

The discharge in chapter 7 differs somewhat from the discharge in chapters 11, 12 and 13. Priority treatment also functions differently in these reorganization chapters.

## A. Overview

Chapters 12 and 13 allow relief through voluntary debt restructuring for individual debtors who have enough regular income to fund plan payments to a chapter 12 or 13 trustee. The trustee, after the court confirms the plan, distributes the debtor's plan payments to creditors. After making all required plan payments, the debtor may receive a discharge. A typical chapter 12 or 13 plan lasts three to five years.

Individuals file chapter 11 debt-restructuring cases less frequently than chapter 12 or 13 cases. Chapter 11 plans must also be confirmed by the court, but they may last longer than three to five years. Prior to BAPCPA, an individual chapter 11 debtor obtained a discharge as soon as the plan was confirmed. BAPCPA now delays discharge for an individual chapter 11 debtor until all plan payments have been made, unless the court orders otherwise for cause.

The chapter 13 discharge differs from the one in chapter 7, 11 and 12 in several ways, including the exceptions to the discharge. As we have noted, property settlement debts can be discharged in a chapter 13 if and when the debtor completes all plan payments. In the past, the chapter 13 discharge was far broader than the chapter 7, 11 and 12 discharge, but BAPCPA eliminated most differences other than the treatment of property settlement debts.

In contrast, the debts excepted from discharge in chapter 11 and 12 cases are identical to those that survive a chapter 7 discharge. Thus, property settlement debts always survive a chapter 11 and 12 discharge.

To obtain this discharge, individual chapter 11, 12 and 13 debtors are required to devote all "disposable income" to reorganization plan payments over the required term of the plan, except in the rare cases where the debtor proposes full payment of unsecured claims. The 2005 changes to the disposable income formula demonstrate the commitment to protecting the interests of the debtor's dependent spouses, former spouses and children. The Code now expressly excludes ongoing support obligations from disposable income. In other words, support expenses come off the top of the debtor's income and are thus less easily overlooked in calculating the net income that will be paid to creditors over the plan term. On the income side, support payments are

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excluded from the disposable income calculus in chapter 11 and 13 cases. In an apparent oversight, Congress made no express provision for this exclusion in chapter 12 cases.

The Bankruptcy Code envisions a financially rehabilitated debtor who emerges from reorganization current in ongoing support obligations and with all pre-petition DSOs (save second-tier DSO priority owed to governmental units, perhaps) fully repaid. The hope, of course, is that the discharge of the unpaid balance of most other pre-petition debts will facilitate a financial “fresh start” and maximize the chances that the debtor will remain current in support obligations and other expenses after bankruptcy. The final sections of this book discuss the required treatment of DSOs in the reorganization chapters designed to implement the debtor’s financial rehabilitation.

### B. Top Priority for Domestic Support Claims

Some support claims, but not property settlement debts, are entitled to priority under § 507. Prior to BAPCPA, support claims had seventh priority. The 2005 amendments elevated DSOs to first priority.

Priority status is particularly important and powerful in chapters 11, 12 and 13. Chapters 12 and 13 do not permit confirmation of a debtor’s plan over the objection of priority claimants unless the plan provides for full payment in deferred cash payments of all priority claims. The only exception concerns second-tier priority DSOs owed to governmental units. These claims need not be paid in full as long as the debtor proposes a five-year plan to which all projected disposable income is devoted. The unpaid support claim will not be discharged, however. To the extent these pre-petition DSOs are not fully paid through the plan, the debtor’s financial “fresh start” is somewhat impeded.

In chapter 11, by contrast, an individual debtor can confirm a plan over a support creditor’s objection only if the plan pays DSOs in full in cash on the effective date of the plan. Chapter 12 and 13 debtors may spread payments on priority claims over the life of the plan.

The debtor’s obligation to pay support does not abate during the bankruptcy, and most debtors are content to leave the mechanics of payment of current support in place. This is an especially likely result since BAPCPA, because wage withholdings for pre- and post-petition DSO payment are not stayed and because a debtor cannot get a bankruptcy discharge unless all support obligations are paid in full. Indeed, the failure to pay post-petition support is grounds for dismissal of chapter 11, 12 and 13 cases, as well as a condition to plan confirmation. Moreover, chapter 12 and 13 debtors must certify that all post-petition support and all support required to be paid through the plan have been paid in order to obtain a discharge. In an apparent oversight, the drafters of the 2005 amendments did not similarly condition the discharge of a chapter 11 debtor on such certification.

The reorganization chapters permit (chapter 12 and 13) or require (chapter 11) classification of claims in plans and require the same treatment for each claim within a given class. For example, each secured claim may be classified separately because of the inherent differences between a home mortgage and a loan secured by a motor vehicle. Certain priority claims, as defined in § 507, may be

separately classified because the Code requires that they be paid in full ahead of other unsecured creditors. Because domestic support obligations have priority, it is acceptable to classify those claims separately. Prior to BAPCPA, most bankruptcy courts agreed that if child support arrearages were to be paid through a chapter 13 plan, those arrearages could be separately classified. Given the new enhanced protections accorded support claims, bankruptcy court approval of separate classification of support debts is likely.

## C. Property of the Estate

In chapters 11, 12 and 13, the bankruptcy estate includes post-petition income and property acquired after the filing (11 U.S.C. §§ 1115(a)(2), 1207(a)(2) and 1306(a)(2)). The debtor's post-petition earnings are necessary to successful plan completion, and the debtor does not receive a discharge in these chapters until the plan has been completed. Absent a modification order, the automatic stay remains in effect until the discharge. However, wage-withholding for payment of pre- and post-petition DSOs is not stayed. Consequently, it is likely that wage-withholding orders will remain in place during the term of the plan. In the reorganization chapters, the bankruptcy court has a long-term involvement, ranging from a few months to five years in chapters 12 and 13. Chapter 11 cases can run even longer.