

Frequently Asked Questions Quick Reference Table

Question	Chapter 7	Chapter 13
<p>What occurs when an NCP files for bankruptcy?</p>	<p>By federal law, some actions are immediately proscribed, like as civil (indirect) contempt. However, the duration of this prohibition is usually only 60-120 days.</p> <p>Other administrative actions, such as income withholding, license suspension, credit bureau reporting and tax refund interception may be initiated. Passport revocation is not recommended.</p>	<p>By federal law, some actions are immediately proscribed, such as civil (indirect) contempt. This duration of this prohibition is usually 3-5 years.</p> <p>Other actions, such as income withholding, license suspension, credit bureau reporting and tax refund interception may be instituted. Passport revocation is not recommended. However, income withholding and tax refund interception may be limited by the confirmation order. Be careful!</p>
<p>How does the obligor pay pre-petition debt during the bankruptcy?</p>	<p>Generally, the obligor pays by income withholding, or directly to the clerk's office or state disbursement unit if income withholding is not available.</p>	<p>Generally through the bankruptcy trustee, who pays the state disbursement unit. Some plans allow for the obligor to pay outside the plan.</p>
<p>What will happen if the obligor fails to pay pre-petition debt?</p>	<p>If administrative methods like income withholding, tax refund offset, and license suspension aren't working, bankruptcy court permission is required to lift the automatic stay before contempt or other actions may be initiated.</p>	<p>If administrative methods like income withholding, tax refund offset, and license suspension aren't working, bankruptcy court permission is required to lift the automatic stay before contempt or other actions may be initiated</p>

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Is child support dischargeable?	No. Child support arrearage, including money owed to the state, may not be discharged in bankruptcy.	No. Child support arrearage, including money owed to the state, may not be discharged in bankruptcy.
What is the usual duration of a bankruptcy action?	Approximately 60-120 days	Typically 3-5 years, depending on the plan.
What Title IV-D actions can be taken during the pendency of a bankruptcy case?	<ul style="list-style-type: none"> · Paternity Establishment · Child Support Order Establishment · Child Support Modification · Income Withholding · License suspension · Credit bureau reporting · Tax refund interception · Medical Support Enforcement 	<ul style="list-style-type: none"> · Paternity Establishment · Child Support Order Establishment · Child Support Modification · Income Withholding* · License suspension · Credit bureau reporting · Tax refund interception* · Medical Support Enforcement <p>* Depends on Confirmation Order; Discuss with Title IV-D Attorney</p>
What enforcement actions can NOT be taken while a bankruptcy case is pending?	<ul style="list-style-type: none"> · Civil contempt actions · Foreclosure on bankruptcy estate property · Passport Revocation · Demand Letters 	<ul style="list-style-type: none"> · Civil contempt actions · Foreclosure on bankruptcy estate property · Passport Revocation · Demand Letters · Any collection outside the plan if confirmed plan calls for payments to be made in the plan
Can bankruptcy court authorize enforcement actions that are otherwise prohibited?	Yes, but a request to lift the automatic stay must be filed in the bankruptcy court. A hearing may be required.	Yes, but a request to lift the automatic stay must be filed in the bankruptcy court. A hearing may be required.

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Does the filing of a petition bring the automatic stay into effect under §362?	Yes	Yes
What assets become property of the estate?	Debtor's property at commencement, with a few exceptions. Post-petition property is usually excluded §541.	Pre-petition property like in Chapter 7 cases, as well as post-petition property. §§541 and 1306.
How is estate property processed?	Liquidation and distribution of proceeds to creditors (possibility of redemption under §722 or the retention of encumbered property by reaffirmation under §524).	Reverts to the debtor upon confirmation of the plan. §1327.
What significance does bankruptcy have on the debtor's post-petition income?	None. The debtor retains this income.	The debtor's disposable income must be directed to payments under the plan. §§1322(a), 1325(b).
Who administers the estate and operates any of the debtor's business?	Trustee administers the estate and conducts interim business operations. Business is liquidated as soon as possible. §§701-703, 721.	Trustee implements investigative and ministerial function and disburses payments under plan. Debtor continues to operate any business under trustee's supervision. §§1302, 1304.
Can the case be converted to a case under another chapter? If so, who may apply to court for conversion?	Debtor has an expansive conversion right. §707. Creditors can initiate conversion to Chapter 11 for cause. §706.	Debtor has a broad right of conversion. §1307. Creditors can convert to Chapter 7 for cause §1307.
	May be dismissed by debtor/ interest party only for cause, or by U.S. Trustee or court.	Debtor has broad right to dismiss. Other interested parties can dismiss for cause. §1307.

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What is the time period for payment?	Liquidation and distribution as expeditiously as possible. §704.	Payments must be made over a period of 3 years to 5 years, depending on the plan. §1332.
What are the guidelines establishing the minimum level of payment to creditors?	Creditors cannot get more than the total proceeds realized from estate property. <i>Secured claims</i> are satisfied from proceeds of collateral. <i>Priority claims</i> are paid in order of rank, followed by general unsecured claims. Members of each class share pro rata. Once the fund is exhausted, junior classes are excluded. §§506-507, 726.	Plan must give <i>secured creditors</i> the present value of the secured claim, and preserve their liens. <i>Priority claims</i> must be paid in full. Payments to <i>unsecured creditors</i> must meet “best interests” and “disposable income” tests. Creditors can accede to lesser payments. §§1322, 1325.
To what degree may the debtor favor of a preferred creditor or class of creditors in the bankruptcy distribution?	No discrimination is allowed. Creditors in each category (secured, priority and unsecured) must be treated on an equal basis as other creditors in that category.	The plan may designate classes of unsecured creditors and may discriminate between them. However, it cannot discriminate unfairly against any class and cannot discriminate between creditors in a class. §1322.
Does the debtor have the power to ameliorate prior default on or to reconstruct payments on or to modify secured obligations?	No, unless the secured creditor consents to the modification in a reaffirmation agreement under §524.	Cure, restructuring and modification in the plan are generally allowed. §1322.
Do creditors have any ability to participate in the formulation of the plan, or to propose their own plan?	There is no plan in this form of bankruptcy.	Only the debtor may propose a plan. §1321.
To what degree is creditor consent needed to approve the proposed bankruptcy distribution?	Creditor consent does not present in the Chapter 7 distribution, which is fixed by the Code. §726.	Creditors have no vote on the debtor’s plan, but are allowed to object if it fails to meet confirmation standards. They can agree to treatment less favorable than that to which they are authorized under the Code. §§1325, 1327.

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When is the discharge granted?	During the course of the case, after conclusion of the period for the filing objections to discharge. Rule 4004.	After completion of payments under the plan, unless a hardship discharge is granted.