



## THE NEEDLEMAN LAW OFFICE

---

### Reasons to Use Chapter 13 Bankruptcy Instead of Chapter 7 Bankruptcy

**Sometimes it makes sense to file for Chapter 13 bankruptcy instead of Chapter 7 bankruptcy.**

Many debtors choose not to file for Chapter 13 bankruptcy because it requires repayment of at least a portion of their debts (unlike Chapter 7 bankruptcy, which wipes out many debts entirely).

In some situations, however, Chapter 13 bankruptcy is the better bankruptcy option. Not only that, but certain debtors don't get to choose: Not everyone is eligible for Chapter 7 bankruptcy, so Chapter 13 will be the only option available to some filers.

Here are some good reasons to file for Chapter 13:

**You cannot file for Chapter 7.** You won't be allowed to file for Chapter 7 if you cannot meet some new requirements imposed by the 2005 revisions to the bankruptcy law. Under these new rules, you cannot file for Chapter 7 if both of the following are true:

- Your current monthly income over the six months prior to your filing date is more than the median income for a household of your size in your state (go to the website of the United States Trustee, [www.usdoj.gov/ust](http://www.usdoj.gov/ust), and click "Means Testing Information" to see the median figures for your state).
- Your disposable income, after subtracting certain expenses and monthly payments for debts you would have to repay in Chapter 13, exceeds certain limits set by law. These calculations are commonly referred to as the "means test" -- if you have the means to repay a certain amount of your debt through a Chapter 13 repayment plan, you flunk the test and are ineligible for Chapter 7 bankruptcy.

The means test can get fairly complex -- and, to make matter worse, Congress has its own definitions of "disposable income," "current monthly income," "expenses," and other important terms, which sometimes operate to make your income seem higher than it actually is.

In addition, if you have received a Chapter 7 bankruptcy discharge within the last eight years, or a Chapter 13 discharge within the last six years, you may not file for Chapter 7 bankruptcy.



## THE NEEDLEMAN LAW OFFICE

---

**You are behind on your mortgage or car loan**, and want to make up the missed payments over time and reinstate the original agreement. You cannot do this in Chapter 7 bankruptcy. You can make up missed payments only in Chapter 13 bankruptcy.

**You have a tax obligation, student loan, or other debt that cannot be discharged in Chapter 7.** You can include these debts in your Chapter 13 plan and pay them off over time.

**You have a sincere desire to repay your debts**, but you need the protection of the bankruptcy court to do so. This might be the case if creditors are coming after you or if you simply require the formal structure and deadlines the Chapter 13 process provides in order to follow through on your good intentions.

**You have nonexempt property that you want to keep.** When you file for Chapter 7 bankruptcy, you get to keep only exempt property -- property that is protected from creditors under state or federal law. You have to give your nonexempt property to the bankruptcy trustee, who can sell it and distribute the proceeds to your creditors.

In Chapter 13, you don't have to give up any property. Instead, you repay your debts out of your income. So, if you have nonexempt property that you can't bear to part with, Chapter 13 might be the better choice.

**You have a codebtor on a personal debt.** If you file for Chapter 7 bankruptcy, your codebtor will still be on the hook -- and your creditor will undoubtedly go after the codebtor for payment. If you file for Chapter 13 bankruptcy, the creditor will leave your codebtor alone, as long as you keep up with your bankruptcy plan payments.

Republished with Permission © 2009 Nolo.