

Bradley's Bankruptcy Basics

Lifecycle for Chapter 13 Bankruptcy Cases

For a detailed reference guide with expanded definitions, see page two and find the correlating endnote.

BANKRUPTCY CASE: CHAPTER 13

These activities/milestones generally happen in every Chapter 13 case.

BANKRUPTCY FILING

Upon bankruptcy filing, the automatic stay immediately halts all collection activity against the debtor

PLAN¹

Plan outlines how debt obligations will be paid

OBJECT TO PLAN?²

CREDITOR DECISION

YES

OBJECTION TO PLAN

FILED BY CREDITOR

NO

PLAN CONFIRMATION³

Once plan is confirmed, proposed claims treatment is binding on all parties

PROOF OF CLAIM⁴

FILED BY CREDITOR

DISCHARGE⁵

Debtor no longer has personal liability for discharged debts

CREDITOR ACTIVITY⁶

Here are three common activities/milestones that can happen in a Chapter 13 bankruptcy case at some point between the bankruptcy filing and case closing (but not necessarily in this order). All three may result in the need for creditors to file a document in the bankruptcy case.

CAUSE FOR RELIEF FROM STAY?⁷

CREDITOR DECISION

YES

MOTION FOR RELIEF FROM STAY⁸

FILED BY CREDITOR

NO

NO CREDITOR ACTION IS NECESSARY

LOSS MITIGATION?⁹

YES

MOTION TO APPROVE AGREEMENT¹⁰

FILED BY CREDITOR OR DEBTOR

NO

NO CREDITOR ACTION IS NECESSARY

Debtors may enter into loss mitigation agreements with secured creditor

MOTION TO ASSUME¹¹

FILED BY DEBTOR

If debtor seeks to assume a contract or lease, debtor will file a motion for approval

BASIS TO OBJECT?¹²

CREDITOR DECISION

YES

OBJECTION TO MOTION

FILED BY CREDITOR

NO

NO CREDITOR ACTION IS NECESSARY

CREDITOR ACTIVITY FOR RESIDENTIAL MORTGAGES¹³

Here are three common activities/milestones in a Chapter 13 bankruptcy case specific to claims arising from residential mortgages. All three may result in the need for creditors to file a document in the bankruptcy case.

FEE ASSESSED TO DEBTOR'S ACCOUNT?¹⁴

YES

NOTICE OF POST-PETITION FEES

FILED BY CREDITOR

NO

NO CREDITOR ACTION IS NECESSARY

CHANGE IN PAYMENT?¹⁵

YES

PAYMENT CHANGE NOTICE

FILED BY CREDITOR

NO

NO CREDITOR ACTION IS NECESSARY

NOTICE OF FINAL CURE¹⁶

FILED BY TRUSTEE

RESPONSE¹⁷

FILED BY CREDITOR

MOTION FOR FINAL DETERMINATION FILED?¹⁸

YES

RESPONSE

FILED BY CREDITOR

NO

NO CREDITOR ACTION IS NECESSARY

CHAPTER 13 LIFECYCLE: CREDITORS QUICK REFERENCE GUIDE

The chart on the previous page provides a high-level overview of the Chapter 13 process for creditors, including documents that a creditor may need to file in the bankruptcy court. It does not account for all of the possible permutations of a Chapter 13 case nor does it address processes that may be specific to particular bankruptcy jurisdictions. The chart highlights additional filings that may be necessary for creditors whose claims are secured by residential mortgages. If you have any questions regarding the processes outlined in this chart, please seek legal counsel.

1. The Chapter 13 plan provides for the treatment of the claim. If it is a secured claim, the plan will include whether the debtor intends to maintain the property and cure any deficiencies that existed on the filing date (arrearage). Generally, the proof of claim (POC) will govern the amount of the creditor's claim for arrearage and ongoing monthly payments. However, some jurisdictions may provide that the amounts in the plan govern.
2. The creditor and other interested parties, such as the Chapter 13 trustee, may object to the plan. Objections are generally based on inaccuracies (i.e., creditor alleges that a significantly larger arrearage is owed than what is claimed in the plan) or feasibility (i.e., creditor payments based on the debtor's income and bankruptcy court determine whether income is sufficient to make the plan's required monthly payments). Objections may be resolved by agreement or a hearing may occur.
3. Once the plan is confirmed, the proposed treatment of claims is binding on all parties. However, an interested party may later file a motion to modify the plan if circumstances change.
4. Failure to timely/accurately file a POC may result in negative impact on the creditor's claim. The debtor or other parties in interest may object to the POC, which generally results in a court hearing. Additionally, creditors that may be oversecured should ensure that they accurately reflect their oversecured status on the POC to indicate that they may be entitled to recover attorneys' fees and/or interest incurred during the bankruptcy.
5. Upon successful completion of the Chapter 13 case, debtors receive discharge of certain debts. However, long-term debts, such as a mortgage or alimony, continue to be owed post-bankruptcy.
6. These activities may not occur linearly or at all in a bankruptcy case, depending on the type of claim (i.e., value of claim, security interest) and the debtor's intention regarding the particular claim.
7. Filing a bankruptcy case "automatically stays" (stops) most collection actions against the debtor or the debtor's property. As long as the automatic stay is in effect, creditors generally may not initiate or continue lawsuits, wage garnishments, or even telephone calls demanding payments. Creditors may file a motion for relief from the stay when "cause" exists to grant such relief, such as when the debtor indicates he or she will surrender property securing the claim, or there is not adequate protection of the creditors' claim.
8. If relief from the stay is granted, the creditor may exercise its state law remedies (i.e., cannot immediately take possession of the home but can initiate the foreclosure process under applicable state law).
9. Debtors may enter into loss mitigation with the secured creditor during the case.
10. In many jurisdictions, at least one of the parties must seek court approval for loss mitigation. Depending on the jurisdiction, various documents may need to be filed by one of the interested parties, such as a motion to approve loss mitigation.
11. A debtor may "assume" (accept and continue paying under the terms of) a contract or lease. The debtor may file a motion to assume the contract or lease. Before he can assume the contract or lease, the debtor must cure any defaults or provide the creditor with assurances he will promptly cure defaults.
12. Creditors may object to a motion to assume a contract or lease, particularly if there are defaults and it does not appear likely that these defaults can be cured.
13. In a Chapter 13 case, creditors whose claims are secured by a residential mortgage must file various documents pursuant to Bankruptcy Rule 3002.1. These documents include: Proof of Claim (POC), Payment Change Notice, Notice of Post-Petition Fees and Response to Notice of Final Cure (the "response"). Detailed rules and form templates exist for these processes. For example, certain loans are exempt from these requirements, such as loans secured on non-principal residences.
14. Fees are not often assessed during a Chapter 13 case, particularly if the debtor is making his monthly payments during the bankruptcy case. If a fee is assessed, the creditor must file a notice of post-petition fees within 180 days after the fee was incurred.
15. Creditors must file a payment change notice at least 21 days prior to any payment change. Such changes may arise from changes due to annual escrow analyses or ARM changes.
16. The Notice of Final Cure is generally filed by the Chapter 13 trustee at the end of the case, but prior to discharge.
17. Creditor must respond and indicate within 21 days of the Notice of Final Cure being filed whether the creditor agrees that the debtor has paid any arrearage and post-petition monthly payments in full. Upon successful completion of a Chapter 13 case, debtors generally will not receive a discharge of mortgage debt unless that claim is paid in full during the case. However, the creditor is generally bound by its response, such that it cannot seek to recover amounts that were not disclosed in the response.
18. The debtor or Chapter 13 trustee may file a motion for final determination of any amount such that the court will confirm any amounts remaining due prior to discharge. The creditor should respond and participate in any hearing.