Four Main Reasons People File for Chapter 13

There are four main reasons to file a chapter 13.

1. You may be considering Chapter 13 as a result of falling behind on your mortgage, the most common reason that people file for Chapter 13. Once you have accrued a delinquency on mortgage payments, very often the mortgage company refuses to work with you. Chapter 13 allows you to repay the amount you are behind (arrears) in installment payments through the Chapter 13 Trustee. For example, if you are $9,000.00 behind with your mortgage, you could propose to repay that $9,000.00 without interest by making 36 monthly payments of $250.00 to the Chapter 13 Trustee, who will distribute the money to your mortgage company. Upon completion of your Chapter 13 plan, your mortgage loan is reinstated. However, in order to cure mortgage arrears through Chapter 13, you must have enough income to pay your regular monthly living expenses (including current mortgage payments as they come due throughout your case) plus be able to afford to make a monthly payment ($250.00 per month in the above example) to the Chapter 13 Trustee. If you don't have the income to fund a Chapter 13 plan, and you are so far behind on your mortgage payments that your mortgage company will not work with you, then the only other options are to refinance your house, sell, or file a Chapter 7 and surrender your house.

2. You may be considering filing Chapter 13 because you have an asset that would be liquidated (sold) by the court in a Chapter 7. There are limits (exemptions) imposed by state and federal law on the amount of assets you can have and still qualify to eliminate all your unsecured debt in a Chapter 7. Assets include money in the bank, stocks, bonds, rights to inherit, among others. The most common asset, however, is interest in real estate, like your home. If, for example, you have a house worth $200,000.00 with a mortgage of $150,000.00 and state law allows you to protect (exempt) $10,000.00 of equity in your home, then you have $40,000.00 of unprotected equity. In this situation, if you filed a Chapter 7 bankruptcy, the Trustee has the power to sell your house and use the sale proceeds of $40,000.00 to pay your unsecured creditors. This is called the "Chapter 7 Liquidation Test" and Congress enacted it to prevent

you from wiping out all your debts, when you could have sold an asset and used the proceeds to pay those debts. If you want to keep your house, you could file a Chapter 13, provided, however, that you propose to pay your unsecured creditors at least $40,000.00, interest free over three to five years, which is what your creditors would have received immediately if you had filed Chapter 7 and the Trustee sold your house. You should call an attorney at our office if you would like an attorney to evaluate if you need to do a Chapter 13 to protect the equity in your assets.

3. You may have to file Chapter 13 because you simply have too much income to qualify for a Chapter 7. In order to qualify for a Chapter 7, you may not have any "disposable income." Disposable income is money that is left over at the end of the month after you have paid your basic living expenses, including your rent or mortgage, car payment, utilities, food, transportation costs, and the like. Accordingly, if you take home $2,000.00 after taxes per month from your pay checks, and your monthly living expenses total only $1,400.00, then you do not qualify to wipe out your unsecured debt in a Chapter 7, and must file a Chapter 13, committing the $600.00 per month in disposable income to repay your debts to the extent possible over a minimum of three and maximum of five years. So, for example, if you have $70,000.00 in credit card debt and medical bills, and have $600.00 per month disposable income, then you must repay $600.00 per month for 36 months, for a total of $21,600.00, or 31% of your debt. The other 69% of your debt is discharged upon successful completion of your Chapter 13.
4. The fourth most common reason to file Chapter 13 is that the debts you have are non-dischargeable in Chapter 7, but can be paid through a Chapter 13. Debts that are not or may not be discharged in a Chapter 7 are debts incurred by fraud (such as debts incurred right before filing or based on false disclosures on credit applications), government fines and penalties (such as moving violations or parking tickets), or debts resulting from intentional injury to another person or property. For example, if the only debt you have is $15,000.00 in parking tickets and moving violations, then you would be unable to discharge those debts in a Chapter 7, and you would have no way to pay down the debt. In a Chapter 13, the court orders the municipality to reinstate your license and allows you to pay down the fines, interest-free over three to five years.

If none of the above situations applies to you, then you likely could file a Chapter 7. If any of the above situations applies to you, then you should file a Chapter 13. It is not uncommon for more than one of the above situations to apply to one particular case. Consult Amicus Curia to help sort out your options.