

KEY DIFFERENCES BETWEEN INDIVIDUAL CHAPTER 11 CASES AND CHAPTER 13 CASES¹

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(**CAUTION:** Most of the statutes cited in this document link to Cornell University Law School, Legal Information Institute's presentation of the U.S. Code. It is incumbent upon the reader to make sure that the information there is up to date. This document is also not intended to give legal advice, rather to point out areas where there are significant differences between chapter 11 and chapter 13 and encourage you to do the research. This document does not list every instance of difference; those you must ascertain for yourself.)

	CHAPTER 11	CHAPTER 13
Eligibility		
Debt amounts.	None. However, see § 101(51D) for definition of a small business debtor which may affect the timing of events in your case. (The current dollar amount to determine whether a debtor is a small business debtor is \$2,190,000 or less).	Not eligible if the amount of secured and unsecured debt exceeds certain limits. § 109 (The dollar amounts change every three years with the last change having taken effect on April 1, 2010. § 104(a) The current dollar limits are unsecured debts less than \$360,475 and secured debts less than \$1,081,400).
Fees		
Filing Fees	\$1,046 (as of Nov. 1, 2011)	\$281 (as of Nov. 1, 2011)
Trustee's Compensation	None unless trustee appointed. If appointed, compensation based on "commission" set by Code §§ 326(a) , 330(a)(7) .	Up to 10% of plan payments made by the trustee. 28 USC § 586(e)(1)(B)(I) .
UST Fees	Minimum \$325 per quarter; increases as disbursements increase.	None.
Attorney's Fees	Depends on complexity: \$15,000 to \$25,000+	\$2,500 to \$4,500 (if fee apps filed)
Committee Fees	Committee authorized to employ attorney and other professionals at estate's expense, Code §§ 330(a) , 503(b)(2) , 1103(a) . Small business debtors may ask that no committee be appointed.	No committees, no fees.
Financial Reporting		

¹Adapted and updated from materials originally prepared by the Honorable Michael S. McManus, E.D. Cal.

	CHAPTER 11	CHAPTER 13
Prepetition Counseling	All individual debtors must go through credit counseling prior to filing a prepetition. Code § 109 (b)(1) .	All individual debtors must go through credit counseling prior to filing a prepetition. Code § 109 (b)(1) .
Prepetition Tax Returns	If requested by the UST, court, or party in interest, federal income tax returns for the 3 years prior to the petition and unfiled when the case was commenced must be filed with the court. Code § 521 (f)(2), (g)(2) .	Same requirement. Plus , not later than 7 days before the first date set for the creditors' meeting, a chapter 13 debtor must provide the trustee, and any creditor making a timely request, with a copy of the federal income tax return or transcript for the most recent prepetition tax year for which a return was required. Code § 521 (e) ; Rule 4002(b)(3) & (4) . Plus, Code § 1308(a) requires that all delinquent tax returns due for tax periods ending during the 4-year period prior to the filing of the petition be filed with the appropriate tax entity no later than the day before the first scheduled date for the meeting of creditors.
Statements & Schedules	Code § 521 (a)(1) requires all debtors to file a list of creditors, schedule of assets and liabilities, schedule of current income and current expenditures, statement of financial affairs, Code § 342(b) certificate (only if debts are primarily consumer debts), copies of employer payment advices, statement of monthly net income, and statement of reasonably anticipated increases in income or expenditures.	Same requirement. But , in chapter 13 cases, if these documents are not filed within 45 days of the filing of the petition, the case is "automatically" dismissed on the 46th day. Code § 521 (l) . Not so in chapter 11 cases.

	CHAPTER 11	CHAPTER 13
Disclosure Statement	If the debtor is not a small business debtor, the plan must be accompanied by a disclosure statement. It must be approved as including "adequate information" necessary for a "hypothetical investor" to make an informed judgment about the plan before acceptances to the plan are solicited. Code § 1125 . In Central District of California, the form plan and disclosure statement should be used (and certain judges have individual forms). In a small business case, the court may permit a combined plan and disclosure statement; or use of a form disclosure statement. The court may also conditionally approve the disclosure statement, subject to final approval at the confirmation hearing. Code § 1125(f) ; Rules 3016(b) , 3017.1 .	None.
Financial Reports	Code § 308 requires small business debtors to report their current and recent financial status, profitability, cash flow projections, comparisons of actual and projected receipts and disbursements, compliance with the postpetition requirements imposed by the Bankruptcy Code and the Bankruptcy Rules, filing of tax returns, and payment of all administrative expenses and taxes. To a degree, this information is included in the monthly operating reports required by the Office of the United States Trustee.	Section 308 does not apply in chapter 13 cases.
Disposable Income	Official Form 22B must be filed. Rule 1007(b)(5). This form is much less detailed than Official Form 22C . Means test deductions required by Code § 1325(b)(3) are not applicable in a chapter 11.	Official Form 22C must be filed. Rule 1007(b)(6)
Property of the Estate	All property is included in the bankruptcy estate. Code § 541 (a) . The estate includes property acquired after the petition is filed as well as an individual debtor's earnings from services. Code § 1115 (a) and (b) .	Same requirement.
The Plan		

	CHAPTER 11	CHAPTER 13
Who May File a Plan and When it Must Be Filed	In a small business case, only the debtor may propose a plan in the first 180 days of the case. Thereafter, any party may file a plan. All plans must be proposed by the 300th day. Code § 1121 (e) . In all other cases without trustees, only the debtor may file the plan in the first 120 days. If filed, the debtor has until the 180th day to solicit acceptances of the plan. If a trustee is appointed and no plan is filed in the first 120 days, or if the debtor fails to obtain the acceptance of the plan by the 180th day, any party in interest may propose a plan Code § 1121(a), (c), & (d) . These time periods can be extended for up to 18 months after petition date (to file a plan) and 20 months after petition date (for acceptances).	Only the debtor may propose a plan. § 1321 . It must be filed within 14 days of the filing of the petition. Rule 3015(b) .
Earliest Confirmation Date	<p>A meeting of creditors may occur no earlier than 21 days and no later than 40 days after the order for relief. Rule 2003(a). However, nothing in chapter 11 requires that the meeting occur or be completed prior to confirmation. If the debtor solicited prepetition acceptances to a “prepackaged” plan, the court may even dispense with the meeting Code § 341 (e). 28 days’ notice of a hearing on disclosure statement and deadline to object to disclosure statement and 28 days’ notice of a confirmation hearing and deadline to object to confirmation must be given. (Total process = 60 to 90 days). Rule 2002(b).</p> <p>If a small business debtor files a plan with the petition, if conditional approval is given to the disclosure statement on the 1st day of the case, and if objections may be raised at the confirmation hearing, the hearing could take place as early as the 28th day. Code § 1129(e) requires that the plan of a small business debtor be confirmed no later than 45 days after the plan is filed.</p>	<p>A meeting of creditors may occur no earlier than 21 days and no later than 50 days after the order for relief. Rule 2003(a).</p> <p>Parties must receive 21 days’ notice of the meeting. Rule 2002(a)(1). 28 days’ notice of a confirmation hearing and deadline to object to confirmation must be given. Rule 2002(b). Confirmation hearing may take place no earlier than 21 days and no later than 45 after meeting of creditors. Code § 1324(b) Assuming: notice of the meeting served on the first day of the case; a meeting on the 21st day; notice of the confirmation hearing served on 14th day; and objections raised at the confirmation hearing, confirmation could occur as early as the 40th day</p>

	CHAPTER 11	CHAPTER 13
Confirmation Standards		
Priority Debt	<p>Must be paid in full. Code § 1129(a)(9). Tax priority claims may be paid in installments. If so, interest must be paid, the installments must be regular, and be over a period ending not later than 5 years after the order for relief. Code § 1129(a)(9)(C). Nontax priority claims must be paid on the effective date unless the class accepts deferred cash payments. When paid deferred cash payments, interest must be paid. Code § 1129(a)(9)(B) Debtor must be current on all post-petition domestic support obligations in order to confirm plan. Code § 1129(a)(14).</p>	<p>Must be paid in full, but if the plan has a term of 5 years and provides for the payment of all disposable income to creditors, the plan may provide for less than full payment of a domestic support obligation assigned to, owed directly to, or recoverable by, a governmental unit. Code §§ 507(a)(1)(B), 1322(a)(4). Code § 1322(a)(2) does not require that interest be paid on priority claims when they are paid in installments. No restrictions on the debtor's ability to pay over the length of the plan.</p>
Voting	<p>Creditors with impaired claims may vote. A class of claims accepts the plan when 1/2 in number and 2/3 in amount of the claims voting accept the plan. Code §§ 1124, 1126, 1129(a)(8).</p>	<p>Creditors may not vote.</p>
Absolute Priority Rule	<p>If at least one impaired class of claims accepts the plan, it may be confirmed over the rejection of a class of unsecured claims if all claim holders in the rejecting class will be paid in full, or if no holder of a claim or interest junior to the rejecting class will receive or retain anything on account of such claim or interest. Code § 1129(b)(1)(B)(i)-(ii). Code § 1129(b)(2)(B)(ii) carves out an exception to the absolute priority rule permitting individual chapter 11 debtors to retain postpetition earnings except to the extent necessary to pay postpetition domestic support obligations.</p>	<p>Because creditors may not vote, there is no absolute priority rule.</p>
Best Interests	<p>Unless the claim holder makes an election under code § 1111(b), a chapter 11 plan must provide to each holder of a claim in an impaired class not less than the present value of the amount that would be paid on such claim if the estate were liquidated under chapter 7. Code § 1129(a)(7).</p>	<p>A chapter 13 plan must provide to each allowed unsecured claim not less than the present value of the amount that would be paid on such claim if the estate were liquidated under chapter 7. Code § 1325(a)(4).</p>

	CHAPTER 11	CHAPTER 13
Best Efforts	<p>If the holder of an allowed unsecured claim objects to confirmation, the plan must either pay unsecured claims in full, or the value of the property distributed under the plan must be no less than the projected disposable income of the debtor. Code § 1129(a)(15). Disposable income must be projected over the longer of the 5-year period following the first plan payment, or the entire period the plan provides for payments. Code § 1129(a)(15). To project disposable income, the debtor’s actual expenses, provided they are reasonably necessary for the maintenance or livelihood of the debtor, are deducted from current monthly income. The “presumed expenses” deducted from current monthly income under code § 1325(a)(3) are not applicable. Code §§ 1129(a)(15)(B) & 1325(b)(2).</p>	<p>If the holder of an allowed unsecured claim or the trustee objects to confirmation, the plan must either pay the unsecured claims in full, or all projected disposable income must be applied to make payments to unsecured creditors. Code § 1325(b)(1). Disposable income projected over 3 years must be devoted to the payment of unsecured creditors if the debtor’s annualized current monthly income is less than median family income. If it is more, the commitment period increases to 5 years. §§ 1322(d), 1325(b)(1)(B) & (b)(4). The method of projecting disposable income hinges on whether the debtor’s annualized current monthly income is greater than median family income. If greater, the expenses deductible from debtor, current monthly income are limited by the presumed expenses used in the means test. Code § 707(b)(2), 1325(a)(3). If less than or equal to median family income, actual expenses that are reasonably necessary for the maintenance or livelihood of the debtor are deductible from current monthly income as under code § 1129(a)(15)(8). Code § 1325(b)(2).</p>
Treatment of Certain Claims		
Home Mortgages	<p>The plan may provide for the cure of any arrears on a home mortgage. Code § 1123(a)(5)(G), (b) & (d). “Curing” a default is distinct from modification of a claim. <i>In re Lennington</i>, 288 B.R. 802 (Bankr C.D. III, 2003). Unmatured, unaccelerated claims secured only by the debtor’s home cannot be modified. Code § 1123(b)(5). The exception to the anti-modification rule in chapter 13, Code § 1322(c), is not applicable in chapter 11. As a result, it does not appear that a matured or accelerated home loan can be extended unless such is permitted by applicable nonbankruptcy law.</p>	<p>The plan may provide for the cure of any arrears on a home mortgage. Code § 1322(b)(3). Unmatured, unaccelerated claims secured only by the debtor’s home cannot be modified. Code § 1322(b)(2). Section 1322(c) permits chapter 13 debtors to cure defaults under a home mortgage unless and until the home is sold at a foreclosure sale. Also, notwithstanding the maturity of a home loan, the plan may provide for payment of the home loan through the plan pursuant to Code § 1325(a)(5)(8).</p>

	CHAPTER 11	CHAPTER 13
Other Secured Claims	Unlike chapter 13, nothing in chapter 11 prevents an individual debtor from stripping down an undersecured claim into its secured and unsecured parts, and treating each part as a separate and distinct claim. Code § 1129(b)(1)(A) . Periodic payments to secured creditors need not be in equal installments. But see secured tax claims below.	Plan may not bifurcate certain undersecured claims into secured and unsecured constituent parts. Code § 1325(a)(5) . This prohibition extends to claims secured by purchase money debt incurred within 910 days of the petition and secured by motor vehicles acquired for the personal use of the debtor or incurred during the 1-year period preceding the petition and secured by any other thing at value. If a secured claim is being paid through the plan in periodic payments, “such payments shall be in equal installments.” Code § 1325(a)(5)(B)(iii)(I) .
Secured Tax Claims	Secured tax claims that would otherwise be priority tax claims under code § 507(a)(8) were they not secured must be paid regular installments over a period ending 5 years after the order for relief and “in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan.” Code § 1129(a)(9)(D) .	No similar limitations.
Long Term Debt	There is no limitation on the maximum duration of a chapter 11 plan. Consequently, it is possible to provide in the plan for the conversion of short-term debt to long-term debt. However, unless court orders otherwise, an individual chapter 11 debtor is not entitled to a discharge until the “completion of all payments under the plan.” Code § 1141(d)(5)(A) . Second, if an unsecured creditor objects, Code § 1129(a)(15)(B) requires an individual chapter 11 debtor to commit all projected disposable income “during the period for which the plan provides payments.”	The only debt that may be treated as long-term debt is a debt that matures after the completion of the plan and is not modified by the chapter 13 plan. (Cure permissible.) Provided a chapter 13 plan seeks only to cure an arrearage, long-term debt may continue beyond the length of the plan. Code § 1322(b)(3) & (5) .

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Duration of Plan		
Minimum Length	There is no mandatory minimum chapter 11 plan length. However, if the holder of an allowed unsecured claim objects to a plan that does not pay unsecured claims in full, “the value of the property distributed under the plan [must be] not less than the projected disposable income of the debtor (as defined in § 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.” Code § 1129(a)(15)(B) .	There is no mandatory minimum chapter 13 plan length. But if the plan does not provide for payment of unsecured claims in full and if the trustee or an unsecured creditor objects, the plan must run 3 to 5 years depending on whether annualized current monthly income exceeds state median family income. Code §§ 1322(d) , 1325(b)(4)(A)(ii) .
Maximum Length	Chapter 11 does not limit the length of chapter 11 plans. However, if an unsecured creditor objects, Bankruptcy Code § 1129(a)(15)(B) requires an individual chapter 11 debtor to commit all projected disposable income for 5 years or, if longer, “during the period for which the plan provides payments.” Also, unless the court orders otherwise, no discharge will be issued until the “completion of all payments under the plan.” Code § 1141(d)(5)(A) .	Absent good cause, a plan cannot require payments for more than 3 years if annualized current monthly income is less than the state median family income. Code § 1322(d)(2) . If there is good cause to exceed 3 years, the plan’s length may not exceed 5 years. Code § 1322(d)(1)(C) . If annualized current monthly income is equal to or more than median family income, a chapter 13 plan may not require payments for more than 5 years. Code § 1322(d)(1) .
Modification of Plan		
Pre-Confirmation	Only the proponent of the plan may modify it prior to confirmation. Bankruptcy Code § 1127(a) .	Only the debtor may modify the plan prior to confirmation. Code § 1323(a) .
Post-Confirmation	If the debtor is an individual, after confirmation of the plan, and whether or not the plan has been substantially consummated, the debtor, any trustee, the United States Trustee, or the holder of an unsecured claim may propose a modification. This right ends when the plan payments have been completed. Code § 1121(e) .	After confirmation, the debtor, the trustee, or the holder of an unsecured claim may propose a modification. This right ends when the plan payments have been completed. Code § 1329(a) .

	CHAPTER 11	CHAPTER 13
Discharge		
Timing	After completion of plan payments. Code § 1141 (d)(5)(A) . But the court may order otherwise.	After completion of plan payments. Code § 1328(a)
Domestic Support Obligations	Individual chapter 11 debtor with a “domestic support obligation” is not required to certify currency on all required payments.	Debtor with a “domestic support obligation” also must certify that he or she is current on all required payments before the discharge will be entered. Code § 1328(a) .
Financial Management Course	Individual chapter 11 debtor is required to take course to obtain discharge. Code § 1141(d)(5) which references Code § 727(a) . See Code § 727(a)(11) .	Debtor must complete a financial management course. Code § 1328(g) .
Hardship Discharge	After confirmation but before completion of plan payments, Code § 1141(d)(5)(B) permits an individual debtor to request a hardship discharge.	After confirmation but before completion of plan payments, Code § 1328(b) permits an individual debtor to request a hardship discharge.
Super Discharge	Not available.	Available but watered down. May discharge a debt for willful and malicious injury, <i>see</i> Code § 523(a)(6) , as well as domestic nonsupport obligations, <i>see</i> Code § 523(a)(15) . But Code § 1328(a)(4) excepts for restitution or damages awarded in a civil action against the debtor as a result of “willful or malicious injury” that caused personal injury or death.
Consequences When Case is Unsuccessful		
Small Business Debtor Exception to Automatic Stay	The automatic stay does not apply to cases filed by a small business debtor if the debtor was a debtor in an earlier small business, case that remains pending, or it was previously a debtor in a small business that was dismissed or had a plan confirmed within the 2 years preceding the latest petition. Also, an entity that acquires substantially all of the assets of a small business having a petition dismissed or plan confirmed in the preceding 2 years cannot acquire the automatic stay in its own bankruptcy case petition unless it proves by a preponderance of the evidence that the acquisition was not for the purpose of evading Code § 362(n) .	Nothing similar in chapter 13.

	CHAPTER 11	CHAPTER 13
Case Pending in Prior Years	If an individual was a debtor in a prior case under chapter 7, 11, or 13, if that prior petition was dismissed, and if the prior petition was pending within 1 year of the new petition, the automatic stay with respect to a debt, property securing such debt, or any lease terminates as to the debtor (but not the estate) on the 30th day after the filing of new case. However, Code § 362(c)(3) does not apply if the new case was filed under a chapter other than chapter 7 after the prior case was dismissed pursuant to Code § 707(b) . Code § 362(c)(3)(B) permits any party in interest to file a motion to extend the stay as to all or some creditors. Such a request must be made with notice and a hearing and must be made within 30 days of the filing of the petition.	If an individual was a debtor in a prior case under chapter 7, 11, or 13, if that prior petition was dismissed, and if the prior petition was pending within 1 year of the new petition, the automatic stay with respect to a debt, property securing such debt, or any lease terminates as to the debtor (but not the estate) on the 30th day after the filing of new case. However, Code § 362(c)(3) does not apply if the new case was filed under a chapter other than chapter 7 after the prior case was dismissed pursuant to section 707(b). Code § 362(c)(3)(B) permits any party in interest to file a motion to extend the stay as to all or some creditors. Such a request must be made with notice and a hearing and must be made within 30 days of the filing of the petition.
More than One Case Pending in Prior Years	When an individual debtor has filed two or more prior cases that were pending during the previous year, but were dismissed, the automatic stay never goes into effect. Once again, there is an exception for a case “refiled” under code § 707(b) . A party in interest may request that the court impose the automatic stay despite the filing and dismissal of multiple prior petitions. Code § 362(c)(4)(B) . Such a request must be made with notice and a hearing and must be made within 30 days of the filing of the petition.	When an individual debtor has filed two or more prior cases that were pending during the previous year, but were dismissed, the automatic stay never goes into effect. Once again, there is an exception for a case “refiled” under code § 707(b) . A party in interest may request that the court impose the automatic stay despite the filing and dismissal of multiple prior petitions. Code § 362(c)(4)(B) . Such a request must be made with notice and a hearing and must be made within 30 days of the filing of the petition.
Other Issues		
Taxes	§ 1398 of the Internal Revenue Code treats the chapter 11 estate as a separate taxable entity for the debtor. Promptly after filing the chapter 11, the debtor must obtain an employer identification number (EIN). And the debtor (or trustee, if one has been appointed) must file a tax return for the bankruptcy estate. (IRC §6012(a)(9) , §6012(b)(4))	§ 1398 is not applicable to chapter 13.

