



5120 E. La Palma Ave., Suite 206 • Anaheim Hills, CA 92807  
 Phone: (949) 354-2601 • Facsimile: (949) 200-4381  
[www.ghidottilaw.com](http://www.ghidottilaw.com)

## CHAPTER 7 AND 13 BANKRUPTCY BASICS

	<i>Chapter 13</i>	<i>Chapter 7</i>
<b>What It Is</b>	<ul style="list-style-type: none"> <li>• <u>Reorganization of Debt</u> – Debtor proposes a Plan to cure pre-petition (existing at time of BK filing) arrears /delinquency over the Plan term and to make regular payments on secured debt on a going forward basis. Unsecured creditors are paid a % of their debt.</li> <li>• Duration: 36-60 months</li> </ul>	<ul style="list-style-type: none"> <li>• <u>Liquidation</u> – If the Debtor has equity in property that he cannot protect with an exemption, it will be sold by the Trustee to pay his unsecured creditors. Secured creditors liens and payments are typically not affected</li> <li>• Duration: 3-6 months</li> </ul>
<b>BK Facts</b>	<ul style="list-style-type: none"> <li>• The filing of a bankruptcy gives rise to an automatic stay which prevents creditors from taking any action against the Debtor or property of the Debtor’s bankruptcy estate</li> <li>• Across a national average, 70% of Homeowners (HO) <b>do not</b> complete their Plan and therefore don’t receive a Discharge of their debts (Source: <a href="http://www.uscourts.gov/statistics">www.uscourts.gov/statistics</a>).               <ul style="list-style-type: none"> <li>➢ Statistics show variations by geography and that after making 18 months of payments, a HO’s chances of completing the Plan greatly increase.</li> </ul> </li> <li>• HO’s can <i>file</i> as often as they want; however <i>filing</i> does not necessarily give rise to the Automatic Stay or a Discharge.               <ul style="list-style-type: none"> <li>➢ On the HO’s 2<sup>nd</sup> BK filing in 1 year: the Automatic Stay expires on the 31<sup>st</sup> day of the filing</li> <li>➢ On the HO’s 3<sup>rd</sup> BK filing in 1 year: there is <u>no</u> Automatic Stay</li> </ul> </li> <li>• CH 13 Discharge to a subsequent CH 13 Discharge is 2 years. CH 7 Discharge to a subsequent CH 13 Discharge is 4 years.</li> <li>• Remains on credit report for ≈ 7 years. Impact on credit score after this time depends on what steps HO takes to repair his credit score</li> <li>• If the HO does not make payments during the Plan term, the Trustee will Dismiss the BK</li> <li>• Once the HO has filed BK, may not contact him directly; you need to go through his attorney.</li> </ul>	<ul style="list-style-type: none"> <li>• The filing of a bankruptcy gives rise to an automatic stay which prevents creditors from taking any action against the Debtor or property of the Debtor’s bankruptcy estate</li> <li>• The majority of cases are “no-asset” cases, meaning the HO receives a Complete Discharge (release of all liability) of all unsecured debt.</li> <li>• HO’s can <i>file</i> as often as they want; however <i>filing</i> does not necessarily give rise to the Automatic Stay or a Discharge.               <ul style="list-style-type: none"> <li>➢ On the HO’s 2<sup>nd</sup> BK filing in 1 year: the Automatic Stay expires on the 31<sup>st</sup> day of the filing</li> <li>➢ On the HO’s 3<sup>rd</sup> BK filing in 1 year: there is <u>no</u> Automatic Stay</li> </ul> </li> <li>• CH 7 Discharge to a subsequent CH 7 discharge is 8 years. CH 13 Discharge to a subsequent CH 7 Discharge is 6 years.</li> <li>• Remains on credit report ≈ 10 years. Impact on credit score after this time depends on what steps HO takes to repair his credit score.</li> <li>• Unlike a CH 13 BK, there is no requirement that a HO make post-petition payments to secured creditors</li> <li>• Once the HO has filed BK, may not contact him directly; you need to go through his attorney.</li> <li>• Unlike foreclosures, BKs are based on Federal law and are largely uniform across</li> </ul>



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	<ul style="list-style-type: none"> <li>• Unlike foreclosures, BKs are based on Federal law and are largely uniform across states. However, significant local nuances can exist</li> </ul>	<p>states. However, significant local nuances can exist.</p>
<b>What It Is / How It Is Used</b>	<ul style="list-style-type: none"> <li>• <i>Reorganization of Debt</i> –               <ul style="list-style-type: none"> <li>➢ Typically filed by a Debtor who is delinquent on their mortgages but has the means to cure the delinquency over time</li> <li>➢ Secured creditors are owed 100% of Pre-petition debt</li> <li>➢ Debtor is required to maintain post-petition payments on secured obligations</li> <li>➢ Unsecured creditors typically paid pro rata at cents on the dollar</li> </ul> </li> <li>• Stops foreclosure through an Automatic Stay which prevents any debt collection efforts against the debtor / debtor’s estate. Foreclosure can continue if creditor is granted a Relief from Stay. A motion for relief from the automatic stay is appropriate if post-petition payments are missed.</li> <li>• Can strip 2<sup>nd</sup> position liens if not secured by equity in the real property; 2<sup>nd</sup> lien will be treated as unsecured</li> <li>• Once the Plan payments are made, the debtor receives a Discharge from the Pre-petition debt but continues to owe the Post-petition debt</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Liquidation/Fresh Start</i> –               <ul style="list-style-type: none"> <li>➢ Chapter 7 does not provide a mechanism for curing mortgage arrears. Chapter 7 cases are typically filed by Debtors who have a large amount of unsecured debt, no equity in any real property and who do not have the income with which to cure mortgage arrears</li> <li>➢ Cannot “strip off”, “cram down” or modify loan terms of secured mortgage liens on primary residences (rental properties can though) **Some courts are now allowing lien strip in a Chapter 7</li> <li>➢ Trustee takes ownership of debtor’s assets until such assets are abandoned back to the debtor because the Trustee determines there is no equity in the asset</li> </ul> </li> <li>• Stops foreclosure through Automatic Stay which prevents any debt collection efforts against the debtor / debtor’s estate. Foreclosure can continue during BK if creditor is granted a Relief from Stay.</li> <li>• Debtor can Redeem, Reaffirm or Surrender real property               <ul style="list-style-type: none"> <li>➢ It is seldom in the best interests of the debtor to Reaffirm the indebtedness, and it is rarely done. (When the debt is Reaffirmed, the debtor does not discharge the mortgage debt and continues to be personally liable for the debt following Discharge.</li> <li>➢ In order to stay in the house, debtor must make regular monthly payments or creditor may foreclose (need Relief from Stay).</li> <li>➢ However, even without Reaffirmation, the debtor can continue to reside in the</li> </ul> </li> </ul>



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		property if it is abandoned by the Trustee as long as the loan is brought current.
<b>Criteria for HO to Qualify for BK</b>	<ul style="list-style-type: none"> <li>• No special criteria other than the HO must have “disposable income” with which to propose and confirm a CH 13 Plan</li> <li>• Only HO’s with secured debts less than ≈ \$1.1M and unsecured debt less than ≈ \$337,000 can file CH 13. If the HO’s debts exceed the limits, they must file under CH 11.</li> </ul>	<ul style="list-style-type: none"> <li>• 1<sup>st</sup> Criteria: Must show that combined, household income for last 6 months is ≤ state’s median monthly income. If so, HO qualifies for a CH 7 BK. If cannot show this, then...</li> <li>• 2<sup>nd</sup> Criteria: Pass a “Means Test” – If monthly disposable income, less IRS standard allowable expenses for his geographic location, is a negative number, Means Test is passed and HO qualifies for a CH 7. If number is positive, HO is required to file CH 13 and likely pay the positive number as his Plan payment.</li> </ul>
<b>Why BK Can Be Beneficial for Second Lien Holders</b>	<ul style="list-style-type: none"> <li>• May indicate the HO wants to keep his/her house and is trying to find a way to do so through a payment plan</li> <li>• Keeps 1<sup>st</sup> from foreclosing and wiping 2<sup>nd</sup></li> <li>• HO removes some debt and has more \$ to pay the 2<sup>nd</sup></li> <li>• BK filing contains detailed HO financial information</li> </ul>	<ul style="list-style-type: none"> <li>• HO removes some unsecured debt and has more \$ to pay 2<sup>nd</sup></li> <li>• If HO’s Voluntary Petition indicates they want to Reaffirm / Retain the property, this <i>may</i> indicate they want to keep the house and work out a resolution</li> <li>• BK filing contains detailed HO financial information</li> </ul>
<b>How the BK will affect the HO’s Loan Payments</b>	<ul style="list-style-type: none"> <li>• Typically Pre-petition arrearage will be paid through the CH 13 Plan based on arrearage ÷ Plan months</li> <li>• The remainder of the debt (e.g. monthly payments) is paid directly to the creditor outside the Plan.               <ul style="list-style-type: none"> <li>➢ Eg: What the HO will owe if they <u>don’t</u> work out an agreement with you: Arrears ÷ Plan term (usually 60 months) + regular monthly payment.</li> <li>➢ <i>Often this is an unaffordable number</i></li> </ul> </li> <li>• Payments can come from the Trustee or direct from the HO; it doesn’t matter</li> </ul>	<ul style="list-style-type: none"> <li>• Once the Automatic Stay is no longer preventing the creditor from foreclosing, the entire arrearage must be paid in full or the creditor has the right to foreclose on the debt.</li> <li>• If the HO does not make the regular monthly payments to a secured creditor, the creditor can foreclose (may need a Relief from Stay to do so during the BK).</li> </ul>
<b>You’re OK When...</b>	<ul style="list-style-type: none"> <li>• You have equity (HO can’t strip the junior lien)</li> <li>• Value of the property is determined as of the petition date</li> </ul>	<ul style="list-style-type: none"> <li>• You seek payment through foreclosure if HO is not making monthly payments (need a Relief from Stay during BK to foreclose)</li> </ul>



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	<ul style="list-style-type: none"> <li>The HO falls out of their BK Plan sometime during the 60 months. Your loan is reinstated to the full amount, including any additional arrears that have accrued.</li> </ul>	<ul style="list-style-type: none"> <li>HO “Retains / Reaffirms” the property, indicating they want to stay and pay (this rarely happens).</li> </ul>
<b>You Might Not be OK When...</b>	<ul style="list-style-type: none"> <li>You have no equity and HO files to strip your Junior lien</li> <li>1<sup>st</sup> mortgage is granted a “Relief from Stay” and moves to foreclose, thereby wiping out your 2<sup>nd</sup> lien</li> </ul>	<ul style="list-style-type: none"> <li>HO “Surrenders” property (indicate they don’t want to stay / pay) and lack of equity means a decision on foreclosing / DIL</li> <li>1<sup>st</sup> mortgage is granted a “Relief from Stay” and moves to foreclose, thereby wiping out your 2<sup>nd</sup> lien</li> </ul>
<b>Exits</b>	<ul style="list-style-type: none"> <li>Workout during the BK</li> <li>Foreclose after Motion for Relief</li> <li>HO falls out of the plan during the 60 (36) months and your debt becomes fully secured again, back to negotiations               <ul style="list-style-type: none"> <li>➤ Sell the loan if it is performing in BK</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Workout during the BK</li> <li>Foreclose after Motion for Relief</li> <li>Workout after the BK but probably after starting foreclosure</li> </ul>
<b>Key BK Court Docs</b>	<ul style="list-style-type: none"> <li>PACER – Public Access to Court Electronic Records, <a href="http://www.pacer.gov">www.pacer.gov</a></li> <li>Docket Report – all documents / motions in chronological order</li> <li>Voluntary Petition &amp; Plan - assets, liabilities, income, expenses, intent regarding property (strip/surrender/retain)</li> <li>In a CH 13, you need to file a Proof of Claim (POC) (or have your attorney do so) by the deadline set when the case is filed in order to get your debt on record and make sure you are part of the Creditor Matrix so you get mailings. In a CH 7 case, a Proof of Claim is not required to be filed by a secured creditor.               <ul style="list-style-type: none"> <li>➤ Send copy to Courthouse to have it filed and a courtesy copy to the HO’s attorney &amp; the HO</li> <li>➤ Should file a Transfer of Claim if the prior note owner had already filed a POC</li> <li>➤ Once a workout is reached, file an amended POC</li> </ul> </li> <li>Only creditors who file POCs (CH 13) will be included in the Plan payments.</li> </ul>	
<b>Miscellaneous Tips</b>	<ul style="list-style-type: none"> <li>BK attorney fees and costs may be added to loan amount if the mortgage/deed of trust provides for recovery of these amounts (most do)</li> <li>When choosing a BK attorney, you want one who focuses on representing creditors in BK as opposed to Debtors</li> </ul>	



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*Disclaimer: Even though bankruptcy law is federally based, there are significant differences in local rules from state to state and Judge to Judge. This information is not intended to be relied upon without consulting a local bankruptcy attorney who has experience to help you understand any unique local bankruptcy rules.*

### FREQUENTLY ASKED QUESTIONS

1. When do I need to retain an attorney? What can I do myself?
2. Can I call the bankruptcy trustee for information about a case?
3. What do I need to do if the Debtor listed my predecessor in the case and not me/my entity which is the current note holder?
4. What is the significance of not filing a Proof of Claim?
5. What do I need to do if a HO files a Motion to Value or Avoid my lien? Do I have to obtain an appraisal or will a BPO/Zillow work?
6. Why would a HO file CH 7 if they want to keep the home and are delinquent on the 2<sup>nd</sup>?
7. Do I need to attend the 341(a) Meeting of Creditors?
8. Why won't the HO's attorney call me back? What can I do if I want to present a workout to the HO?
9. How can I analyze a CH 13 case once it's filed to determine how I will be treated?
10. Can I just wait out a CH 7 since it's a short case, or would I file a motion? Pro's / Con's
11. Is there anything I can do if my lien has been avoided and I missed the hearing / deadline for filing an opposition?
12. How can I be notified of the documents filed in a case?