

Comparison: Chapter 11 vs Chapter 12 vs Chapter 13

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A Chart providing an overview and comparison of the major facets of an individual Chapter 11 reorganization case, a Chapter 12 adjustment of debts of a family farmer or fisherman with regular annual income, and a Chapter 13 adjustment of debts of an individual with regular income. The Chart examines several crucial issues, including commencement of the case, case administration, and plans of reorganization.

The Chapter 12 process provides family farmers and fishermen with an opportunity to reorganize in a manner that is tailored to fit their circumstances better than Chapters 11 or 13. Chapter 11 reorganizations are ideally suited for large companies with strong existing management or for sole proprietorships. Individual Chapter 11 reorganizations may be an individual debtor’s only option due to factors restricting an individual debtor’s eligibility under Chapter 7 or Chapter 13. However, the duties of a Chapter 11 debtor and the associated time and expense are prohibitive to many farmers and fishermen. Chapter 13 is designed for individuals but is not

well-suited for individuals or entities whose income fluctuates seasonally and who have large business-related debts. Chapter 12 incorporates many of the same provisions of the Bankruptcy Code as do Chapter 11 and Chapter 13 but with significant operative differences.

This Chart compares several aspects of a bankruptcy case under these three chapters of the Bankruptcy Code, including:

- Initiating Chapter 11, 12, and 13 cases and requirements to be eligible as a debtor under each (see Commencement of the Case).
- General case administration (see Case Administration).
- The role of the US Trustee (see Role of US Trustee/Bankruptcy Administrator).
- Plans of reorganization (see Plan of Repayment or Reorganization).

For more information on individual Chapter 11 bankruptcy cases, see Practice Note, Individual Chapter 11 Bankruptcy: Overview ([W-008-8977](#)).

For more information on the basics of Chapter 12, see Practice Note, Bankruptcy: Overview: Box: Chapter 12: Adjustment of Debts of a Family Farmer or Fisherman with Regular Annual Income ([1-380-9908](#)).

For more information on the basics of Chapter 13, see Practice Note, Bankruptcy: Overview: Chapter 13: Adjustment of Debts of an Individual with Regular Income ([1-380-9908](#)).

COMMENCEMENT OF THE CASE

INITIATING A CASE

Chapter 11	Chapter 12	Chapter 13
A Chapter 11 debtor can commence a voluntary bankruptcy case on its own. Unsecured creditors can file an involuntary petition against a debtor under section 303 of the Bankruptcy Code (see Practice Note, The Involuntary Bankruptcy Process (0-522-5462)).	Chapter 12 involuntary petitions are not permitted (§ 303(a), Bankruptcy Code).	Chapter 13 involuntary petitions are not permitted (§ 303(a), Bankruptcy Code).

DEBTOR ELIGIBILITY

No individual or family farmer may be a debtor under any Chapter of the Bankruptcy Code if, during the 180 days before the petition date:

- A bankruptcy petition was dismissed due to the debtor’s willful failure to:
 - appear before the court; or
 - abide by court orders.
 - The debtor requested and obtained voluntary dismissal of the case after the filing of a request for relief from the automatic stay under section 362 of the Bankruptcy Code.
- (§ 109(g), Bankruptcy Code.)

Chapter 11	Chapter 12	Chapter 13
<p>An individual is eligible as a Chapter 11 debtor (§ 109(d), Bankruptcy Code).</p> <p>An individual can file for Chapter 11 if the debtor:</p> <ul style="list-style-type: none"> ■ Cannot satisfy the Chapter 7 means test (§ 707(b), Bankruptcy Code). ■ Is ineligible for Chapter 13 because the claims against the debtor exceed the statutory limits of: <ul style="list-style-type: none"> • \$394,725 of noncontingent, liquidated, unsecured debt; and • \$1,184,200 of noncontingent, liquidated, secured debt. <p>■ (§ 109(e), Bankruptcy Code.)</p>	<p>Under section 109(f) of the Bankruptcy Code, only family farmers (§ 101(18), (19), Bankruptcy Code) and family fishermen (§ 101(19A), (19B), Bankruptcy Code) with regular annual income are eligible as debtors under Chapter 12. Family farmers and fishermen fall into two categories, which are:</p> <ul style="list-style-type: none"> ■ An individual or individual and spouse. ■ A corporation or partnership. <p>For an individual to qualify for relief under Chapter 12, individual farmers or fishermen must meet four criteria as of the petition date. These criteria are that:</p> <ul style="list-style-type: none"> ■ The individual or spouses must be engaged in a farming operation or a commercial fishing operation. ■ The total secured and unsecured debts of the operation cannot exceed: <ul style="list-style-type: none"> • \$4,153,150 if a farming operation; or • \$1,924,550 if a commercial fishing operation. ■ A minimum percentage of fixed debts, exclusive of debt for the debtor’s home, must be related to the farming or commercial fishing operation, including at least: <ul style="list-style-type: none"> • 50% if a family farmer; and • 80% if a family fisherman. ■ More than 50% of gross income must have come from the farming or commercial fishing operation, for: <ul style="list-style-type: none"> • the individual or spouses, for the preceding tax year; or • family farmers only, for each of the second and third prior tax years. <p>For a corporation or partnership to qualify for relief under Chapter 12, the corporation or partnership must meet certain criteria as of the petition date, including that:</p> <ul style="list-style-type: none"> ■ More than 50% of the outstanding stock or equity in the corporation or partnership must be owned by one family or by one family and its relatives. ■ The family or the family and its relatives must conduct the farming or commercial fishing operation. ■ More than 80% of the value of the corporate or partnership assets must be related to the farming or fishing operation. 	<p>An individual is eligible for Chapter 13 if the individual’s unsecured and secured debts are less than the maximum amounts stated in section 109(e) of the Bankruptcy Code, which are adjusted periodically with the consumer price index.</p> <p>An eligible individual includes:</p> <ul style="list-style-type: none"> ■ One with regular income who, as of the petition date, owes: <ul style="list-style-type: none"> • unsecured, noncontingent, liquidated debts of less than \$394,725; and • secured, noncontingent, liquidated debts of less than \$1,184,200. ■ An individual with regular income and the individual’s spouse, except a stockbroker (§ 101(53A), Bankruptcy Code) or commodity broker (§ 101(6), Bankruptcy Code), who, as of the petition date, owes: <ul style="list-style-type: none"> • unsecured, noncontingent, liquidated debts that aggregate of less than \$394,725; and • secured, noncontingent, liquidated debts of less than \$1,184,200. <p>A corporation or partnership cannot be a Chapter 13 debtor.</p>

Chapter 11	Chapter 12	Chapter 13
	<ul style="list-style-type: none"> ■ The total indebtedness of the corporation or partnership cannot exceed: <ul style="list-style-type: none"> • \$4,153,150 if a farming operation; or • \$1,924,550 if a commercial fishing operation. ■ A minimum percentage of the corporation's or partnership's fixed debts (exclusive of debt for one home occupied by a shareholder) must be related to the farming or fishing operation, including at least: <ul style="list-style-type: none"> • 50% for a farming operation; or • 80% for a fishing operation. ■ If the corporation issues stock, the stock cannot be publicly traded. 	

The threshold amounts for Chapters 12 and 13 are adjusted periodically, typically every three years.

CASE ADMINISTRATION

APPOINTMENT OF EXAMINER OR TRUSTEE

Chapter 11	Chapter 12	Chapter 13
<p>A Chapter 11 debtor is vested with many of the same powers and duties as a Chapter 7 trustee, so the debtor continues to manage its own affairs as a debtor-in-possession (§ 1107, Bankruptcy Code). In limited circumstances, a trustee or examiner may be appointed in a Chapter 11 case at the request of a party in interest or the US Trustee (§ 1104, Bankruptcy Code).</p>	<p>A standing trustee is appointed by the US Trustee to administer each Chapter 12 bankruptcy case. The Chapter 12 trustee's role is to:</p> <ul style="list-style-type: none"> ■ Evaluate the case. ■ Act as a disbursing agent: <ul style="list-style-type: none"> • collecting payments from the debtor; and • making distributions to creditors. <p>(§ 1202(a), Bankruptcy Code.)</p>	<p>A standing trustee is appointed by the US Trustee to administer each Chapter 13 bankruptcy case. The Chapter 13 trustee's role is to:</p> <ul style="list-style-type: none"> ■ Evaluate the case. ■ Act as a disbursing agent: <ul style="list-style-type: none"> • collecting payments from the debtor or through payroll deduction; and • making distributions to creditors. <p>(§ 1302, Bankruptcy Code.)</p>

RETENTION OF PROFESSIONALS

Chapter 11	Chapter 12	Chapter 13
<p>A Chapter 11 debtor's engagement of counsel requires court approval under section 327(a) of the Bankruptcy Code, which requires that the debtor file an application for approval of counsel's retention under Bankruptcy Rule 2014. Counsel must be disinterested and cannot hold or represent any interest adverse to the debtor's estate.</p> <p>For more information on the retention of professionals in Chapter 11, see Practice Note, Getting Retained as a Professional to the Debtor-in-Possession (8-385-1512).</p>	<p>A Chapter 12 debtor is not required to obtain court approval to retain an attorney or other professionals. By contrast, section 327(a) of the Bankruptcy Code requires a Chapter 12 bankruptcy trustee to obtain court approval to retain an attorney or other professional, who must be disinterested and not hold or represent any interest adverse to the estate.</p>	<p>A Chapter 13 debtor is not required to obtain court approval to retain an attorney or other professionals. By contrast, section 327(a) of the Bankruptcy Code requires a Chapter 13 bankruptcy trustee to obtain court approval to retain an attorney or other professional, who must be disinterested and not hold or represent any interest adverse to the estate.</p>

FINANCING DURING BANKRUPTCY

Chapter 11	Chapter 12	Chapter 13
<p>An individual Chapter 11 debtor may incur unsecured debt in the ordinary course of business without court approval. Court approval is required before incurring non-ordinary course debt (§ 364, Bankruptcy Code and see Practice Note, DIP Financing: Overview (1-383-4700)).</p>	<p>A Chapter 12 debtor cannot incur any significant new debt without consulting the trustee because additional debt may compromise the debtor's ability to complete the plan (§§ 1222(a)(1) and 1227, Bankruptcy Code).</p>	<p>The debtor cannot incur any significant new debt without consulting the trustee because additional debt may compromise the debtor's ability to complete the plan (§§ 1305(c), 1322(a)(1), and 1327, Bankruptcy Code).</p>

AUTOMATIC STAY

Chapter 11	Chapter 12	Chapter 13
<p>The automatic stay applies only to the debtor and its property. A debtor's Chapter 11 filing provides no stay protection to other parties liable on the debt with the debtor, such as co-borrowers and guarantors.</p> <p>For more information on the automatic stay in bankruptcy, see Practice Note, Automatic Stay: Lenders' Perspective (9-380-7953).</p>	<p>Chapter 12 contains a special automatic stay provision that protects a codebtor (defined as an individual liable on the debt with the debtor or who secured the debt). The stay provides that, unless the bankruptcy court authorizes otherwise, a creditor cannot seek to collect a consumer debt from any individual who is liable on the debt with the debtor (§ 1201(a), Bankruptcy Code). Consumer debts are those incurred by an individual primarily for a personal, family, or household purpose (§ 101(8), Bankruptcy Code).</p>	<p>Chapter 13 contains a special automatic stay provision that protects a codebtor (defined as an individual liable on the debt with the debtor or who secured the debt). The stay provides that, unless the bankruptcy court authorizes otherwise, a creditor cannot seek to collect a consumer debt from any individual who is liable on the debt with the debtor (§ 1301(a), Bankruptcy Code). Consumer debts are those incurred by an individual primarily for a personal, family, or household purpose (§ 101(8), Bankruptcy Code).</p>

CLAIMS

Chapter 11	Chapter 12	Chapter 13
<p>A proof of claim or interest is deemed filed for any prepetition claim or interest that appears in the schedules filed by the debtor, except a claim or interest that is scheduled as disputed, contingent, or unliquidated (§ 1111(a), Bankruptcy Code). Creditors are served with written notice of the bar date, a specific claim filing deadline, and instructions for filing proofs of claim. Only holders of allowed claims are entitled to vote on a Chapter 11 debtor's plan of reorganization.</p> <p>For more information on filing a proof of claim, see Practice Note, Filing a Proof of Claim in a Chapter 11 Bankruptcy Case (8-385-1512).</p>	<p>To participate in distributions from a Chapter 12 bankruptcy estate:</p> <ul style="list-style-type: none"> ■ A proof of claim must be filed by non-governmental creditors holding secured and unsecured claims not later than 70 days after the voluntary petition is filed (Fed. R. Bankr. P. 3002(c)). ■ A governmental unit must file a proof of claim (other than one arising from certain tax returns) not later than 180 days after the voluntary petition date. The court may, for cause, enlarge the time for a governmental unit to file a proof of claim only on a motion of the governmental unit made before expiration of the period for filing a timely proof of claim (Fed. R. Bankr. P. 3002(c)(1)). 	<p>To participate in distributions from a Chapter 13 bankruptcy estate:</p> <ul style="list-style-type: none"> ■ A proof of claim must be filed by non-governmental creditors holding secured and unsecured claims not later than 70 days after the voluntary petition is filed (Fed. R. Bankr. P. 3002(c)). ■ A governmental unit must file a proof of claim (other than one arising from certain tax returns) not later than 180 days after the voluntary petition date. The court may, for cause, enlarge the time for a governmental unit to file a proof of claim only on a motion of the governmental unit made before expiration of the period for filing a timely proof of claim (Fed. R. Bankr. P. 3002(c)(1)).

COMMITTEES

Chapter 11	Chapter 12	Chapter 13
<p>An official unsecured creditors' committee may be appointed in any Chapter 11 case, regardless of whether the debtor is an individual or a corporate entity (§ 1102(a)(1), Bankruptcy Code). However, appointment of a creditors' committee is unusual in individual and small business Chapter 11 cases due to the associated expense. For more information on creditors' committees, see Practice Note, Chapter 11 Creditors' Committees (1-508-8252).</p>	<p>The Bankruptcy Code does not provide for the appointment of official committees in Chapter 12 cases.</p>	<p>The Bankruptcy Code does not provide for the appointment of official committees in Chapter 13 cases.</p>

ASSET SALES

Chapter 11	Chapter 12	Chapter 13
<p>An individual Chapter 11 debtor may sell assets, other than in the ordinary course of business, with the assets transferring to buyers free of liens and interests only if one of certain requirements is met, including:</p> <ul style="list-style-type: none"> ■ Applicable non-bankruptcy law permits sale of the property free and clear of the lien or interest. ■ The lienholder consents. ■ The sale price is greater than the aggregate value of all liens on the property (that is, there is equity in the property). ■ The lien or interest is in bona fide dispute. ■ The lien or interest holder could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of the claim. <p>(§§ 363(f) and 1107(a), Bankruptcy Code.)</p> <p>For more information on asset sales in bankruptcy, see Practice Note, Buying Assets in a Section 363 Bankruptcy Sale: Overview (1-385-0115).</p>	<p>A Chapter 12 trustee or debtor has the same right as in other chapters to sell estate property, other than in the ordinary course of business, with assets transferring to buyers free and clear of liens (§ 363(f), Bankruptcy Code). However, it can be difficult for family farmers and fishermen to meet the usual requirements for sales free and clear of liens.</p> <p>In many Chapter 12 cases, the initial strain on the debtor's cash flow is so great that it is necessary to sell all assets not required for continuing operations before confirmation of a plan. Chapter 12 recognizes this need by relaxing and expanding the rights of trustees and debtors to sell:</p> <ul style="list-style-type: none"> ■ Farmland. ■ Farm equipment. ■ Property used to carry out a commercial fishing operation. <p>Even when a Chapter 12 trustee or debtor cannot meet the usual sale requirements, these assets can be sold free and clear of liens. The interests of creditors of Chapter 12 debtors are protected by having their liens transfer to the proceeds of sale (§ 1206, Bankruptcy Code).</p>	<p>In a Chapter 13 case where the debtor is engaged in business, the debtor (exclusive of the Chapter 13 trustee) may sell assets, other than in the ordinary course of business, with the assets transferring to buyers free of liens and interests, only if one of certain requirements is met, including:</p> <ul style="list-style-type: none"> ■ Applicable non-bankruptcy law permits sale of the property free and clear of the lien or interest. ■ The lienholder consents. ■ The sale price is greater than the aggregate value of all liens on the property (that is, there is equity in the property). ■ The lien or interest is in bona fide dispute. ■ The lien or interest holder could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of the claim. <p>(§§ 363(f) and 1304, Bankruptcy Code.)</p>

CONVERSION/DISMISSAL

Chapter 11	Chapter 12	Chapter 13
<p>The decision to dismiss or convert an individual Chapter 11 case can occur when either:</p> <ul style="list-style-type: none"> ■ There are assets that may be liquidated for the benefit of unsecured creditors. ■ The debtor has engaged in some sort of wrongdoing and conversion is in the best interests of the estate. <p>The US Trustee or other parties in interest can move to convert or dismiss a Chapter 11 case for cause if the debtor fails to:</p> <ul style="list-style-type: none"> ■ Provide the required financial documents on a timely basis. ■ Maintain appropriate insurance that poses a risk to the estate or the public. ■ Attend the section 341 meeting of creditors or a Rule 2004 examination without good cause. ■ Timely pay postpetition taxes or file tax returns due postpetition. ■ Pay US Trustee quarterly fees. ■ File a plan that has the potential to be confirmed within the required time limits. <p>(§ 1112(b), Bankruptcy Code.)</p>	<p>A Chapter 12 debtor may:</p> <ul style="list-style-type: none"> ■ Convert the case to one under Chapter 7 of the Bankruptcy Code at any time, which right cannot be waived (§ 1208(a), Bankruptcy Code). ■ Request the case be dismissed at any time, which right cannot be waived (§ 1208(b), Bankruptcy Code). <p>A party in interest, after notice and a hearing, may request that the case be dismissed for cause. Bases for dismissal are enumerated under section 1208(c) of the Bankruptcy Code and include:</p> <ul style="list-style-type: none"> ■ If the debtor fails to make timely payments due under the confirmed plan (§ 1208(c)(4), Bankruptcy Code). ■ Continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation (§ 1208(c)(9), Bankruptcy Code). ■ If the debtor fails to pay any postpetition domestic support obligations, such as child support or alimony (§ 1208(c)(10), Bankruptcy Code). 	<p>A Chapter 13 debtor may:</p> <ul style="list-style-type: none"> ■ Convert the case to one under Chapter 7 of the Bankruptcy Code at any time, which right cannot be waived (§ 1307(a), Bankruptcy Code). ■ Request the case be dismissed at any time, which right cannot be waived (§ 1307(b), Bankruptcy Code). <p>A party in interest or the US Trustee, after notice and a hearing, may request that the case be converted or dismissed for cause if in the best interests of creditors and the estate. Bases for conversion or dismissal for cause are enumerated under section 1307(c) of the Bankruptcy Code and include if the debtor fails to:</p> <ul style="list-style-type: none"> ■ Make timely payments due under the confirmed plan (§ 1307(c)(4), Bankruptcy Code). ■ Pay any postpetition domestic support obligations, such as child support or alimony (§ 1307(c)(11), Bankruptcy Code). ■ Make required tax filings during the case (§§ 1307(e) and 1308, Bankruptcy Code).

Chapter 11	Chapter 12	Chapter 13
<p>On motion of the US Trustee or other party in interest to dismiss or convert the Chapter 11 case, the burden shifts to the debtor to prove that:</p> <ul style="list-style-type: none"> ■ There is a reasonable likelihood that a confirmable plan is imminent. ■ The debtor’s act or omission: <ul style="list-style-type: none"> • is justifiable; and • will be cured within a reasonable amount of time. ■ Dismissal or conversion is not in the best interest of creditors and the estate. <p>(§ 1112(b)(2), Bankruptcy Code.)</p> <p>For more information on dismissing or converting a case in Chapter 11, see Practice Note, Dismissing or Converting a Chapter 11 Case (W-000-6009).</p>	<p>On request of a party in interest and after notice and a hearing, the bankruptcy court may dismiss a Chapter 12 case or convert it to Chapter 7 on finding that the debtor has committed fraud regarding the case (§ 1208(d), Bankruptcy Code). A case cannot be converted to a case under another chapter if the debtor does not qualify to be a debtor under that chapter.</p>	<p>The court cannot convert a Chapter 13 case to one under Chapters 7, 11, or 12 if the debtor is a farmer, unless the debtor requests conversion (§ 1307(f), Bankruptcy Code). A case cannot be converted to a case under another chapter if the debtor does not qualify to be a debtor under that chapter.</p>

ROLE OF US TRUSTEE/BANKRUPTCY ADMINISTRATOR

In North Carolina and Alabama, Bankruptcy Administrators perform functions similar to those that US Trustees perform in the remaining 48 states. The Bankruptcy Administrator program is administered by the Administrative Office of the US Courts, while the US Trustee program is administered by the Department of Justice. In addition to chapter-specific duties, US Trustees and Bankruptcy Administrators are responsible for referring matters for investigation and criminal prosecution when appropriate, such as in cases of suspected bankruptcy fraud and abuse. The references in this section to the US Trustee are interchangeable with references to the Bankruptcy Administrator.

GENERAL OBLIGATIONS

Chapter 11	Chapter 12	Chapter 13
<p>The US Trustee has oversight responsibility for and is directly involved in an individual’s Chapter 11 case.</p> <p>The US Trustee sends a transmittal letter to the individual debtor at the beginning of the case containing:</p> <ul style="list-style-type: none"> ■ A summary of the debtor’s specific duties. ■ Forms for monthly operating reports. ■ Payment schedules for quarterly bankruptcy fees. <p>The US Trustee must conduct an initial interview with a Chapter 11 debtor as soon as practicable but before the section 341 meeting of creditors. The purpose of the initial debtor interview is to:</p> <ul style="list-style-type: none"> ■ Investigate the debtor’s viability. ■ Inquire about the debtor’s reorganization strategy. ■ Explain the debtor’s obligations to file monthly operating reports and other required financial information. ■ Inform the debtor of other obligations. <p>(28 U.S.C. § 586(a)(3).)</p>	<p>The US Trustee appoints the standing trustees who administer every Chapter 12 case (28 U.S.C. § 586(b)).</p> <p>The US Trustee is tasked with:</p> <ul style="list-style-type: none"> ■ Supervising the Chapter 12 standing trustees’ administration of individual bankruptcy estates. ■ Monitoring the trustees’ financial recordkeeping. ■ Imposing other requirements to ensure that the trustees carry out their fiduciary duties. <p>The US Trustee’s supervisory actions in Chapter 12 cases are similar to those in Chapter 13 cases.</p> <p>For more information on the US Trustee’s role in Chapter 12 and Chapter 13, see DOJ: The U.S. Trustee’s Role in Consumer Bankruptcy Cases.</p>	<p>The US Trustee appoints the standing trustees who administer every Chapter 13 case (28 U.S.C. § 586(b)).</p> <p>The US Trustee is tasked with:</p> <ul style="list-style-type: none"> ■ Supervising the Chapter 13 standing trustees’ administration of individual bankruptcy estates. ■ Monitoring the trustees’ financial recordkeeping. ■ Imposing other requirements to ensure that the trustees carry out their fiduciary duties. <p>The US Trustee’s supervisory actions over the Chapter 13 trustee include:</p> <ul style="list-style-type: none"> ■ Periodically reviewing: <ul style="list-style-type: none"> • case reports; • budget reports; • bank account information; • management skills; • court performance; and • similar information.

Chapter 11	Chapter 12	Chapter 13
<p>The US Trustee must monitor the individual Chapter 11 case with as much, if not greater, oversight as a typical Chapter 11 case. If appropriate, the US Trustee should also:</p> <ul style="list-style-type: none"> ■ Ascertain the status of the debtor's books and records. ■ Verify that tax returns have been filed. <p>(28 U.S.C. § 586(a)(3).)</p> <p>For more information on the role of the US Trustee in Chapter 11 bankruptcy, see Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors (W-000-5977).</p>		<ul style="list-style-type: none"> ■ Ensuring that Chapter 13 trustees are bonded. ■ Ensuring that Chapter 13 trustees are independently audited. ■ Determining Chapter 13 trustees' maximum annual compensation and actual necessary expenses. ■ Providing training for Chapter 13 trustees. ■ Monitoring trust account funds. <p>For more information on the US Trustee's role in Chapter 12 and Chapter 13, see DOJ: The U.S. Trustee's Role in Consumer Bankruptcy Cases.</p>

PLAN OF REPAYMENT OR REORGANIZATION

FILING DEADLINE

Chapter 11	Chapter 12	Chapter 13
<p>There is no statutory deadline for filing an individual Chapter 11 plan. The debtor has an exclusive right to file a plan for the first 120 days of the case, unless extended by court order after notice and a hearing for cause. Thereafter, creditors are allowed to file a plan (§ 1121(b), Bankruptcy Code).</p> <p>If the debtor cannot file a plan within a reasonable time or comply with the section 1129 requirements for confirmation, the individual Chapter 11 case is then subject to conversion or dismissal (see Practice Note, Chapter 11 Plan Process: Overview: Who May File a Plan? (0-502-7396)).</p>	<p>Unless the court grants an extension for cause, the debtor must file a Chapter 12 plan of repayment either:</p> <ul style="list-style-type: none"> ■ With the petition. ■ Within 90 days after filing the petition (§ 1221, Bankruptcy Code; Fed. R. Bankr. P. 3015(a)). 	<p>Unless the court grants an extension for cause, the debtor must file a Chapter 13 repayment plan either:</p> <ul style="list-style-type: none"> ■ With the petition. ■ Within 14 days after the petition is filed or, if a case is converted to a Chapter 13 case, within 14 days after conversion (Fed. R. Bankr. P. 3015(b)).

PLAN CONTENT

Chapter 11	Chapter 12	Chapter 13
<p>To be confirmed, the individual debtor's plan must meet the confirmation requirements of section 1129 of the Bankruptcy Code.</p> <p>If an unsecured creditor objects to confirmation of an individual debtor's plan, the plan must provide either that the value of the property to be distributed under the plan:</p> <ul style="list-style-type: none"> ■ On account of the objecting creditor's claim is not less than the amount of that claim as of the plan effective date (§ 1129(a)(15)(A), Bankruptcy Code). ■ Is not less than the debtor's projected disposable income (§ 1325(b)(2), Bankruptcy Code) for the longer of five years beginning on the date the first payment under the plan is due or the period that the plan provides payments for (§ 1129(a)(15)(B), Bankruptcy Code). 	<p>The debtor proposes a repayment plan for trustee review and court approval. Under the repayment plan:</p> <ul style="list-style-type: none"> ■ The debtor makes payments of fixed amounts to the trustee on a regular basis for three to five years. ■ If a debtor owes domestic support claims for child support or alimony, plan payments must span five years and include all of the debtor's disposable income. ■ The trustee distributes funds to creditors according to the terms of the repayment plan, which typically provides unsecured creditors with less than full payment on their claims. <p>The plan must:</p> <ul style="list-style-type: none"> ■ Require the debtor to submit to the trustee all or the portion of the debtor's future income as is necessary for execution of the plan. ■ Require full payment over time of all claims entitled to priority under section 507 of the Bankruptcy Code, with limited statutory exceptions. ■ If the plan classifies claims and interests, provide the same treatment for each claim or interest within a particular class unless the holder of a particular claim or interest agrees to less favorable treatment. <p>(§ 1222, Bankruptcy Code.)</p>	<p>The debtor proposes a repayment plan for trustee review and court approval. Under the repayment plan:</p> <ul style="list-style-type: none"> ■ The debtor makes payments of fixed amounts to the trustee on a regular basis for three to five years. ■ If the debtor's current monthly income is less than the applicable state median, the plan usually will be for three years, with higher incomes requiring a five-year plan. ■ A debtor can cure mortgage payments that were late as of the petition date by paying them over the life of the plan but must timely pay all mortgage payments that come due after the petition date. ■ The trustee distributes funds to creditors according to the terms of the repayment plan, which typically provides unsecured creditors with less than full payment on their claims. <p>(§ 1322, Bankruptcy Code.)</p>

CONFIRMATION

Chapter 11	Chapter 12	Chapter 13
<p>To be confirmed, the individual Chapter 11 plan must meet the confirmation requirements of section 1129 of the Bankruptcy Code. Holders of allowed claims are entitled to cast ballots to accept or reject the plan. If the plan is not accepted by at least one class of impaired claim holders, then the debtor must seek cramdown confirmation of the plan under the requirements of section 1129(b) (see Practice Note, Chapter 11 Plan Process: Overview: Confirmation of a Plan: Consensual Plans (0-502-7396) and Confirmation of a Plan: Cramdown Plans (0-502-7396)).</p> <p>Section 1129(a)(15) provides that if an unsecured creditor objects to confirmation of an individual debtor's plan, the plan must provide either that the value of the property to be distributed under the plan:</p> <ul style="list-style-type: none"> ■ On account of the objecting creditor's claim is not less than the amount of that claim as of the plan effective date (§ 1129(a)(15)(A), Bankruptcy Code). ■ Is not less than the debtor's projected disposable income for the longer of five years beginning on the date the first payment under the plan is due or the period that the plan provides payments for (§ 1129(a)(15)(B), Bankruptcy Code). <p>(See Practice Note, Individual Chapter 11 Bankruptcy: Overview: Plan Confirmation (W-008-8977)).</p> <p>Disposable income for Chapter 11 purposes is defined the same as in Chapter 13 cases, which is the debtor's monthly income (excluding child support payments), less:</p> <ul style="list-style-type: none"> ■ Reasonable living expenses. ■ Certain charitable contributions. ■ If the debtor is engaged in business, the debtor's necessary business expenses. <p>(§§ 1129(a)(15)(B) and 1325(b)(2), Bankruptcy Code).</p>	<p>Creditors do not vote to confirm a Chapter 12 repayment plan. Creditors instead receive 21 days' notice of the confirmation hearing and the right to file objections to the plan (Fed. R. Bankr. P. 2002(a)(8)).</p> <p>Except for cause, the confirmation hearing must be held not later than 45 days after filing the plan for the court to determine whether the plan:</p> <ul style="list-style-type: none"> ■ Is feasible. ■ Meets the standards for confirmation under section 1225 of the Bankruptcy Code. <p>(§§ 1224 and 1225, Bankruptcy Code.)</p>	<p>Creditors do not vote to confirm a Chapter 13 repayment plan. Creditors instead receive 28 days' notice of the confirmation hearing and the right to file an objection to the plan (Fed. R. Bankr. P. 2002(b)).</p> <p>A confirmation hearing is held not earlier than 20 days and not later than 45 days after the section 341 meeting of creditors, unless otherwise set by the court. At the confirmation hearing, the court determines whether the plan:</p> <ul style="list-style-type: none"> ■ Is feasible. ■ Meets the standards for confirmation under section 1325 of the Bankruptcy Code. <p>(§§ 1324 and 1325, Bankruptcy Code.)</p>

DISCHARGE

Chapter 11	Chapter 12	Chapter 13
<p>Confirmation of an individual debtor's plan does not discharge any of the individual's debts. A discharge instead is granted on completion of all payments required under the plan (§ 1141(d)(5)(A), Bankruptcy Code). However, a debtor may request that the discharge become effective at the time of confirmation for cause shown and after notice and a hearing (§ 1141(d)(5)(A), Bankruptcy Code).</p> <p>Section 1141(d)(5)(A) of the Bankruptcy Code does not define cause for granting a discharge on confirmation. In determining whether cause exists to grant discharge at the time of confirmation, courts have considered:</p> <ul style="list-style-type: none"> ■ The likelihood that the debtors will make all plan payments. ■ The assurance, in the form of collateral, that creditors will receive the amounts they have been promised even if the plan payments are not made. <p>(See <i>In re Sheridan</i>, 391 B.R. 287, 290 (Bankr. E.D.N.C. 2008).)</p> <p>An individual Chapter 11 debtor whose plan was confirmed but who has not completed making the required payments may request a discharge if both:</p> <ul style="list-style-type: none"> ■ The value paid on account of allowed unsecured claims as of the effective date of the plan is at least what those claims would have received in a Chapter 7 liquidation (§ 1141(d)(5)(B)(i), Bankruptcy Code). ■ Modification of the plan is not practicable (§ 1141(d)(5)(B)(i), Bankruptcy Code). <p>For more information on the discharge of an individual Chapter 11 debtor's debt, see Practice Note, Individual Chapter 11 Bankruptcy: Overview: Discharge (W-008-8977).</p>	<p>A Chapter 12 debtor's debts will be discharged after all plan payments are completed. Secured debts may continue to be paid after the end of the plan payment period and, in those instances, are not discharged (§ 1228(a), Bankruptcy Code).</p> <p>The court may grant a hardship discharge to a Chapter 12 debtor only if:</p> <ul style="list-style-type: none"> ■ The debtor's failure to complete payments is due to circumstances for which the debtor should not justly be held accountable. ■ Unsecured creditors have received payments that equal or exceed what they would have received in a Chapter 7 liquidation. ■ Modification of the plan is not practicable. (§ 1228(b), Bankruptcy Code.) 	<p>A successful Chapter 13 debtor will be discharged on completion of all payments under the plan. Secured debts may continue to be paid after the end of the plan payment period and, in those instances, are not discharged (§ 1328, Bankruptcy Code).</p> <p>Although certain types of debts are non-dischargeable in Chapter 13, just as in other chapters (including alimony, child support, and federally guaranteed student loans), Chapter 13 offers debtors a broad discharge. Debts dischargeable in Chapter 13, but not in Chapter 7, include debts:</p> <ul style="list-style-type: none"> ■ For willful and malicious injury to property. ■ Incurred to pay some non-dischargeable tax obligations. ■ Arising from property settlements in divorce or separation proceedings. <p>(§ 1328(a), Bankruptcy Code.)</p> <p>The court may grant a hardship discharge to a Chapter 13 debtor only if:</p> <ul style="list-style-type: none"> ■ The debtor's failure to complete payments is due to circumstances for which the debtor should not justly be held accountable. ■ Unsecured creditors have received payments that equal or exceed what they would have received in a Chapter 7 liquidation. ■ Modification of the plan is not practicable. (§ 1328(b), Bankruptcy Code.)

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