

# **Chapter 13 Bankruptcy versus Debt Consolidation: Legal Aspects**

## **The Advantages of Chapter 13 Bankruptcy over Traditional Debt Consolidations**

Chapter 13 bankruptcies are a type of debt consolidation with certain legal aspects differing that allows you to reorganize your finances by consolidating your debts into one monthly payment. Chapter 13, however, should not be confused with traditional debt consolidation programs. Chapter 13 has the power of the Federal Bankruptcy Code behind it, and provides many advantages for people seeking debt relief:

### **The Automatic Stay**

When you file a Chapter 13 bankruptcy, you receive immediate protection by an automatic stay, a Bankruptcy Court injunction that prevents almost all collection activity against you. The stay has the power to stop foreclosures, repossessions, garnishments, license suspensions, and creditor harassment. Traditional debt consolidations don't have any comparable stay provisions, there is no court order protecting you and your creditors cannot be forced to stop any of these actions.

### **Includes Most Types of Debt**

Most traditional debt consolidations only allow specific debts to be consolidated in the payment plan, and don't usually consolidate mortgage arrears, car payments, tax debt, and child support arrears. All of these debts can be included in a Chapter 13 bankruptcy, consolidating your debt into one monthly payment and providing protection from ALL of your creditors.

### **Drastically Reduced Total Amount of Debt**

Subject to certain qualifications, A Chapter 13 bankruptcy will allow you to pay as little as 10% of the unsecured debt back and eliminate the other 90%. Your reduction in principal owed allows you to pay your debts off more quickly than you could through other consolidation plans that lack the power to dictate what the creditors are entitled to be paid. Traditional debt consolidation programs merely ask the

creditor to lower the interest rates or balances and do not have a Federal judge ordering the creditors to adhere to the plan.

## **Definite Time Period**

Chapter 13 bankruptcies are usually between 3 and 5 years in length. All dischargeable debts are eliminated at the completion of the bankruptcy. Traditional consolidations allow a possibility that the plans could drag on for years without significantly lowering the balances.

## **No Interest or Late Fees**

Upon filing Chapter 13, unlike debt consolidation, any debt in existence prior to the filing does not accrue any more late fees, and usually will be repaid interest-free. All of the money you pay toward your unsecured debt will generally be applied toward principal drastically reducing the amount of time it takes you to repay a debt.

## **Attorney Working in Your Best Interests**

Your Chapter 13 attorney, unlike a debt consolidator, has a legal and ethical obligation to zealously represent your best interests. Your attorney's compliance with his obligations to you are regulated by state law. Thus, in a Chapter 13 bankruptcy, you have the opportunity to have a bankruptcy attorney represent only your interests and you are ensured that your attorney is fighting for your rights. Many debt consolidation programs are private entities, sponsored by creditors and don't have the same strict legal requirements to protect borrowers' best interests.

## **Protects Equity**

A Chapter 13 bankruptcy does not require you to post any collateral in order to consolidate. Many traditional debt consolidations or home equity loans require you to risk your home and property if you can't afford the monthly payments.

## **Pays Your Most Important Bills First**

A Chapter 13 bankruptcy plan pays off most secured loans first and delays payment of unsecured debts. The majority of the initial Chapter 13 payments can be applied towards mortgage and automobile payment defaults. Credit cards and medical bills can be paid after these secured and other priority claims have been paid off. Traditional

debt consolidation plans usually don't have the power to delay payments to unsecured creditors without penalty or give preferential treatment to your car or home finance companies.

### **Debts are Eliminated if the Creditor Doesn't File A Proof Of Claim**

Each creditor must file a proof of claim with the Bankruptcy Court if they are to be paid during the consolidation. Frequently, not all creditors listed in a Chapter 13 bankruptcy file a proof of claim. As long as you finish the terms of your Chapter 13 debt repayment plan, all unfilled claims are eliminated and never have to be paid back.