

Bankruptcy now

Bankruptcy usually involves a Chapter 7 or Chapter 13 process. Chapter 7 is the liquidation section where you surrender all but your exempt property and the trustee sells it to pay your unsecured creditors. It can result in a discharge after about 70 days and it is extremely important to some because if they feel they may be about to experience a turn-around, and they don't want any future successes to be doomed by yesterday's failures, then they often want a Chapter 7. A Chapter 13 is a "Plan" process required of you if you make over the mean income in your community for a family of your size, and is voluntarily chosen by others for various reasons including the desire to retain some essential assets that they deem necessary for continued success. A Chapter 13 does involve the obligation to answer to the Bankruptcy Court and Trustee for as long as 60 months.

A Chapter 13 requires you to pay a monthly installment to the Trustee based upon 1) your "disposable" income which is what remains monthly after your essential and regular monthly expenses are deducted, and 2) an amount necessary to equal the value of the non-exempt assets you wish to retain. Because of this last issue some will "choose" to file a Chapter 13 even where it is not required. In that case it may be effective for only 36 months unless you request the 60 month period. Your chapter will thus be a product of choice or necessity depending upon the facts.

Adversarial proceedings are now a regular additional process in Bankruptcy cases and traditionally they have been said to be unavailable in the typical Chapter 7 matter to do things like "stripping" junior liens (Second mortgages and deeds of trust) and making them go away, and "cramming down" primary liens which means to reduce their principal balances to what their property is worth in today's marketplace. Most courts have concluded that these proceedings are only capable of being filed within a Chapter 13 although some have been willing to "strip" junior liens in a motion process. Because some courts require that even stripping be done an Adversarial Proceeding, and because we at Brand and Associates require predictability and flat fees to accomplish this, we file an Adversarial proceedings in all even cases where we intend to "strip" a junior lien. In this manner you have no surprises by additional fees.

Although we all know what is necessary for homeowner relief, even bankruptcy has been denied the ability to easily assist most homeowners because of the continued resistance of the House and Senate to pass the cram down for the primary residence, translate: "where you live". It should be noted that even if the personal residence restriction be removed, any modification of the law which would be successful in helping almost everyone who has suffered reduced home value must also include removal of the requirement that the new Plan pay the reduced principal over 60 equal monthly payments. The current language has been interpreted as requiring a 5 year amortization in order to obtain reduced principal. Our experience is that if the reduced value exceeds \$100,000 it is almost impossible, to keep current on the massive monthly payment necessary when your amortization period is reduced to 5 years. Your budget will not permit you to pay the necessary house payment and this was the intent of banking lobbyist who assuredly supervised the adoption of the language used in Chapter 13.

In those cases where the property desired to be retained is not now your residence and is either an investment or second home, and where we elect to attempt a Cram down, then Chapter 11 is available to attempt amortization over 30 years. Chapter 11 is often very costly but offers the best opportunity to assure that a residence may be retained.. gary