

Understanding The Bankruptcy Process

What is Chapter 13 Bankruptcy?

Generally, Chapter 13 Bankruptcy is the preferred option, for those who have valuable assets they wish to keep, such as a home (in which the debtor has more equity than allowed under the bankruptcy exemptions).

The most common reason for filing a chapter 13 Bankruptcy is the fact that filing the petition stops the foreclosure process and gives the debtor an opportunity to catch up on missed payments. In a Chapter 13 Bankruptcy, your bankruptcy attorney develops a debt repayment plan proposing to repay a portion of your debt to creditors over a three to five year period. The Chapter 13 plan must pay creditors the equivalent value of any assets not covered by the state or federal exemptions and must include most disposable income a debtor has every month after allowed monthly expenses are deducted. The idea behind a chapter 13 Bankruptcy is that the debtor gets to keep his or her assets in exchange for committing future disposable income over a 3 to 5 year period to payment of creditors. It is not uncommon at all for a plan to be approved that pays unsecured creditors practically nothing, where there are no un-exempt assets.

Another advantage of the Chapter 13 bankruptcy is the cram down option. This allows the debtor to keep personal property that is collateral, without consent of the secured creditor, by making a plan that proposes to pay the secured creditor only the value of the collateral at the effective date of the plan.

The Chapter 13 plan is presented to the Chapter 13 trustee for approval and confirmation by the Bankruptcy Court at a confirmation hearing to ensure that the plan meets the Bankruptcy Code requirements for confirmation.

Chapter 13 Bankruptcy is usually appropriate only where an individual debtor has a regular source of income. The Chapter 13 plan developed by your bankruptcy attorney will require regular monthly or biweekly payments to the Chapter 13 trustee. Once all payments have been made according to the plan the debtor gets a discharge of all outstanding dischargeable debt.

What is the Process to file Chapter 13 Bankruptcy?

The following is a simplified outline of the basic stages of Chapter 13 bankruptcy:

Consultation: First, we'll sit down with you, review your case, and let you know which type of bankruptcy (if any) you should file.

Gather information: Before we can petition the bankruptcy court on your behalf, we'll need to collect some information (e.g., information on your debts, your possessions, your income, etc.). With this information we can put together a bankruptcy petition on your behalf.

Sign bankruptcy petition & propose a repayment plan: Once we've finished putting together the bankruptcy petition on your behalf, you'll be asked to sign the petition and verify that what we've included is correct (e.g., the information you previously provided). In addition, we'll be including a plan on how you'll be repaying a portion of your debts, as we've previously discussed.

File petition with the bankruptcy court: We'll then file the bankruptcy petition with the bankruptcy court for where you reside (e.g., Northern Georgia).

In the second part of a two-part series, UPENDRA BHATT interviews PRADEEK SUSHEELAN, ESQ, an attorney at law practicing Bankruptcy and Immigration law at Smith White Sharma Yaskhi Halpern & Ishar, LLP.

Start making monthly Chapter 13 plan payments:

As outlined in your bankruptcy petition, you'll then start to make payments toward your Chapter 13 bankruptcy. This is a show of good faith that you're already in the process of making good on a portion of your debts.

Attend meeting with bankruptcy trustee and creditors:

Next, you and your bankruptcy attorney will attend a meeting with an officially appointed bankruptcy trustee who will review the information provided, and ask any questions they may have. Your creditors will be present and they may ask you questions as well.

Get you proposed Chapter 13 plan approved by the court:

Your petition will then be filed with the bankruptcy court, who will review your petition and bankruptcy plan for validity, before making a determination to allow you to continue with your payments to discharge your debts.

Continue making your monthly Chapter 13 plan payments: As part of a Chapter 13 bankruptcy, you will need to continue to make payments to your debtors as agreed upon with the bankruptcy court. As long as you continue to make payments, your debtors will leave you alone, and you'll continue on to receive your bankruptcy discharge.

Receive your bankruptcy discharge: After the completion of all your payments, you will receive your bankruptcy "discharge". This means your creditors can no longer take any collections actions on these debts - no more legal actions, no more threatening calls or letters.

How do you compare Chapter 7 Bankruptcy with Chapter 13 Bankruptcy?

Chapter 7 Bankruptcy and Chapter 13 Bankruptcy are very different.

The main difference is that the Chapter 13 debtor remains in possession of his or her property and makes payments to creditors, through the Trustee using a Chapter 13 plan based on anticipated income over the life of the plan.

In Chapter 13 Bankruptcy, there is no immediate discharge of debts. The Chapter 13 debtor must complete the payments required by the plan before a bankruptcy discharge is received. While a chapter 7 Bankruptcy provides a discharge within Five months.

In both Chapter 7 Bankruptcy and Chapter 13 Bankruptcy, the debtor is protected from lawsuits, garnishments, and other creditor actions. In Chapter 7 Bankruptcy, the debtor is protected from the bankruptcy filing under the 362 stay and after discharge by the discharge stay. The Chapter 13 Bankruptcy debtor is protected from the filing and during the time that the plan is in effect and after.

Only a chapter 13 stops foreclosure proceedings as a Chapter 7 stay can be lifted to foreclose property where the debtor has defaulted.

Only a chapter 13 allows the debtor the opportunity to keep property that is collateral for a secured debt by using the cram down option to pay back only the value of the property at the date the plan is effective.

Chapter 13 is only available to individuals while a Chapter 7 is available to Corporations, Partnerships and individuals.

Does Bankruptcy affect Immigration status?

Many of our potential clients have not only financial issues affecting their lives, but also

immigration issues. It's not uncommon for a non-citizen to need a Bankruptcy case. The first question is whether or not a non-citizen can even file a case. The next question many people ask is whether or not the filing of a bankruptcy affects their immigration status or application for citizenship.

The Bankruptcy Code states that "...only a person that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title" [11 U.S.C. Section 109(a)]. The term "person" includes individual, partnership, and corporation... [11 U.S.C. Section 101(a)(41)]. As you can see, there is no requirement of citizenship in the bankruptcy code.

The general rule is that filing a bankruptcy will not affect immigration status or citizenship applications. It is not a crime to file a bankruptcy case.

Although filing for bankruptcy does not have any immigration consequences there are certain related criminal convictions that would mandate deportation. Crimes of "moral turpitude" such as using credit cards in other people's names, writing "fraudulent" checks, tax evasion, fraudulent transfers of assets, or providing fraudulent information to the federal government (such as by filing fraudulent bankruptcy petitions) sometimes come into play.

Certainly if an immigrant has been working "under the table" and not paying taxes, tax evasion can certainly be an issue. It could also be a problem if an immigrant debtor has transferred money or property to another person in order to avoid creditor action.

If the amount of the transfer or the amount of the tax liability that was evaded exceeds \$10,000, the immigrant debtor could be considered an "aggravated felon" and is conclusively deemed deportable.

Thus, it is very important to be truthful when filing bankruptcy schedules, avoid transferring money or property to anyone (except for normal payments on living expenses), and make sure all income is reported to the IRS on tax returns.



First Indian Woman Who Skied To South Pole

New Delhi: (IANS) For Reena Kaushal Dharmshaktu's family the year 2009 ended on a high note as she became the first Indian woman to ski to the South Pole. However, as the family earnestly awaits her return, their first priority is to repay the loan taken to fund the venture, and not the celebrations.

"We came to know about the news yesterday (Thursday). I have not been able to talk to her. But the Commonwealth Antarctic Expedition authorities told us that she was likely to return Jan 15," Love Raj Singh, her husband and a mountaineer himself, told IANS.

Dharmshaktu, a 38-year-old mountaineer and outdoor instructor based in Delhi, was part of an all-women expedition that skied for nearly eight-nine hours daily for 40 days, braving chilly winds, sub-zero temperatures, the vast emptiness of Antarctica and carried 80 kg of load on their backs to reach the South Pole Thursday.

For her family the journey to the South Pole

was taken against formidable odds like lack of finance. "It is a big achievement for us and a tremendous example of her will power. All sponsors had said no to us and we took a loan to fund the venture.



The first priority is to repay that loan," Singh said.

The cost of the venture has been Rs.10-11 lakh. Unable to raise sufficient funds and shown the doors by the government and corporate houses, Dharmshaktu had to take a loan of Rs.5.75 lakh from a bank and borrow the rest from friends.

Dharmshaktu and her husband's dream of

becoming the first Indian couple to together scale Mount Everest, the highest peak on earth, has taken a back seat.

"We will think about other expeditions only when we have repaid this loan," Singh added.

However, currently the family is waiting to have a word with her.

"Despite the problems, the achievement is big. When I will get to talk to her I will just say 'Well Done'," an elated Singh said.

Even though Dharmshaktu's return date is tentative, people from all over the country have been calling up her husband and congratulating him.

"Since yesterday (Thursday) the phone has not stopped ringing. Everybody wants to know when is she coming back and want to be part of the celebrations," said Singh.

To mark the 60th anniversary of the Commonwealth, the team of eight women from Britain, Brunei, Cyprus, Ghana, India, Jamaica, New Zealand and Singapore were selected for the expedition.