

POSTED ON FEBRUARY 21, 2010 BY JONATHAN ALPER

Chapter 13 Debt Limits Set To Rise: Many People Still Denied 13 Relief By High Mortgage Debts

The 2005 bankruptcy law was supposed to encourage, or require, many debtors to file a Chapter 13 repayment bankruptcy instead of a Chapter 7 "wipe out" bankruptcy. People who make too much money relative to expenses usually fail the Chapter 7 means test and are forced into Chapter 13. Not exactly. The problem is that Chapter 13 has debt ceilings. Regardless of how badly you flunk the means test you are ineligible to file Chapter 13 if your secured debts total more than approximately \$1,000,000 or if your unsecured debts total more than approximately \$350,000.

These debt limits frequently close people out of Chapter 13 even if they are willing to pay what they can afford to creditors. Blame it on the housing bubble. The great housing inflation not only raised prices, but it also increased mortgage amounts. Liberal issuance of second mortgages took peoples total mortgages even higher. Many people now filing bankruptcy became insolvent because of the depreciation of investment real estate- more mortgages. All homestead mortgages and all investment property mortgages count as secured debts to the extent they remain secured by property value. Upside down mortgages are secured debts to extent of current property value and are unsecured debts to the extent of the deficiency. The sum of this mortgage debt is throwing many people out of Chapter 13.

If you don't qualify for Chapter 7 or Chapter 13 you have two alternatives. One is Chapter 11 bankruptcy, but Chapter 11 is a very complicated procedure and involves legal fees- mostly over \$20,000, which few individual debtors can afford. Chapter 11 procedures are appropriate for large corporate bankruptcy. The only other alternative for people who cannot file 7 or 13 is to face creditor lawsuits without any bankruptcy protection.

The Chapter 13 debt limits increase effective April 1, 2010. The increase is only 3%. The debt ceilings will not significantly rise. The April, 2010, increase will not solve the problem.

If a debt is contingent or unliquidated that debt does not count toward Chapter 13 debt limits. A debt is contingent if the debtor will owe them only if something happens in the future. A purchaser's debt to a seller may be contingent upon the seller delivering the product at a future date. An unliquidated debt is owed now, but the debtor does not know the amount and cannot determine the amount. If a debtor has been sued, and the court found the debtor liable but the damage award is undecided then the debtor is facing an unliquidated claim.

If you think your debts exceed Chapter 13 limits check with an attorney to see if the attorney believes that some of your debts may be either legally contingent or unliquidated.