

SOUTH CAROLINA BAR
Bankruptcy and the Law



There are two kinds of bankruptcy that are commonly used for individuals — Chapter 7 and Chapter 13.

CHAPTER 7

A Chapter 7 bankruptcy is a liquidation bankruptcy, also called a straight bankruptcy. When a Chapter 7 is filed, the bankruptcy court appoints a trustee from a panel of individuals who regularly serve as trustees. The trustee's job is to determine whether the bankrupt debtor has anything that can be sold to pay creditors. If there is something that can be sold with money left over after paying off any liens, the trustee has the power to sell that property after notifying the debtor and all

creditors and obtaining the approval of the bankruptcy court. In many Chapter 7 cases, however, no property is sold, either because the liens and mortgages on the property are equal to or greater than the value of the property or the property is of a kind that is exempt from seizure from creditors. Exempt property includes \$5,000 in a home, \$1,200 in a vehicle and \$2,500 in household goods. Some items, like retirement plans, may be entirely exempt regardless of their value.

After a short time in

bankruptcy, most debtors are granted a discharge of most of their debts. A discharge is a court order that prohibits creditors from taking any action to collect their debts. Creditors are barred from calling, writing or suing the debtor. However,

there are some debts that are not affected by the bankruptcy and survive the bankruptcy discharge, including some tax debts, student loan debts, debts for alimony and child support and criminal restitution. Certain debts arising from fraud and other bad behavior may also survive the bankruptcy. Once the bankruptcy is over, the debtor may choose to pay some or all of his or her debt, but because of the bankruptcy, the creditor cannot force the debtor to pay.

Chapter 7 does not

discharge liens and mortgages except in very limited circumstances. Frequently, debtors are able to keep the items that have been pledged as collateral by arranging to continue to pay for them or to pay the value lump sum.

Bankruptcy laws are federal laws, but because some state laws apply, the effects of bankruptcy can differ from state to state. A married couple may file bankruptcy jointly, or one spouse may file alone.

A Chapter 7 bankruptcy can be reported on the debtor's credit report for up to 10 years.

CHAPTER 13

A Chapter 13 bankruptcy is a reorganization bankruptcy for individual consumers or sole proprietors. In order to qualify for Chapter 13, a debtor must have regular income from a job, retirement or other sources. A Chapter 13 trustee is appointed by the bankruptcy court to work with the debtor and creditors to develop a plan for the payment of creditors. Monthly payments are made to the trustee, who in turn distributes the payments to the creditors according to the plan approved by the bankruptcy court.

A Chapter 13 allows a debtor to catch up missed payments, including mortgage payments, but does not change the amount of a payment on a home mortgage except in very limited circumstances. In most cases, the payment to the Chapter 13 trustee is made in addition to home mortgage

payments. Payments to the Chapter 13 trustee cover missed mortgage payments and remaining debts, including car payments, credit card bills and taxes.

The amount of a Chapter 13 payment is determined from a number of factors including what the debtor can afford after payment of regular living expenses. The Chapter 13 payments must be enough to pay all taxes in full, bring mortgages current, pay past due alimony and child support, some taxes and pay at least the value of the collateral the debtor wishes to keep. The debtor must pay what he can afford for at least three years and must pay creditors at least as much as they would receive in a Chapter 7 liquidation. In South Carolina, debtors in Chapter 13 usually pay for almost five years. A Chapter 13 plan cannot extend for more than five years. If the debtor pays as much as he can afford for that period of time, any unpaid portion of

the debts are discharged, except certain debts such as student loans.

A Chapter 13 case is completely voluntary, and the debtor can dismiss the case at any time. If payments are not made to the trustee, however, the trustee will ask the bankruptcy court to dismiss or convert the case to Chapter 7. If mortgage payments are not

made to mortgage creditors outside the plan, those creditors can ask the bankruptcy court to allow them to foreclose or they can ask the bankruptcy court to dismiss the debtor's case.

A Chapter 13 bankruptcy can be reported on the debtor's credit report for up to 10 years.

General information:

South Carolina Bar Lawyer Referral Service

If you need a lawyer, contact the South Carolina Bar Lawyer Referral Service from 9 a.m. to 5 p.m. Monday through Friday. Call 1-800-868-2284; if you are in Richland or Lexington Counties, call 799-7100.

Additional Legal Tips Available

To access prerecorded information on other legal issues, call the South Carolina Bar's LawLine. In the Columbia area, call 771-0011. From anywhere else in South Carolina, call 1-800-521-9788. Follow the recorded instructions.

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