

A Comparison of Individual Chapter 11s to Chapter 13: There Is a Decided Difference

Mark G. Stingley, Moderator

Bryan Cave LLP; Kansas City

Rudy J. Cerone

McGlinchey Stafford PLLC; New Orleans

Lee M. Kutner

KutnerBrinen, P.C.; Denver

Patricia A. Redmond

*Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
Miami*

James Patrick Shea

Armstrong Teasdale LLP; Las Vegas

36TH ANNUAL MIDWESTERN BANKRUPTCY INSTITUTE

September 30, 2016
Westin Kansas City Crown Center
Kansas City, Missouri

CONSUMER TRACK: A COMPARISON OF CHAPTER 11 FOR INDIVIDUALS WITH CHAPTER 13

Patricia A. Redmond
Stearns Weaver Miller Weissler Alhadeff
& Sitterson, P.A.
Miami, FL

Rudy J. Cerone
McGlinchey Stafford, PLLC
New Orleans, LA

Lee M. Kutner
KutnerBrinen, P.C.
Denver, CO

James Patrick Shea
Armstrong Teasdale LLP
Las Vegas, NV

Mark G. Stingley
Bryan Cave LLP
Kansas City, MO
Moderator

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**CHAPTER 11 FOR INDIVIDUALS v. CHAPTER 13:
A COMPARATIVE ANALYSIS**

**Rudy J. Cerone
Sarah E. Edwards
McGlinchey Stafford PLLC
601 Poydras Street, 12th Floor
New Orleans, Louisiana 70130
(504) 586-1200
rcerone@mcglinchey.com
sedwards@mcglinchey.com**

INTRODUCTION

While individuals always could file Chapter 11, not many took advantage of it. Most individuals who had large amounts of unsecured debt simply filed under Chapter 7. This may not be possible where the individual has a large amount of *consumer debts*¹ and the individual is over the median income for the given state.² If the individual does not qualify for Chapter 13, they will have to file under Chapter 11.

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BACPA”) amended the Bankruptcy Code to include a number of provisions that now bring a Chapter 11 case for individuals more in line with that of a case under Chapter 13. The materials below juxtapose the provisions of Chapter 11 applicable to individuals and the corresponding provisions that apply under Chapter 13. There are some decided differences between the two.

These materials are organized into the following categories:

- I. Effect of Bankruptcy Filing and Bankruptcy Basics
- II. Financial Filings by the Debtor
- III. Creditor Proofs of Claim
- IV. The Plan
- V. Confirmation Standards
- VI. Special Treatment of Certain Claims
- VII. Duration of Plan
- VIII. Modification of Plan
- IX. Discharge
- X. Consequences When Case is Unsuccessful
- XI. Special Notice Requirements for the Residential Home Loans

¹ See *Toibb v. Radloff*, 111 S. Ct. 157 (1991).

² Individual filings for doctors and other high net worth individuals which are most likely to be abusive will still be eligible for Chapter 7 because the debts are not primarily consumer debts.

I. Effect of Bankruptcy Filing and Bankruptcy Basics

Property of the estate includes the individual debtor's post petition personal service income similar to a Chapter 13 case. Essentially all property that an individual debtor obtains while a chapter 11 case is pending is property of the estate. Although an individual debtor presumably could buy food, as such a purchase would be in the ordinary course of the debtor's business, many other transactions may not be. *See In re Michael Goldstein & Bridget Goldstein*, 2007 WL 1970263 *2 (Bankr. C.D. Cal. 2007) (ordinary course of business provision "authorizes a debtor to buy bread and probably to purchase a ticket to travel to a court hearing.")

EFFECT OF BANKRUPTCY FILING AND BANKRUPTCY BASICS		
	CHAPTER 11	CHAPTER 13
Automatic Stay	The filing of a bankruptcy petition (voluntary cases) and the order of relief entered by the court (involuntary cases) acts as a stay against, among other things, the commencement or continuation of any action or proceeding against the debtor, any act of enforcement against the debtor or property of the estate and any action to obtain possession or exercise control over property of the estate. <i>See</i> 11 U.S.C. § 362.	Same, except there are no involuntary chapter 13 cases.
Co-Debtor Stay	There is no co-debtor stay; however, a stay of actions against third parties may be imposed in very limited circumstances. <i>See</i> 11 U.S.C. § 105.	A creditor is prohibited from seeking to collect on consumer debts from a co-debtor (unless and until the co-debtor stay is lifted as to the co-debtor). <i>See</i> 11 U.S.C. § 1301.
Property of the Estate	All property of the debtor is included in the bankruptcy estate, including the debtor's interest in community property. <i>See</i> 11 U.S.C. § 541(a). Post-petition income and property of the debtor also is property of the estate. <i>See</i> 11 U.S.C. § 1115(a).	Same. Same. <i>See</i> 11 U.S.C. § 1306(a).

<p>Debt Limits</p>	<p>None.</p>	<p>Only an individual with regular income that owes, on the petition date, noncontingent, liquidated unsecured debts of less than \$394,725(*) and noncontingent, liquidated secured debts of less than \$1,184,200 (*) can be a chapter 13 debtor. <i>See</i> 11 U.S.C. § 109(e).</p> <p>(*) Dollar amount as of April 1, 2016; subject to change.</p>
<p>Disposable Income</p>	<p>Disposable income must be calculated pursuant to 11 U.S.C. § 1325(b)(2) rather than through a means test deduction (used for higher income chapter 13 debtors); <u>Official Form 122B</u> must be filed. <i>See</i> 11 U.S.C. § 1129(a)(15). Note: this is not required in a corporate chapter 11 case.</p> <p>If a creditor objects to the plan, the individual debtor must pay all of his/her disposable income. <i>See</i> 11 U.S.C. § 1129(a)(15).</p>	<p>Debtors are required to submit their monthly disposable income to fund their plans. If the debtor's income exceeds the applicable median for their state, then the debtor's disposable income is determined in accordance with the means test of 11 U.S.C. § 707(b)(2) (A) and (B). <u>Official Form 122C-1</u> must be filed, which is more detailed than Official Form 122B required in an individual chapter 11 case. <i>See</i> 11 U.S.C. § 1325(b)(2).</p>
<p>Supervision of Debtor and Case</p>	<p>The United States Trustee and a chapter 11 trustee, if one is appointed.</p>	<p>The standing chapter 13 trustee.</p>

II. Financial Filings by the Debtor

When the Chapter 11 filing is for an individual with primarily consumer debts, the individual must obtain a certificate demonstrating the individual attended a group or individual briefing on credit counseling and budget analysis. The credit counseling session is required in order to be eligible for relief under Chapter 11 or any other Chapter. The individual debtor also must file copies of all payment advances or evidence of payment from an employer for the 60 days preceding the petition date.

FINANCIAL FILINGS BY THE DEBTOR		
	CHAPTER 11	CHAPTER 13
Statements and Schedules	All debtors must file a list of creditors, schedules of assets and liabilities, a schedule of current income and current expenditures, a statement of financial affairs, a certificate pursuant to 11 U.S.C. § 342(b) (only if debts are primarily consumer debts), copies of employer payment advices, a statement of monthly net income and statement of reasonably anticipated increases in income or expenditures. <i>See</i> 11 U.S.C. § 521(a)(1).	Same. However, in chapter 13 cases, if these documents are not filed within 45 days of the filing of the petition, the case is “automatically” dismissed on the 46 th day, which does not occur in chapter 11 cases. <i>See</i> 11 U.S.C. § 521(i)(1).
Disclosure Statement	<p>The plan of reorganization must be accompanied by a disclosure statement, which must be approved by the court as including “adequate information” necessary for a “hypothetical investor” to make an informed judgment about the plan before acceptances to the plan are solicited. <i>See</i> 11 U.S.C. § 1125.</p> <p>In a small business case, a separate disclosure statement is not required; the court may permit a combined plan and disclosure statement or the use of a form disclosure statement. The court also may approve the disclosure statement conditionally subject to the final approval at the confirmation hearing. <i>See</i> 11 U.S.C. § 1125(f) and Bankruptcy Rules 3016(b) and 3017.1.</p>	Not applicable; no disclosure statement is required. In a chapter 13 case, the standing chapter 13 trustee investigates the financial affairs of the debtor.

Financial Reports	Monthly reports of the debtor's post-petition business operations are required. Small business debtors must report their current and recent financial status, profitability, cash flow projections, comparisons of actual and projected receipts and disbursements, compliance with the post-petition requirements imposed by the Bankruptcy Code and Rules, filing of tax returns and payment of all administrative expenses and taxes.	Reports of increases in income and expenses may be required.
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III. Creditor Proofs of Claim

The deadline to file proofs of claim in an individual Chapter 11 case is set by court order and an extension may be granted upon a showing of excusable neglect. *See* Bankruptcy Rule 3003(c)(3). In a Chapter 13, the deadline to file proofs of claim is set by rule and courts generally do not permit untimely filings. *See* Bankruptcy Rule 3002(c).

CREDITOR PROOFS OF CLAIM		
	CHAPTER 11	CHAPTER 13
Filing a Proof of Claim	A creditor may file a proof of claim; if the creditor fails to file the proof of claim, the debtor may file a proof of claim for the creditor. <i>See</i> 11 U.S.C. § 501(a) and (c).	Same.
Requirements for Filing Proofs of Claim	<p>Creditor must file an Official Form B-410.</p> <p>Bankruptcy Rule 3001(c) and (d) require the following in an individual debtor case:</p> <ul style="list-style-type: none"> • An itemized statement of the debt if the amount owed includes interest, fees, charges, etc. (in addition to the principal balance). The official form must be used for the itemization if the debt owed is secured by the debtor's principal residence. <i>See</i> Bankruptcy Rule 3001(c)(2)(A). • The amount necessary to cure any default existing as of the petition date if a security interest in the debtor's property is claimed. <i>See</i> Bankruptcy Rule 3001(c)(2)(B). • An escrow statement generated at the time of the bankruptcy filing if the debt is for an escrowed home loan. <i>See</i> Bankruptcy Rule 3001(c)(2)(C). 	<p>Same.</p> <p>Same.</p>

	<ul style="list-style-type: none"> • If the creditor’s claim is based on a writing (<i>e.g.</i>, a promissory note), a copy of the writing must be filed. <i>See</i> Bankruptcy Rule 3001(c)(1). • If a security interest is claimed in the debtor’s property, evidence of the perfected security interest (<i>e.g.</i>, copy of recorded mortgage or deed of trust) must be filed. <i>See</i> Bankruptcy Rule 3001(d). 	
Timeline for Filing Proof of Claim	Set by order of the court. The court shall fix and, for cause shown, may extend the time within which proofs of claim may be filed. <i>See</i> Bankruptcy Rule 3003(c)(3). Notwithstanding the expiration of such time, a proof of claim may be filed to the extent and under the conditions stated in Bankruptcy Rule 3002(c)(2), (c)(3), (c)(4), and (c)(6).	Set by rule. With limited exceptions, a proof of claim must be filed by a non-governmental creditor within 90 days after the first date set for the meeting of creditors. <i>See</i> Bankruptcy Rule 3002(c).
Treatment of Untimely Proofs of Claim	A creditor may be granted an extension of time to file a late proof of claim upon a showing of excusable neglect.	Untimely claims generally are not allowed unless approved by the court (based on meeting one of the exceptions provided for in Bankruptcy Rule 3002(c)).

IV. The Plan

There is no Chapter 11 plan form. Without creditor objection, the plan may last for any time period. With creditor objection, the plan may last less than five years as long as the value of the property to be distributed under the plan is equal to or greater than the projected net disposable income of the debtor that would be received from the longer of: (i) the five-year period beginning on the date that the first payment is due under the plan, or (ii) during the period for which the plan provides payments. *See* 11 U.S.C. § 1129(a)(15). In a Chapter 13, a form plan typically is utilized based on the requirements in 11 U.S.C. § 1322. The plan may last between three to five years, determined by the means test. However, a plan cannot exceed five years. *See* 11 U.S.C. §§ 707 and 1322(d).

THE PLAN		
	CHAPTER 11	CHAPTER 13
Who May File a Plan and When	<p>In a small business case, only the debtor may propose a plan of reorganization in the first 180 days of the case. Thereafter, any party may file a plan. However, any plan proposed by an entity other than the debtor may not commit exempt property without the debtor’s consent. All plans must be proposed by the 300th day. <i>See</i> 11 U.S.C. § 1121(e).</p> <p>In all other cases without a trustee, only the debtor may file the plan in the first 120 days. If filed, the debtor has until the 180th day to solicit acceptances of the plan. If a trustee is appointed and no plan is filed in the first 120 days, or if the debtor fails to obtain the acceptance of the plan by the 180th day, any party in interest may propose a plan. <i>See</i> 11 U.S.C. § 1121(a), (c) and (d).</p> <p>These time periods may be extended for up to 18 months after the petition date (to file a plan) and 20 months after the petition date (for acceptances). <i>See</i> 11 U.S.C. § 1121(d)(2)(A)&(B).</p>	<p>Only the debtor may propose a payment plan. <i>See</i> 11 U.S.C. § 1321. The plan must be filed within 14 days of the filing of the petition. <i>See</i> Bankruptcy Rule 3015(b).</p>

<p>Form of Plan Documents</p>	<p>Except in small business cases, where there is an optional consent form (see Official Form 25A and 25B), there is no standard chapter 11 plan.</p> <p>The plan of reorganization must be accompanied by a disclosure statement, which must be approved by the court as including adequate information necessary for a hypothetical investor to make an informed judgment about the plan before acceptances to the plan are solicited. <i>See</i> 11 U.S.C. § 1125.</p> <p>In a small business case, a separate disclosure statement is not required; the court may permit a combined plan and disclosure statement or the use of a form disclosure statement. The court also may approve the disclosure statement conditionally subject to the final approval at the confirmation hearing. <i>See</i> 11 U.S.C. § 1125(f) and Fed. R. Bankr. P. 3016(b) and 3017.1.</p>	<p>Typically a form plan is used in chapter 13 cases. 11 U.S.C. § 1322 sets forth the mandatory and permissive provisions for chapter 13 plans.</p> <p>Disclosure statements are not applicable in chapter 13.</p>
<p>Plan Commitment Period</p>	<p>Without creditor objection, any time period. With creditor objection, the plan is not required to last five years, as § 1129(a)(15) may initially suggest. Instead, this section provides that the plan is confirmable and may last less than five years as long as the <i>value</i> of the property to be distributed under the plan is equal to or greater than the projected net disposable income of the debtor that would be received from the longer of: (i) the five-year period beginning on the date that the first payment is due under the plan, or (ii) during the period for which the plan provides payments. <i>See</i> 11 U.S.C. § 1129(a)(15).</p>	<p>Between three to five years; determined by the means test. A plan cannot exceed five years. <i>See</i> 11 U.S.C. §§ 707 and 1322(d).</p>

<p>Earliest Confirmation Date</p>	<p>The United States Trustee must call a meeting of creditors to be held no fewer than 21 and no more than 40 days after the order for relief. <i>See</i> Bankruptcy Rule 2003(a). Nothing in a chapter 11 requires that the meeting occur or be completed prior to confirmation. If the debtor solicited pre-petition acceptances to a “prepackaged” plan, the court may dispense with the meeting of creditors. <i>See</i> 11 U.S.C. § 341(e).</p> <p>28 day notices are required both for a hearing on approval of the disclosure statement and for the deadline to object to disclosure statement; a 28 day notice is required for the confirmation hearing; and the deadline to object to confirmation must be given. <i>See</i> Bankruptcy Rule 2002(b).</p> <p>In a small business case, the hearing could take place as early as the 25th day of the case, if certain pre-conditions are met. The plan of a small business debtor be confirmed no later than 45 days after the plan is filed. <i>See</i> 11 U.S.C. § 1129(e).</p>	<p>The United States Trustee shall call a meeting of creditors to be held no fewer than 21 and no more than 50 days after the order for relief. <i>See</i> Bankruptcy Rule 2003(a).</p> <p>Parties must receive at least 21 days notice of the meeting. <i>See</i> Bankruptcy Rule 2002(a)(1).</p> <p>28 day notice of a confirmation hearing and deadline to object to confirmation must be given. <i>See</i> Bankruptcy Rule 2002(b).</p> <p>The confirmation hearing may take place no earlier than 20 days and no later than 45 days after the meeting of creditors. <i>See</i> 11 U.S.C. § 1324(b).</p> <p>The confirmation hearing could occur as early as the 40th day of the case, if certain pre-conditions are met.</p>
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V. Confirmation Standards

In Chapter 11, confirmation does not require periodic payments. In fact, the statutory language provides that, under § 1129(a)(15) upon the objection of an unsecured creditor, the debtor must provide creditors the value of its disposable income stream for either five years or the term of the plan, whichever is longer. The test is different than the disposable income requirement under § 1325(b)(2) of the Code. Thus, the Chapter 11 test creates a second floor in addition to the best interest of creditors test for determining the amount of value which must be distributed to holders of unsecured claims.

CONFIRMATION STANDARDS		
	CHAPTER 11	CHAPTER 13
Priority Debt	<p>Must be paid in full. <i>See</i> 11 U.S.C. § 1129(a)(9).</p> <p>Priority tax claims may be paid in installments. If so, interest must be paid, the installments must be regular and be over a period ending not later than five years after the order for relief. <i>See</i> 11 U.S.C. § 1129(a)(9)(C).</p> <p>Non-tax priority claims must be paid in full on the effective date of the plan unless the class votes to accept deferred cash payments through the plan. When deferred cash payments are made, interest must be paid. <i>See</i> 11 U.S.C. § 1129(a)(9)(B).</p> <p>Claims allowed under 507(a)(2) and (a)(3) must be paid in cash on the effective date, unless the holder of such a claim agrees otherwise. <i>See</i> 11 U.S.C. § 1129(a)(9)(A).</p> <p>Debtor must be current on all post-petition domestic support obligations in order to confirm a plan. <i>See</i> 11 U.S.C. § 1129(a)(14).</p>	<p>Must be paid in full; but if the plan has a term of five years and provides for the payment of all disposable income to creditors, the plan may provide for less than the full payment of a domestic support obligation assigned to, owed directly to or recoverable by a governmental unit. <i>See</i> 11 U.S.C. §§ 507(a)(1)(B), 1322(a)(4).</p> <p>No requirement that interest be paid on priority claims when they are paid in installments and there are no restrictions on the debtor’s ability to pay these claims over the length of the plan. <i>See</i> 11 U.S.C. § 1322(a)(2).</p>

<p>Voting and Objections</p>	<p>Creditors with impaired claims may vote. A class of claims accepts the plan when 1/2 in number and 2/3 in dollar amount of the claims voting accept the plan. <i>See</i> 11 U.S.C. §§ 1124, 1126, 1129(a)(8).</p> <p>Creditors and other parties in interest may object to confirmation of the plan if it does not comply with the requirements of the Bankruptcy Code, primarily 11 U.S.C. §§ 1123 (contents of the plan), 1124 (impairment of claims and interests), 1126 (acceptance of plan) and 1129 (confirmation of plan).</p>	<p>Creditors may not vote on the plan; but creditors can file objections pursuant to 11 U.S.C. § 1325.</p>
<p>Absolute Priority Rule</p>	<p>If at least one impaired class of claims accepts the plan, it may be confirmed over the rejection of a class of unsecured claims if all claim holders in the rejecting class will be paid in full, or if no holder of a claim or interest junior to the rejecting class will receive or retain anything on account of such claim or interest, <i>except that in the case of an individual, the debtor may retain property included in the estate under section 1115. See</i> 11 U.S.C. § 1129(b)(2)(B)(i)-(ii) (emphasis added). This carve out allows individual debtors to retain post-petition earnings and income, except to the extent necessary to pay post-petition domestic support obligations.</p> <p>The 4th, 5th, 6th, 9th and 10th Circuits have held that the absolute priority rule applies to individuals in chapter 11 cases. <i>See In re Maharaj</i>, 681 F.3d 558 (4th Cir. 2012); <i>In re Lively</i>, 717 F.3d 406 (5th Cir. 2013); <i>Ice House America, LLC v. Cardin</i>, 2014 WL 1887583 (6th</p>	<p>Not applicable.</p>

	<p>Cir. 5/13/14); <i>Zachary v. California Bank & Trust</i> (9th Cir. B.A.P. 2015); <i>In re Stephens</i>, 704 F.3d 1279 (10th Cir. 2013). The remaining circuits have not specifically addressed the issue.</p>	
<p>New Value Exception to the Absolute Priority Rule</p>	<p>Requires equity holders to make a substantial and essential contribution in exchange for their continued ownership of the debtor.</p> <p>To be substantial, most courts require that that contribution (<i>i.e.</i>, new value) be (1) a present contribution, (2) freely tradable in the market, and (3) money or money’s worth.</p> <p>To be essential, the case law generally mandates that this new contribution be directly related to the success of the reorganized plan.</p>	<p>Not applicable.</p>
<p>Feasibility</p>	<p>To confirm a plan, the debtor must demonstrate that the plan satisfies 11 U.S.C. § 1129(a) by a preponderance of the evidence.</p> <p>Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor of the debtor under the plan, unless such liquidation or reorganization is proposed in the plan. <i>See</i> 11 U.S.C. § 1129(a)(11).</p>	<p>A debtor’s resources are measured by the debtor’s anticipated income over a three to five year time period, as well as assets that a debtor may sell or liquidate under 11 U.S.C. § 363 during the life of the plan with proceeds contributed to the plan. <i>See</i> 11 U.S.C. § 1325(a)(4).</p>
<p>Good Faith</p>	<p>The court shall confirm a plan only if it has been proposed in good faith and not any means forbidden by law. <i>See</i> 11 U.S.C. § 1129(a)(3).</p>	<p>Same. 11 U.S.C. § 1325(a)(3).</p>

<p>Best Interests of Creditors Test</p>	<p>Unless a claim holder makes an election under 11 U.S.C. § 1111(b), a chapter 11 plan must provide to each holder of a claim in an impaired class not less than the present value of the amount that would be paid on such a claim if the estate were liquidated under chapter 7. <i>See</i> 11 U.S.C. § 1129(a)(7).</p>	<p>A chapter 13 plan must provide to each allowed unsecured claim not less than the present value of the amount that would be paid on such claim if the estate were liquidated under chapter 7. <i>See</i> 11 U.S.C. § 1325(a)(4).</p>
<p>Best Efforts</p>	<p>For individual debtors, if the holder of an allowed unsecured claim objects to confirmation, the plan must pay unsecured claims in full or the value of the property distributed under the plan must be no less than the projected disposable income of the debtor. <i>See</i> 11 U.S.C. § 1129(a)(15).</p> <p>Disposable income must be projected over at least a five year period following the first plan payment or over the entire period the plan provides for payments, if longer than five years. <i>See</i> 11 U.S.C. § 1129(a)(15).</p> <p>To project disposable income, the debtor’s “actual expenses,” provided they are reasonably necessary for the maintenance or livelihood of the debtor, are deducted from current monthly income. The presumed expenses deducted from current monthly income under 11 U.S.C. § 1325(b)(2) are not applicable. <i>See</i> 11 U.S.C. § 1129(a)(15)(B).</p>	<p>If the holder of an allowed unsecured claim or the trustee objects to confirmation, the plan either must pay the unsecured claims in full or all projected disposable income must be applied to make payments to unsecured creditors. <i>See</i> 11 U.S.C. § 1325(b)(1).</p> <p>Disposable income projected over three years must be devoted to the payment of unsecured creditors if the debtor’s annualized current monthly income is less than the median family income. If it is more, the commitment period increases to five years. <i>See</i> 11 U.S.C. §§ 1322(d), 1325(b)(1)(B) and (b)(4).</p> <p>The method of projecting disposable income hinges on whether the debtor’s annualized current monthly income is greater than the median family income. If greater, the expenses deductible from the debtor’s current monthly income are limited by the presumed expenses used in the means test in 11 U.S.C. §§ 707(b)(2) and 1325(b)(3). If less than or equal to the median family income, actual expenses that are reasonable and necessary for the maintenance or livelihood of the debtor are deductible from current monthly income as under 11 U.S.C. § 1325(b)(2).</p>

VI. Special Treatment of Certain Claims

The exception to the anti-modification rule in chapter 13 generally is not applicable in chapter 11. However, the circuits are split on whether the anti-modification provision applies to mixed-use property of an individual Chapter 11 debtor.

SPECIAL TREATMENT OF CERTAIN CLAIMS		
	CHAPTER 11	CHAPTER 13
Home Mortgages	<p><u>Cure</u>: The plan may provide for the cure of any arrear on a home mortgage. <i>See</i> U.S.C. § 1123(a)(5)(G), (b) and (d).</p> <p><u>Modification</u>: Unmatured, unaccelerated claims secured only by the debtor's home cannot be modified. <i>See</i> 11 U.S.C. § 1123(b)(5).</p> <p>The exception to the anti-modification rule in chapter 13 (11 U.S.C. § 1322(c)) is generally not applicable in chapter 11. As a result, a matured or accelerated home loan typically cannot be extended unless such is permitted by applicable non-bankruptcy law.</p> <p>However, circuits are split on whether the anti-modification provision applies to mixed-use property of an individual Chapter 11 debtor. The Ninth Circuit has held that the anti-modification provision applies where the real property is used as the debtor's principal residence and has a commercial (income-producing) use. <i>See In re Wages</i>, 508 B.R. 161 (9th Cir. B.A.P. 2014). The Third Circuit disagrees. <i>See Scarborough v. Chase Manhattan Mortg. Corp. (In re Scarborough)</i>, 461 F.3d 406 (3d Cir. 2006).</p>	<p><u>Cure</u>: The plan may provide for the cure of any arrear on a home mortgage. <i>See</i> 11 U.S.C. § 1322(b)(3).</p> <p>Chapter 13 debtors may cure defaults under a home mortgage unless and until the home is sold at a foreclosure sale. <i>See</i> 11 U.S.C. § 1322(c)(1).</p> <p><u>Modification</u>: Same. <i>See</i> 11 U.S.C. § 1322(b)(2).</p> <p>Notwithstanding the maturity of a home loan, the chapter 13 plan may provide for payment of a home loan through the plan pursuant to 11 U.S.C. § 1322(c)(2).</p> <p>The anti-modification rule in chapter 13 does not apply to a junior lien that is wholly unsecured by any equity in the debtor's principal residence. A wholly unsecured junior lien can be stripped off upon the completion of payments under the plan and the issuance of a discharge. If there is equity above the amount of the first mortgage, the junior lien is not wholly unsecured and cannot be stripped off.</p>

<p>Other Secured Claims</p>	<p>Nothing in chapter 11 prevents an individual debtor from stripping down an undersecured claim into its secured and unsecured parts, and treating each part as a separate and distinct claim. <i>See</i> 11 U.S.C. § 1129(b)(1)(A).</p> <p>Periodic payments to secured creditors need not be in equal installments. <i>But see</i> Secured Tax Claims below.</p>	<p>A chapter 13 plan may not bifurcate certain undersecured claims into secured and unsecured constituent parts. This prohibition extends to claims secured by a PMSI incurred within 910 days of the petition and secured by motor vehicles acquired for the personal use of the debtor or incurred during the one year period preceding the petition and secured by any other thing of value. <i>See</i> 11 U.S.C. § 1325(a)(5) hanging paragraph.</p> <p>If a secured claim is being paid through the plan in periodic payments, “such payments shall be in equal monthly amounts.” <i>See</i> 11 U.S.C. § 1325(a)(5)(B)(iii)(I).</p>
<p>Secured Tax Claims</p>	<p>Secured tax claims that otherwise would be unsecured tax claims under 11 U.S.C. § 507(a)(8) were they not secured must be paid in regular installments over a period ending not later than five years after the order for relief and “in a manner not less favorable than the most favored non-priority unsecured claim provided for by the plan.” <i>See</i> 11 U.S.C. § 1129(a)(9)(D).</p>	<p>Not applicable.</p>
<p>Long Term Debt</p>	<p>There is no maximum duration of a chapter 11 plan. Short-term debt may be converted to long-term debt under a chapter 11 plan.</p>	<p>The only debt that may be treated as long-term debt is a debt that matures after the completion of the plan and is not modified by the chapter 13 plan (but cure is permissible).</p> <p>Provided a chapter 13 plan seeks only to cure an arrearage, payments on long-term debt may continue beyond the length of the plan. <i>See</i> 11 U.S.C. § 1322(b)(3) and (5).</p>

<p>Cosigned Debt</p>	<p>No comparable provision. However, all claims classified together must be substantially similar and, if the plan is not accepted by all classes, it must be fair and equitable. <i>See</i> 11 U.S.C. § 1122, 1129(b)(1).</p>	<p>A chapter 13 plan can separately classify cosigned consumer debt and pay it differently from other debt, provided that the claims classifications may not discriminate unfairly. <i>See</i> 11 U.S.C. § 1322(b)(1).</p>
<p>Student Loans</p>	<p>Student loan are generally not dischargeable in any bankruptcy unless the debtor can prove that they will suffer an “undue hardship” if the debts are not discharge. <i>See</i> 11 U.S.C. § 523(a)(8).</p> <p><i>In re Brunner</i>, 46 B.R. 752 (Bankr. S.D.N.Y. 1985), established a three-part test for bankruptcy discharge of a student loan: (1) debtor must establish “that she cannot maintain, based on current income and expenses, a ‘minimal’ standard of living for herself and her dependents if forced to repay the loans”; (2) debtor must show “that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans”; and (3) debtor has made good faith efforts to repay the loans. The <i>Brunner</i> test has been adopted by the Third, Seventh and Ninth Circuits. <i>See In re Faish</i>, 72 F.3d 298 (3d Cir. 1995); <i>Matter of Roberson</i>, 999 F.2d 1132 (7th Cir. 1993); <i>In re Pena</i>, 155 F.3d 1108, 1114 (9th Cir. 1998) (stating that “We adopt the <i>Brunner</i> test to be applied to determine the ‘undue hardship’ required to discharge student loans in bankruptcy pursuant to 11 U.S.C. § 523(a)(8)(B)”). Moreover, <i>Brunner</i> has been applied by bankruptcy courts and district courts in all circuits.</p>	<p>Same.</p> <p>Same.</p>

VII. Duration of Plan

There is no mandatory maximum or minimum term for a Chapter 11 plan. In a Chapter 13, the plan may not run for more than three years if the debtor's annualized current monthly income is less than the state median family income. If the debtor's annualized current monthly income is equal to or more than the state median family income, a chapter 13 plan may not require payments for more than five years.

DURATION OF PLAN		
	CHAPTER 11	CHAPTER 13
Minimum Length	There is no mandatory minimum chapter 11 plan length. However, if the holder of an allowed unsecured claim objects to a plan that does not pay unsecured claims in full, "the value of the property distributed under the plan [must be] not less than the projected disposable income of the debtor (as defined in 11 U.S.C. § 1325(b)(2)) to be received during the five year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer." <i>See</i> 11 U.S.C. § 1129(a)(15)(B).	There is no mandatory minimum chapter 13 plan length. But if the plan does not provide for payment of unsecured claims in full, and if the trustee or an unsecured creditor objects, the plan must run three to five years depending on whether annualized current monthly income exceeds state median family income. <i>See</i> 11 U.S.C. §§ 1322(d), 1325(b)(4)(A)(ii).
Maximum Length	<p>There is no mandatory maximum chapter 11 plan length.</p> <p>In individual chapter 11 debtor cases, however, if an unsecured creditor objects, the debtor must commit all projected disposable income for at least five years or, if longer, "during the period for which the plan provides payments." <i>See</i> 11 U.S.C. § 1129(a)(15)(B).</p> <p>Unless the court orders otherwise, an individual chapter 11 debtor is not entitled to a discharge until the "completion of all payments under the plan." <i>See</i> 11 U.S.C. § 1141(d)(5)(A).</p>	Absent good cause, a plan cannot require payments for more than three years if the debtor's annualized current monthly income is less than the state median family income. <i>See</i> 11 U.S.C. § 1322(d)(2). If there is good cause to exceed three years, the plan's length may not exceed five years. <i>See</i> 11 U.S.C. § 1322(d)(1)(C). If the debtor's annualized current monthly income is equal to or more than the state median family income, a chapter 13 plan may not require payments for more than five years. <i>See</i> 11 U.S.C. § 1322(d)(1).

When Payments Begin For the Debtor	Payments start <u>after</u> confirmation of the plan on the effective date of the plan.	Payments start <u>before</u> confirmation of the plan; the first plan payment is due 30 days after the filing of the petition or the plan, whichever is earlier. <i>See</i> 11 U.S.C. § 1326(a)(1).
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VIII. Modification of Plan

The Chapter 11 plan may be modified at any time after confirmation but before payments are completed, regardless of whether the plan is substantially consummated to increase or decrease payments or the timing or duration of payments. Adequate disclosure of an amendment is required.

MODIFICATION OF PLAN		
	CHAPTER 11	CHAPTER 13
Pre-Confirmation	Only the proponent of the plan may modify it prior to confirmation. <i>See</i> 11 U.S.C. § 1127(a).	Only the debtor may modify the plan prior to confirmation. <i>See</i> 11 U.S.C. § 1323(a).
Post-Confirmation	After confirmation, and whether or not the plan has been substantially consummated, the debtor, any trustee, the United States Trustee, or the holder of an unsecured claim may propose a modification. This right ends when the plan payments have been completed. <i>See</i> 11 U.S.C. § 1121(e).	After confirmation, the debtor, the trustee or the holder of an unsecured claim may propose a modification. This right ends when the plan payments have been completed. <i>See</i> 11 U.S.C. § 1329(a).

IX. Discharge

Unlike a Chapter 13 debtor, a Chapter 11 debtor is not required to certify that he/she is current on all domestic support obligation payments to obtain a discharge. Additionally, in limited circumstances, the court may grant a discharge to a Chapter 11 debtor before completion of plan payments.

DISCHARGE		
	CHAPTER 11	CHAPTER 13
Timing	After completion of plan payments. <i>See</i> 11 U.S.C. § 1141(d)(5)(A). But the court may order otherwise under limited circumstances.	After completion of plan payments. <i>See</i> 11 U.S.C. § 1328(a).
Domestic Support Obligations	Individual chapter 11 debtor with a “domestic support obligation” is not required to certify that he/she is current on all required payments before a discharge is entered.	Debtor with a “domestic support obligation” must certify that he/she is current on all required payments before the discharge will be entered. <i>See</i> 11 U.S.C. § 1328(a).
Hardship Discharge	After confirmation but before completion of plan payments an individual debtor may request a hardship discharge. <i>See</i> 11 U.S.C. § 1141(d)(5)(B).	Same. <i>See</i> 11 U.S.C. § 1328(b).
Super Discharge	Not available.	Available, but watered down. May discharge a debt for willful and malicious injury (11 U.S.C. § 523(a)(6)), as well as domestic nonsupport obligations (11 U.S.C. § 523(a)(15)). But 11 U.S.C. § 1328(a)(4) excepts from discharge restitution/damages awarded in a civil action against the debtor as a result of “willful or malicious injury” that caused personal injury or death.

X. Consequences When Case is Unsuccessful

There is an exception to the automatic stay for Small Business Debtors and entities that acquire substantially all of a small business from bankruptcy under certain circumstances.

CONSEQUENCES WHEN CASE IS UNSUCCESSFUL		
	CHAPTER 11	CHAPTER 13
Small Business Debtor Exception to Automatic Stay	<p>The automatic stay does not apply to cases filed by a small business debtor if the debtor was a debtor in an earlier small business case that remains pending, or it was previously a debtor in a small business case that was dismissed or had a plan confirmed within the two years preceding the latest petition.</p> <p>Also, an entity that acquires substantially all of a small business having a petition dismissed or plan confirmed in the preceding two years cannot have the benefit of the automatic stay in its own bankruptcy case unless it proves by a preponderance of the evidence that the acquisition was not for the purpose of evading 11 U.S.C. § 362(n).</p>	Not applicable.
One Case Pending In a Prior Year	<p>If an individual was a debtor in a prior case under chapter 7, 11, or 13 and that prior petition was dismissed, and if the prior petition was pending within one year of the new petition, the automatic stay with respect to a debt, property securing such debt, or any lease terminates as to the debtor (but not the estate) on the 30th day after the filing of a new case. <i>See</i> 11 U.S.C. § 362(c)(3)(A). However, 11 U.S.C. § 362(c)(3)(A) does not apply if the new case was filed under a chapter other than a chapter 7 after the prior case was dismissed. <i>See</i> 11 U.S.C. § 707(b).</p>	Same.

	<p>Any party in interest may file a motion to extend the stay as to all or some creditors. Such a request must be made with notice and hearing within 30 days of the filing of the petition. <i>See</i> 11 U.S.C. § 362(c)(3)(B).</p>	<p>Same.</p>
<p>Two Cases Pending in a Prior Year</p>	<p>When an individual debtor has filed two or more prior cases that were pending during the previous year, but were dismissed, the automatic stay never goes into effect. <i>See</i> 11 U.S.C. § 362(c)(4)(A)(i). There is an exception for a case “refiled” under 11 U.S.C. § 707(b).</p> <p>A party in interest may request that the court impose the automatic stay despite the filing and dismissal of multiple prior petitions. The request must be made with notice and a hearing and must be made within 30 days of the filing of the petition. <i>See</i> 11 U.S.C. § 362(c)(4)(B).</p>	<p>Same.</p> <p>Same.</p>

XI. Special Notice Requirements for the Residential Home Loans

In a Chapter 13 case, creditors with a claim secured by the debtor’s principal residence must give notice to the debtor of any payment change and the amount of recoverable post-petition fees and costs. Additionally, the creditor must respond to the trustee’s notice of final cure payment within 21 days after service, even if the response is that the trustee’s notice is correct.

SPECIAL NOTICE REQUIREMENTS FOR THE RESIDENTIAL HOME LOANS		
	CHAPTER 11	CHAPTER 13
Notices for Claims Secured by a Security Interest in Debtor’s Principal Residence	Not applicable in chapter 11 cases.	<p>Creditors in a chapter 13 case with claims secured by a security interest in the debtor’s principal residence must:</p> <ol style="list-style-type: none"> 1) Provide notice of any payment change at least 21 days before the new payment amount is due (<i>See</i> Bankruptcy Rule 3002.1(b)); 2) Provide notice of post-petition fees and costs that the holder of the claim asserts are recoverable against the debtor or their property within 180 days after the post-petition fees and costs are incurred (<i>See</i> Bankruptcy Rule 3002.1(c)); and 3) Provide a response to the trustee’s notice of final cure payment per Bankruptcy Rule 3002.1(f) within 21 days after service (even if the response is that the trustee’s notice is correct) (<i>See</i> Bankruptcy Rule 3002.1(g)).