

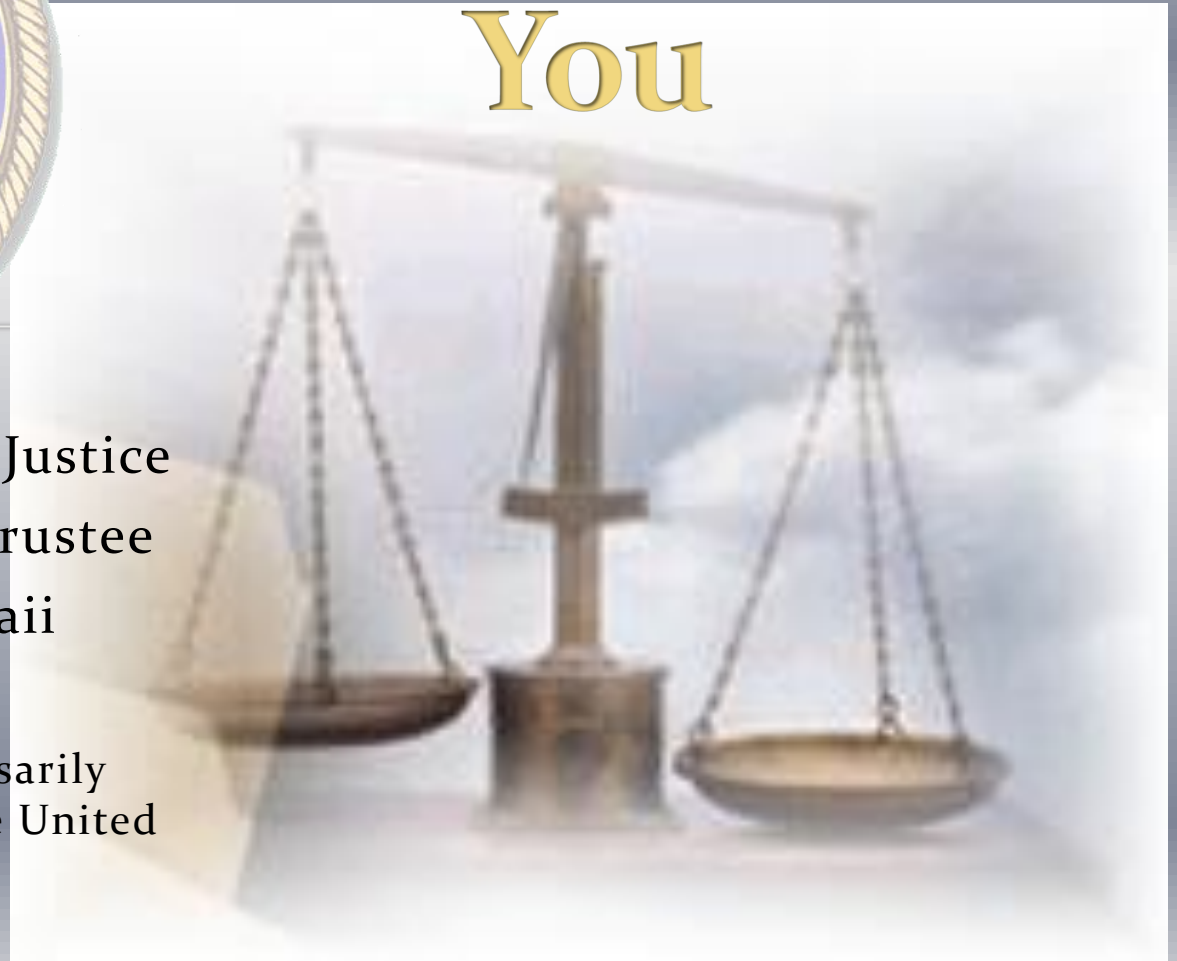
What Chapter 13 Can Do For (or To) You



U.S. Department of Justice
Office of the U.S. Trustee
Honolulu, Hawaii

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These slides do not necessarily
reflect the position of the United
States Trustee Program.



What Is Chapter 13?

- Repayment Plan. §1321.
- 36-60 Months. §1322(d).



Who Is Eligible For Chapter 13?

- Section 109(e):
 - Individuals
 - Regular Income
 - Unsecured debts under \$394,725
 - Secured debts under \$1,184,200

Why Chapter 13?

- Broader Discharge Than Chapter 7.
- Protection of Co-Debtors.
- Delay Foreclosure and Cure Mortgage Arrears.
- Strip Junior Liens.
- Buy Time

Common Features in All Bankruptcies

- Automatic Stay. §362.
- Meetings of Creditors. §341.
- Discharge. §1328.



Major Differences To Ch 7

- Length of Case. §1322(d).
- Co-Debtor Stay. §1301.
- Distributions to Creditors. §1326(a)(2).
- Debtor Remains in Possession of Property of the Bankruptcy Estate. §1306(b).

Requirements for Confirmation

- Pay All Priority Claims. §1322(a).
- Length § 1322(d) and 1325(b)(4):
 - Above-Median Income: 60 months
 - Below-Median Income: 36 months
- Good Faith. §1325(a)(3).

Requirements for Confirmation

- Satisfies “Best Interests” Test, i.e., Compare to Ch 7. §1325(a)(4).
- Plan is Feasible. §1325(a)(6).
- Debtor Has Filed All Required Tax Returns. §1325(a)(9).

Requirements for Confirmation

- If a Creditor Objects, Plan Must Provide that All Debtor's Disposable Income Will Be Paid Into Plan.
§1325(b)(1).

Payments of Administrative Claims

- Debtor's Attorney's Fees Can Be Paid Through The Plan. §1326(b)(1).
- Trustee Takes a Percentage Fee Under The Plan. §1326(b)(2).

Chapter 13 Discharge

- Discharge occurs after completion of plan payments. §1328(a).
- Taxes are generally dischargeable.
 - But not trust fund taxes. §1328(a)(2).

Chapter 13 Discharge

- Exceptions to Chapter 13 Discharge - § 1328(a):
 - Unlisted Debts
 - Domestic Support Obligations.
 - Student Loans
 - Debts for Drunk Driving
 - Restitution



Chapter 13 Discharge

- Exceptions to Chapter 13 Discharge - § 1328(a):
 - Debts incurred by Fraud.
 - Debts for Embezzlement, Larceny, or Breaching a Fiduciary Duty.
 - Debts Caused by Willful or Malicious Injury

Chapter 13 Discharge

- Hardship Discharge. §1328(b).
 - Can be granted where “the debtor’s failure to complete such [plan] payments is due to circumstances for which the debtor should not justly be held accountable.”
 - Amount already distributed is at least what creditors would have received in Chapter 7 liquidation.
 - Modification of the plan is not practicable.

Co-Debtor Automatic Stay

- In Chapter 13 only, the automatic stay imposed by Section 362 is extended to co-debtors. §1301.

Curing Mortgage Loan Defaults

- In Ch 13, Debtors can cure a default over the length of the plan. §1322(b)(5).
- Amount Needed For Cure Is Determined By Mortgage Loan Docs And Applicable Non-Bankruptcy Law. §1322(e).

Lien Stripping: Residences

- Chapter 13 plans can modify the rights of secured (and unsecured) creditors. §1322(b)(2).
 - But the plan may not modify rights of “*holders of secured claims*” who hold a security interest in debtor’s principal residence. *Id.*
 - Look to §506(a) to determine whether a creditor is a holder of a secured claim.

Lien Stripping: Residences

- A junior secured creditor (i.e., 2nd mortgagee) is still a “holder of a secured claim” if it is even *partially* secured, i.e., undersecured.
 - So this type of creditor (partially secured) cannot be stripped.
- As a result, a Ch 13 plan can strip a junior lien but only if it is *wholly unsecured*.

Lien Stripping: Residences

- How can you tell if the junior lien is wholly unsecured?
 - Valuation hearings, aka, the battle of the appraisers.
- Lien strip is only effective if debtor completes the plan.

Lien Stripping: Vehicles

- Plan May Not Strip Lien on PMSI Vehicle Purchase Within 910 Days Prior To Filing. §1325(a).
 - Vehicle must be for personal use.
- Plan May Not Strip Lien on PMSI Purchase of Other Collateral Within One Year Prior To Filing. §1325(a).

Buying Time

- Delaying foreclosure and allow curing of arrears or opportunity to sell home on open market.
- Delaying foreclosure so that debtor can complete loan modification process.
- Delaying foreclosure for the sake of delay (bad faith).

Limitations On Plan Revocation

- Chapter 13 plan can be revoked for fraud within 180 days of order confirming plan. §1330.
- What happens if fraud is not discovered until 181st day?



Statistics

- “Success” rates in Chapter 13
- Factors affecting success.*
 - Attorney vs. pro se
 - Married vs. single
 - Prior bankruptcy filings
 - Filing fees paid in full at time of filing.
 - Race

*Sources: Ed Flynn, Success Rates in Chapter 13, August 2017 ABI Journal, p. 38; Greene, Patel, Porter, Cracking the Code: An Empirical Analysis of Consumer Bankruptcy Outcomes, 101 Minnesota Law Review 1031 (2017)

Statistics

- Factors affecting success (cont'd)
 - All have health insurance
 - Reason for filing: Mortgage/housing
 - Affordable housing
 - Higher unsecured debt
 - Lower secured debt

Questions?

(Ask Howard)

