

Max Gardner's Top Reasons to Always File a Chapter 13 Before Filing a Chapter 7

1. You can file a 13 for the Husband or the Wife. If the single-debtor case runs into viability problems, then you can always file a new Chapter 13 case for the non-filing spouse. And, during the single-debtor case the non-filing spouse is protected by the 1301 stay. This strategy allows you to avoid the multiple-filing limitations on the automatic stay plus the 109(g) problems.
2. You control all of the consumer claims in the Chapter 13. The debtor has standing to file Adversary Proceedings on all pre-petition claims; to object to improper proof of claims; to pursue all claims arising during the case such as automatic stay violations; and to have a venue for filing all dischargeability proceedings.
3. Almost all of the adversary proceedings provide for fee-shifting statutes that require the creditor to pay your legal fees.
4. The Debtor Educational Course can be completed before the final plan payment versus within 45 days of the first date for the 341 meeting.
5. If the Debtor wants to keep a car, then the Debtor can file a Chapter 13 and avoid all of the Chapter 7 problems with redemption and ipso factor clauses if the Debtor seeks to ride-through under a keep and pay approach. Also, if the debtor determines that the Chapter 13 is beyond his or her means, the case can be converted to Chapter 7 and the debt canceled. This is not the case when the debtor has signed a Reaffirmation Agreement.
6. The dischargeability bar dates for Adversary Proceedings (which must be filed in the Chapter 13 case) transfers over to the Chapter 7. So, if the AP is not filed within 60 days of the first 341 date in the Chapter 13 case it will be barred in the converted 7 case.
7. You can now do a Chapter 13 with a "0" percent pay-back to the unsecured creditors. As a result, the Chapter 13 plan can be used to pay the Trustee, the Legal fees and the secured debts for the property the debtor really wants to keep. Why should an attorney do a Chapter 7 and spend 12 months trying to collect the Chapter 7 legal fee when the Chapter 13 Trustee will do all of this collecting and accounting for free.
8. If you convert a Chapter 13 case to Chapter 7, there is no Means Test. The Means Test only applies to a case filed "under Chapter 7." 707(b)(3)("filed by an individual debtor under this chapter whose debts are primarily consumer debts"). And, 348(b) does not mention 707 as a Section that applies when you convert from 13 to 7.

9. If you convert a Chapter 13 case to Chapter 7, then the duty of the attorney to perform a "reasonable investigation" and to "certify" that the information on the schedules is "not incorrect" does not arise since these obligations only apply to a case filed "under Chapter 7" of the Code. 707(b)(3)(C) and (D). And, none of these new attorney liability rules apply to a Chapter 13 case at all.
10. You completely avoid the concern about liability when you sign-off on a debtor Reaffirmation Agreement. And, you avoid all of the automatic stay termination rules and possible turnover actions in a Chapter 7 if the debtor does not reaffirm or redeem.
11. You are dealing with a Chapter 13 Trustee who really wants your business rather than a Chapter 7 Trustee who hates all of the new paper-work.
12. You avoid less scrutiny by the United States Trustee because you are doing exactly what Congress said should be done-file for Chapter 13.
13. You retain the ability in most jurisdictions to modify the plan as necessary to abandon secured collateral and reduce the plan payments if appropriate.
14. The legal fees for Chapter 13 case are generally 3 to 4 times the fees for Chapter 7 cases.
15. The opportunity for additional non-base fees in Chapter 13 cases is 20 times the rate in Chapter 7 cases.
16. Chapter 13 provides the debtor with the ability to repay non-dischargeable taxes.
17. Chapter 13 provides the debtor with a greater opportunity to protect exempt assets from DSO claims. It is anticipated that many Chapter 7 Trustees will pursue such claims as a source of fees and commissions.
18. The automatic stay in Chapter 13 is of longer duration than the Chapter 7 stay and provides the debtor with a greater opportunity to reorganize his or her affairs.
19. With all of the new front-end fees (credit counseling, asset and credit checks, etc) and the enhanced filing fees (\$189.00 to \$274.), the ability to offer a consumer immediate protection with all of your fees in the plan is a guaranteed business generation device.
20. If you start off with a Chapter 13 case and then convert to Chapter 7, you can file another Chapter 13 within 2 years to stop a foreclosure or to

deal with non-discharge priority claims. Although there is no discharge, you still get the full protection of the automatic stay.

21. You can cure mortgage arrears in a Chapter 13 plan and if you do then you have a new cause of action for misapplication of payments or improper fees and charges against the mortgage servicers upon discharge per 524(i). Since there is no ability for the mortgage servicers to comply with this new statutory mandate, you will have a new post-discharge cause of action in every Chapter 13 case with a residential mortgage.

22. You can still cram down non-910 claims, non-PMSI claims, and PMSI claims that are older than 1 year (other than a motor vehicle), and a vehicle purchased for use by someone other than the debtor.

23. You can reverse the 910 claims by filing a 13 for the husband and cram down the car purchased for the wife and then file a 13 for the wife and cram down the car purchased for use by the husband.

24. No attorney fees for the pure 910 and 365 claims since 506 does not apply to these claims. 506 is the only basis for the award of attorney fees to an over-secured creditor. Also, there is no right to pre-confirmation interest on these claims for the same reason.

25. The Till interest rate still applies to the 910 and 365 claims plus you can stretch out payments on a 365 claim to 60 months. And, in many jurisdictions the debtor has the option of taking the Till rate or the contract rate, whichever is less. So, you can still take a 0 interest 910 claim and pay back the contractual amount due over 60 months.

26. There is no automatic relief from the co-debtor stay of 1301 even in multiple filing cases.

27. Debts incurred to pay taxes are not discharged in a 7 but are discharged in a 13.

28. Willful and malicious injury to property not discharged in a 7 but is subject to discharge in a 13.

29. Willful and malicious injury to a person is not dischargeable in a 13 but only if the state court action has gone to judgment. So, you file the 13 before judgment.

30. Older taxes that were timely filed are dischargeable in a 13.

31. Non-DSO obligations are still dischargeable in a 13. In short, read this as obligations under a Property Settlement Agreement that do not qualify for alimony.

32. You can separately classify non-dischargeable debt in a 13 and repay the debt in full with interest if the general unsecured creditors receive 100% of filed and allowed claims.
33. You could theoretically have a debtor in a Chapter 13 forever. The bar on refiling is from filing date to filing date. So, as long as you carry each case for at least 2 years, you can dismiss and re-file against and again.
34. Child support income is not included in a 13, but is included in a Chapter 7.
35. Little chance of any abuse in Chapter 13 since you get to subtract all the secured payments that are contractually due over a period of 60 months. If a mortgage is in foreclosure when you file a Chapter 13, then under the law in most states the full debt has been "accelerated" so you divide the full debt plus all foreclosures fees and expenses by 60.
36. You can use 363(a)(3) to reclaim personal property that was repossessed pre-petition.
37. Chapter 13 allows you to make a mistake since you always have the right to file a voluntary dismissal. Hank Hildebrand refers to this as the "mulligan rule."
38. You can continue to repay your pension loans. The loans are no longer debts and are not even subject to the automatic stay. And, the payments are not part of disposable income.
39. Fixed and standard pension contributions are allowed to continue and are not party of the debtor's disposable income.
40. Chapter 13 allows you to cure child support arrears, to repay back taxes, and even deal with student loans.
41. There is no longer a minimum term for Chapter 13 plans. You have new "commitment periods" of 3 and 5 years but nothing in BAPCPA says that you cannot payoff the "commitment amount" in 12 months or less.
42. Even in a second filing within 1 year of a prior dismissal, the stay is still effective for more than 30 days as to "property of the estate." And, if you have a 1306 plan then all pre and post-petition property would be fully protected even if the stay was not extended as to the debtor.
43. In a Chapter 13 case, the stay does not terminate "as to the debtor" in a repeat filing with 1 year of a prior dismissal unless some pre-filing action was taken with respect to a debt or property securing the debtor before the 2nd filing. 362(c)(3)(A).

44. You have the option to return collateral secured by a 910 or 365 claim to the creditor in full satisfaction of the underlying debt.
45. The conversion fee is still set at \$15.00 so you can file a 13 and convert to a 7 and save \$10.00.
46. The filing fee is \$274.00 versus \$299.99.
47. The Chapter 13 discharge provides more opportunities for post-discharge litigation than the Chapter 7 discharge. And, of equal importance, the Chapter 13 Trustee normally has little interest in any of this litigation.
48. The so-called "Nine Traps and One Slap" attorney liability provisions of BAPCPA do not apply to lawyers representing debtors in Chapter 13 case.
49. The Chapter 13 attorney completely avoids the issue of "certifying the ability of the debtor to repay" under a Chapter 7 Reaffirmation Agreement. 524(k)(5).
50. You have the creative ability to draft a plan that includes other terms and conditions not inconsistent with what at best is a poorly drafted statute. And, if the creditors do not object, then the plan is deemed accepted as to them.