing unless the debtor applies for and obtains:

- an order authorizing payment via four monthly installments
- an order allowing him/her/them to proceed in forma pauperis (this waives the filing fee requirement for Chapter 7, unable to waive fees for Chapter 13) (Official Form 103b)

5. After filing, the debtor must timely file proof of completion of a financial management class from an approved agency in order to be eligible for a discharge.

H. Where to File

File with the United States Bankruptcy Court in the federal district & division where the client has lived for the majority of the past 180 days. If the client has recently moved to the district, he or she may need to wait 90 days from the date of the move and then file.

I. Is a Lawyer Required?

The law allows individuals and married couples to represent themselves in a bankruptcy case.

However, bankruptcy laws and procedures are complicated and a lawyer greatly increases the chances of success. Some North Carolina pro bono agencies provide a lawyer free of charge for bankruptcies in certain circumstances (for example, to save the family home).

II. Chapter 7 Bankruptcy

A. Chapter 7 Basics

1. No repayment plan (unlike Chapter 13). As a result, there is a quicker path to discharge: most Chapter 7 debtors obtain their discharge order 3-5 months after filing.
2. If property is available for liquidation, the trustee liquidates it subject to court oversight and approval and is paid for liquidation services from the proceeds.
3. Nonexempt assets, if any, are liquidated via (1) trustee sale or (2) settlement with the trustee. Any surplus or exemption will be paid to the debtor.
4. Sales and settlements require court approval.
5. Creditors are paid from sale and settlement proceeds; what is not paid is discharged, if it's the type of debt that is dischargeable. If it is not the type of debt that is dischargeable, the debtor remains personally liable.

B. Some Eligibility Cautions

1. Available to individuals, married couples filing jointly, and businesses in liquidation.
2. Rarely appropriate for businesses to file Chapter 7 (businesses may not have enough unencumbered property to liquidate for the benefit of general unsecured creditors and are ineligible for a Chapter 7 discharge).
3. Must complete debt counseling course no more than 180 days before filing.
4. If the debtor has filed for bankruptcy within the past 8 years, he or she should consult an attorney to review the dates of the prior filing(s), the type(s), and the outcome(s) to determine what bankruptcy relief, if any, is available.
5. If the majority of the debtor's debts are *consumer* in nature, there are household income caps on eligibility. If the majority of the debtor's debts are *non-consumer* in nature, those income caps do not apply.
6. Debtors who have had previous bankruptcy dismissed due to willful non-compliance or voluntary dismissal after creditor action cannot refile within 180 days.

C. The Chapter 7 Process

1. File petition and required schedules and statements in the bankruptcy court with jurisdiction; pay the full filing fee absent relief by court order (**See I.G.4**).
2. The filing triggers the automatic stay, halting most types of collection activities (**see I.D.2**) and remains in effect until the earlier of (a) the entry of the discharge order or (b) a bankruptcy court order lifting the stay.
3. A Chapter 7 Trustee is appointed.
 - a. The court system appoints on a rotating basis to each Chapter 7 case a specific trustee from a pool of qualified people appointed to the local Chapter 7 Trustee panel.
 - b. Chapter 7 Trustees are private citizens, not government employees, who have a financial background such as attorneys and CPAs.
 - c. Chapter 7 Trustees oversee the case and any disbursements to creditors.
4. The debtor must attend an administrative hearing known as a “meeting of creditors.”
6. The debtor must perform his or her statement of intention (**See II.E**).
7. Discharge order typically entered in 3 to 5 months.

D. The Chapter 7 Bankruptcy Estate

1. Creation of the Estate: Filing for bankruptcy automatically creates an “estate” that technically becomes the legal owner of the debtor’s property rights.
2. Contents of the Estate:
 - a. All of the debtor’s property and property rights (tangible and intangible assets) **UNLESS** the property is either *exempt* or *excluded*.
 - b. Future earnings are typically NOT part of the Chapter 7 bankruptcy estate, so the Chapter 7 debtor likely gets to keep his or her paychecks during the bankruptcy.
 - Future earnings ARE typically part of the Chapter 13 bankruptcy estate, because the debtor must pay to the trustee, for the benefit of creditors, his or her monthly disposable income.
 - c. **CAUTION:** money or property that the debtor becomes entitled to within 180 days of the bankruptcy filing, resulting from either death or separation/divorce,

becomes property of the bankruptcy estate for the benefit of creditors, subject to any available exemptions:

- *Death*: life insurance proceeds; property or property rights by bequest/inheritance or intestacy
- *Equitable distribution/property settlement due to separation and divorce*

3. Exempt Property: Basic Property That Debtors Can Keep in Order to be Productive and Move On

State and federal laws exempt certain property from being liquidated in a bankruptcy proceeding and allow the debtor to retain possession. Most debtors can keep their clothing, pets, jewelry, books, electronics, furnishing, and appliances worth up to \$5,000. For tools of the trade can exempt up to \$2,000. Most debtors also have a “wildcard” exemption up to \$5,000 that they can use to protect any property, or group of property, they would otherwise lose if they have not maxed out their homestead exemption (below). **N.C.G.S § 1C-1601**

Common North Carolina exemptions include:

- a. Houses: most debtors can keep the primary residence that they own if they continue to pay their mortgages and have less than \$35,000 in equity. If both spouses are on the title the exemption doubles (\$70,000). If debtor is 65 or older and has a deceased spouse, exemption is up to \$60,000.
 - This exemption amount is very low compared to postpandemic real estate values. It is very important to check Zillow.com or other websites to begin determining the value of the real estate and whether the property will be protected in a Chapter 7.
 - If equity is higher than exemption amount, consider a Chapter 13.
 - Remember that you must be current on your mortgage to keep your home.
- b. Cars: most debtors can keep their cars if they continue to pay their car payments and have less than \$3,500 in equity. Does not apply to cars purchased within 90 days of filing.
 - This exemption amount is very low compared to postpandemic car values. It is very important to check NADA.com or other websites to begin determining the value of the car and whether it will be protected in a Chapter 7.
 - If equity is higher than exemption amount, consider a Chapter 13.
 - Remember that you must be current on your car payment to keep your car.
- c. Wages: N.C.G.S § 1-362 protects from most types of creditors wages earned within the preceding 60 days to the extent reasonably necessary to support the individual, family or household. This is why North Carolina does not allow wage garnishment for most types of debts.

E. Financed Personal Property in Chapter 7

On the debtor's Statement of Intent form (filed no more than 30 days after the bankruptcy petition), the debtor must elect one of the following options concerning debtor's encumbered property:

- 1. Reaffirmation.** Reaffirmation is accomplished by signing and filing with the Bankruptcy Court a *reaffirmation agreement*.
 - a. Most commonly used for financed vehicles.
 - b. This is accomplished via the signing and filing of an official bankruptcy form, in which the debtor and creditor agree to honor the original loan terms. The filing of the reaffirmation agreement takes that debt out of the bankruptcy, so that upon default, the creditor can repossess the property, sue for any loan deficiency, and collect the deficiency.
- 2. Redemption.** Debtors pay creditors the fair market value of personal property (rather than what they owe the creditors) in full satisfaction of the debt and retain possession free and clear of the lien.
 - a. Most commonly used for cars, furniture and appliances.
 - b. If the parties cannot agree on a valuation, the court will hold a hearing to determine valuation.
 - c. *Practical Problem:* Debtors rarely have access to the cash necessary for the lump sum payment.
- 3. Surrender: a Consensual Foreclosure**
 - a. Most commonly used for relief from unaffordable monthly loan payments and/or when the loan balance exceeds the value of the property.
 - b. The creditor takes possession of the financed property and the debtor discharges the debt.
- 4. "Ride Through"(real property only)**
 - a. The debtor doesn't reaffirm the debt but instead honors all contractual obligations before, during, and after bankruptcy.
 - b. Available because a bankruptcy filing, in and of itself, does not void most retail installment contracts.

F. Financed Real Estate in Chapter 7

On the debtor's Statement of Intent form (filed no more than 30 days after the bankruptcy petition), the debtor must also elect one of the following options concerning debtor's encumbered property:

1. Surrender (See II.E.3 above)

2. "Ride Through" (See II.E.4 above)

NOTE: Reaffirmation is not required for debts secured by real estate (i.e. mortgages and HELOCs), is rarely appropriate, and will rarely be approved by a court.

G. Executory Contracts and Leases

Definition: Contracts and unexpired leases where both parties have not completed material performances such as a lease on an apartment with months or years remaining.

On the debtor's Statement of Intent form (filed no more than 30 days after the bankruptcy petition), the debtor must also elect from certain options.

III. Chapter 13 Bankruptcy

A. Chapter 13 Basics

1. Debts adjustment for individuals and married couples with regular incomes to keep property and create a payment plan that typically lasts 3-5 years.
2. Classes of Chapter 13 Debtors and Why They Matter
 - a. Below Median: If household income is less than the state median, plan term can be as little as 3 years.
 - b. Above Median: If household income is greater than the state median, plan term must generally be for 5 years.

Median income guidelines change periodically but can be accessed here:

https://www.justice.gov/ust/eo/bapcpa/20241101/bci_data/median_income_table.htm

3. Creditors must receive via the Chapter 13 plan at least what they would receive in a Chapter 7 liquidation, which means that in order to keep any nonexempt assets, the debtor's plan must propose to pay general unsecured creditors at least the value of that property.
 - a. If your home or car has nonexempt equity, this will increase your Chapter 13 plan payment.
 - b. Increased real estate and car values can make Chapter 13 plan payments higher.
4. Sales and settlements require court approval.

5. Creditors are paid pursuant to the plan, which can propose direct payments to creditors, payments through Chapter 13 plan payments paid to the Chapter 13 Trustee, the surrender or liquidation of assets, or some combination of these.

B. Some Eligibility Cautions

1. The debtor(s) must be an individual or a married couple with regular income. Spouses may file a joint petition though only one spouse has a regular income.
 - a. Regular income is that which is “sufficiently stable and regular to enable such an individual to make payments under a plan under Chapter 13.”⁴
 - b. Regular income can come from non-employment sources such as payments from relatives, personal investments, pensions, benefits, welfare, social security payments, child support, or disability payments.
2. Debt limits: The debtor must owe at the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$465,275, and noncontingent, liquidated, secured debts of less than \$1,395,625. These numbers are adjusted periodically to account for inflation and other factors
3. Ineligible if a debtor’s previous bankruptcy petition was dismissed within 180 days.

C. The Chapter 13 Process

1. Complete credit counseling course (\$50 fee). Taken within 180 days of filing for bankruptcy.
2. File petition (debtor’s domicile or residence), required schedules (assets & liabilities; current income & expenditures; executory contracts & unexpired leases) and financial statements, and Chapter 13 plan in the bankruptcy court with jurisdiction; pay the full filing fee absent relief by court order (**see I.G.4**). Serve the plan on all creditors and other parties in interest.
3. Upon filing, the automatic stay halting most types of collection activities is triggered (**see I.D.2**) and remains in effect until the earlier of (a) the entry of the discharge order or (b) a bankruptcy court order lifting the stay.
4. A Chapter 13 Trustee is appointed. Chapter 13 Trustee’s role and responsibilities include:
 - a. reviewing the Chapter 13 petition, schedules and plan in advance of the hearing for compliance with the law;
 - b. conducting the hearing (meeting of creditors);
 - c. recommending to the Court that the plan be confirmed (if it complies with the law) or dismissed (if it does not);

- d. monitoring the plan for compliance; and
 - e. paying creditors.
5. Absent a court order authorizing otherwise, plan payments must commence within 30 days of the filing and are due every 30 days thereafter.
 6. The debtor must attend an administrative hearing known as a “341 meeting of creditors.
 7. An Order Confirming Plan is entered 21 days after conclusion of the meeting of creditors, unless an objection to confirmation is filed (in which case the Court must rule on the objection; if sustained, the debtor is typically given a short period of time to file an amended plan that cures the problem, or the case is dismissed).

D. Confirming a Chapter 13 Plan; Modification of the Plan; Default.

1. The debtor must commit all disposable income to the plan for the benefit of creditors.
2. Defining disposable income
 - a. Certain types of income, such as child support and Social Security, are excluded from the calculation of disposable monthly income, but can be volunteered in order to make the necessary plan payment.
 - b. Disposable income for bankruptcy purposes is income (that is not legally excluded, see prior bullet point) less amounts reasonably necessary for the maintenance or support of the debtor or dependents and less charitable contributions up to 15% of the debtor's gross income.
 - c. Disposable income is demonstrated by the filing of a Schedule I (household income) and Schedule J (household expenses). $I - J = \text{disposable income}$.
3. Plan modification
 - a. The debtor must comply with a confirmed plan, including by timely making full monthly payments and notifying of any substantial changes (positive or negative) to household income.
 - b. Accomplished by court order, usually due to a material, unforeseen and unanticipated change in the debtor’s financial circumstances affecting ability to make payments.
 - c. Plan can be modified so that payments increase or decrease.
4. Default: Failure to Make Plan Payments
 - a. Court may dismiss the case or order (more rarely) the case to be converted to one under Chapter 7 for the liquidation of the estate.

- b. Debtors generally have the right to voluntarily convert their case to one under Chapter 7 if the conversion is in good faith.
 - c. Debtors generally have the right to dismiss their case if the dismissal is in good faith.
 - d. Court may authorize trustee to keep some funds for costs, but must return all remaining funds to the debtor that are not due or been disbursed to creditors.
- E. The Chapter 13 Bankruptcy Estate.** The main difference from the Chapter 7 estate is that future earnings and property rights of the debtor ARE part of the bankruptcy estate. The same exemptions set out above (see II.D.3) also apply in Chapter 13 cases.

F. Financed Personal Property in Chapter 13

The debtor must propose in a Chapter 13 Plan (filed no more than 14 days after the bankruptcy petition) treatment of all financed personal property, and the options are:

- 1. Surrender: A consensual foreclosure. (See II.E.3)**
- 2. Pay pursuant to contract terms.** Required for secured personal property the debtor wishes to keep and for which the debt is secured by a purchase money security interest and was:
 - a. incurred within the 910 days (2.5 years) prior to the bankruptcy filing to finance or refinance a vehicle for the debtor's personal use;
 - b. incurred within the 365 days prior to the bankruptcy filing to finance any other thing of value (other than a car)—e.g., computers, jewelry, appliances, furniture, other electronics.

Also required to prevent collection activity against a co-debtor for a consumer debt (like student loans or credit card debt).

- 3. Cram down.** Personal property secured by liens on cars that are older than the 910- and 365-day windows set out just above can be “crammed down” – that is, the debtor can propose to pay only what the property is worth at a statutory interest rate (rather than the contract rate). Very helpful for “underwater” cars and other personal property.

G. Financed Real Property in Chapter 13

The debtor must propose in a Chapter 13 Plan (filed no more than 14 days after the bankruptcy petition) treatment of all financed real property, and the options are:

- 1. Surrender (See II.E.3).** Any deficiency is treated as a general unsecured debt and that creditor must receive the same dividend (payment) as other general unsecured creditors.

2. **Debts that mature during the plan.** If the debt matured prior to the filing of the bankruptcy and the debtor still holds title to the property, the debt must be paid in full during the Chapter 13 plan.
3. **Maintenance of payments and cure of any default.** If the debt does not mature during the plan term, then in order to retain possession of the property, the debtor's plan must propose to pay full contractual monthly payments *plus* any arrears owed as of the date of the bankruptcy filing. For example: if the debtor is \$30,000 in arrears on a mortgage on the date of the bankruptcy filing, the debtor's plan must propose to pay the entire \$30,000 plus current monthly mortgage payments as they become due.
4. **Sell the property and apply the proceeds to the debt.** Sales must be court-approved.

H. Executory Contracts and Leases. Debtors retain rights to assume or reject executory contracts and have the ability to catch up arrears in the plan.

I. Classes of Claims and Corresponding Priority of Repayment Obligations

Creditors must be paid in the following order of priority set out in the Bankruptcy Code, and creditors within the same class must be treated equally unless the creditor consents to different treatment.

1. Administrative claims

- a. Most common are the balance of the bankruptcy attorney's fee (if not paid in full at the time of the filing) and court-approved legal fees incurred during the bankruptcy
- b. Must be paid in full unless the creditor agrees otherwise

2. Priority claims

- a. Most common are domestic support arrearages and recent income tax debts
- b. Must be paid in full unless creditor agrees otherwise
- c. Full payment under the plan must be complete before any general unsecured creditor receives any payment (see below)

3. Secured claims

- a. These are claims for which creditors can take collateral upon default (like a mortgage)
- b. Debtors can keep the property if the creditor is paid at least the value of the collateral or, in certain instances, the full value of the claim if the creditor is undersecured (**See III.F.3 above**)

- c. Secured creditors secured by property greater than the value of the claim are entitled to post-petition interest

4. [General] unsecured claims

- a. Claims for which there are no lien rights in collateral (such as credit card debt, medical debt, personal loans, and student loan debt)
- b. Need **not** be paid in full if debtor contributes all disposable income to the plan
- c. This class of creditors typically receives less than 10% of their claim. Unless the debtor is below the poverty line, most districts require the debtor to pay at least a 1% dividend to general unsecured creditors.
- d. Utilities have special rights under the Code. They can alter or refuse service if the debtor fails to provide adequate assurance (a requested deposit) within 20 days after the order for relief (for postpetition service).

J. Chapter 13 Discharge: Regular Discharge v. Hardship Discharge

1. Regular Discharge: The Most Common Type of Ch. 13 Discharge

Upon successfully completing the payment plan, the Chapter 13 discharge releases the debtor from personal liability from all debts provided for by the plan or disallowed by the Court, **with a few exceptions including:**

- a. Long-term mortgages (those not paid in full during the Chapter 13) unless the property was surrendered, in which case the debt is discharged
- b. Alimony and child support
- c. Government funded or guaranteed educational loans or benefit overpayments
- d. Death or personal injury caused by DUI or DWI.
- e. Nondischargeable tax debt

Note that post-petition debts are not discharged unless the plan is modified to accommodate them. This topic is outside of the scope of these materials.

2. Hardship Discharge: Limited Availability in Chapter 13

A hardship discharge may be available, by motion and order, even if the debtor does not complete payments under the plan if all of the following requirements are met:

- a. the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable (such as the death of a spouse or a catastrophic illness or injury materially decreasing future income);

- b. unsecured creditors do not receive less than what they would under a Chapter 7 liquidation; and
- c. modification of the plan is not practicable.