

WHEN A DEBTOR IS NOT ELIGIBLE FOR A CHAPTER 13 DISCHARGE AFTER AN EARLIER CASE WAS FILED

Taking the date a case was filed as “today.” The date of **filing** is the date that matters. The discharge date or case closed date is not relevant. What date was the first case filed? What date was the second case filed?

1. If debtor has received a discharge in a case under chapter 7, 11 or 12 that was **filed** within the past 4 years cannot receive a chapter 13 discharge in a case filed today. (11 U.S.C. §1328(f)(1))

When a Chapter 7 case has been filed within the last four years prior to the filing of a Chapter 13 case, the debtor cannot receive a Chapter 13 discharge (they can still have a case, just will not be able to obtain a discharge at the end.

2. If debtor has received a chapter 13 discharge in a case that was **filed** within the past 2 years cannot receive a chapter 13 discharge in a case filed today. (11 U.S.C. §1328(f)(2)- this will almost never arise.)

This is almost a trick situation. For the most part, a Chapter 13 case is going to go for 3 to 5 years, so it would be a very unusual situation where a second case is filed less than two years after the first case was filed *where there was a discharge granted in the earlier case*. If no discharge was entered in an earlier case, this provision does not apply and a discharge can be entered if the debtor makes it to the end of the second case.

As to conversions: When a case is converted from one chapter to another, the filing date is the date on which the second case was **filed**. **The date of conversion is not relevant.** 11 U.S.C. §348(a).

The conversion situation will arise more when a case converts from 13 to 7. That is why we have cases that convert to 7, and then come back to a 13, as the parties discover that they cannot get a discharge in a Chapter 7 after they converted.

That is because the second case was filed less than 8 years after a Chapter 7 case was filed (and debtor received a discharge) or the second case was filed less than 6 years after a Chapter 13 case was filed and the debtor received a discharge. Because the date of filing is the relevant date, it does not matter when the case converts. This is a common mistake, where the party thinks that 8 or 6 years have run, but since the case was originally filed within 8 or 6 years of the first case, they cannot receive a subsequent discharge in Chapter 7, if they convert.