

Divorce and Separation During Chapter 13 Bankruptcy



What happens when a married couple who has filed Chapter 13 bankruptcy separates?

Married couples frequently file a bankruptcy case together in what is called a joint case. The Chapter 13 term lasts three to five years. Sometimes the couple's relationship falls apart during that term. This article discusses three options that an attorney would discuss with the couple.

One option is for the couple to continue with the chapter 13 bankruptcy case. The challenges with this option are two-fold. First, the estranged spouses must continue to work together in some capacity to keep the case going, and this is not easy when they have just decided to separate. Second, the Chapter 13 bankruptcy plan payment must continue, which can be a financial burden to one or both of the clients. The separation might warrant a lower Chapter 13 plan payment because expenses have changed, and the clients can consult with their attorney

to discuss this issue. The clients must decide among themselves who is responsible for the Chapter 13 plan payment, or if they will share the responsibility.

Note that if the clients are unable to come to an agreeable solution between themselves, this may force them to have to find independent legal counsel in the bankruptcy case. This may require the bankruptcy attorney to withdraw as counsel because the attorney is not able to counsel each person without impacting the other party.

If the clients are unable to continue paying the Chapter 13 plan payment, then the couple will have the option of converting the case from a Chapter 13 to a Chapter 7. The attorney will determine whether the clients are precluded from converting their case to a chapter 7 because their income is too high or because of previous bankruptcy case filings. The attorney will also look for other issue such as asset exposure or issues concerning secured debt. Sometimes clients who separate cannot afford secured debt, such as a car loan or a mortgage loan, so those clients may need to surrender the car or house in the Chapter 7 conversion.

If the clients cannot continue to make the Chapter 13 plan payments and conversion is not a viable option, their case will dismiss. Once the case is dismissed, each spouse can consult with an attorney about filing an individual case.

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