Chapter 13 Bankruptcy

Chapter 13 bankruptcy is a form of bankruptcy relief that individuals can avail themselves if they are behind on home mortgage payments or car payments to cure the default on the secured loan and to keep the collateral (home or motor vehicle). A Chapter 13 plan is proposed and filed to the Bankruptcy Court.

Repayment Plan under Chapter 13

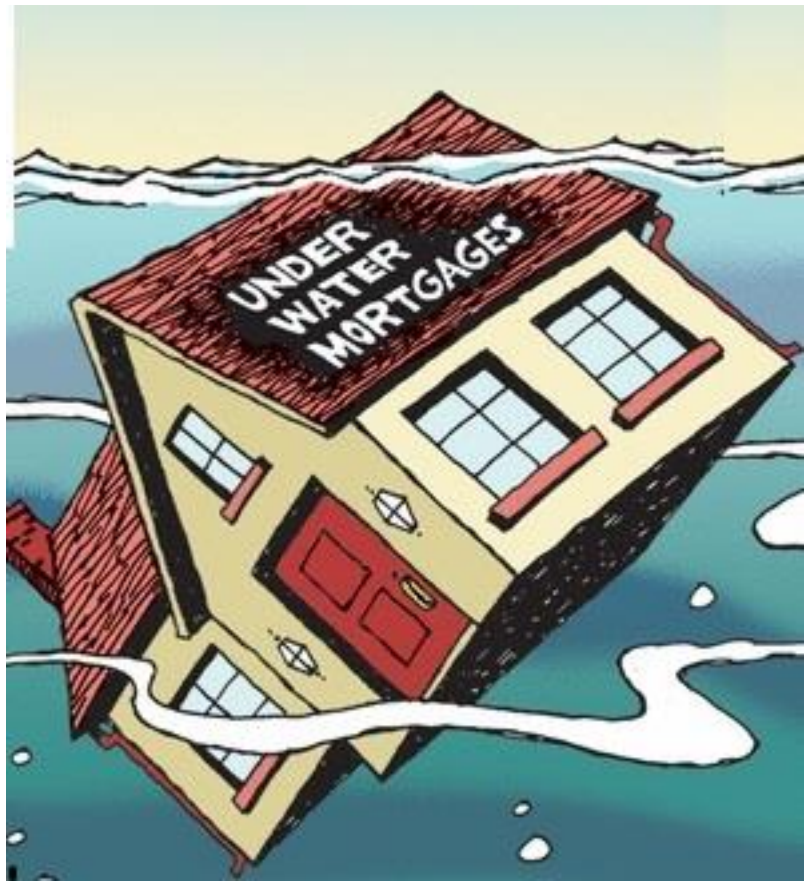
Chapter 13 is essentially a repayment plan that is a mini-version of Chapter 11, but geared for individuals who have a steady job or source of income. The Chapter 13 debtor pays the trustee a certain amount every month pursuant to a plan filed with the Bankruptcy Court. If the plan is confirmed, the creditor is bound to accept what is proposed to be paid through the plan. The debtors must make monthly mortgage payments to keep their homes; likewise with cars In some cases, zero repayment to unsecured creditors is allowed. The plans last between 3 to 5 years.

Chapter 13 helps people who want to keep their house to restructure their debt so they can “cure” any home mortgage arrearage over a 3 to 5 year repayment plan. Unsecured debts are paid a fraction of the amount owed, sometimes zero percent.

Automatic Stay

The automatic stay of Section 362(a) of the Bankruptcy enjoins all collection efforts and goes into effect by operation of law upon filing a Chapter 13 bankruptcy petition. Sheriff Sale's cannot go forward to sell homes that have been foreclosed on by the mortgage company; this is true only if the bankruptcy filing is before the Sheriff Sale. Similarly, the bank must return a motor vehicle after it has been repossessed in a Chapter 13 context.

Underwater mortgages are a big problem of many homeowners. Though Chapter 13 cannot “strip down” first mortgages in most instances, it can “strip off” and eliminate second or more junior mortgages if no equity attaches to them. Review my discussion on this topic on this website.



If the junior mortgage is totally unsecured, then the Bankruptcy Court can effectively eliminate the junior mortgage and treat it as an unsecured claim. The mortgage is removed from the land records once the Chapter 13 case is completed.

Discharge

Like Chapter 7, most Chapter 13 debtors will get a discharge at the end of the case. Indeed, the Chapter 13 discharge is slightly broader than a Chapter 7 discharge. Nonetheless, a Chapter 13 debtor may still avail themselves of the benefits under this chapter even if they are not elifgible for a discharge (such as when they recent received a Chapter 7 discharge). A Chapter 7 case followed by a Chapter 13 case is sometimes called a “Chapter 20.”