

CHAPTER 13 CASES

Scope Note: This Chapter examines Chapter 13 “wage earner” re-organization proceedings for individuals and small business operators. Topics include:

- Nature of Chapter 13 proceedings (§13:3 ff.)
- Operating as a Chapter 13 debtor (§13:60 ff.)
- The Chapter 13 trustee (see §13:160 ff.)
- Chapter 13 plan requirements (see §13:230 ff.)
- Chapter 13 plan confirmation requirements (see §13:640 ff.)
- Plan confirmation procedure (see §13:980 ff.)
- Effects of plan confirmation (see §13:1050 ff.)
- Distribution under a confirmed Chapter 13 plan (see §13:1200 ff.)
- Revocation of plan confirmation (see §13:1216 ff.)
- Plan modification (see §13:1270 ff.)

Cross-refer—related topics:

- Determining under which Chapter to file (see Ch. 2)
- Advantages/disadvantages of Chapter 13 as compared to other Chapters (see Ch. 2)
- Chapter 13 eligibility requirements (see Ch. 5 Part I)
- Procedures for commencing a bankruptcy case (see Ch. 5 Part I)
- Chapter 13 discharge (see Ch. 22)
- Conversion/dismissal of Chapter 13 cases (see Ch. 5 Part II)

PRACTICE CONSIDERATIONS

[13:1] **LOCAL RULES:** Chapter 13 practice is significantly determined by local practice and procedure. Virtually every court district and division has local rules, guidelines, general orders and mandatory forms governing Chapter 13 practice (especially the plan confirmation process). Consequently, Chapter 13 practitioners *must be familiar with local orders and rules*. Also, in multi-judge districts, Chapter 13 cases may be assigned to one, some or all of the judges. Be sure to inquire which judges currently handle Chapter 13 cases and learn the Chapter 13 procedures they utilize.

[13:2] **USE OF FORMS:** This Chapter refers to numerous forms used in connection with Chapter 13 cases, including Official Bankruptcy Forms, local bankruptcy court forms and bankruptcy judges' forms.

- *Official Bankruptcy Forms* can be found on Thomson Reuters Westlaw

[13:2.1 — 13:6]

PRACTICE CONSIDERATIONS (Cont'd)

and the U.S. Courts website (www.uscourts.gov/forms/bankruptcy-forms).

Local bankruptcy court forms and bankruptcy judges' forms are available on the websites for each bankruptcy district in California:

Central District: www.cacb.uscourts.gov

Southern District: www.casb.uscourts.gov

Northern District: www.canb.uscourts.gov

Eastern District: www.caeb.uscourts.gov

Be sure to verify that the particular form you are using is acceptable in both the *district and division* where the Chapter 13 case is pending. For further discussion, see ¶1:76 ff.

[13:2.1] **USE OF LOCAL FORM CHAPTER 13 PLAN REQUIRED:** All four districts in California have adopted their own mandatory local Chapter 13 form plans. Be sure to use the required local form plan. See detailed discussion at ¶13:230 ff.

- Local bankruptcy court forms are available on the websites for each district in California.

A. OVERVIEW OF CHAPTER 13

1. [13:3] **Reorganization for Individual Debtors:** Chapter 13 provides individual debtors (including small business operators) with the same opportunity to organize and resolve their financial problems as large businesses have under Chapter 11—but through a less cumbersome and expensive procedure. It encourages them to adjust their debts, rather than liquidate their assets.
 - a. [13:4] **Liabilities restructured:** To a certain degree, a Chapter 13 plan may modify creditor rights by restructuring debts (whether unsecured or secured) and the terms pursuant to which the debtor will pay off those debts. [11 USC §1325(a)(5)]
 - (1) [13:5] **Short-term and long-term debts can be “cured” and reinstated:** A Chapter 13 plan may “cure” defaults and reinstate mortgages and other debts, and provide for those arrearages to be paid over the life of the plan. Doing so may allow the debtor to save his or her home, cars, etc. [11 USC §§1322(b)(3) (short-term debts, see ¶13:385 ff.), 1322(b)(5) (long-term debts, see ¶13:440 ff.)]
 - (2) [13:6] **Limited ability to lienstrip certain secured debts:** A Chapter 13 plan may also “rewrite” some types of undersecured secured debt by “stripping” the unsecured portion of the debt from the secured portion and splitting the debt into two claims: a secured claim in an amount equal to the present value of the collateral, and an unsecured claim for the deficiency (i.e.,

the difference between the collateral value and the total amount of the debt). The plan “crams down” on the creditor’s “stripped” claim by making plan payments over the life of the plan totaling the present value of the secured portion of the claim (i.e., the value of the collateral). The unsecured portion of the claim is classified and paid with other unsecured claims. *See further discussion at ¶13:371 ff.; and detailed treatment of lienstripping in Ch. 18.*

- b. [13:7] **Discharge greater than Chapter 7:** One of the benefits of Chapter 13 is the ability, through a confirmed Chapter 13 plan, to discharge (entirely eliminate) some debts that are not dischargeable in a Chapter 7 case. *See discussion at ¶22:1285 ff.*

- (1) [13:8] **“Hardship discharge”:** In Chapter 13, the ability to discharge debts not dischargeable in a Chapter 7 case is limited to debtors who complete payments under their confirmed Chapter 13 plans (known as a “full compliance” discharge). If a debtor fails to complete plan payments, a “hardship discharge” may be granted by the court under specific circumstances. However, a hardship discharge is not as extensive as a full compliance discharge. *See discussion at ¶22:1400 ff.*

[13:9-14] *Reserved.*

2. [13:15] **Limited to Voluntary Cases:** Unlike Chapter 11, Chapter 13 proceedings are purely voluntary. Creditors cannot force a debtor into Chapter 13; nor can they propose a repayment plan.

However, a debtor who flunks the Chapter 7 “means test” may, in order to obtain the benefits of bankruptcy (i.e., a discharge), *feel* “forced” to convert the case to Chapter 13. *See discussion at ¶5:277 ff.*

3. [13:16] **Eligibility:** Only an individual with regular income and their spouse whose debts are below the applicable ceilings may be a debtor under Chapter 13. [11 USC §109(e); *and see discussion at ¶5:550 ff.*]

- [13:16.1] **Caution—debtors involved in marijuana business:** Where a Chapter 13 debtor’s “regular income” is primarily derived from activities related to the sale or cultivation of marijuana, the debtor’s eligibility for bankruptcy is jeopardized, as Chapter 13 trustees are prohibited from administering bankruptcy estates that include assets derived from illegal activities without being exposed to criminal prosecution. *See discussion at ¶5:557.2 ff.*

Moreover, it is the policy of the U.S. Trustee Program to move to dismiss or object in all cases involving marijuana assets on grounds such assets may not be administered under the Bankruptcy Code (*see ¶9:101*).

[13:17 — 13:26]

Cross-refer: Chapter 13 eligibility is discussed in detail at ¶5:550 ff.

4. [13:17] **Chapter 13 Trustee Appointed:** A Chapter 13 trustee is appointed in *every* Chapter 13 case. The Chapter 13 trustee monitors the debtor’s progress throughout the case and is also responsible for collecting plan payments from the debtor and disbursing moneys under the debtor’s confirmed plan. *See discussion at ¶13:160 ff.*

5. [13:18] **Debtor Remains “in Possession”:** A Chapter 13 debtor keeps possession of all assets, exempt and nonexempt, and has the power to sell or dispose of those assets with court approval (*see* ¶13:60 ff.). (Nonexempt assets, of course, usually would be turned over to the trustee in a Chapter 7 liquidation.) [11 USC §1306(b)]

Moreover, unless the court orders otherwise, a Chapter 13 debtor engaged in business may continue to operate that business. [11 USC §1304(b)]

- a. [13:19] **Court order not required:** No court order is required for a Chapter 13 debtor to remain in possession.
- b. [13:20] **Duration:** A Chapter 13 debtor cannot be removed from possession unless the case is converted to another Chapter. (*Compare:* In Chapter 11, a trustee may be appointed and the debtor dispossessed from property of the estate, either for cause or in the interest of creditors and the estate.)
- c. [13:21] **Effect of debtor’s death:** If a Chapter 13 debtor dies during the case, the case may be dismissed or the case may proceed as though the death did not occur. *See discussion at ¶5:154.*

[13:22-24] *Reserved.*

6. [13:25] **Debtor and Codebtors Protected by Automatic Stay:** As with Chapter 7 or 11, filing a petition under Chapter 13 automatically stays most collection actions against the debtor. [11 USC §362]

But a Chapter 13 stay *also* automatically stays creditor action against certain *codebtors*—e.g., family members or friends who have guaranteed or cosigned loans. [11 USC §1301]

Cross-refer: The codebtor stay is discussed at ¶8:145 ff.

7. [13:26] **Postpetition Property Included in Estate:** With some exceptions, property held by the debtor prepetition becomes property of the estate once the petition is filed. [See 11 USC §541 (defining “property of the estate”)]

In addition, in a Chapter 13 case (unlike Chapter 7), property acquired by the debtor, including earnings from postpetition services performed by the debtor and property acquired postpetition before the case

is closed, dismissed or converted, is estate property. [11 USC §1306(a)(1), (2)]

Cross-refer: Property of the estate is discussed in detail in *Ch. 6*.

8. [13:27] **Creditors' Committees *Not* Appointed:** Unlike Chapter 11, there is *no* authority to appoint creditors' committees in Chapter 13 cases.
9. [13:28] **Claims Bar Date Established:** The deadline for filing claims in Chapter 13 cases is generally set 70 days after the order for relief. [See FRBP 3002(c)]
 - [13:28.1] **Caution—effect of failure to file proof of claim:** Creditors who wish to participate in distributions from a Chapter 13 plan must file a proof of claim. (The fact the debtor has scheduled the creditor's debt does not satisfy the claim-filing requirement.) [See FRBP 3002(a); *In re Barker* (9th Cir. 2016) 839 F3d 1189, 1196-1198—credit union that filed proof of claim after claims bar date prohibited from participating in Chapter 13 distributions despite debtor's scheduling of credit union debt]
 - [13:28.2] **Includes secured claims:** Secured creditors wishing to participate in distributions under a Chapter 13 plan must file a proof of claim to do so. [See FRBP 3002(a)]

For example, if the debtor's Chapter 13 plan proposes to pay arrearages on a secured claim through the plan, but the secured creditor fails to timely file a proof of claim, the Chapter 13 trustee is *prohibited from making distributions* to the secured creditor under the plan.

10. [13:29] **Optional Rights and Responsibilities Agreement Between Chapter 13 Debtors and Their Counsel (RARA):** The RARA ("Rights and Responsibilities Agreement Between Chapter 13 Debtors and Their Attorneys") is a form contract that details the duties of both the Chapter 13 debtor and their counsel. The RARA is part of an optional streamlined procedure used by several districts in California to compensate Chapter 13 counsel (*see* ¶4:1642).

The Central, Southern and Eastern Districts have RARA forms available for downloading from their respective websites. In the Northern District, the San Francisco, Oakland and San Jose divisions have RARA forms available on the Northern District's website.

➡ [13:29.1] **PRACTICE POINTER:** Local forms, including RARAs, are routinely revised. Be sure to check the applicable district's website to ensure you are using the most current version of the local form.

[13:30 — 13:34.2]

- a. [13:30] **Specifies duties/services of debtor’s counsel prepetition and postpetition and payment therefor:** Each RARA specifies that debtor’s counsel will perform the designated prepetition and postpetition services in connection with the debtor’s Chapter 13 case and the amount debtor’s counsel will be paid. There is some variation in the services required by the various RARAs for each district. *See discussion at ¶4:1640 ff.*
 - b. [13:31] **Specifies postpetition duties of Chapter 13 debtor:** *See discussion at ¶13:142.*
11. [13:32] **Reorganization Plan Required:** In order to receive a discharge under Chapter 13, the debtor must file, obtain confirmation of and *perform* under a Chapter 13 plan.
- ➡ [13:32.1] **PRACTICE POINTER—USE OF LOCAL CHAPTER 13 PLAN FORMS REQUIRED:** All four districts in California have adopted their own mandatory local Chapter 13 plan forms. Be sure to use the required local form plan. *See detailed discussion at ¶13:230 ff.*
- Local bankruptcy court Chapter 13 plan forms are available on the websites for each district in California (*see* ¶13:2).
- a. [13:33] **Debtor’s exclusive right to file plan:** Since a Chapter 13 case is purely voluntary, only the *debtor* has the right to file a plan. Unlike Chapter 11 cases, creditors may *not* propose a plan. [11 USC §1321]

The trustee has no responsibility for preparation of the plan, but is under a duty to advise and assist the debtor in performance under the plan. [11 USC §1302(b)]
 - b. [13:34] **Creditor consent to plan not required:** Unlike a Chapter 11 plan, which must be accepted by each class of creditors whose claims are impaired by it (or at least one such class in a Chapter 11 “cramdown” situation), no creditor acceptance or consent is required for a Chapter 13 plan.
 - (1) [13:34.1] **Includes creditors with impaired claims:** Chapter 13 plan acceptance is not required, even where creditors’ claims are impaired under the plan.
 - (a) [13:34.2] **“Impairment”:** “Impairment” is not defined in Chapter 13 of the Code. However, 11 USC §1124(1) defines “impair” in the context of Chapter 11 plans, and courts have looked to Chapter 11 case law for guidance. In doing so, one case found that impairment for purposes of a Chapter 13 claim is “any proposed alteration of the rights of a creditor, which the debtor could not insist on but for the protections of the Bankruptcy Code.” [*In re Evans* (BC D OR 2018) 584

BR 917, 919-921; and see discussion at ¶11:766 ff. re impairment in Chapter 11 cases]

- (2) [13:35] **Compare—unsecured creditors may object to plan:** However, unsecured creditors (including partially-secured creditors) with allowed claims may *object* to a proposed Chapter 13 plan (¶13:1001 ff.). Plan objections are considered by the court at the plan confirmation hearing.
- c. [13:36] **Disclosure statement not required:** Because creditor consent is not required for a Chapter 13 plan, there is no need for a Chapter 13 debtor to prepare the detailed disclosure statement usually required in Chapter 11 cases to solicit creditor consent.
- d. **Plan form and contents**
 - (1) [13:37] **Mandatory plan provisions:** The Bankruptcy Code requires certain provisions to be included in every Chapter 13 plan. [See 11 USC §1322, discussed at ¶13:230 ff.]
 - (2) [13:38] **Provisions required in Local Form Chapter 13 plans:** All four districts in California have adopted their own mandatory local Chapter 13 plan forms containing provisions required by FRBP 3015.1. See discussion at ¶13:230 ff.
 - (3) [13:38.1] **Optional plan provisions:** The Bankruptcy Code permits certain discretionary provisions to be included in a Chapter 13 plan, provided the plan meets the confirmation requirements (see discussion at ¶13:330 ff.).
- e. [13:39] **Filing deadline:** The plan must be filed within 14 days after the case is commenced unless a court order extending time is obtained for cause. [See FRBP 3015(b)]



[13:40] **PRACTICE POINTER FOR DEBTORS:** Given the 14-day deadline, it is good practice to *file the plan with the petition* (all four districts in California have mandatory form Chapter 13 plans; see ¶13:118 ff.).

However, where the case filing is an emergency (e.g., to forestall an impending foreclosure or other creditor action), be sure to obtain an extension of time from the court to submit the plan to avoid any risk of dismissal or conversion.

To obtain an extension within the 14-day period, an *emergency or shortened time motion* must be filed. Consult local rules for the proper procedure required to obtain the extension.

Cross-refer: Motion practice is discussed in detail in Ch. 19.

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- f. [13:41] **Plan payments commence *before* confirmation:** A Chapter 13 debtor commences making plan payments *before* the plan is confirmed (11 USC §1326(a)(1)). *See discussion at ¶13:965 ff.*

[13:42-44] *Reserved.*

12. [13:45] **Plan Confirmation:** After the plan has been filed and served on creditors, the court holds a hearing to “confirm” (approve) it. A proposed plan is not binding on creditors until it is confirmed by the court. And a court can only confirm a plan if it complies with specific statutory requirements, including the “best interests of creditors” test. [See 11 USC §1325, *discussed at ¶13:640 ff.*]

13. [13:46] **Effect of Plan Confirmation:** Once confirmed by the court, the plan redefines the terms pursuant to which the debtor’s debts will be repaid.

Once it becomes final, an order confirming a Chapter 13 plan has res judicata and collateral estoppel effect in subsequent litigation. *See discussion at ¶13:1085 ff.*

14. [13:47] **Applicability of Other Code Provisions:** Chapters 1, 3 and 5 of the Bankruptcy Code apply in Chapter 13 proceedings (11 USC §103(a)). Indeed, many of the important provisions governing Chapter 13 proceedings are found in those Chapters (e.g., eligibility to file (11 USC §109); how proceedings are commenced (11 USC §301); automatic stay (11 USC §362); procedure for claims (11 USC §502)). In addition, some provisions of Chapter 7 are incorporated by reference (e.g., duties of the Chapter 13 trustee are derived from the provisions governing Chapter 7 trustees (11 USC §§1302(b), 704(a)(2)-(8))).

[13:48-59] *Reserved.*

B. CHAPTER 13 DEBTOR’S RIGHTS, POWERS AND DUTIES

1. Debtor’s Rights and Powers

- a. [13:60] **Possession of assets:** One of the main advantages of Chapter 13 is that the debtor *remains in possession of all assets* pending plan confirmation. And unless the plan or the confirmation order provides otherwise, the debtor will continue to retain possession of all the debtor’s property after confirmation. [11 USC §1306(b)]

- b. [13:61] **Selling or disposing of assets with court approval:** Chapter 13 debtors have the power to sell or dispose of estate assets, subject to court approval. [11 USC §§1304(b), 363(b)]

Unlike Chapters 7 and 11, the Chapter 13 trustee has no power to compel the debtor to sell or dispose of any assets. The *debtor alone* has the right to seek court approval for sale or lease of a car, a home, etc. [11 USC §1303; see *Matter of Aycock* (BC ED NC 1981) 15 BR 728, 730—Chapter 13 debtor has right to use, lease or sell property under 11 USC §363 exclusive of the trustee]

[13:62] *Reserved.*

- c. [13:63] **Continuing business operations:** Unless the court orders otherwise, an individual debtor “engaged in business” may continue to operate the business in substantially the same manner that a Chapter 11 debtor conducts its business. [See 11 USC §1304(b); *In re Pittman* (D CO 1981) 8 BR 299, 301]
- (1) [13:64] **“Engaged in business”:** A debtor is “engaged in business” if *self-employed* and if the debtor has incurred *trade credit* in the production of income from such self-employment. [11 USC §1304(a)]
 - (2) [13:65] **Sale or disposition of assets:** A Chapter 13 debtor “engaged in business” has the exclusive right to sell, lease or otherwise use the business assets, *in the normal course of operations*. No prior notice, hearing or court approval is required. [See 11 USC §§1304(b), 363(c)]
 - (a) [13:66] **Comment:** These provisions are intended to enable the debtor to rehabilitate himself or herself. If instead of continuing “business as usual,” the debtor starts holding close-out sales, court approval must be obtained.
 - (3) [13:67] **Obtaining credit:** A debtor “engaged in business” has the right to obtain credit for the business (the same power as a debtor in possession in a Chapter 11 case). [See 11 USC §§1304(b), 364]

But most courts conclude that a Chapter 13 debtor who is *not* “engaged in business” can only obtain credit under 11 USC §1305 (¶13:510 *ff.*). [*In re Nacci* (BC ND OH 2018) 586 BR 733, 736-737, following *In re Ward* (BC ND TX 2016) 546 BR 667, 678—because 11 USC §§363 and 364 “likely” only apply to Chapter 13 debtors engaged in business, §1305 should apply to debts incurred by Chapter 13 debtors postpetition; *In re Fields* (BC D MN 2016) 551 BR 424, 426-427 (same)]

- (a) [13:67.1] **Procedural dilemma?** The procedure for obtaining postpetition credit in bankruptcy cases is FRBP 4001(c); however, that Rule *does not apply* in Chapter 13 cases. [FRBP 4001(c)(3)]

Moreover, according to the Committee Note, the Rule “does not speak to the underlying substantive issue of whether the Bankruptcy Code requires or permits a chapter 13 debtor not engaged in business to request approval of postpetition credit.” [See FRBP 4001(c), Adv. Comm. Note, 2019 Amend.]

- [13:67.2] **Comment:** Most courts require debtors to notify the Chapter 13 trustee or seek

[13:68 — 13:80]

court approval before incurring credit that impacts the debtor's budget. Be sure to check local court rules/procedures on this issue.

- d. [13:68] **Objecting to creditor claims:** The debtor has standing to object to the allowance of claims. [*Matter of Dooley* (BC ND GA 1984) 41 BR 31, 33]

Note: Creditors and other interested parties also have the right to object to allowance of a claim. See 11 USC §502(a).

Cross-refer: Objections to claims are discussed at ¶17:1330 ff.

- e. [13:69] **Exercising turnover power:** A Chapter 13 debtor has the power under 11 USC §542 to compel turnover of property, subject to the creditor's right to adequate protection. [See *In re Radden* (BC ED VA 1983) 35 BR 821, 826; *In re Sininger* (BC SD OH 1988) 84 BR 115, 118; *In re Coleman* (BC ND IL 1999) 229 BR 428, 429]

Cross-refer: Turnover power under §542 is discussed at ¶21:1670 ff.

- f. [13:70] **Exercising avoiding powers?** Courts are split as to whether the debtor may exercise the trustee's avoiding powers under 11 USC §§544, 545, 547, 548, 549 and 553:

- [13:71] Some courts permit the debtor to exercise the avoiding powers. [*In re Cohen* (9th Cir. BAP 2004) 305 BR 886, 895-900—Chapter 13 debtor and trustee hold avoidance powers concurrently]
- [13:72] But the majority view is that *only the Chapter 13 trustee* can bring avoidance actions. [*In re Hansen* (10th Cir. BAP 2005) 332 BR 8, 10-16 (collecting/analyzing case law and concluding Chapter 13 debtors lack standing to exercise trustee's avoiding powers); *In re Binghi* (BC SD NY 2003) 299 BR 300, 302-306 (same); see also *In re Stangel* (5th Cir. 2000) 219 F3d 498, 501—Chapter 13 debtor lacked standing to pursue 11 USC §545 avoidance action]

Cross-refer: Avoidance actions are discussed in detail in *Ch. 21*.

- (1) [13:73] **Compare—standing to avoid transfers of exempt property:** The debtor may exercise the Code's avoiding powers to avoid involuntary transfers of exempt property if the Chapter 13 trustee has not done so. [See 11 USC §522(g)(1), (h); *Matter of Hamilton* (5th Cir. 1997) 125 F3d 292, 297; *In re Dickson* (6th Cir. 2011) 655 F3d 585, 592; and discussion at ¶21:1520 ff.]

[13:74-79] *Reserved.*

- g. [13:80] **Right to sue and be sued:** A debtor in a Chapter 13 case pending in California has standing to sue and be sued