



There are many factors that go into deciding whether or not to file Chapter 7. Among the factors are debts that may not be discharged in a chapter 7 case but can be discharged in a chapter 13 case.

The operation of the discharge in chapter 13 of debts not discharged in chapter 7 is called the chapter 13 "super" discharge. The ability of chapter 13 to discharge debts that cannot be discharged in a chapter 7 case is something that clients should consider as they decide whether to file a chapter 7, or a chapter 13 bankruptcy case.

### **WHY DOES THE "SUPER" DISCHARGE EXIST?**

The answer is that, at one time, Congress wanted to encourage an increase in chapter 13 cases. Congress found that most people sought the benefits of the liquidation theory of chapter 7 bankruptcy - the chapter 7 discharge comes within months of filing; the chapter 13 discharge, years.

Chapter 7 has typically been the bankruptcy chapter that is less expensive in terms of attorney fees. And chapter 7 carries with it a "no strings attached" scenario - the chapter 7 debtor doesn't have to make payments on discharged debt after the chapter 7 case is filed.

Chapter 13 is slower, more expensive and the chapter 13 debtor has to commit to make monthly payments to pay at least a portion of the debt owed. Since chapter 13 wasn't as popular as chapter 7, in 1978 Congress created the super discharge - it was a "carrot," so to speak, to encourage people to file a chapter 13 bankruptcy.

### **WHAT DEBTS ARE SUBJECT TO THE SUPER DISCHARGE?**

#### **Debts caused by willful and malicious injury to people or property.**

It may seem unusual to allow debts incurred by an individual's deliberate actions to be discharged in a chapter 13, but this provision makes sense if we remember that insurance will cover many (although certainly not all) damages caused by someone's

intentional acts. This provision allows someone who has deliberately injured another person, or who has caused damage to another person's property to make monthly payments for three to five years to pay at least a part of the damages back to the property owner, and then, after the time period for the chapter 13 has passed, to move on from that financial obligation.

An exception to the discharged of liability for willful and malicious injury in chapter 13 is for a situation in which there is an award of damages existing for injury to another person at the time the chapter 13 case is filed - in that circumstance, discharge of that debt is not available.

### **Government Fines, Penalties and Forfeitures**

Most obligations owed to the government cannot be discharged in a chapter 7 case, but court fines and penalties can be discharged in a chapter 13.

### **Debts that were denied discharge in a previous case**

If a debt in a previous chapter 7 or chapter 13 case was determined to not be discharged in that bankruptcy by the bankruptcy court, that debt can be discharged if the debtor files a "new" chapter 13 case.

### **Debts resulting from fraudulent bank activity**

Since only people can file a chapter 13 case, this super discharge is not available to banks themselves; but any individual required to pay for fraudulent bank activity can receive a chapter 13 discharge. ***Be careful about this, though, court-ordered restitution payments are not subject to the chapter 13 discharge.***

### **Debts incurred to pay taxes**

If a debtor borrows money, or uses a line of credit or a credit card to pay tax liability that cannot be discharged in a chapter 7 bankruptcy case, that tax-related debt cannot be discharged in a chapter 7 case, but it can be with chapter 13.

### **Property settlements in divorce cases**

The debtor who owes another person money for child support or spousal maintenance payments cannot receive a discharge in either chapter 7 or chapter 13. Property settlements, though, are a different story. A debtor's obligation to pay an ex-spouse a property settlement can be discharged in a chapter 13.

### **For some violations of Securities Laws**

Anyone who has acted illegally with respect to Securities Laws cannot receive a chapter 7 discharge for any fine, penalty or restitution as a result of a court or arbitration decision. Chapter 13 debtor, on the other hand, can get these obligations discharged