AMERICAN BANKRUPTCY INSTITUTE

2022 Annual Spring Meeting

Advanced Chapter 13 Hot Topics

Alane A. Becket
Becket & Lee LLP; Malvern, Pa.

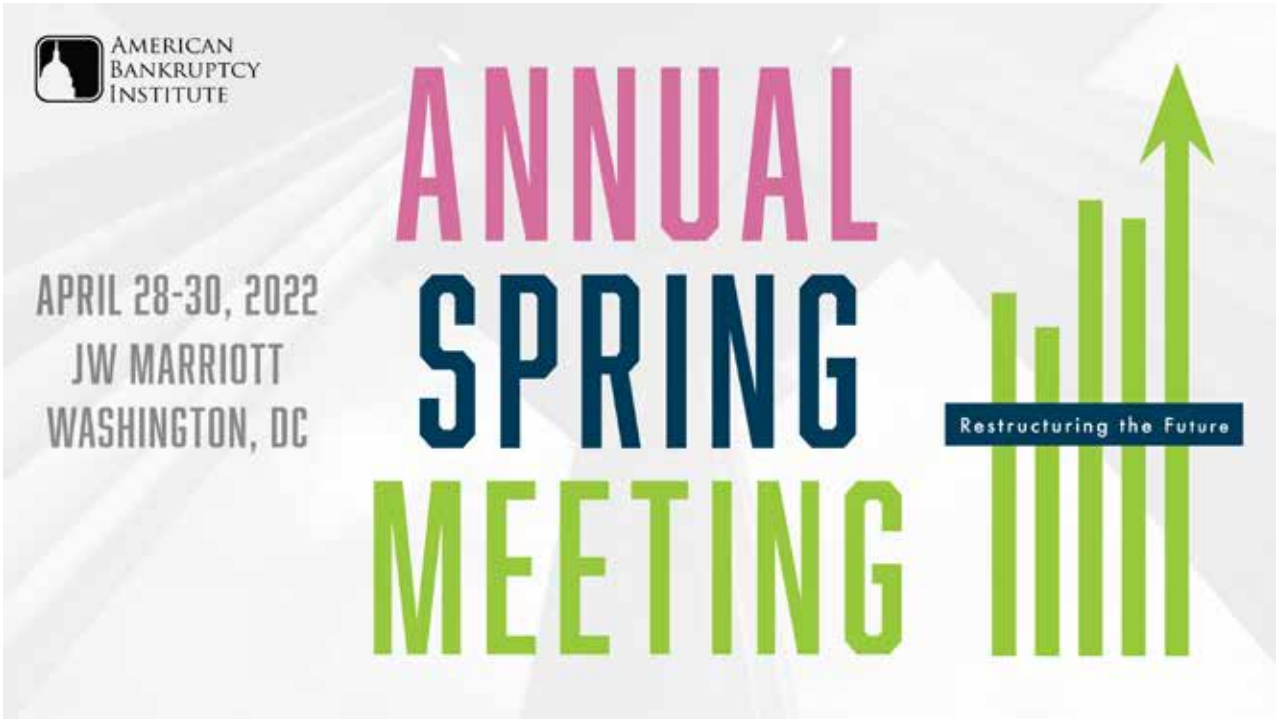
Hon. Daniel P. Collins
U.S. Bankruptcy Court (D. AZ); Phoenix

Richard P. Cook
Cape Fear Debt Relief; Wilmington, N.C.

Nancy J. Whaley
Chapter 13 Trustee; Atlanta

CONCURRENT SESSION

2022



ADVANCED CHAPTER 13 HOT TOPICS

SPEAKERS

Hon. Daniel P. Collins
Judge, U.S. Bankruptcy Court
District of Arizona

Nancy J. Whaley
Chapter 12 & 13 Trustee
Northern District of Georgia
nwhaley@njwtrustee.com

Alane A. Becket
Becket & Lee LLP
Malvern, PA
abecket@becket-lee.com

Richard P. Cook
Cape Fear Debt Relief
Wilmington, NC
richard@capefeardebtrelief.com

AGENDA

- Trustee statutory fees in cases dismissed/converted
- Vesting – What it means, who decides, when it occurs, and why is it important
- Curing plan defaults after month 60

TRUSTEE STATUTORY FEES

If a case is dismissed preconfirmation, may the trustee retain fees from debtor payments made pursuant to the plan?

11 U.S.C. 1226, 1302(a)and (b),1326

28 U.S.C. 586 (a)(3),(b),(d) and (e)

CIRCUIT CASES

10th Circuit

- *In Re Doll:* Trustee won in the Bankruptcy Court, Debtor won in District Court.

9th Circuit

- *In Re Evans:* Debtor won in the Bankruptcy Court, Trustee won in District Court.

1st Circuit

- *In Re Soussis:* Trustee won in the Bankruptcy Court, Trustee won at District Court.

TRUSTEE ARGUMENTS

- The code sections and UST Handbook provide that Standing Trustees collect a statutory fee on all receipts under the plan.
- If debtors prevail, the debtors in confirmed plans will pay the cost of trustee operations.
- Trustee fees will be higher for those in confirmed plans.

DEBTOR ARGUMENTS

- 11 U.S.C. §1326 provides that a trustee is to *hold payments* made by the debtor until confirmation or denial of plan. If confirmed, distribute to creditors and if dismissed, subject to administrative expense, return the funds to the debtor.
- A “Plan” refers to a confirmed plan
- 28 U.S.C. §586 fixes the percentage of the trustee fee but 1326 directs where the money goes.
- The fees may be excessive.

VESTING

"The common definition of vest is to confer ownership (of property) upon a person and to invest (a person) with the full title to property."

Cal. Franchise Tax Bd. v. Kendall (In re Jones), 657 F.3d 921, 928 (9th Cir. 2011) (citing Black's Law Dictionary (9th ed. 2009)).

WHO DECIDES

11 U.S.C. § 1321 – The debtor shall file a plan.

11 U.S.C. § 1322(b)(9), the plan may:

(9) provide for the vesting of property of the estate, on confirmation of the plan or at a later time, in the debtor or in any other entity.

"In sum, we hold that under the plain language of § 1327(b), the property of the estate revests in the debtor upon plan confirmation, *unless the debtor elects otherwise in the plan*." (emphasis added).
In re Jones, 657 F.3d at 928 (9th Cir. 2011)

WHEN DOES VESTING OCCUR

- 11 U.S.C. § 1327(b): (b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

  See e.g., In re Jones, 657 F.3d at 928 (9th Cir. 2011), *Telfair v. First Union Mortgage Corp.,* 216 F.3d 1333, 1341 (11th Cir. 2000), *Black v. U.S. Postal Serv. (In re Heath),* 115 F.3d 521, 524 (7th Cir. 1997).

- What if the debtor chooses vesting at discharge?

  Courts must make specific findings as to why vesting at discharge is needed; default setting is vesting at confirmation. *In re Cherry,* 963 F.3d 717, 720 (7th Cir. 2020) ("A bankruptcy court may confirm a plan that holds property in the estate only after finding good case-specific reasons for that action.").

DOES PROPERTY REALLY VEST AT CONFIRMATION (EVEN IF SPECIFIED IN THE PLAN)?

Not always: *In re Kolenda*, 212 B.R. 851, 853 (W.D. Mich. 1997) (all property of the estate remains property of the estate after confirmation until discharge, dismissal, or conversion); *In re Brensing*, 337 B.R. 376, 383 (Bankr. D. Kan. 2006); *Barbosa v. Soloman*, 235 F.3d 31, 37 (1st Cir. 2000) (post-confirmation proceeds from sale of real property did not vest with debtor).

For an analysis and theories on vesting: *In re Baker,* 620 B.R. 655 (Bankr. Colo. 2020).

What is the importance of vesting (at least for debtors)?

11 U.S.C. § 1327(c): … property vesting in the debtor … is free and clear of any claim or interest of any creditor provided for by the plan.

Post-confirmation sale of assets, debtor retains *all* net sales proceeds. *Black v. Leavitt (In re Black),* 609 B.R. 518, 529 (9th Cir. BAP 2019) ("the revesting provision of the confirmed plan means that the debtor owns the property outright and that the debtor is entitled to any postpetition appreciation."); *see also, In re Baker*, 620 B.R. 655 (Bankr. Colo. 2020).

Vesting terminates the stay as to property of the estate, starts clock for future dischargeability of priority taxes. *In re Jones,* 657 F.3d at 928-929.

Curing Plan Defaults After Month 60

Grace periods:

- 11 U.S.C. § 1322(d)(1): a plan may not require payments for a period that is longer than five years

- 11 U.S.C. § 1329(c): a modified plan "may not provide for payments over a period that expires after the applicable commitment period . . . unless a court, for cause, approves a longer period, but the court may not approve a period that expires after five years

COVID EXTENTIONS

- 11 U.S.C. § 1329(d) to provide that a chapter 13 plan confirmed before March 27, 2020, may be modified upon request of the debtor if the debtor is experiencing or has experienced a "material financial hardship" due, directly, or indirectly to COVID-19.*

- 11 U.S.C. § 1329(d)(2) extends the maximum commitment period for a chapter 13 plan from five years to seven years.*

**March 27, 2022 sunset*

QUESTIONS??

Chapter 13 Hot Topics
ABI Annual Spring Meeting - April, 2022

Presented by:

Hon. Daniel P. Collins
U.S. Bankruptcy Court (D. AZ); Phoenix

Nancy J. Whaley
Chapter 13 Trustee; Atlanta

Richard P. Cook
Cape Fear Debt Relief; Wilmington, N.C.

Alane A. Becket, Moderator
Becket & Lee LLP; Malvern, Pa.

Trustee Statutory Fees

Advanced Chapter 13 Hot Topics

Recently there has been litigation whether a Chapter 13 Trustee fee pursuant to 11 U.S.C. §586 is to be collected and retained by the Trustee in a case in which a plan is not confirmed. Attached are briefs and opinions from various stakeholders and representative of the positions taken.

The three cases pending before the Circuit Courts are:

10th Circuit
ECF Link:
https://ecf.ca10.uscourts.gov/n/beam/servlet/TransportRoom?servlet=CaseSummary.jsp&caseNum=22-1004&incOrigDkt=Y&incDktEntries=Y

- *In Re Doll*. Adam Goodman, Standing Chapter 13 Trustee v. Daniel Richard Doll, Debtor

Trustee won in the Bankruptcy Court, Debtor won in District Court and on appeal to the 10th COA.

9th Circuit
ECF Link:
https://ecf.ca9.uscourts.gov/n/beam/servlet/TransportRoom?servlet=CaseSummary.jsp?caseNum=22-35216&dktType=dktPublic&incOrigDkt=Y&incDktEntries=Y

- *In Re Evans*. Kathleen McCallister, Standing Chapter 13 Trustee v. Roger Evans and Lori Steedman, Debtors

Debtor won in the Bankruptcy Court, Trustee won in District Court and on appeal to the 9th COA.

2nd Circuit
ECF Link:
https://ecf.ca2.uscourts.gov/n/beam/servlet/TransportRoom?servlet=CaseSummary.jsp&caseNum=22-155&incOrigDkt=Y&incDktEntries=Y

- *In Re Soussis*. Julie F. Soussis, Debtor v. Michael J. Macco, Standing Chapter 13 Trustee and the United States Trustee

Trustee won in the Bankruptcy Court, Trustee won at District Court and Debtor appealed to the 1st COA.

Trustee's arguments:

- The code sections and UST Handbook provide that Standing Trustees collect a statutory fee on all receipts under the plan.
- If debtors prevail, the debtors in confirmed plans will pay the cost of trustee operations.
- Trustee fees will be higher for those in confirmed plans.

Debtor's arguments:

- 11 U.S.C. §1326 provides that a trustee is to *hold payments* made by the debtor until confirmation or denial of plan. If confirmed, distribute to creditors and if dismissed, subject to administrative expense, return the funds to the debtor.
- A Plan refers to a confirmed plan
- 28 U.S.C. §586 fixes the percentage of the trustee fee but 1326 directs where the money goes.
- The fees may be excessive.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

IN RE:	:	
	:	
REQUIREMENT OF LOCAL FORM FOR CHAPTER 13 PLANS AND RELATED PROCEDURES	:	**GENERAL ORDER NO. 41-2020**

ORDER REQUIRING LOCAL FORM FOR CHAPTER 13 PLANS AND ESTABLISHING RELATED PROCEDURES

Pursuant to Rule 3015.1 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), effective December 1, 2017, the Court required the use of a local form for a plan filed in a case under Chapter 13 of Title 11 of the United States Code (the "Bankruptcy Code") in its General Order No. 21-2017. The Court in this Order adopts the revised Local Form attached hereto as Exhibit A for the Northern District of Georgia (the "Local Form") to replace the prior form adopted pursuant to General Order No. 21-2017 and concludes that the Local Form satisfies all the requirements of Bankruptcy Rule 3015.1. This Order supersedes General Order 21-2017 as set forth herein.

As used in this Order, "Debtor" includes both debtors in a joint Chapter 13 case, and "Trustee" means the Chapter 13 Trustee.

It is, therefore, hereby **ORDERED** as follows:

1.0 Requirement of use of Local Form for plan. From and after December 1, 2020, the Debtor must use the Local Form attached as Exhibit A to file a plan as 11 U.S.C. § 1321 requires.

2.0 Service of plan.

2.1 Mailing of Plan. If the Debtor files a plan contemporaneously with the filing of a Chapter 13 petition under 11 U.S.C. § 301(a) or § 302(a), or if the Debtor files a

plan at the same time that the Debtor's case under another Chapter is converted to Chapter 13, the Clerk will mail a copy of the plan to all entities listed on the Mailing Matrix.[1] Otherwise, the Debtor must serve the plan when it is filed with the Court on all entities listed on the Mailing Matrix. See Bankruptcy Rule 3015(d). Section 4.2 of this Order governs service of a preconfirmation modification to the plan.

2.2 Service required under Bankruptcy Rule 7004. The Local Form contains requests (if applicable) for determination of the amounts of secured claims (Local Form § 3.2) and for avoidance of liens on exempt property pursuant to 11 U.S.C. § 522(f) (Local Form § 3.4). The Debtor must serve the plan on each creditor affected by such a request in the manner provided by Bankruptcy Rule 7004 for service of a summons and a complaint except that such service is not required for a creditor if the Debtor requests, or Bankruptcy Rule 3012(c) requires, determination of the amount of the creditor's secured claim by motion. See Bankruptcy Rules 3012(b), 4003(d).

2.3 Certificates with regard to service of the plan.

2.3.1 Certificate of service if the Clerk mails the plan. If the Clerk mails the plan and if any creditor must be served under Bankruptcy Rule 7004, the Debtor must promptly file a Certificate of Manner of Service of Plan Under Bankruptcy Rule 7004 that must: (A) be signed by the person who served the plan; (B) state the date and method of service for each creditor served under Bankruptcy Rule 7004 (including the method of service of any creditor for which Bankruptcy Rule 7004(h) requires service by certified mail); and (C) set forth the name and address of each creditor served.

[1] The Clerk maintains the Mailing Matrix, which is available through the Case Management/Electronic Case Filing system or from the Clerk's office.

2.3.2 Certificates of service if the Debtor must mail the plan. If the Debtor must mail the plan, the Debtor must file, promptly after the Debtor mails the plan: (A) a Certificate of Service of Plan that certifies service of the plan; and (B) if any creditor must be served under Bankruptcy Rule 7004, a separate Certificate of Manner of Service of Plan Under Bankruptcy Rule 7004 that certifies such service (including the method of service of any creditor for which Bankruptcy Rule 7004(h) requires service by certified mail). Each certificate of service must: (X) be signed by the person who served the plan; (Y) state the date and method of service; and (Z) set forth the name and address of each entity served.

3.0 Motion to determine amount of secured claim. If the Debtor elects in Local Form § 3.2, or Bankruptcy Rule 3012(c) requires, that the Court determine the amount of a secured claim by motion, the Debtor must comply with the following:

3.1 Required provisions in Local Form § 3.2. In Local Form § 3.2, the Debtor must check the box for each secured claim for which the Debtor will file a motion to determine its secured amount.

3.2 Filing of motion; scheduling of hearing; contents of motion. The Debtor must promptly file a motion under Bankruptcy Rule 3012 for determination of the amount of each secured claim for which a box is checked and arrange for the scheduling of a hearing on the motion in accordance with the scheduling procedures of the bankruptcy judge assigned to the case. The motion must include: (A) the name of the creditor; (B) the estimated amount of the creditor's total claim; (C) the collateral securing the claim; (D) the value of the collateral; (E) the amount of claims, if any, senior to the creditor's claim; (F) the amount of the secured claim; (G) the interest rate

that the plan proposes to pay on the claim; (H) the monthly preconfirmation adequate protection payment that the plan proposes (if applicable); and (I) the monthly postconfirmation payment that the plan proposes.

3.3 Notice of hearing on motion; contents of notice. The Debtor must provide notice of the hearing on the motion. The notice must contain the following statement: "If the creditor objects to the provisions of the Debtor's plan for any reason, the creditor must file an objection to confirmation of the plan or, in the case of an objection to the monthly preconfirmation adequate protection payment (if applicable) seek appropriate relief in a motion."

3.4 Service of motion and notice of hearing. The Debtor must serve each motion and the notice of hearing on the creditor in the manner that Bankruptcy Rule 7004 requires for service of summons and a complaint. The Debtor must promptly file a certificate of service that must (A) be signed by the person who served the motion; (B) state the date and method of service of the creditor served (including the method of service of any creditor for which Bankruptcy Rule 7004(h) requires service by certified mail); and (C) set forth the name and address of the creditor served.

4.0 Filing and service of preconfirmation modification of plan under 11 U.S.C. § 1323.

4.1 Form of preconfirmation modification.

4.1.1 Local Form required for preconfirmation modification. The Debtor must propose a preconfirmation modification under 11 U.S.C. § 1323 (the "Modified Plan") by filing a Local Form that contains the amended provisions. The Debtor must indicate at the top of the Local Form that it is an amended plan and specify the sections that are amended. Amendments to a

section are not effective if the section is not specified as amended in the space provided.

4.1.2 Optional Statement of Modified Plan. The Debtor may file a Modified Plan as an exhibit to a Statement of Modified Plan (the "Modification Statement"). The Modification Statement must (A) state that a Modified Plan has been filed that amends the plan as set forth in the Modification Statement and that the Modified Plan is attached as an exhibit to the Modification Statement filed with the Court; (B) specify each section of the plan that the Modified Plan amends and state the amendments that are in the Modified Plan; and (C) contain a statement that any amendments in the Modified Plan not set forth in the Modification Statement are not effective. The Modification Statement must conform to the form attached as Exhibit B.

4.2 Service of preconfirmation modification.

4.2.1 What must be served. The Debtor must serve the Modified Plan if the Debtor does not file a Modification Statement. See Bankruptcy Rule 3015(d). If the Debtor files a Modification Statement, the Debtor must serve the Modification Statement but need not serve the Modified Plan.

4.2.2 Who must be served. Unless the Court orders otherwise, the Debtor must serve the Modified Plan or the Modification Statement on all entities listed on the Mailing Matrix.

4.2.3 When service under Bankruptcy Rule 7004 is required. If the Debtor was required to serve a creditor with the original plan in the manner that Bankruptcy Rule 7004 requires for service of summons and a complaint, the Debtor must serve the Modified Plan or the Modification Statement on that

creditor in accordance with Bankruptcy Rule 7004, unless the Modified Plan does not materially and adversely affect that creditor. If an attorney has appeared in the case for such a creditor, the Debtor must also serve the attorney.

4.2.4 Certificate of service of Modified Plan or Modification Statement. Promptly after service of the Modified Plan or Modification Statement, the Debtor must file a Certificate of Service in accordance with § 4.4 of this Order.

4.3 Notice and hearing with regard to preconfirmation modification; Time for objections to confirmation of Modified Plan.

4.3.1 General rule for notice with regard to hearing on confirmation of Modified Plan and time for objections. Unless the Court orders otherwise, the Debtor must serve, on each creditor that the Modified Plan materially and adversely affects, a notice that states (A) the time and place of the hearing on confirmation of a Modified Plan and (B) that an objection to confirmation of a Modified Plan must be filed at least seven days before the date set for such hearing. See Bankruptcy Rules 2002(b), 3015(f). The notice must be served not less than 28 days before the date of such hearing, unless the Court orders otherwise. The notice must conform to the form attached as Exhibit C. If the Debtor was required to serve a creditor who must receive this notice with the original plan in the manner that Bankruptcy Rule 7004 requires for service of summons and a complaint, the Debtor must serve the notice on that creditor in the manner that Bankruptcy Rule 7004 requires.

4.3.2 Certificate of service of notice. Promptly after service of the notice, the Debtor must file a Certificate of Service in accordance with § 4.4 of this Order.

4.3.3 Determination of who must be served with notice of hearing on confirmation and time for objections. At a confirmation hearing, the Court may determine matters with regard to notice and service of the Modified Plan or Modification Statement and any hearing thereon, including without limitation: (A) whether the Modified Plan materially and adversely affects any creditors such that the Court cannot confirm it without further service of the Modified Plan or Modification Statement and without further notice and hearing with regard to its confirmation; (B) which creditors must be served with the Modified Plan or Modification Statement and with notice of the time to object to it and of the hearing on its confirmation; or (C) the time for the filing of objections to confirmation of the Modified Plan and the time for the hearing on its confirmation.

4.4 Certificates of Service of Modified Plan or Modification Statement and notice of confirmation hearing and time for objections. Promptly after service of a Modified Plan or Modification Statement or of any required notice with regard to the hearing on confirmation and the time for objections, the Debtor must file: (A) a Certificate of Service of the Modified Plan or Modification Statement or the required notice; and (B) if any creditor must be served under Bankruptcy Rule 7004, a separate Certificate of Manner of Service Under Bankruptcy Rule 7004 of the Modified Plan or Modification Statement or the required notice, as applicable, that certifies such service (including the method of service of any creditor for which Bankruptcy Rule

7004(h) requires service by certified mail). Each certificate of service must: (X) be signed by the person who served the plan; (Y) state the date and method of service; and (Z) set forth the name and address of each entity served.

5.0. Objections to claims. Unless the plan expressly permits a postconfirmation objection in a nonstandard provision, an objection to a proof of claim (A) filed by a creditor that is not a governmental unit and (B) that asserts a secured claim must be filed before confirmation of the plan if the objection challenges the validity, perfection, or avoidability of the lien securing the claim or the amount of the secured claim based on the value of the property securing the claim. All other objections to a proof of claim, including an objection to a proof of claim that challenges the total amount of the claim or seeks its reduction or disallowance under 11 U.S.C. § 502, may be filed before or after confirmation.

6.0 Provisions with regard to Chapter 13 Trustees.

6.1 Percentage fee upon receipt of funds. The Chapter 13 Trustees in the Northern District of Georgia shall take a percentage fee upon receipt of funds in all Chapter 13 cases in this District, notwithstanding any contrary language in a plan.

6.2 Preconfirmation adequate protection payments. If a plan provides for the Trustee to disburse preconfirmation adequate protection payments as required by 11 U.S.C. § 1326(a)(1)(C) to secured creditors, prior to confirmation of the plan, the Trustee is authorized to make such disbursements and to assess and collect the Trustee's percentage fee. If the case is dismissed or converted prior to confirmation of the plan, the Trustee shall disburse the adequate protection payments prior to payment of any attorney's fees.

7.0 **Disbursement of Funds by Trustee to Holders of Allowed Claims**:

(a) Disbursements before confirmation of plan. The Trustee will make preconfirmation adequate protection payments to holders of allowed claims as set forth in the Local Form.

(b) Disbursements after confirmation of plan. Upon confirmation, after payment of the Trustee's statutory fee, the Trustee will disburse Regular Payments, Additional Payments, and Tax Refunds (all as defined in the Local Form) that are available for disbursement to make payments to holders of allowed claims as follows:

(1) First disbursement after confirmation of Regular Payments. In the first disbursement after confirmation, the Trustee will disburse all available funds from Regular Payments in the following order:

(A) To pay any unpaid preconfirmation adequate protection payments required by 11 U.S.C. § 1326(a)(1)(C) as set forth in the Local Form, and orders of the Bankruptcy Court;

(B) To pay fees, expenses, and costs of the attorney for the Debtor as set forth in the Local Form;

(C) To make payments pro rata based on the monthly payment amount: on secured claims as set forth in Local Form §§ 3.1, 3.2, 3.3, and 3.4; on domestic support obligations as set forth in Local Form § 4.4; on the arrearage claims on nonpriority unsecured claims as set forth in Local Form § 5.2; and on executory contracts and unexpired leases as set forth in Local Form § 6.1; and

(D) To pay claims in the order set forth in § 7.0(b)(3) of this Order.

(2) Second and subsequent disbursements after confirmation of Regular Payments. In the second disbursement after confirmation, and each month thereafter, the Trustee will disburse all available funds from Regular Payments in the order below. All available Regular Payments will be distributed to the claims in each paragraph until such claims are paid in full.

(A) To make concurrent monthly payments, including any amount past due under this Local Form: on secured claims as set forth in §§ 3.1, 3.2, 3.3, and 3.4; on fees, expenses, and costs of the attorney for the Debtor as set forth in §4.3; on domestic support obligations as set forth in § 4.4; on the arrearage claims on both nonpriority unsecured claims as set forth in § 5.2 and executory contracts and unexpired leases as set forth in § 6.1;

(B) To make pro rata payments on administrative expenses allowed under 11 U.S.C. § 503(b) other than the Trustee's fee and the Debtor's attorney's fees, expenses, and costs; and

(C) To pay claims in the order set forth in § 7.0 (b)(3) of this Order.

(3) Disbursement of Additional Payments and Tax Refunds. The Trustee will disburse the Additional Payments and Tax Refunds in the following order:

(A) To pay fees, expenses, and costs of the attorney for the Debtor as set forth in the Local Form;

(B) To make pro rata payments on administrative expenses allowed under 11 U.S.C. § 503(b) other than the Trustee's fee and the Debtor's attorney's fees, expenses, and costs;

(C) To make payments pro rata based on the monthly payment amount: on secured claims as set forth in Local Form §§ 3.1, 3.2, 3.3, and 3.4; on domestic support obligations as set forth in Local Form § 4.4; on the arrearage claims on both nonpriority unsecured claims as set forth in Local Form § 5.2 and executory contracts and unexpired leases as set forth in Local Form § 6.1;

(D) To pay other Allowed Secured Claims as set forth in Local Form § 3.6;

(E) To pay allowed claims entitled to priority under 11 U.S.C. § 507, other than administrative expenses and domestic support obligations; and

(F) To pay nonpriority unsecured claims not otherwise classified as set forth in the Local Form ("Unclassified Claims") and to pay nonpriority unsecured claims separately classified as set forth in the Local Form ("Classified Claims"). The Trustee will estimate the total amounts to be disbursed during the plan term (1) to pay Unclassified Claims and (2) to pay Classified Claims. Funds available for disbursement on these claims will be allocated pro rata to each class, and the funds available for disbursement for each class will be paid pro rata to the creditors in the class.

(4) Unless the Debtor timely advises the Trustee otherwise in writing, the Trustee may treat and disburse any payments received from the Debtor's Regular Payments.

8.0 Effective Date; Superseding of prior General Orders; Transition.

8.1 This Order is effective December 1, 2020.

8.2 In cases to which this Order applies, this Order supersedes General Order No. 19-2015 (Chapter 13 § 1328(a)(1)(C) Pre-Confirmation Adequate Protection Payments), General Order No. 17-2015 (Trustee Fee in Chapter 13 Cases), and General Order 21-2017. These General Orders remain in effect with regard to cases to which this Order does not apply.

8.3 This Order applies: (A) in all cases filed on or after December 1, 2020; (B) in all cases filed before December 1, 2020, that are converted to Chapter 13 on or after December 1, 2020; and (C) in all cases filed before December 1, 2020, in which the Debtor did not file a plan before December 1, 2020.

IT IS SO ORDERED this 18th day of November, 2020.

Wendy L. Hagenau
Chief United States Bankruptcy Judge
For the Court

EXHIBIT A

Local Form

Fill in this information to identify your case:

Debtor 1 _____
First Name Middle Name Last Name

Debtor 2 _____
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the Northern District of Georgia

Case number _____
(if known)

☐ Check if this is an amended plan, and list below the sections of the plan that have been changed. Amendments to sections not listed below will be ineffective even if set out later in this amended plan.

Chapter 13 Plan

NOTE: **The United States Bankruptcy Court for the Northern District of Georgia adopted this form plan for use in Chapter 13 cases in the District pursuant to Federal Rule of Bankruptcy Procedure 3015.1. See Order Requiring Local Form for Chapter 13 Plans and Establishing Related Procedures, General Order No. 41-2020, available in the Clerk's Office and on the Bankruptcy Court's website, ganb.uscourts.gov. As used in this plan, "Chapter 13 General Order" means General Order No. 41-2020 as it may from time to time be amended or superseded.**

Part 1: Notices

To Debtor(s): This form sets out options that may be appropriate in some cases, but the presence of an option on the form does not indicate that the option is appropriate in your circumstances. Plans that do not comply with the United States Bankruptcy Code, local rules and judicial rulings may not be confirmable.

In the following notice to creditors, you must check each box that applies.

To Creditors: **Your rights may be affected by this plan. Your claim may be reduced, modified, or eliminated.**

You should read this plan carefully and discuss it with your attorney if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you oppose the plan's treatment of your claim or any provision of this plan, you or your attorney must file an objection to confirmation at least 7 days before the date set for the hearing on confirmation, unless the Bankruptcy Court orders otherwise. The Bankruptcy Court may confirm this plan without further notice if no objection to confirmation is filed. See Bankruptcy Rule 3015.

To receive payments under this plan, you must have an allowed claim. If you file a proof of claim, your claim is deemed allowed unless a party in interest objects. See 11 U.S.C. § 502(a).

The amounts listed for claims in this plan are estimates by the debtor(s). An allowed proof of claim will be controlling, unless the Bankruptcy Court orders otherwise.

The following matters may be of particular importance. ***Debtor(s) must check one box on each line to state whether or not the plan includes each of the following items. If an item is checked as "Not included," if both boxes are checked, or if no box is checked, the provision will be ineffective even if set out later in the plan, except 1.4.***

§ 1.1	**A limit on the amount of a secured claim, that may result in a partial payment or no payment at all to the secured creditor, set out in § 3.2**	☐ Included	☐ Not Included
§ 1.2	**Avoidance of a judicial lien or nonpossessory, nonpurchase-money security interest, set out in § 3.4**	☐ Included	☐ Not Included
§ 1.3	**Nonstandard provisions, set out in Part 8**	☐ Included	☐ Not Included
§ 1.4	**The plan provides for the payment of a domestic support obligation (as defined in 11 U.S.C. § 101(14A)), set out in § 4.4.**	☐ Included	☐ Not Included

Debtor _____ Case number _____

Part 2: Plan Payments and Length of Plan; Disbursement of Funds by Trustee to Holders of Allowed Claims

§ 2.1 Regular Payments to the trustee; applicable commitment period.

The applicable commitment period for the debtor(s) as set forth in 11 U.S.C. § 1325(b)(4) is:

Check one: ☐ 36 months ☐ 60 months

Debtor(s) will make regular payments ("Regular Payments") to the trustee as follows:

The debtor(s) will pay _____ per week for the applicable commitment period. If the applicable commitment period is 36 months, additional Regular Payments will be made to the extent necessary to make the payments to creditors specified in this plan, not to exceed 60 months unless the Bankruptcy Court orders otherwise. If all allowed claims treated in § 5.1 of this plan are paid in full prior to the expiration of the applicable commitment period, no further Regular Payments will be made.

Check if applicable.

☐ The amount of the Regular Payment will change as follows *(If this box is not checked, the rest of § 2.1 need not be completed or reproduced. Insert additional lines as needed for more changes.)*:

Beginning on *(insert date)*:	**The Regular Payment amount will change to** *(insert amount)*:	**For the following reason** *(insert reason for change)*:
	_____ per week	

§ 2.2 Regular Payments; method of payment.

Regular Payments to the trustee will be made from future income in the following manner:

Check all that apply.

☐ Debtor(s) will make payments pursuant to a payroll deduction order. If a deduction does not occur, the debtor(s) will pay to the trustee the amount that should have been deducted.

☐ Debtor(s) will make payments directly to the trustee.

☐ Other (specify method of payment): _____

§ 2.3 Income tax refunds.

Check one.

☐ Debtor(s) will retain any income tax refunds received during the pendency of the case.

☐ Debtor(s) will (1) supply the trustee with a copy of each federal income tax return filed during the pendency of the case within 30 days of filing the return and (2) turn over to the trustee, within 30 days of the receipt of any federal income tax refund during the applicable commitment period for tax years _____, the amount by which the total of all of the federal income tax refunds received for each year exceeds $2,000 ("Tax Refunds"), unless the Bankruptcy Court orders otherwise. If debtor's spouse is not a debtor in this case, "tax refunds received" means those attributable to the debtor.

☐ Debtor(s) will treat tax refunds ("Tax Refunds") as follows:

_____

§ 2.4 Additional Payments.

Check one.

☐ **None.** *If "None" is checked, the rest of § 2.4 need not be completed or reproduced.*

☐ Debtor(s) will make additional payment(s) ("Additional Payments") to the trustee from other sources as specified below. *Describe the source, estimated amount, and date of each anticipated payment.*

_____

§ 2.5 [Intentionally omitted.]

§ 2.6 Disbursement of funds by trustee to holders of allowed claims.

The trustee shall disburse funds in accordance with General Order No. 41-2020. (www.ganb.uscourts.gov/local-rules-and-orders)

Debtor _____ Case number _____

Part 3: Treatment of Secured Claims

§ 3.1 Maintenance of payments and cure of default, if any.

Check one.

☐ **None.** *If "None" is checked, the rest of § 3.1 need not be completed or reproduced.*

☐ Beginning with the first payment that is due after the date of the order for relief under Chapter 13, the debtor(s) will maintain the current contractual installment payments on the secured claims listed below, with any changes required by the applicable contract and noticed in conformity with any applicable rules. These payments will be disbursed directly by the debtor(s). Any existing arrearage on a listed claim will be paid in full through disbursements by the trustee, with interest, if any, at the rate stated below.

If relief from the automatic stay is ordered as to any item of collateral listed in this paragraph, then, unless the Bankruptcy Court orders otherwise, all payments under this paragraph as to that collateral will cease, and all secured claims based on that collateral will no longer be treated by the plan.

Name of creditor	Collateral	Estimated amount of arrearage (if any)	Interest rate on arrearage (if applicable)	Monthly plan payment on arrearage
			%	

§ 3.2 Request for valuation of security and modification of certain undersecured claims.

☐ **None.** If "None" is checked, the rest of § 3.2 need not be completed or reproduced.

The remainder of this paragraph will be effective only if the applicable box in Part 1 of this plan is checked.

☐ The debtor(s) request(s) that the Bankruptcy Court determine the value of the secured claims listed below.

For each non-governmental secured claim listed below, the debtor(s) state(s) that the value of the secured claim should be as set out in the column headed *Amount of secured claim*. For secured claims of governmental units, unless the Bankruptcy Court orders otherwise, the value of a secured claim listed in a proof of claim filed in accordance with the Bankruptcy Rules controls over any contrary amount listed below. For each creditor checked below, debtor(s) will file a motion pursuant to Bankruptcy Rule 3012 and the Chapter 13 General Order to request determination of the amount of the secured claim.

For each listed claim below, the value of the secured claim will be paid in full, with interest at the rate stated below. For a secured tax claim, the interest rate shall be the interest rate stated in the proof of claim. The portion of any allowed claim that exceeds the amount of the secured claim will be treated as an unsecured claim under Part 5 of this plan. If the amount of a creditor's secured claim is listed below as having no value, the creditor's allowed claim will be treated in its entirety as an unsecured claim under Part 5 of this plan.

The trustee will make monthly preconfirmation adequate protection payments that 11 U.S.C. § 1326(a)(1)(C) requires to the creditor in the amount set out in the column headed *Monthly preconfirmation adequate protection payment*.

The holder of any claim listed below as having value in the column headed *Amount of secured claim* will retain the lien on the property interest of the debtor(s) or the estate(s) until the earlier of:

(a) payment of the underlying debt determined under nonbankruptcy law, or

(b) payment of the amount of the secured claim, with interest at the rate set forth below, and discharge of the underlying debt under 11 U.S.C. § 1328, at which time the lien will terminate and be released by the creditor.

+	Check only if motion to be filed	Name of creditor	Estimated amount of total claim	Collateral and date of purchase	Value of collateral	Amount of claims senior to creditor's claim	Amount of secured claim	Interest rate	Monthly pre-confirmation adequate protection payment	Monthly post-confirmation payment
-	☐							%		

Debtor _____ Case number _____

§ 3.3 Secured claims to be paid in full.

Check one.

☐ **None.** *If "None" is checked, the rest of § 3.3 need not be completed or reproduced.*

☐ The claims listed below will be paid in full under the plan. Reasons for payment in full may include:

(1) were incurred within 910 days before the petition date and secured by a purchase money security interest in a motor vehicle acquired for the personal use of the debtor(s), or

(2) were incurred within 1 year of the petition date and secured by a purchase money security interest in any other thing of value.

(3) the value of the collateral exceeds the anticipated claim; or

(4) the claim listed shall be paid in full because the claim is cosigned; or

(5) the claim shall be paid in full because the debtor is not entitled to a discharge.

These claims will be paid in full under the plan with interest at the rate stated below. These payments will be disbursed by the trustee.

The trustee will make monthly preconfirmation adequate protection payments that 11 U.S.C. § 1326(a)(1)(C) requires to the creditor in the amount set out in the column headed *Monthly preconfirmation adequate protection payment*.

The holder of any claim listed below will retain the lien on the property interest of the debtor(s) or the estate(s) until the earlier of:

(a) payment of the underlying debt determined under nonbankruptcy law, or

(b) payment of the amount of the secured claim, with interest at the rate set forth below, and discharge of the underlying debt under 11 U.S.C. § 1328, at which time the lien will terminate and be released by the creditor.

+	Name of creditor	Collateral	Purchase date	Estimated amount of claim	Interest rate	Monthly pre-confirmation adequate protection payment	Monthly post-confirmation payment to creditor by trustee
-					%		

§ 3.4 Lien avoidance.

Check one.

☐ **None.** *If "None" is checked, the rest of § 3.4 need not be completed or reproduced.*

The remainder of this paragraph will be effective only if the applicable box in Part 1 of this plan is checked.

☐ The judicial liens and/or nonpossessory, nonpurchase money security interests securing the claims listed below impair exemptions to which the debtor(s) would have been entitled under 11 U.S.C. § 522(b). Unless the Bankruptcy Court orders otherwise, a judicial lien or security interest securing a claim listed below will be avoided to the extent that it impairs such exemptions upon entry of the order confirming the plan. The amount of the claim secured by the judicial lien or security interest that is avoided will be treated as an unsecured claim in Part 5 to the extent allowed. The amount, if any, of the claim secured by the judicial lien or security interest that is not avoided will be paid in full as a secured claim under the plan to the extent allowed. See 11 U.S.C. § 522(f) and Bankruptcy Rule 4003(d). *If more than one lien is to be avoided, provide the information separately for each lien.*

+				
-	Name of creditor	Description of judicial lien or security interest	Description of property subject to judicial lien or security interest	Amount of lien or security interest
	Amount avoided and treated as unsecured claim	Amount of remaining secured claim, if any	Interest rate, if applicable %	Monthly payment on secured claim, if applicable
	Enter additional claims as needed			

§ 3.5 Surrender of collateral.

Check one.

☐ **None.** *If "None" is checked, the rest of § 3.5 need not be completed or reproduced.*

☐ The debtor(s) elect(s) to surrender to each creditor listed below the collateral that secures the creditor's claim. The debtor(s) request(s) that, upon confirmation of this plan, the stay under 11 U.S.C. § 362(a) be terminated as to the collateral only and that the stay under § 1301 be terminated in all respects. Confirmation of the plan results in termination of such stays. Any allowed unsecured claim resulting from the disposition of the collateral will be treated in Part 5 below. No payments as to the collateral will be made, and all secured claims based on the collateral will not otherwise be treated by the plan.

Debtor _____ Case number _____

+	Name of Creditor	Collateral
-		

§ 3.6 Other Allowed Secured Claims.

A proof of claim that is filed and allowed as a secured claim, but is not treated as a secured claim in this plan, shall be paid with interest at the rate of _____%. Payments will commence as set forth in § 2.6. Notwithstanding the foregoing, the debtor(s), and any other party in interest, may: object to allowance of the claim; request that the Bankruptcy Court determine the value of the secured claim if modification of the claim is permissible and if 11 U.S.C. § 506 is applicable; or request that the Bankruptcy Court avoid the creditor's lien pursuant to 11 U.S.C. § 522(f), if applicable.

If the Bankruptcy Court determines the value of the secured claim, the portion of any allowed claim that exceeds the amount of the secured claim will be treated as an unsecured claim under Part 5 of this plan.

The holder of the claim will retain the lien on the property interest of the debtor(s) or the estate(s) until the earlier of:

(a) payment of the underlying debt determined under nonbankruptcy law, or

(b) payment of the amount of the secured claim, with interest at the rate set forth above, and discharge of the underlying debt under 11 U.S.C. § 1328, at which time the lien will terminate and be released by the creditor.

Part 4: Treatment of Fees and Priority Claims

§ 4.1 General.

Trustee's fees and all allowed priority claims will be paid in full without postpetition interest. An allowed priority claim will be paid in full regardless of whether it is listed in § 4.4.

§ 4.2 Trustee's fees.

Trustee's fees are governed by statute and may change during the course of the case.

§ 4.3 Attorney's fees.

(a) The unpaid fees, expenses, and costs owed to the attorney for the debtor(s) in connection with legal representation in this case are $_____. The allowance and payment of the fees, including the award of additional fees, expenses and costs of the attorney for the debtor(s) are governed by General Order 42-2020 ("Chapter 13 Attorney's Fees Order"), as it may be amended.

(b) Upon confirmation of the plan, the unpaid amount shall be allowed as an administrative expense under 11 U.S.C. § 503(b) to the extent set forth in the Chapter 13 Attorney's Fees Order.

(c) From the first disbursement after confirmation, the attorney will receive payment under the Chapter 13 Attorney's Fees Order up to the allowed amount set forth in § 4.3(a).

(d) The unpaid balance and any additional amounts allowed under § 4.3(c) will be payable (1) at $_____ per month from Regular Payments and (2) from Tax Refunds or Additional Payments, as set forth in the Chapter 13 Attorney's Fees Order until all allowed amounts are paid in full.

(e) If the case is converted to Chapter 7 before confirmation of the plan, the debtor(s) direct(s) the trustee to pay to the attorney for the debtor(s) the amount of $_____, not to exceed the maximum amount that the Chapter 13 Attorney's Fees Order permits. If the attorney for the debtor(s) has complied with the applicable provisions of the Chapter 13 Attorney's Fees Order, the trustee will deliver, from the funds available, the stated amount or the maximum amount to the attorney, whichever is less.

(f) If the case is dismissed before confirmation of the plan, fees, expenses, and costs of the attorney for the debtor(s) in the amount of $_____, not to exceed the maximum amount that the Chapter 13 Attorney's Fees Order permits, will be allowed to the extent set forth in the Chapter 13 Attorney's Fees Order. The attorney may file an application for fees, expenses, and costs in excess of the maximum amount within 14 days from entry of the order of dismissal. If the attorney for the debtor(s) has complied with the applicable provisions of the Chapter 13 Attorney's Fees Order, the trustee will deliver, from the funds available, the allowed amount to the attorney.

(g) If the case is converted to Chapter 7 after confirmation of the plan, the debtor(s) direct(s) the trustee to deliver to the attorney for the debtor(s), from the funds available, any allowed fees, expenses, and costs that are unpaid.

(h) If the case is dismissed after confirmation of the plan, the trustee will pay to the attorney for the debtor(s), from the funds available, any allowed fees, expenses, and costs that are unpaid.

§ 4.4 Priority claims other than attorney's fees.

☐ **None.** *If "None" is checked, the rest of § 4.4 need not be completed or reproduced.*

☐ The debtor(s) has/have domestic support obligations as set forth below. The debtor(s) is/are required to pay all postpetition domestic support obligations directly to the holder of the claim.

Debtor _____ Case number _____

	Name and address of creditor:	Name and address of child support enforcement agency entitled to § 1302(d)(1) notice	Estimated amount of claim	Monthly plan payment
+				
-				

☐ The debtor(s) has/have priority claims other than attorney's fees and domestic support obligations as set forth below:

	Name and address of creditor:	Estimated amount of claim
+		
-		

Part 5: Treatment of Nonpriority Unsecured Claims

§ 5.1 Nonpriority unsecured claims not separately classified.

Allowed nonpriority unsecured claims that are not separately classified will be paid, pro rata, as set forth in § 2.6. Holders of these claims will receive:

Check one.

☐ A pro rata portion of the funds remaining after disbursements have been made to all other creditors provided for in this plan.

☐ A pro rata portion of the larger of (1) the sum of $_____ and (2) the funds remaining after disbursements have been made to all other creditors provided for in this plan.

☐ The larger of (1) _____% of the allowed amount of the claim and (2) a pro rata portion of the funds remaining after disbursements have been made to all other creditors provided for in this plan.

☐ 100% of the total amount of these claims.

Unless the plan provides to pay 100% of these claims, the actual amount that a holder receives will depend on (1) the amount of claims filed and allowed and (2) the amounts necessary to pay secured claims under Part 3 and trustee's fees, costs, and expenses of the attorney for the debtor(s), and other priority claims under Part 4.

§ 5.2 Maintenance of payments and cure of any default on nonpriority unsecured claims.

Check one.

☐ **None.** *If "None" is checked, the rest of § 5.2 need not be completed or reproduced.*

☐ The debtor(s) will maintain the contractual installment payments and cure any default in payments on the unsecured claims listed below on which the last payment is due after the final plan payment. These payments will be disbursed directly by the debtor(s). The claim for the arrearage amount will be paid in full as specified below and disbursed by the trustee.

	Name of creditor	Estimated amount of arrearage	Monthly plan payment on arrearage
+			
-			

§ 5.3 Other separately classified nonpriority unsecured claims.

Check one.

☐ **None.** *If "None" is checked, the rest of § 5.3 need not be completed or reproduced.*

☐ The nonpriority unsecured allowed claims listed below are separately classified. Each claim will receive pro rata payments as set forth in § 2.6. The unpaid balance will be paid in full, including interest at the rate stated below, if applicable.

	Name of creditor	Basis for separate classification	Estimated amount of claim	Interest rate (if applicable)
+				
-				%

Part 6: Executory Contracts and Unexpired Leases

§ 6.1 The executory contracts and unexpired leases listed below are assumed and will be treated as specified. All other executory contracts and unexpired leases are rejected.

Check one.

☐ **None.** *If "None" is checked, the rest of § 6.1 need not be completed or reproduced.*

Debtor _____ Case number _____

☐ **Assumed items.** Current installment payments will be disbursed directly by the debtor(s). Arrearage payments will be disbursed by the trustee. The final column includes only payments disbursed by the trustee rather than by the debtor(s).

	Name of creditor	Description of leased property or executory contract	Estimated amount of arrearage	Monthly postconfirmation payment to cure arrearage
+				
-				

Part 7: Vesting of Property of the Estate

§ 7.1 Unless the Bankruptcy Court orders otherwise, property of the estate shall not vest in the debtor(s) on confirmation but will vest in the debtor(s) only upon: (1) discharge of the debtor(s); (2) dismissal of the case; or (3) closing of the case without a discharge upon the completion of payments by the debtor(s).

Part 8: Nonstandard Plan Provisions

§ 8.1 Check "None" or list Nonstandard Plan Provisions.

☐ **None.** *If "None" is checked, the rest of Part 8 need not be completed or reproduced.*

Under Bankruptcy Rule 3015(c), nonstandard provisions must be set forth below. A nonstandard provision is a provision not otherwise included in this N.D. Ga. Chapter 13 Plan Form or deviating from it. Nonstandard provisions set out elsewhere in this plan are ineffective.

The following plan provisions will be effective only if there is a check in the box "Included" in § 1.3. (Insert additional lines if needed.)

Part 9: Signatures

§ 9.1 Signatures of Debtor(s) and Attorney for Debtor(s).

The debtor(s) must sign the initial plan and, if not represented by an attorney, any modification of the plan, below. The attorney for the debtor(s), if any, must sign below.

✘ _____
Signature of debtor 1 executed on _____
MM / DD / YYYY

_____
Address City, State, ZIP code

✘ _____
Signature of debtor 2 executed on _____
MM / DD / YYYY

_____
Address City, State, ZIP code

✘ _____
Signature of attorney for debtor(s)

Date: _____
MM / DD / YYYY

_____
Firm

_____
Address City, State, ZIP code

By filing this document, the debtor(s), if not represented by an attorney, or the attorney for debtor(s) also certify(ies) that the wording and order of the provisions in this Chapter 13 Plan are identical to those contained in the Local Form for Chapter 13 Plans that the Bankruptcy Court for the Northern District of Georgia has prescribed, other than any nonstandard provisions included in Part 8.

EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
[Appropriate Division] DIVISION

IN RE:	)	
	)	Case No. ***[xx-xxxxx] – [Assigned Judge's Initials]***
[Name(s) of Debtor(s)],	)	
	)	
Debtor(**s**).	)	Chapter 13
	)	

STATEMENT OF MODIFIED PLAN

Come(s) now ***[Name(s) of Debtor(s)]*** and state(s) the following:

1. On ***[date]***, Debtor(s) filed a Modified Plan. The Modified Plan is attached as an Exhibit to this Statement of Modified Plan filed with the Bankruptcy Court.

2. The Modified Plan amends the specified section(s) of the Plan and changes them as follows: ***[State each section that is modified and describe the substance of the amendment. If the Modified Plan changes the treatment of a specific creditor, the description should include the name of that creditor.]***

3. Any amendment contained in the Modified Plan that is not set forth in this Statement of Modified Plan will not be effective.

4. Objections to the confirmation of the Modified Plan must be filed with the Court and served on the Debtor(s), the attorney for the Debtor(s), and the Chapter 13 Trustee at least seven days before the date set for the hearing on confirmation.

Respectfully submitted,

[Signature of attorney for Debtor(s)]
[Name, address, telephone number, and Georgia Bar Number of attorney for Debtor(s)]

[Attach certificate of service showing the persons served and the date and manner of service]

EXHIBIT C

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
[Appropriate Division] DIVISION

IN RE:	)	Case No. *[xx-xxxxx] – [Assigned Judge's Initials]*
[Name of Debtor(s)],	)	
Debtor*(s).*	)	**Chapter 13**

NOTICE OF HEARING ON CONFIRMATION OF MODIFIED PLAN AND OF DEADLINE FOR OBJECTIONS TO CONFIRMATION OF MODIFIED PLAN

PLEASE TAKE NOTICE that the Debtor(s) has/have filed a preconfirmation modification to the Chapter 13 Plan. The preconfirmation modification may materially and adversely change the treatment or rights of creditors from those set forth in the Chapter 13 Plan previously filed.

Your rights may be affected. You should read the preconfirmation modification carefully and discuss it with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you oppose confirmation of the Chapter 13 Plan, as modified, and do not want the court to confirm it, or if you want the Court to consider your views, then not less than seven days before the hearing on confirmation scheduled below, you or your attorney must:

(1) File with the court a written objection, explaining your positions and views as to why the court should not confirm the Chapter 13 Plan, as modified. The written objection must be filed at the following address:

[*State address of Clerk of Court of appropriate division*]

If you mail your response to the Clerk for filing, you must mail it early enough so that the Clerk will **actually receive** it not less than seven days before the hearing on confirmation scheduled below.

(2) Mail or deliver a copy of your written objection to the Debtor's attorney at the address stated below and to the Chapter 13 Trustee. You must attach a certificate of service to your written objection, stating when, how, and on whom (including addresses) you served the objection.

If you or your attorney do not file a timely objection, the court may decide that you do not oppose confirmation of the Chapter 13 plan, as modified.

A hearing on confirmation of the Chapter 13 Plan, as modified, will be held in ***[State place of hearing, e.g., Courtroom number and street address of building] at [State time***] on ***[State date[2]]***. You or your attorney must attend the hearing and advocate your position.

Dated: ***[Date]***

[Signature of attorney for Debtor(s)]
[Name of Attorney] [Bar No.]
[Address]
[Telephone Number]
Attorney for Debtor(s)

[2] Obtain the hearing date by following the procedures for scheduling hearings used by the judge to whom the case is assigned.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

IN RE:	:	
	:	
FEES, EXPENSES, AND COSTS OF ATTORNEYS FOR DEBTORS IN CHAPTER 13 CASES	:	**GENERAL ORDER NO. 42-2020**

AMENDED AND RESTATED ORDER WITH REGARD TO FEES, EXPENSES AND COSTS OF ATTORNEYS FOR DEBTORS IN CHAPTER 13 CASES

General Order 42-2020, entered by the Court on November 18, 2020, is hereby amended and restated to provide that §3.3.2 regarding the use of the Court's Voluntary Notice Procedures, applies to all pending cases. There remainder of the order remains unchanged and establishes procedures for attorneys to utilize in charging and collecting attorney's fees, expenses, and costs in connection with representation of Debtors in Chapter 13 cases in accordance with the Local Form for Chapter 13 plans that the Court adopted in General Order 41-2020 (the "Local Form"). As used in this Order, "Debtor" includes both debtors in a joint Chapter 13 case, and "Trustee" means the Chapter 13 Trustee in the case.

This Order establishes no particular fee or method of payment of the attorney's fees, expenses, and costs. The agreement between the attorney and the Debtor must provide for reasonable fees in accordance with 11 U.S.C. § 330(a)(1) and (a)(4)(B) and the ethical requirements of the State Bar of Georgia. Pursuant to 11 U.S.C. § 329(b), the Court may order the return of excessive fees, expenses, and costs. Allowable expenses and costs may include the payment of the fee required for filing the case. All terms and

conditions of the agreement between the Debtor and the attorney must be disclosed in the statement that Rule 2016(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") requires (the "2016(b) Statement").

1.0 Attorney must represent Debtor in all matters. Attorneys representing Debtors in Chapter 13 cases must represent the Debtor in all matters related to the case that affect the Debtor's interests unless the attorney is permitted to withdraw by order of the Court. See N.D. Ga. Bankruptcy Local Rule 9010-5.

2.0 Use of Local Form § 4.3 for payment of attorney's fees, expenses, and costs through the Chapter 13 plan.

2.1 General rule. Local Form § 4.3 permits the payment of the fees, expenses, and costs of the Debtor's attorney from payments that the Debtor makes to the Trustee under the plan. The costs may include an advance of the Debtor's filing fee. Section 4.3 applies when the agreement between the Debtor and the attorney involves either (A) a "flat fee" for all services in the case; or (B) an initial "flat fee" for services commonly required in the case prior to confirmation of the plan and additional fees, expenses, and costs for specific tasks pursuant to a set fee schedule for the specified tasks or on an hourly basis. Any provisions for additional fees, expenses, and costs must be included in the agreement between the Debtor and the attorney and disclosed in the 2016(b) Statement.

2.2 Nonstandard provision required for certain fees, expenses, and costs. Local Form § 4.3 is not applicable for the allowance of fees, expenses, and costs if the fee agreement between the Debtor and the attorney provides for fees on an hourly basis or if the fee agreement does not contemplate a flat fee for most services prior to confirmation of the plan. For fee agreements of this nature, the plan must include a

nonstandard provision in Local Form § 8 that provides for allowance and payment of the attorney's fees, costs and expenses. The 2016(b) Statement must contain sufficient information regarding the fee arrangement to allow thorough review by the Court and all parties in interest. The nonstandard provision must state whether Local Form § 4.3 will govern disbursement to the attorney of fees, costs, and expenses. If so, the nonstandard provision must state: (A) an estimate of the fees, expenses, and costs that the Debtor and the Debtor's attorney anticipate will be required during the case and a monthly amount to be paid to the attorney as a monthly amount under Local Form §4.3 to the extent that they are allowed; (B) that, pending allowance of the attorney's fees, expenses, and costs, the Trustee will reserve funds otherwise payable to the attorney under Local Form § 2.6 and for disbursement of the reserved funds to the extent that the attorney's fees, expenses, and costs are allowed; and (C) that any funds reserved in excess of the allowed amounts shall be treated as a Regular Payment under Local Form § 2.2. Otherwise, the nonstandard provision must state how the allowed attorney's fees, expenses, and costs will be paid.

3.0 Allowance of fees, expenses, and costs of Debtor's attorney.

3.1 Allowance of fees, expenses, and costs of Debtor's attorney set forth in Local Form § 4.3; allowance of additional amounts. Upon confirmation of the plan, the unpaid fees, expenses, and costs of the Debtor's attorney set forth in Local Form § 4.3 are allowed as administrative expenses under 11 U.S.C. § 503(b) subject to the terms of this Order and of the confirmed plan. The Debtor's attorney must file an application for allowance of additional fees, expenses, and costs that are not set forth in Local Form § 4.3. The application must describe how the

allowance and payment of the additional fees, expenses, and costs, will affect distributions to creditors under the plan.

3.2 Allowance of fees, expenses, and costs of Debtor's attorney provided for in nonstandard provision. If the fees, expenses, and costs of the Debtor's attorney are the subject of a nonstandard provision in accordance with § 2.2 of this Order, the Debtor's attorney must file an application for allowance of the fees, expenses, and costs in accordance with Bankruptcy Rule 2016.

3.3 Procedure for allowance of fees, expenses, and costs of Debtor's attorney. The following applies when this Order requires an application for allowance of any fees, expenses and costs of the Debtor's attorney:

3.3.1 Upon filing such an application, the Debtor's attorney may schedule a hearing using the self-calendaring procedure of the judge assigned to the case.

3.3.2 Alternatively, the Debtor's attorney may use the Voluntary Notice Procedure set out in BLR 9014-2 and General Order 24-2018.

4.0 Payment of fees, expenses, and costs of attorney for Debtor upon conversion to Chapter 7 or dismissal of case. The following provisions apply when the plan filed with the Court contains Local Form §§ 4.3(e), (f), (g), or (h), as applicable, or if a nonstandard provision with regard to the Debtor's fees, expenses, and costs contains a substantially similar provision:

4.1 Conversion to Chapter 7 before confirmation. If (A) the case is converted to Chapter 7 before confirmation; (B) the Debtor's attorney has complied with the requirements of this Order; (C) the 2016(b) Statement discloses that the Debtor has directed the Trustee to disburse funds to the Debtor's attorney to pay unpaid fees upon conversion; and (D) Local Form § 4.3(e) or a similar provision so provides, then the

Trustee is authorized to deliver to the Debtor's attorney, from funds available, the amount equal to (X) the unpaid amount of the fees, expenses, and costs of the Debtor's attorney, not to exceed the sum of $2,500 and any filing fee advanced by Debtor's counsel, less (Y) any payments to Debtor's attorney prior to conversion.

4.2 Dismissal before confirmation. Unless the Court orders otherwise, if (A) the case is dismissed before confirmation; (B) the Debtor's attorney has complied with the requirements of this Order; and (C) Local Form § 4.3(f) or a similar provision so provides, then the Debtor's attorney shall be allowed an administrative expense, subject to objection, in the amount of (X) the smaller of (i) the sum of $ 2,500 and any filing fee advanced by Debtor's counsel or (ii) the amount of fees, expenses, and costs set forth or estimated in the plan, less (Y) any payments to Debtor's attorney prior to dismissal. Debtor's attorney may file a fee application in compliance with Bankruptcy Rule 2016(a) to request allowance of any fees, expenses, and costs in excess of the amount stated above, but it must be filed within 14 days of the dismissal. The Trustee is authorized to pay from funds available, after payment of the Trustee's fees and, if applicable, any payments due under 11 U.S.C. § 1326(a)(1)(B) or (C) and in accordance with the plan, the amount allowed herein or pursuant to any fee application at dismissal pursuant to 11 U.S.C. § 1326(a)(2).

4.3 Conversion to Chapter 7 after confirmation. If (A) the case is converted to Chapter 7 after confirmation; (B) the Debtor's attorney has complied with the requirements of this Order; (C) the 2016(b) Statement discloses that the Debtor has directed the Trustee to disburse funds to the Debtor's attorney to pay unpaid fees upon conversion; and (D) Local Form § 4.3(g) or a similar provision so provides, then the

Trustee is authorized to deliver to the Debtor's attorney from funds available, the unpaid amount of the allowed fees, expenses, and costs of the Debtor's attorney.

4.4 Dismissal after confirmation. Unless the court orders otherwise, if (A) the case is dismissed after confirmation; (B) the Debtor's attorney has complied with the requirements of this Order; and (C) Local Form § 4.3(h) or a similar provision so provides, then the Trustee is authorized to pay from funds available, after payment of the Chapter 13 trustee's fees and, if applicable, any payments due under 11 U.S.C. § 1326(a)(1)(B) or (C) and in accordance with the plan, the unpaid amount of the allowed fees, expenses, and costs of the Debtor's attorney.

5.0 Filing and content of 2016(b) Statement. The 2016(b) Statement must:

5.1 Be filed before the payment of any fees, expenses, and costs of the Debtor's attorney in the bankruptcy case;

5.2 Describe all fees, expenses and costs received before the filing of the case and the amounts and method of any future payments;

5.3 Disclose any direction given by the Debtor with regard to disbursement of funds held by the Trustee upon conversion of the case, as set forth in Local Form §§ 4.3(e) and (g); and

5.4 Certify that the attorney has provided the Debtor a copy of the "Rights and Responsibilities" as set forth in § 8.0 of this Order.

6.0 Attorney for Debtor cannot accept fees from Debtor after filing of case except as the Debtor's plan and this Order permit. The attorney for the Debtor shall not accept payment of fees from a Debtor after the filing of the Debtor's case except as set forth in the Debtor's plan and as set forth in this Order.

7.0 Objections regarding fees, expenses, and costs of Debtor's attorney. Any agreement between the Debtor and the Debtor's attorney is subject to objection by any party in interest. Any party in interest may object to allowance of any fees, costs, and expenses of Debtor's attorney.

8.0 Statement of rights and responsibilities. Before filing a Chapter 13 petition on behalf of a Debtor, the attorney for the Debtor must provide the Debtor a copy of the statement of Rights and Responsibilities attached as Exhibit A and shall certify same in the 2016(b) Statement. Failure of an attorney to perform all of the attorney's duties set forth in the statement of Rights and Responsibilities may result in the reduction or disgorgement of fees, expenses, and costs in such amount as the Court concludes is appropriate.

9.0 Modification of fee agreement by the Court. The Court in its discretion may modify any agreement between the Debtor and the Debtor's attorney with regard to fees, expenses, and costs in connection with services rendered in connection with representation of the Debtor in the case. A modification that results in a reduced fee will not constitute grounds for the attorney for the Debtor to withdraw, and it will not reduce the duty that the attorney has to the Debtor.

10.0 Interim nature of payment of fees, expenses, and costs of Debtor's attorney. Any allowed fees, expenses, and costs of the Debtor's attorney paid in conjunction with the case shall be interim in nature and subject to review, disallowance, and disgorgement upon request of any party in interest or *sua sponte* by the Court.

11.0 Effective Date; Superseding of prior General Orders; Transition.

11.1 This Order is effective December 1, 2020.

11.2 In cases to which this Order applies, this Order supersedes General Order No. 18-2015, Compensation of Attorneys for Debtors in Chapter 13 Cases and General Order 22-2017 with Regard to Fees, Expenses, and Costs of Attorneys for Debtors in Chapter 13 Cases. General Order No. 18-2015 and General Order No. 22-2017 remain in effect with regard to cases to which this Order does not apply.

11.3 This Order applies: (A) in all cases filed on or after December 1, 2020; (B) in all cases filed before December 1, 2020, that are converted to Chapter 13 on or after December 1, 2020; and (C) in all cases filed before December 1, 2020, in which the Debtor did not file a plan before December 1, 2020, PROVIDED that §3.3.2 of this Order also applies to all pending cases.

IT IS SO ORDERED this 6th day of January, 2021.

Wendy L. Hagenau
Chief United States Bankruptcy Judge
For the Court

EXHIBIT A

Rights and Responsibilities Statement

As adopted by General Order 18-2015

(12/1/2015)

SPECIAL ANNOTATED VERSION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA

RIGHTS AND RESPONSIBILITIES STATEMENT BETWEEN CHAPTER 13 DEBTORS AND THEIR ATTORNEYS

Chapter 13 of the Bankruptcy Code gives each debtor ("Debtor") important rights, such as the right to keep property that could otherwise be lost through repossession, foreclosure or liquidation by a Chapter 7 Trustee. Chapter 13 also places burdens on Debtors, however, such as the burden of making complete and truthful disclosures of their financial situation and prompt payments as required by the Plan. It is important for Debtors who file a Chapter 13 bankruptcy case to understand their rights and responsibilities to the court, the Chapter 13 Trustee and to creditors. Debtors are entitled to expect certain services to be performed by their attorneys, but Debtors also have responsibilities to their attorneys. To assure that Debtors and their attorneys understand their rights and responsibilities in the Chapter 13 process, the judges of the Bankruptcy Court for the Northern District of Georgia have approved this statement of rights and responsibilities of Debtors and their attorneys in Chapter 13 cases that include, but are not limited to the following, as each case's facts may require more of both Debtor and Debtor's attorney.

BEFORE THE CASE IS FILED

EACH DEBTOR SHALL:

1. Discuss with the attorney the Debtor's objectives in filing the case.

2. Timely provide the attorney with full and accurate financial and other information, including, but not limited to:

   (a) Copies of pay stubs or other evidence of payment received before the date of filing of the petition, as requested by the attorney;[1]

   (b) Copies of all Federal income tax returns (or transcript of the returns) as requested by the attorney.[2]

3. Inform the attorney of any and all prior bankruptcy cases Debtor has filed.[3]

4. Provide copies of all bills, notices, statements or communications from creditors, as requested by attorney.[4]

THE ATTORNEY SHALL:

1. Personally counsel Debtor regarding the advisability of filing either a Chapter 13 or a Chapter 7 case, discuss with Debtor the procedures in both Chapters, as well as non-bankruptcy options, and answer Debtor's questions.

2. Personally explain to Debtor the requirement of obtaining a certificate from an approved nonprofit budget and credit counseling agency.[5]

3. Personally explain to Debtor that the attorney is being engaged to represent Debtor on all matters arising in the case, and explain how and when the attorney's fees and the trustee's fees are determined and paid.

4. Personally review with Debtor and obtain Debtor's signature on the completed petition, plan, as well as the Statement of Financial Affairs, Income and Expenses, and other statements as well as the various schedules (the "Schedules"), and all amendments thereto, whether filed with the petition or later. The Schedules may be prepared initially with the help of clerical or paralegal staff of the attorney's office, but personal attention of the attorney is required for the review and signing by Debtor.

5. Timely prepare and file Debtor's petition, plan, Schedules, statement of monthly net income[6], and any other required pleading.

6. Explain to Debtor how, when and where to make all necessary payments, including both payments that must be made directly to creditors and payments that must be made to the Chapter 13 Trustee, with particular attention to housing, vehicle, and domestic support obligation payments.[7]

7. Advise Debtor of the need to maintain appropriate insurance especially for house and vehicle.

8. Inform Debtor of the need to potentially provide attorney with copies of each Federal income tax return (or transcript of the return) for each tax year ending while the Debtor is in the case.[8]

AFTER THE CASE IS FILED

EACH DEBTOR SHALL:

1. Appear punctually at the meeting of creditors (also called the "341 meeting") with recent proof of income, a photo identification card, and proof of Social Security number. Acceptable forms of proof of identification are: driver's license; government ID, state picture ID; student ID, U.S. passport; military ID; resident alien card. Acceptable forms of proof of Social Security number are: Social Security Card; medical insurance card; pay

stub; W-2 form; IRS form 1099; Social Security Administration Report. Debtor must be present both in time for check-in and when the case is called for the actual examination.

2. Make the required payments to Trustee and to such creditors as are being paid directly, or, if required payments cannot be made, to notify the attorney immediately.

3. Promptly provide attorney, upon their request, evidence of all payments made directly to creditors and Trustee, including amount and date of payment.[9]

4. Notify the attorney immediately of any change in Debtor's address or telephone number.

5. Inform the attorney immediately of any wage garnishments, liens or levies on assets that occur or continue after the filing of the case.

6. Contact the attorney immediately if Debtor loses employment, is "laid off" or furloughed from work or has any significant change in income; experiences any other significant change in financial situation, including serious illness, personal injury, lottery winnings, or an inheritance.

7. Notify the attorney immediately if Debtor is sued or wishes to file a lawsuit, including divorce, matters regarding personal or property injury (including any worker's compensation matters), and any other matter in which Debtor is involved in a lawsuit or legal action outside this court.

8. Inform the attorney immediately if any tax refunds to which Debtor is entitled are seized or not received when due from the IRS or Georgia Department of Revenue.

9. Contact the attorney before buying, refinancing, or contracting to sell real property, and before entering into any loan agreement.

10. Complete an instructional course concerning personal financial management prior to receiving a discharge.[10]

THE ATTORNEY SHALL:

1. Advise the Debtor of the requirement to attend the meeting of creditors, and notify or remind Debtor of the date, time and place of the meeting, in such detail as is helpful or necessary to Debtor's appearance.

2. Inform Debtor that Debtor must be punctual and, in the case of a joint filing, that both spouses must appear at the same meeting.

3. Provide competent legal representation for Debtor at the meeting of creditors, appear in time for check-in and the actual examination and, unless excused by Trustee, for the

confirmation hearing.

4. If an attorney not employed by Debtor's attorney's law firm (a "contract" attorney) will be attending Debtor's 341 meeting or any court hearing, personally explain to Debtor in advance the role and identity of the contract attorney, obtain Debtor's written permission for the contract attorney to represent Debtor and provide the contract attorney with the file in sufficient time to review and discuss it with Debtor prior to such representation.

5. Make all reasonable efforts for the individual attorney who met with Debtor to attend the § 341 meeting or any other court hearing. However, if that attorney is unavailable then an attorney will be present on behalf of the Debtor with knowledge of Debtor's case and authority to make any modifications to Debtor's plan deemed necessary.[11]

6. Timely submit to Trustee properly documented proof of income for each Debtor, including business reports for self-employed debtors, and all required pay advises and tax returns or transcripts.[12]

7. Timely respond to objections to plan confirmation, and where necessary, prepare, file and serve amended Schedules or an amended plan.

8. Timely prepare, file, and serve any necessary annual financial statements[13], amended statements and Schedules, and any change of address, in accordance with information provided by each Debtor.

9. Monitor all incoming case information (including, but not limited to, Order Confirming Plan, Notice of Intent to Pay Claims, and 6-month status reports) for accuracy and completeness. Contact promptly Trustee or Debtor regarding any discrepancies.

10. Promptly respond to Debtor's questions through the term of the plan.

11. Timely prepare, file and serve necessary modifications to the plan after confirmation, including modifications to suspend, lower, or increase plan payments.

12. Prepare, file and serve necessary motions to buy or sell property and to incur debt.

13. On or before 60 days after the general bar date, certify the attorney has reviewed claims with Debtor, prepared, filed and served objections to improper or invalid claims and filed claims within 30 days after the bar date for creditors who fail to file claims when such failure will adversely affect Debtor's case or its successful completion and discharge or such failure will adversely affect Debtor after case completion and discharge.

14. Timely confer with Debtor and respond to any motion to dismiss the case, such as for payment default, or unfeasibility, and to motions to increase the percentage payment to unsecured creditors.

15. Timely confer with Debtor and respond to motions for relief from stay.

16. Timely prepare, file and serve appropriate motions to avoid liens.

17. Provide any other legal services necessary for the administration of the case.

ENDNOTES

1. Section 521(a)(1)(B)(iv) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the "Act") provides that the debtor shall file copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition. Additionally, this information would be useful in calculating the debtor's "current monthly income" as defined in § 101(10A), and the debtor's "applicable commitment period" as specified in § 1325(b)(4).

2. Section 1308(a) provides that not later than the day before the date on which the meeting of creditors is first scheduled to be held, the debtor shall file with appropriate tax authorities all tax returns for all tax periods ending during the 4 year period ending on the date of the filing of the petition. Also, § 521(e)(2) states that not later than 7 days before the date first set for the first meeting of creditors, the debtor shall provide to the trustee a copy of the Federal income tax return (or transcript) for the most recent tax year ending immediately before the commencement of the case.

3. Some of the most extensive changes in the Act deal with § 362. Section 362(c)(3) provides that the automatic stay terminates on the 30th day after the filing of the case if the debtor had a case pending during the previous year which was dismissed. Section 362(c)(4) states that if a debtor has had two or more cases pending within the previous year which were dismissed, then the automatic stay does not even go into effect. Of course nothing contained herein obviates the need for attorneys to utilize all available methods to ascertain whether their clients have filed cases previously.

4. Substantial changes have been made by the Act pertaining to notice. Section 342(c)(2)(A) specifies how notice may be required to be given by the debtor to a creditor. If, within the 90 days before the commencement of the case, a creditor supplies the debtor in at least two communications sent to the debtor with the current account number of the debtor and the address at which such creditor requests to receive correspondence, then any notice required by this title to be sent by the debtor to such creditor must be sent to such address and shall include such account number.

5. Section 109(h) provides that in order to be a debtor under Title 11, during the 180 day period preceding the date of filing of the petition, the individual must have received from an approved nonprofit budget and credit counseling agency described in § 111(a) an individual or group briefing that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

6. See § 521(a)(1)(B)(v), which states that in addition to schedules and statement of financial affairs, a debtor must file a statement of the amount of monthly net income, itemized to show how the amount is calculated.

7. "Domestic support obligation" is a defined term under § 101(14A). Pursuant to § 1307(c)(11), failure of a debtor to pay any post-petition domestic support obligation may be the basis for the dismissal or conversion of the case. Section 1325(a)(8) makes the payment of post-petition domestic support obligations a pre-requisite for the confirmation of the plan.

8. See § 521(f) which states, that at the request of any party in interest, a debtor shall file with the Court a copy of each federal income tax return with respect to each tax year ending while the case is pending.

9. Section 1326(a)(1)(C) states that if adequate protection payments are made directly to a creditor, the trustee must be provided with evidence of the payment including the amount and date of payment.

10. Section 1328(g)(1) mandates that the court shall not grant a discharge to a debtor unless the debtor has completed an instructional course concerning personal financial management as described in § 111.

11. It is anticipated that at the meeting of creditors parties will have an opportunity to negotiate for purposes of resolving issues pertaining to the proposed treatment (i.e. value, monthly distribution... e.g.) of creditors under the debtor's plan. The Court expects that counsel for debtors have the authority to negotiate binding arrangements with creditors and the trustee at the meeting of creditors in order to obviate the need for time consuming objections to confirmation to be filed in all instances.

12. See § 521(e)(2)(A)(i) which provides that not later than 7 days before the date first set for the meeting of creditors the debtor shall provide to the trustee a copy of the Federal income tax return (or transcript) for the most recent tax year.

13. Section 521(f)(4) states that at the request of the court, the United States Trustee, or any party in interest, a debtor shall file a statement, under penalty of perjury, of the income and expenditures of the debtor during the most recently concluded tax year and of the monthly income of the debtor, that shows how income, expenditures, and monthly income are calculated.

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CHAPTER 13 – PAYMENTS
[Rule 3070-1]

CHAPTER 13 TRUSTEE'S ADMINISTRATIVE FEE IN CHAPTER 13 CASES DISMISSED PRIOR TO CONFIRMATION

The administrative fee authorized pursuant to Local Bankruptcy Rule 3070-1(d)(1) shall be in the amount of $375.00.

indicating the amended plan is deficient, and the court may schedule a hearing for further adjudication.

Rule 3070-1
CHAPTER 13 - PAYMENTS

(a) RETURN OF PLAN PAYMENTS TO DEBTOR. Subject to subsections (b) and (d) below, upon conversion or dismissal of a chapter 13 case prior to confirmation, and unless the court orders otherwise, the standing trustee shall return to the debtor any payments made by the debtor under the proposed plan.

(b) ATTORNEYS FEES IN A DISMISSED UNCONFIRMED CHAPTER 13 CASE.

(1) Upon the entry of an order of dismissal in a chapter 13 case prior to a plan being confirmed, and unless other arrangements are made with the debtor for compensation, counsel for the debtor shall have 14 days from the entry of the order of dismissal within which to file an application for attorney fees ("Application"). The Application shall be served upon the debtor and the chapter 13 trustee, and those parties-in-interest shall have 14 days to respond.

(2) The chapter 13 trustee shall not make any disbursement until the 14 day period for filing the Application has expired. If an Application is timely filed, the trustee shall continue to hold the funds in trust and shall not make final disbursement until the court rules on the Application.

(c) ADEQUATE PROTECTION PAYMENTS TO SECURED CREDITORS AND DIRECT PAYMENTS TO LESSORS.

(1) The debtor shall pay directly to the lessor all payments scheduled in a lease of personal property for that portion of the obligation that becomes due after the order for relief.

(2) Unless the chapter 13 plan provides that the entire secured claim is to be paid directly by the debtor to the creditor, the debtor shall pay to a creditor, who holds an allowed claim secured by personal property to the extent that the claim is attributable to the purchase of the property by the debtor, pre-confirmation adequate protection payments through the chapter 13 trustee; however, the court may order payments to be made by any other method.

(3) The presumptive adequate protection payment to be paid pursuant to Section 1326(a)(1) shall be at least one percent (1%) of the value of the subject collateral at the discretion of the chapter 13 trustee as of the petition date. The valuation of the collateral shall be made solely by the chapter 13 trustee, subject to further court consideration.

(4) All adequate protection payments paid through the chapter 13 trustee shall be subject to an administrative fee in favor of the trustee equal to the trustee's statutory percentage commission then in effect, and the trustee shall collect the fee at the time of the distribution of the adequate protection payment to the claimant.

(5) The chapter 13 trustee shall make adequate protection payments to the creditor at the address duly noted on the proof of claim. The use of the address shall be deemed proper notice of the creditors for purpose of the adequate protection payments.

(6) The chapter 13 trustee shall not be required to make pre-confirmation adequate protection payments on account of any claim for which the secured value of the claim is less than $2,000.00.

(7) All adequate protection payments made through the chapter 13 trustee shall be disbursed in the ordinary course of the trustee's business, according to the trustee's standard monthly distribution schedule, from funds in the case as they become available for distribution to claimants prior to or after entry of the Order Confirming Plan.

(8) Subsections (c)(2) and (c)(3) of this rule shall not apply if the adequate protection is provided by means other than by direct payments to the holder of the secured claim.

(d) CHAPTER 13 TRUSTEE'S ADMINISTRATIVE FEE IN CHAPTER 13 CASES DISMISSED PRIOR TO CONFIRMATION.

(1) An administrative fee is authorized for the chapter 13 trustee in cases dismissed prior to confirmation in the amount set forth in the Administrative Guide.

(2) The fee shall be payable from payments made by the debtor(s) and held by the trustee at the time of case dismissal.

(3) The trustee who has incurred actual costs and expenses in excess of the standard administrative fee may apply under 11 U.S.C. § 503(a) for reimbursement of these additional costs and expenses from funds paid by the debtor to the trustee.

RULE 3070-2
CHAPTER 13 – RESIDENTIAL MORTGAGE PAYMENTS

(a) DEFINITIONS. As used in this Local Rule, the following definitions shall apply:

(1) "Administrative Arrearage" is the total amount of two full post-petition Mortgage Payments and shall be in addition to any Pre-Petition Arrearage claim.

(2) "Conduit Payment" means a Mortgage Payment that is paid by a Debtor through the Chapter 13 Trustee. The amount of a Conduit Payment shall be equal to the amount of the petition-date monthly contractual Mortgage Payment due pursuant to the note or contract subject to any subsequent change in such Mortgage Payment effectuated in compliance with this rule.

(3) "Debtor" includes both Debtors in a joint case.

(4) "Mortgage Loan" is a mortgage, deed of trust or other consensual lien on the real property of the Debtor that is the principal residence of the Debtor, unless the confirmed plan or other order of the court provides for the surrender of the residence, the avoidance of the lien purportedly securing such loan, or such other treatment that is expressly inconsistent with the application of this rule.

(5) "Mortgage Payment" means a regular, periodic payment that is owed by a Debtor on a Mortgage Loan as set forth in the documents evidencing the loan that is the basis of the Real Property Creditor's claim.

(6) "Plan Payment" means the total amount that the Debtor is required to pay to the Chapter 13 Trustee each month under the chapter 13 plan, which amount includes an amount sufficient to cover the Conduit Payments.

(7) "Pre-Petition Arrearage" is the total amount past due on a Real Property Creditor's claim as of the petition date.

Vesting

620 B.R. 655

IN RE: Robert William BAKER, Debtor.

Bankruptcy Case No. 17-14041 EEB

United States Bankruptcy Court, D. Colorado.

Signed September 29, 2020

[620 B.R. 656]

Stephen E. Berken, Sean Cloyes, Denver, CO, for Debtor.

Chapter 13 Trustee-Goodman, Adam Goodman, Denver, CO, for Trustee Adam M. Goodman.

ORDER ON REQUESTED PLAN MODIFICATIONS

Elizabeth E. Brown, Bankruptcy Judge

THIS MATTER is before the Court on two competing motions to modify the Debtor's chapter 13 plan, one filed by the Debtor and one by the chapter 13 trustee (the "Trustee"). Post-confirmation, the Debtor sold his residence and realized net sales proceeds in excess of Colorado's homestead exemption. The Debtor's request to modify seeks to eliminate any further payments to the mortgage holder, whose debt the Debtor repaid from the sales proceeds. The Trustee's request would require the Debtor to segregate the homestead proceeds and agree to restrict their use to only the purchase of a new home, as well as the immediate turnover of the non-exempt portion and the eventual turnover of the exempt proceeds in the event the Debtor does not purchase a new home within two years of the sale date.

To rule on the competing motions, the Court must decide whether the sale proceeds, or any portion of them, constitute post-confirmation property that vested in the Debtor (unfettered by any bankruptcy restrictions) or whether they remain property

[620 B.R. 657]

of the estate (subject to restricted use). While this might appear to be a narrow question, answering it requires the Court to interpret several foundational chapter 13 statutes. Some might argue that these statutes are vague and even contradictory. One thing is certain, court interpretations of them are widely divergent.

I. BACKGROUND

Before engaging in this legal discourse, there are two aspects of this matter that require some background, one involves the value of the Debtor's home and the other applicable state law. When the Debtor filed his chapter 13 case on May 3, 2017, he owned a home he valued at $230,000, encumbered by a first deed of trust in the amount of $196,131. He claimed an exemption for the $34,131 of equity under Colorado's $75,000 homestead exemption statute.[1] But when he sold his home post-confirmation, he realized $86,000 in net sales proceeds, only $75,000 of which is exempt. The Trustee has not disputed or requested an evidentiary hearing on whether the Debtor improperly scheduled the petition date value of his home or whether the increase reflects post-confirmation changes, such as reduction of the mortgage balance or changes in the residential marketplace. In the absence of any challenge to the Debtor's original valuation, the Court assumes the increase in value reflects a post-confirmation change.

Second, according to Colorado law, proceeds up to the amount of the applicable homestead exemption remain exempt:

> for a period of two years after such sale if the person entitled to such exemption keeps the exempted proceeds separate and apart from other moneys so that the same may be always identified. If the person receiving such proceeds uses said proceeds in the acquisition of other property for a home, there shall be carried over to the new property the

> same homestead exemption to which the owner was entitled on the property sold.

Colo. Rev. Stat. § 38-41-207. In this case, the Debtor's two-year reinvestment period will expire on May 17, 2021.

II. DISCUSSION

The Trustee's argument is straight forward. The Debtor can only exempt $75,000. Therefore, the additional $11,000 should be immediately contributed toward the repayment of creditors. The remaining $75,000 only retains its exempt character if the Debtor uses it to buy a new home within two years. Consequently, he should not be able to spend it on anything else. If he loses his exemption, then all the funds must go toward repaying creditors.

This argument requires the Court to interpret three pivotal statutes: 11 U.S.C. §§ 1306, 1327, and 1329.[2] Section 1306 delineates what is property of the estate in a chapter 13 case. In addition to the property specified in § 541, the chapter 13 estate includes all property the debtor "acquires

[620 B.R. 658]

after the commencement of the case but before the case is closed, dismissed, or converted...." 11 U.S.C. § 1306(a)(1). Section 1327 describes the legal effect of plan confirmation. In subsection (b), it provides that, unless the plan states otherwise, "confirmation ... vests all of the property of the estate in the debtor." *Id.* § 1327(b). These two statutes appear to be contradictory. Is property acquired post-confirmation property of the estate under § 1306(a)(1) that must be contributed toward plan obligations? Or is it property of the debtor following confirmation as provided by § 1327(b) and, therefore, it is no longer subject to the claims of his creditors, except as provided in the plan?

Finally, § 1329 sets forth the requirements for any post-confirmation modification of a plan. It allows for increases and decreases in plan payments but does not specify what constitutes cause for a change in payments. Is it limited to changes in income? Or does a sale of an asset provide grounds for an increase? It also specifies that any modification must satisfy certain confirmation standards, such as the best-interest-of-creditors test (the "BIC"). *Id.* § 1329(b) (incorporating § 1325(a)(4)). This test requires a showing that the creditors will receive under the modified plan at least as much as they would from a chapter 7 liquidation. *Id.* § 1325(a)(4). But § 1329(b) does not specify the measuring date on which the BIC test must be applied in a modification context. Should the court measure the hypothetical chapter 7 distribution on the date of the proposed modification or does it remain the date of the plan's effective date as specified in § 1325(a)(4)? The value of the debtor's assets, and even the existence of the assets themselves, may differ significantly on these two dates.

Congress may have left these statutes intentionally vague to allow courts greater flexibility in interpretation but, as a result, courts are sharply divided on how they have filled these gaps. When applicable bankruptcy statutes are subject to varying interpretations, this Court always begins by stepping back and looking at the Bankruptcy Code as a whole. It has provided two different methods by which individual debtors may restructure their finances and obtain a fresh start, one in chapter 7 and the other in chapter 13.[3] In chapter 7, the debtor parts with his non-exempt property but keeps his future income and, in exchange, he receives a discharge of his debts. In chapter 13, the debtor retains his property, but to achieve a discharge he agrees to contribute all his disposable income over the life of the plan, which payments must amount to at least as much as his creditors would receive in a chapter 7 liquidation. Thus, the two bargains struck are fundamentally different. David Gray Carlson, *Modified Plans of Reorganization and the Basic Chapter 13 Bargain* , 83 Am. Bankr. L.J. 585 (2009) ("Carlson"). Either the debtor trades his property or his income for his discharge, but not both. Any interpretation of these chapter 13 statutes must not attempt to blur this fundamental premise. It must recognize that, in

chapter 13, the debtor's plan payments substitute for his property, leaving the debtor with the freedom "to treat his ... property as his ... own without court intervention at every turn." *Yoon v. Krick* (*In re Krick)* , 373 B.R. 593, 607 (Bankr. N.D. Ind. 2007).

[620 B.R. 659]

Another bedrock principle of chapter 13 is that a debtor must make his best efforts to repay creditors with his future income. However, often debtors' circumstances change over the three-to-five-year terms of their plans, whether for better or worse. The Bankruptcy Code anticipates this. In § 1329(a), the Code provides for modification of a confirmed plan to request four types of changes: (1) an increase or decrease in payments (§ 1329(a)(1)); (2) an extension or reduction in the time for payments (§ 1329(a)(2)), provided that any extension does not cause the plan to exceed five years in length (§ 1329(c)) or seven years in length if the debtor has experienced material financial hardship due to the COVID-19 pandemic (§ 1329(d)); (3) an alteration in a creditor's distribution rights under the plan to account for non-plan payments the creditor has received (§ 1329(a)(3)); and (4) a decrease in payments necessary to allow the debtor to acquire health insurance (§ 1329(a)(4)).

This statute not only limits the types of permissible modifications, but also standing to request a modification. Requests for post-confirmation modification can be made only by the debtor, the chapter 13 trustee, or the holder of an allowed unsecured claim. *Id.* § 1329(a). And they must make their requests before the completion of payments under the confirmed plan. *Id.*

Before approval, the court must determine whether, with the proposed modification, the plan will continue to satisfy many of the original confirmation requirements. In § 1329(b), the Code lists several sections of chapter 13 that "apply to any modification." They are: §§ 1322(a), 1322(b), 1323(c) and "the requirements of section 1325(a)." *Id.* § 1329(b)(1). By failing to place restrictions on the use of the sale proceeds, the Trustee asserts that the Debtor's proposed modification does not meet two of the requirements of § 1325(a): (1) the BIC test of § 1325(a)(4) and (2) the good faith requirement of § 1325(a)(3).

A. What is the Measuring Date for the BIC Test under § 1329 ?

In the confirmation context, § 1325(a)(4) clearly specifies that the BIC test is to be applied "as of the effective date of the plan." However, § 1329(b) does not state its measuring date. Given its silence in this regard, many courts assume that they should reapply it as of the modification date. Keith M. Lundin, *Lundin on Chapter 13* , § 126.2, at ¶ 11 (September 27, 2020 update) ("Lundin"). The leading case for this view is *In re Barbosa* , 236 B.R. 540 (Bankr. D. Mass. 1999), *aff'd sub nom. Barbosa v. Solomon* , 243 B.R. 562 (D. Mass 2000), *aff'd,* 235 F.3d 31 (1st Cir. 2000). In that case, the debtors owned an investment property they valued at $63,000 at the time of confirmation of their original plan. A few months later, they sold the property for $137,500 and the chapter 13 trustee moved to modify the debtors' plan to increase the distribution to unsecured creditors. The bankruptcy court determined that the BIC test should be applied as of the date of modification, reflecting the higher asset value. *Barbosa* , 236 B.R. at 552.[4]

[620 B.R. 660]

The legislative history of § 1329(b) can be read to support this view:

> In applying the standards of proposed 11 U.S.C. § 1325(a)(4) to the confirmation of a modified plan, 'the plan' as used in the section will be the plan as modified under this section, by virtue of the incorporation by reference into this section of proposed 11 U.S.C. § 1323(b). Thus, the application of the liquidation value test must be

> redetermined at the time of the confirmation of the modified plan.

H.R. Rep. No. 595, 95th Cong., 1st Sess. 431 (1977), *as reprinted in* U.S.C.C.A.N. 5787, 6387. When a statute is susceptible to varying interpretations, legislative history is a relevant factor to consider. *Nat'l Credit Union Administration Board v. Nomura Home Equity Loan, Inc.* , 764 F.3d 1199, 1225-26 (10th Cir. 2014) ; 2A Norman Singer & Shambie Singer, *Sutherland Statutes and Statutory Construction* § 48:1 (7th ed., October 2019 update) ("Sutherland") (citing *Train v. Colo. Public Interest Research Group, Inc.* , 426 U.S. 1, 10, 96 S.Ct. 1938, 48 L.Ed.2d 434 (1976)).

However, does this statement really answer the question? One possible interpretation is that the BIC test must be measured by valuing the assets as of the modification date, but it is also possible to interpret it as saying the test must be reapplied, but not necessarily with a change in the measuring date. If the debtor proposes a modification to decrease plan payments due to a decrease in his income, he still must pay his creditors at least as much as they would have received in chapter 7 on the effective date. If his confirmed plan required him to pay at least $25,000 to meet this test because he had $25,000 of non-exempt equity in his home on the effective date, he cannot later modify his confirmed plan to pay less than $25,000 to creditors. In this instance, the BIC test is reapplied to the proposed modification but with the same measuring date – to make sure creditors will still receive at least as much as they would have if the case had originally been filed as a chapter 7 proceeding.

Even if the legislative history is interpreted to mean a court should revalue the assets as of the modification date, legislative history is not the only factor to consider in interpreting this statute. When the overall context of a statutory scheme and the actual language of the statute suggest a different interpretation, the court need not be bound by legislative history. In fact, courts may disregard legislative history and rules of statutory construction and "expand a statute's literal meaning to accomplish beneficial results, or to serve an act's purpose, or to avoid thwarting a legislative intent apparent

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from an entire act ...." 2A Sutherland, *supra* , § 47:25 (footnotes omitted).

Before considering the overarching statutory framework of chapter 13, the language of § 1329(b) itself sheds some light on this interpretive question. First, § 1329(b) is a bit of an anomaly. Instead of stating in § 1329(b) itself the tests that apply to modifications, it merely incorporates other statutes by reference. The BIC test in § 1325(a)(4), which it incorporates, states that the test is to be applied "as of the effective date of the plan." Thus, in the absence of any other date specified in § 1329(b), it is logical to assume that the court should apply the same testing date. After all, § 1329(b) incorporated the totality of § 1325(a)(4), without making any changes to it.

The other statutes referenced in § 1329(b), and those omitted from it, provide further insight. While § 1329(b) incorporates § 1322(a) and (b), which list the required contents of a plan, it does not incorporate § 1322(c) – (f). Subsection (d), for example, specifies the permitted maximum length of the plan, which differs depending on whether the debtor is an above-median-income or below-median-income debtor. Section 1329 specifies its own term limit, *i.e.* that the plan, as modified, may not exceed five years in length. 11 U.S.C. § 1329(c). Thus, § 1329(b) did not need to incorporate § 1322(d). However, when § 1329 intended to incorporate a prior confirmation standard without making any changes, it did so merely by reference to it. From this standpoint, one can assume that Congress did not intend in § 1329(b) to change the BIC test measuring date from its original requirement in § 1325(a)(4), which specified the "effective date."

So, what is the effective date? Unfortunately, the Bankruptcy Code does not define its use of this phrase. Consequently, there are no less than three schools of thought as to what it means. One holds

that it is the confirmation date. *See, e.g.* , *In re Gibson* , 415 B.R. 735, 738 (Bankr. D. Ariz. 2009). Another relies on § 1326(a)(1), which requires the debtor to begin making plan payments no later than thirty days from the filing of the plan. This "implies that the plan is effective against the debtor even before it is confirmed ...." Carlson, *supra* , at 601. "Judge Lundin, however, reports that most courts assume that the date of the bankruptcy petition is the date as of which the test must be performed." *Id.* (*citing* 3 Keith M. Lundin, *Chapter 13 Bankruptcy* § 160.1 (3d ed. 2000)); *see also In re Green* , 169 B.R. 480, 482 (Bankr. S.D. Ga. 1994). Whether it is the petition date, the first payment date, or the confirmation date, in most cases this date will be close in time to the petition date.

Some courts have adopted the view that the measuring date remains the confirmed plan's effective date when considering a modification request.[5] The leading case is *Forbes v. Forbes (In re Forbes)* , 215 B.R. 183, 189 (8th Cir. BAP 1997). In *Forbes* , the court determined that settlement proceeds from a cause of action that accrued post-petition would not be included in property of the estate under the BIC test and their existence was irrelevant to the court's approval of plan modification. The *Forbes* panel noted the impracticalities of applying the test at the date of plan modification. It might lead to the "absurd result that a Chapter 13 debtor could be required

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by consecutive motions from unsecured claim holders to continuously modify the confirmed plan if the debtor owns an asset that appreciates after confirmation of each modified plan." *Forbes* , 215 B.R. at 190. Ultimately, the *Forbes* court relied on the concept that the Code contemplates only one " 'plan' as a unitary constant and solitary construct." *Forbes* , 215 B.R. at 188. The court reasoned that

> there is but a single plan in effect at any given time during the pendency of a bankruptcy case [and] there is ordinarily but a single plan confirmation made during the entire course of a bankruptcy case. The Bankruptcy Code does not provide for the 'confirmation' of a modified plan; rather, the plan as modified becomes the plan if it is not disapproved.

Id.

Expanding on this reasoning, the court in *In re Gibson* relied on the language in § 1329(b)(2) that says, "the plan as modified becomes the plan." The court then concluded that:

> [t]he Code thus contemplates only one plan that is effective although its terms may be modified. It would be an anomaly for that one plan, as modified, to have two effective dates.... [O]nce the plan became binding on creditors, that event defined the plan's effective date. Modification of the terms of the plan makes no change to its effectiveness in binding creditors and cannot change the date on which it became effective.

In re Gibson , 415 B.R. 735, 739 (Bankr. D. Ariz. 2009). "There should be only one date as of which the determination is made as to what creditors would have received upon liquidation, so the 'effective date of the plan' must remain that of the original plan." *Id.*

This interpretation maintains the fundamental bargain of chapter 13 where a debtor trades his future income, not his property, to obtain a discharge. Any interpretation that would require a debtor to trade both his income and his property should be eschewed. The Collier treatise sums up the flaws inherent in the *Barbosa* view. It argues that the court should not recalculate the BIC test based on property values at the time of modification because:

> [t]he best-interests test turns on what would have happened had the

> debtor filed a chapter 7 case instead of a chapter 13 case. If a chapter 7 case had been filed, only property of the estate under section 541 would have been available to creditors and not the additional property that became property of the estate under section 1306(a). Therefore, property acquired after the petition, other than the limited types that become property of the estate under section 541, is not relevant to application of section 1325(a)(4) to a proposed plan modification. To hold otherwise, a court would have to find the best-interests test to be a constantly fluctuating standard, subject not only to property coming into the estate and leaving the estate but also to changes in the value of estate property. Indeed, if a case is converted from chapter 13 to chapter 7, property of the estate ordinarily is based on the property the debtor had on the date of the petition, and not the date of conversion. [§ 348(f)(1)] The policy behind this provision, that a debtor should not be discouraged from filing a chapter 13 case by the possibility that property acquired during the case could be lost to creditors who would have no right to it had the debtor initially filed a chapter 7 case, is equally applicable. For similar reasons, the acquisition or liquidation of assets should not be grounds for modification, at least if those assets do not produce additional ongoing income for the debtor.

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8 *Collier on Bankruptcy* ¶ 1329.05[3] (Richard Levin & Henry J. Sommer eds., 16th ed. 2019).

Demanding an increase in plan payments because of a post-confirmation sale of property or its appreciation in value would threaten the very fabric of the chapter 13 bargain.

> Suppose a debtor owns a house. The § 1325(a)(4) test is conducted at the time of the confirmation hearing and the court finds that, given the appraised value of the house, all creditors would receive more from the plan than they would have received in a chapter 7 liquidation. Two years later, however, the house has increased in value. If an unsecured creditor moves to modify, and if the § 1325(a)(4) test is redone, the payments, previously high enough to justify confirmation, no longer suffice. To make the plan work as modified, the debtor would have to liquidate principal, not income. This would be a violation of the basic chapter 13 bargain.

Carlson, *supra* , at 599-600.

B. Are the Homestead Proceeds Property of the Chapter 13 Estate Under § 1306(a) ?

The Trustee's second argument for taking the sales proceeds into account when determining an increase or decrease in plan payments is based on his reading of § 1306(a). Section 1306(a)(1) provides that property of the estate includes "all property of the kind specified in [§ 541] that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 ...." In his view, this language is broad enough to include the increase in value that has occurred since confirmation. Many courts agree with him and this Court acknowledges that, if this statute is read in isolation, it would. But § 1327(b) provides that, "[e]xcept as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor." And § 1327(c) says that, "[e]xcept as otherwise provided in the plan or in the order confirming the plan, the property vesting in the debtor under subsection (b) of this

section is free and clear of any claim or interest of any creditor provided for by the plan." These latter two sections suggest that the chapter 13 estate terminates at confirmation. At that point property of the estate becomes property of the debtor, no longer subject to bankruptcy court oversight.

The apparent contradiction between § 1306(a) and § 1327 have led courts to adopt no less than five different approaches to reconciliation:

> Estate-termination approach – At confirmation the estate ceases to exist and all property of the estate, whether acquired before or after confirmation, becomes property of the debtor.
>
> Estate-transformation approach – At confirmation, all property of the estate becomes property of the debtor except property essential to the debtor's performance of the plan; the Chapter 13 estate continues to exist, but it contains only property necessary to performance of the plan, whether acquired before or after confirmation.
>
> Estate-replenishment approach – At confirmation, all property of the estate becomes property of the debtor; the Chapter 13 estate continues to exist and "refills" with property defined in § 1306 that is acquired by the debtor after confirmation, without regard to whether that property is necessary to performance of the plan.
>
> Estate-preservation approach – The vesting of property in the debtor under § 1327(b) does not remove any property

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> from the chapter 13 estate, whether acquired before or after confirmation; property remains in the estate until the case is closed, dismissed or converted. The debtor's rights and responsibilities with respect to property of the estate may change somewhat at confirmation, but the existence and composition of the estate are not disturbed by § 1327(b).
>
> Conditional-vesting approach – At confirmation, vesting gives the debtor an immediate and fixed right to use estate property, but that right is not final until the debtor completes the plan and obtains a discharge.

Lundin, *supra* , at § 120.3, ¶ [9] (citations omitted).

Under the "estate termination" view, all property that vested in the debtor at confirmation and any post-confirmation income or property he acquires is no longer property of the estate. There is no chapter 13 estate once the court confirms a chapter 13 plan. *See, e.g.* , *Calif. Franchise Tax Bd. v. Jones (In re Jones)* , 420 B.R. 506, 514 (9th Cir. BAP 2009). The vested property is no longer subject to administration by the bankruptcy court. Under this view, neither the Debtor's home nor the proceeds of the home sale are estate property and the Debtor is free to do with the proceeds whatever he wants.

The "estate transformation" view also would not obligate the Debtor to contribute the homestead proceeds to his plan. Under this view, the post-confirmation chapter 13 estate includes only post-petition income and property necessary to consummate the plan. *See, e.g.* , *Telfair v. First Union Mortg. Corp.* , 216 F.3d 1333, 1340 (11th Cir. 2000) (concluding that the plan returns so much of that property to the debtor's control as is not necessary to the fulfillment of the plan); *Black v. U.S. Postal Serv. (In re Heath)* , 115 F.3d 521, 524 (7th Cir. 1997) (stating that post-

confirmation income that is not necessary to fulfillment of plan is not estate property). The Debtor's confirmed plan does not require him to use the homestead proceeds to pay creditors, so it is not property of his estate under this view.

The "estate preservation" and "conditional vesting" views both deem all property, whether acquired pre- or post-confirmation, to be estate property. Thus, the Debtor would have to account for the non-exempt proceeds in a BIC calculation if the Court performs the BIC test as of the date of modification. *See, e.g.* , *In re Brensing* , 337 B.R. 376, 383 (Bankr. D. Kan. 2006) ; *In re Fisher* , 198 B.R. 721, 732-34 (Bankr. N.D. Ill. 1996), *rev'd* , 203 B.R. 958 (N.D. Ill. 1997) ; *W. Va. State Tax Dep't v. Mullins (In re Mullins)* , 2009 WL 3160361, at *3-4 (S.D. W. Va. Sep. 30, 2009) (describing but disagreeing with lower court's conditional vesting analysis).

The "estate replenishment" view, sometimes called the "modified estate transformation" approach, is the most difficult to apply in the present context. Under this view, all pre-confirmation property, including his former home, vested in the Debtor on confirmation of his plan, but if one views the homestead proceeds as "new" property, they would become estate property under § 1306(a). Conversely, if one interprets the vesting provision of § 1327(b) as permanently removing the home from the jurisdiction of the Court, or if one views the homestead proceeds as a "substitute" for the home rather than an entirely new property interest, then the proceeds would not become estate property under § 1306(a). *See, e.g.* , *Waldron v. Brown (In re Waldron)* , 536 F.3d 1239, 1242-43 (11th Cir. 2008) (determining that "entirely new" property interests acquired post-confirmation are estate property under § 1306(a), whether "necessary" to the completion of the plan or not);

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City of Chicago v. Fisher (In re Fisher) , 203 B.R. 958 (N.D. Ill. 1997) ; *In re Gonzales* , 587 B.R. 363, 370 (Bankr. D. N.M. 2018) (adopting estate replenishment view but explaining that pre-confirmation wages are no longer estate property after confirmation). Some courts do not make the distinction between the sale of pre-bankruptcy property and the acquisition of additional property post-confirmation. *See* , *e.g.* , *Garcia v. Bassel* , 507 B.R. 907 (N.D. Tex. 2014).

1. **No Binding Precedent**

There is no binding precedent in the Tenth Circuit on this question. There is, however, language in *United States v. Richman (In re Talbot)* , 124 F.3d 1201 (10th Cir. 1997) consistent with either the "estate termination" or "estate preservation" approach. In *Talbot* , the debtors proposed a plan that bifurcated the I.R.S.' claim into a secured claim with a lien against their home to the extent of $18,000 and an unsecured claim in the amount of $19,000. The I.R.S. did not object to this treatment and the court confirmed the plan. However, when the debtors sold their home post-confirmation, the I.R.S. refused to release its lien at closing unless it was paid $37,000 on its combined claim. The debtors capitulated to this demand. Then they moved to modify their plan to eliminate any remaining payment of secured debts against the home and any further payment to the I.R.S. The chapter 13 trustee requested an order requiring the I.R.S. to disgorge the sales proceeds. The bankruptcy court, and the district court on appeal, ordered disgorgement. Before the Tenth Circuit, the trustee argued that the disgorgement order was proper because the bankruptcy court retained jurisdiction over the sale proceeds as property of the estate under § 1306(a). The Tenth Circuit rejected this notion, applying § 1327. Under § 1327(b), the house vested in the debtors at confirmation. Therefore, it was no longer property of the estate under § 1306(a). Under § 1327(c), the Debtor's title to the home was free and clear of any claim or interest provided for by the plan, except as expressly provided otherwise. This plan only retained an $18,000 lien of the I.R.S. Finally, under § 1327(a), the I.R.S. was bound by the confirmed plan. Its action in extracting full payment at the closing violated the plan. Therefore, on remand, the

bankruptcy court could order disgorgement, but only of the excess payment amount.

This reasoning and its ruling are consistent with the estate termination approach. However, the Tenth Circuit was careful to note that it did not have to decide whether the "vesting provisions in § 1327(b) operate to grant absolute 'ownership' of estate property to the debtor upon confirmation of a Chapter 13 plan," because the trustee had conceded this point. *Talbot* , 124 F.3d at 1207 n.5. So, this case provides no precedent on this issue, but we are left with several indications of the court's leanings. It clearly acknowledged that "vesting" under § 1327 is an important consequence of plan confirmation. It relied on *Black v. U.S. Postal Serv. (In re Heath)* , 115 F.3d 521, 524 (7th Cir. 1997), which held that a bankruptcy court lacks jurisdiction to control disposition of a chapter 13 debtor's property that is no longer property of the estate. *Talbot* , 124 F.3d at 1206-07. However, in a parenthetical, the Tenth Circuit described the *Heath* case as "holding that post-confirmation income *that is not necessary to the fulfillment of the plan* of reorganization does not become part of bankruptcy estate." *Id.* at 1208 n.9 (emphasis added). This language echoes the estate transformation approach, in which all property vests in the debtor on confirmation, except property essential to the fulfillment of the plan. Thus, it is not possible from this case alone to decipher what position

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the Tenth Circuit would take on this thorny issue.

Nor is there is a Tenth Circuit Bankruptcy Appellate Panel ("BAP") decision on this issue. Twice, the BAP has recognized the issue and the split in authority. *See Rael v. Wells Fargo Bank, N.A. (In re Rael)* , 527 B.R. 799, 2015 WL 847432 (10th Cir. BAP Feb. 27, 2015) (unpublished opinion); *Vannordstrand v. Hamilton (In re Vannordstrand)* , 356 B.R. 788, 2007 WL 283076 (10th Cir. BAP Jan. 31, 2007) (unpublished opinion). Yet it has not yet reached this issue.

In a recent decision, *In re Gonzales* , 587 B.R. 363 (Bankr. D.N.M. 2018), the New Mexico bankruptcy court adopted the estate transformation view, in part based on language in *Harris v. Viegelahn* , 575 U.S. 510, 135 S. Ct. 1829, 191 L.Ed.2d 783 (2015). In *Harris v. Viegelahn* , the Supreme Court said that "the Chapter 13 estate ... includes both the debtor's property at the time of his bankruptcy petition, and any wages and property acquired after filing." *Id.* at 1835. However, the Supreme Court addressed only whether, after conversion of a chapter 13 case to chapter 7, a chapter 13 trustee could distribute to creditors funds derived from the debtor's post-petition wages remaining in the trustee's possession on the conversion date. The Court was not required to, and did not consider, the effect of § 1327(b) on property of the estate on the date of confirmation. The Supreme Court's general statements regarding property of the estate under § 1306(a) were only made to highlight the differences between chapter 7 and chapter 13 cases. Moreover, the debtor's plan in *Harris v. Viegelahn* specifically provided that "[u]pon confirmation of the plan, all property of the estate shall not vest in the Debto[r], but shall remain as property *of the estate* ." *Id.* at 1839 (emphasis in original). Therefore, *Harris v. Viegelahn* does not directly speak to the issue at hand.

2. **Estate Termination View is the Better Interpretation**

This Court has previously addressed the interplay between § 1327 and § 1306(a) in *In re Dagen* , 386 B.R. 777, 782 (Bankr. D. Colo. 2008), a case alleging a stay violation under a prior version of § 362(b). There, the issue was whether a child support creditor had violated the automatic stay when she collected her pre- and post-petition debts from the debtor's post-confirmation income. The Court had to determine whether post-confirmation income was property of the estate because § 362(b)(2)(B) only allows a child support creditor to collect its debt from "property that is not property of the estate." 11 U.S.C. § 362(b)(2)(B). The Court adopted the "estate termination" approach because it is the only

construction that "gives effect to the literal terms of § 1327(b), which expressly states that confirmation vests all property in the debtor." *Id.* at 782. Accordingly, the Court held that the debtor's post-confirmation disability income, even though necessary to fund the plan, was no longer property of the estate under § 1306(a). *Id.* at 785.

Another division of this court, faced with facts similar to the present case, held that proceeds from a post-confirmation sale of the homestead were no longer property of the estate under § 1306(a)(1). *Sender v. Golden (In re Golden)* , 528 B.R. 803 (Bankr. D. Colo. 2015). In *Golden* , the chapter 13 debtor sold his home after confirmation, transferred the proceeds from the sale to his ex-wife, and then converted his case to chapter 7. His chapter 7 trustee sued the ex-wife under § 549 to recover the sale proceeds transferred without court authorization. Because § 549 applies only to an unauthorized transfer of "estate property," the court had to address whether

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the proceeds were in fact property of the estate. 11 U.S.C. § 549(a).

Reasoning that the most common meaning of "vest" refers to a transfer of ownership, the *Golden* court determined that § 1327(b) meant that, upon confirmation, "ownership of the property left the estate and vested in the Debtor." *In re Golden* , 528 B.R. at 806. The court discussed the various theories regarding the extent of the post-confirmation chapter 13 estate and concluded that only the "estate preservation" approach would consider the proceeds to be estate property. Under any other approach, because the home sale proceeds were not necessary to consummate the plan, they would not become estate property under § 1306(a)(1). The court further noted that, in *Talbot* , the Tenth Circuit did not adopt the estate preservation view and neither had prior bankruptcy court decisions from Colorado. *Id.* at 807-08 (citing *In re Segura* , 2009 WL 416847 at *6 (Bankr. D. Colo. Jan. 9, 2009) (adopting "estate termination" approach) and *Providian Nat'l Bank v. Vitt (In re Vitt)* , 250 B.R. 711, 718-19 (Bankr. D. Colo. 2000) (adopting "estate transformation" approach)). Viewing its decision as consistent with the reasoning in *Talbot* , the court said "the home was no longer property of the Chapter 13 estate upon confirmation of the Debtor's plan. The Debtor, therefore, enjoyed full ownership and control over the property after the date of confirmation." *Golden* , 528 B.R. at 808.

This Court believes the estate termination approach is the only interpretation that respects the plain meaning of the language of § 1327(b). As the *Golden* court noted, in § 1306(b), the Code already provides that a chapter 13 debtor has the right to possess all property of the estate from and after the date of filing. Therefore, unless the concept of "vesting" in § 1327(b) refers to a transfer of ownership, § 1327(b) is rendered meaningless. *Golden* , 528 B.R. at 806-07 (citing *In re Clouse* , 446 B.R. 690, 699 (Bankr. E.D.Pa. 2010)); *see also Yoon v. Krick (In re Krick)* , 373 B.R. at 601 (to give meaning to § 1327(b), the words "estate" and "debtor" must define separate concepts and, therefore, "vesting" must mean a change in ownership from the estate to the debtor).

While the estate termination approach gives meaning to § 1327(b)'s vesting provision, it is admittedly at odds with the general language of § 1306(a). In the face of this apparent conflict, resort to traditional canons of statutory construction are called for. First, "where one statute deals with a subject in general terms and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible. But if two statutes conflict, the general statute must yield to the specific statute involving the same subject." 2B Sutherland, *supra* , § 51:5; *see also In re Petruccelli* , 113 B.R. 5, 15 (Bankr. S.D. Cal. 1990). Section 1306(a) is a more general statute defining what property comes into the chapter 13 estate. Section 1327(b) is the more specific statute describing its status following confirmation.

The estate termination view gives meaning to both statutes. Consider a debtor's home and his wages. On the filing of his chapter 13 petition, both become property of his estate under § 1306(a), protected by the automatic stay from creditor attempts to collect prepetition debts. On confirmation, his home and his wages become property of the debtor once again, but despite this change in status, they continue to be protected by the automatic stay, (with only very narrow exceptions set out in § 362(b) such as the domestic support creditor), until the case is closed, dismissed, or the debtor receives or is denied his discharge,

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whichever comes first. 11 U.S.C. §§ 362(a)(5)-(7), (c)(2). The plan provides creditors with substitute rights in regard to their prepetition debts. *Id.* § 1327(a).

Section 1306(a) still plays an important role in many respects, including bringing those assets under the umbrella of the automatic stay and in determining what assets must be considered in the BIC test analysis at confirmation. Section 1327(b), on the other hand, terminates the estate's rights to that property. The debtor is then free to spend his wages and deal with his assets however he wishes, so long as he fulfills his plan obligations. Post-confirmation, he does not need to run into the bankruptcy court for approval to trade his car in for a new one or to obtain a home-equity line of credit to repair his plumbing. The plan is the only contract between the debtor and his prepetition creditors. They have no further rights in the debtor's property except those specifically preserved in the plan. § 1327(c). Therefore, the bankruptcy court has no further authority over this property, except to rule on a motion for stay relief or a dismissal motion if the debtor defaults on his plan obligations. And, of course, it continues to have jurisdiction over post-confirmation modification motions until the plan has been completed.

A modification request may alter the contract between the debtor and his prepetition creditors by requiring an increase in plan payments, but not because § 1306(a) causes his post-petition wages to remain property of the estate. It is because Congress has expressly provided for the adjustment of the contract to reflect changes in the debtor's financial circumstances. It does so not by changing title to the property once again but only by increasing his payment obligation. In that sense, modification grants his unsecured creditors an *impersonam,* not an *in rem* remedy.

This interpretation is also consistent with another well-known canon of statutory construction, which advises that identical words used in different parts of the same or a similar statute should be interpreted to have the same meaning absent some contrary indication. 2A Sutherland, *supra* , § 46.6. Thus, the term "vest" in § 1327(b) should be construed similarly to how it is used in other Code provisions. Section § 1141(b) mirrors § 1327(b) insofar as it "vests" property of the estate in the debtor on confirmation. Courts construing § 1141(b) have interpreted it to mean that the property is no longer property of the estate. *Hillis Motors, Inc. v. Hawaii Auto. Dealers' Ass'n* , 997 F.2d 581, 587 (9th Cir. 1993) ; *Still v. Rossville Bank (In re Chattanooga Wholesale Antiques)* , 930 F.2d 458, 462 (6th Cir. 1991) ; *Penthouse Media Group v. Guccione (In re General Media, Inc.)* , 335 B.R. 66, 74 (Bankr. S.D.N.Y. 2005).

Section § 349(b)(3) uses the term "revest" to describe the change in title that occurs with dismissal of a bankruptcy case. Dismissal "revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case...." 11 U.S.C. § 349(b)(3). In most instances, this means the property will revert to its status as property of the debtor but, if for example, the trustee avoided a preferential transfer or fraudulent conveyance during the case, dismissal will return title to the transferee. *Sender v. Golden (In re Golden)* , 528 B.R. 803, 807 (Bankr. D. Colo. 2015) ; *In re Van Stelle* , 354 B.R. 157, 167-68 (Bankr. W.D. Mich. 2006) ; *In re Beaird* , 578 B.R. 643, 646-49 (Bankr. D. Kan. 2017) ; *In re Sadler* , 935 F.2d 918 (7th Cir. 1991). In both §§ 1141(b) and

349(b)(3), "vesting" connotes a transfer of title and the termination

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of an estate. *In re Petruccelli* , 113 B.R. 5, 16-17 (Bankr. S.D. Cal. 1990).

The Court rejects the estate preservation view and the conditional vesting view because they give no effect to the term "vest," essentially reading § 1327(b) out of the Code. They also strip this term of its commonly accepted meaning, which signifies a transfer of ownership. *See Vest, Black's Law Dictionary* (11th ed. 2019) (defining "vest" as "[t]o confer ownership (of property) on a person," "[t]o invest (a person) with the full title to property," or "[t]o give (a person) an immediate, fixed right of present or future enjoyment.").

The estate transformation view reads nonexistent language into the statute by distinguishing between property necessary to consummation of the plan from that which is not. Decisions in which the courts employ this approach often seem result driven, with the courts endeavoring to protect the debtor's post-confirmation assets from the collection efforts of post-petition creditors. *See, e.g.* , *In re Ziegler* , 136 B.R. 497, 502 (Bankr. N.D. Ill. 1992) (ruling that debtor's post-petition earnings were property of the estate and protected by the automatic stay from post-petition creditors to the extent the earnings were necessary to fund plan payments); *see also McGlockling v. Chrysler Fin. Co. (In re McGlockling)* , 296 B.R. 884, 887 (Bankr. S.D. Ga. 2003) (determining that debtor's car was property of the estate because he needed reliable transportation to complete plan and compelling lender to permit debtor to take car overseas). However, nothing in chapter 13, or the Code as a whole, promises protection against the collection of *post-* petition debts.

Finally, the Court disagrees with the estate replenishment view because it reads § 1306(a) too broadly and gives insufficient weight to § 1327(b). The Court has considered but respectfully disagrees with the decisions of the Fifth Circuit and the lower courts in Texas that have viewed proceeds from the post-confirmation sale of exempt property as "new" property interests that enter a chapter 13 estate through § 1306(a). *See* , *e.g.* , *Hawk v. Engelhart (In re Hawk)* , 871 F.3d 287 (5th Cir. 2017) ; *Garcia v. Bassel* , 507 B.R. 907 (N.D. Tex. 2014). The Trustee relies heavily on these decisions, but the Court finds them unpersuasive.

In *Black v. Leavitt (In re Black)* , 609 B.R. 518 (9th Cir. BAP 2019), the court analyzed the interplay between §§ 1306(a) and 1327(b) in the context of property appreciating in value post-confirmation. Its interpretation gave full effect to the chapter 13 bargain a debtor makes when trading his future income for his assets. In *Black* , the debtor owned a rental property that he valued at $44,000. In his plan, he provided that he would sell the rental property at some point during the plan and contribute $45,000 from the sale to his creditors. Near the end of his three-year plan, the debtor sold the property for $107,000. The chapter 13 trustee moved to modify to require the debtor to contribute all the sales proceeds to his creditors. The bankruptcy court approved the trustee's modification request, but the appellate court reversed. Recognizing a split of authority, the court rejected *Barbosa's* estate preservation approach and reaffirmed its prior adoption of the estate termination view. *Black* , 609 B.R. at 529 (*citing Cal. Franchise Tax Bd. v. Jones (In re Jones)* , 420 B.R. 506, 515 (9th Cir. BAP 2009)). It held that when the bankruptcy court confirmed the debtor's plan, the property vested in him. It was no longer property of the estate, so the appreciation in the property's value did not belong to the estate.

C. Good Faith

The Trustee also objects to the Debtor's proposed modification on the basis of "bad

[620 B.R. 670]

faith." The only evidence of bad faith that he asserts is the Debtor's failure to commit the proceeds from the sale of his home to repay

creditors.[6] The fact that the Debtor seeks to remain in chapter 13 but refuses to modify his plan in accordance with his present ability to pay, says the Trustee, contravenes the purpose and intent of chapter 13. "[T]he spectacle of [a debtor] profiting while in bankruptcy is disconcerting and may be indicative of a bad faith manipulation of the Code." *In re Barbosa* , 236 B.R. 540, 552 (Bankr. D. Mass. 1999), *aff'd sub nom. Barbosa v. Solomon* , 243 B.R. 562 (D. Mass 2000), *aff'd,* 235 F.3d 31 (1st Cir. 2000).

Section 1325(a)(3) requires that a plan be "proposed in good faith" and § 1329(b) applies this same test to post-confirmation modifications. The Tenth Circuit has directed bankruptcy courts to make the good faith determination on a case-by-case basis, considering the totality of the circumstances. *Flygare v. Boulden* , 709 F.2d 1344, 1347 (10th Cir. 1983). One of the factors to consider in evaluating good faith is "whether [the debtor] has unfairly manipulated the Bankruptcy Code." *Robinson v. Tenantry (In re Robinson)* , 987 F.2d 665, 668 n. 7 (10th Cir. 1993).

In this case, the Debtor clearly intends to keep all the sales proceeds while paying his unsecured creditors almost nothing. Is this an unfair manipulation of the Bankruptcy Code to the detriment of his creditors? Or is the Debtor merely taking advantage of what the Bankruptcy Code permits? If, as this Court has determined, the Code itself does not compel the Debtor to use these proceeds to pay creditors, can the Court nevertheless find he has acted in bad faith solely because he refuses to do so? In a different context, the Tenth Circuit has answered this question in the negative, saying that it is "not bad faith for [a debtor] to adhere to the provisions of the Bankruptcy Code and, in doing so, obtain a benefit provided by it." *Anderson v. Cranmer (In re Cranmer)* , 697 F.3d 1314, 1319 (10th Cir. 2012).

The *Cranmer* case is instructive. The debtor was an above-median-income debtor who, in addition to his other sources of income, received $1,940 each month in social security income. Over the life of his plan, this would amount to an additional $87,000 in income. The chapter 13 trustee opposed confirmation because he did not include his social security income in his calculation of "projected disposable income." The trustee argued that his refusal to commit any of these funds to the payment of creditors meant he had not proposed his plan in good faith.

While the definition of "current monthly income," which is used to calculate a debtor's disposable income, expressly excludes social security income, the trustee argued social security income should nevertheless be considered part of the debtor's projected disposable income under the Supreme Court's decision in *Hamilton v. Lanning* , 560 U.S. 505, 130 S.Ct. 2464, 177 L.Ed.2d 23 (2010). In that case, the Supreme Court held that known and virtually certain changes to the debtor's income should be taken into account when calculating projected disposable income. *Lanning* , 560 U.S. at 524, 130 S.Ct. 2464. It was virtually certain the *Cranmer* debtor would receive $87,000 in additional income during his plan. Nevertheless, the Tenth Circuit rejected this argument because the Bankruptcy Code authorized the debtor's exclusion of social security income and, therefore, the exclusion was not "one of the

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unusual cases contemplated by *Lanning* ." *Cranmer* , 697 F.3d at 1318. Accordingly, when a debtor calculates his plan payments "exactly as the Bankruptcy Code and Social Security Act allow him to," the exclusion of social security income from his plan payments "cannot constitute a lack of good faith." *Cranmer* , 697 F.3d at 1319 ; *see also Beaulieu v. Ragos (In re Ragos)* , 700 F.3d 220, 227 (5th Cir. 2012) ("Having already concluded that Debtors' plan fully complied with the Bankruptcy Code, it is apparent that [d]ebtors are not in bad faith merely for doing what the Code permits them to do.").

In *In re Boisjoli* , 591 B.R. 468 (Bankr. D. Colo. 2018), the debtors proposed a sixty-month plan to pay one hundred percent of their debts, but the

trustee objected because they had the financial ability to repay their creditors much sooner. The court rejected the trustee's argument that stringing out payments over a five-year period amounted to bad faith. It concluded the debtors' plan met all the Code's requirements and the debtors had done everything the Bankruptcy Code required of them.

The same reasoning applies here. Courts may disagree on whether the BIC test should be recalculated as of the date of modification and whether the estate terminates at confirmation. However, this Court has determined both issues in the Debtor's favor and ruled that he is permitted to retain the sale proceeds. As a result, it cannot find that in doing so he is acting in bad faith or unfairly manipulating the Code.

III. CONCLUSION

For the reasons set forth above, the Court hereby:

> 1. OVERRULES the Trustee's objection to the Debtor's proposed modification;
>
> 2. DENIES the Trustee's proposed modification; and
>
> 3. APPROVES the Debtor's modification of his plan, dated May 7, 2019, finding that it satisfies the requirements of § 1329.

Notes:

[1] Colorado's homestead exemption statute is Colo. Rev. Stat. § 38-41-201. The Debtor has acknowledged that he incorrectly cited Colo. Rev. Stat. § 38-41-204 as the source of his homestead exemption. This statute governs the homestead exemption rights of surviving spouses or children of deceased homeowners. However, no party objected to the Debtor's homestead exemption within the time prescribed by Fed. R. Bankr. P. 4004(b) and as such the Debtor's claim of a $75,000 homestead exemption is not subject to challenge. *Taylor v. Freeland & Kronz* , 503 U.S. 638, 643-44, 112 S.Ct. 1644, 118 L.Ed.2d 280 (1992).

[2] Unless otherwise specified, all further references to "§" or "section" are to the Bankruptcy Code, Title 11, United States Code.

[3] Individuals may also file a chapter 11 petition, but few do so because of the greater cost and complexity of such a proceeding. Those who do usually do so because they are not eligible for chapter 13. *See* 11 U.S.C. § 109(e). In chapter 11, as in chapter 13, individual debtors are required to contribute their disposable income over the life of their plans. *Id.* §§ 1115(a)(2), 1129(a)(15).

[4] For other cases following this view, see *In re Guentert* , 206 B.R. 958, 963 (Bankr. W.D. Mo. 1997) (observing that there is no specific Code provision so providing, but reasoning that the court must account for any property that has become property of the estate post-confirmation before any plan modification can be confirmed); *In re Roberts* , 514 B.R. 358, 365 (Bankr. E.D.N.Y. 2014) (concluding that the majority view maintains the purpose of the BIC test at modification, ensuring that creditors receive at least as much as they would under a chapter 7 liquidation); *In re Auernheimer* , 437 B.R. 405, 409 (Bankr. D. Kan. 2010) (applying the majority rule in a case that benefitted debtors because their property declined in value after confirmation of the original plan); and *In re Davenport* , 2011 WL 6098068, at *3-4 (Bankr. D. Kan. Dec. 7, 2011) (discounting practical problems inherent in majority view and anticipating that requests to modify would not occur absent significant unexpected changes in the value of estate property). As the Trustee notes in his brief, this Court has previously adopted the majority view in an unpublished decision, *In re Pettway-Wilson* , Case No. 13-13668 EEB (December 8, 2015), ECF No. 139. The court in *In re Villegas* , 573 B.R. 844 (Bankr. W.D. Wash. 2017) adopted a slight variation on the majority rule. It determined that the value of assets in existence on the petition date are fixed "once and

for all" at the time of confirmation. *Id.* at 850. However, courts should value new assets coming into the estate after confirmation at the date of any modification for the purposes of § 1325(a)(4) and add the nonexempt value of such assets to the previously calculated BIC number. *Id.*

[5] For cases adopting this view, see *Hollytex Carpet Mills v. Tedford* , 691 F.2d 392, 393 (8th Cir. 1982) ; *In re Statmore* , 22 B.R. 37, 38 (Bankr. D. Neb. 1982). *See also In re Easley* , 240 B.R. 563, 566 (Bankr. W.D. Mo. 1999) (making determination in context of hardship discharge).

[6] The Court offered the parties an opportunity to present evidence on the good faith objection but they agreed to submit the matter to the Court on this basis only.

EXTENDING A CHAPTER 13 PLAN BEYOND 60 MONTHS

Prepared by:
Honorable Daniel P. Collins (Bankr. D. Arizona)[1]

April 7, 2022

The following outline is intended to be a resource but does not contain all the cases decided on the issues addressed.

[1] Judge Collins would like to thank his law clerk, Hannah-Kaye Fleming, and Arizona State University 2L, Kylie Horne, for their good work on this outline.

Table of Contents

I. Background

In chapter 13 bankruptcies, a debtor must propose a repayment plan to make installments to creditors over three to five years.[2] 11 U.S.C. § 1322(d)(1)[3] instructs that the plan may not require payments for a period that is longer than five years. Section 1329(c) provides that a modified plan "may not provide for payments over a period that expires after the applicable commitment period . . . unless a court, for cause, approves a longer period, but the court may not approve a period that expires after five years." A debtor who completes all payments under a confirmed chapter 13 plan is entitled to a discharge under § 1328.

This outline provides an overview of the current split among Circuit Courts of Appeal on whether bankruptcy courts may grant chapter 13 debtors a "grace period" to cure defaults under their plans after the five-year plan statutory limit expires. While some courts have granted a "grace period," other courts find such extensions are an impermissible plan modification under § 1329(c).

[2] 11 U.S.C. § 1321 and 1322(a)-(c).
[3] All references to statutes in this document refer to the U.S. Bankruptcy Code ("Code"), 11 U.S.C. §§ 101-1532.

II. Cases Extending Chapter 13 Debtors a "Grace Period"

A. Circuit Court Decisions

1. *In re Klaas*[4]

The Third Circuit held that bankruptcy courts retain discretion under the Code to grant chapter 13 debtors a reasonable "grace period" to cure defects in their chapter 13 plans.[5] The court found that § 1307 does not include a strict restriction on length and does not require a court to dismiss a debtor's chapter 13 case upon a material default.[6] The Third Circuit also reasoned that a debtor's discharge is not conditioned on whether all payments were made within five years under § 1328.[7] The Third Circuit concluded that a final payment made outside of the five-year plan was still made "pursuant to authority conferred by the plan."[8]

The Third Circuit provided a non-exhaustive list of factors that bankruptcy courts should consider when determining whether to extend a chapter 13 debtor a "grace period."[9] These factors include: (1) whether the debtor substantially complied with the plan, including the debtor's diligence in making prior payments; (2) the feasibility of completing the plan if permitted, including the length of time needed and amount of arrearage due; (3) whether allowing a cure would prejudice any creditors; (4) whether the debtor's conduct is excusable, taking into account the cause of the shortfall and the timeliness of notice to the debtor; and (5) the availability and relative equities of other remedies, including conversion and hardship discharge.[10]

2. *Germeraad v. Powers*[11]

The Seventh Circuit held that allowing a chapter 13 debtor to cure defaults under a plan outside the five-year time frame set by § 1329(c) was permissible.[12] The Seventh Circuit reasoned that payments outside the five-year period would "not be payments provided for by the modified plan" but rather, "payments made because the debtor did not make the payments 'provided for' by the plan in the first place."[13]

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[4] *In re Klaas*, 858 F.3d 820 (3d Cir. 2017).
[5] *Id.* at 823.
[6] *Id.* at 829.
[7] *Id.*
[8] *Id.* at 830.
[9] *Id.* at 832.
[10] *Id.*
[11] *Germerad v. Powers*, 826 F.3d 962 (7th Cir. 2016).
[12] *Id.* at 968.
[13] *Id.*

B. Lower Court Decisions

1. ***In re Touroo***, 2019 WL 2590751, at *1 (E.D. Mich. June 25, 2019) (Holding that courts may grant debtors a "grace period" to cure plan defaults because § 1307(c) does not require dismissal if a debtor has not timely completed all plan payments within five years. The district court remanded the case back to the bankruptcy court for consideration of the *Klaas* factors).

2. ***In re Coughlin***, 568 B.R. 461, 481 (Bankr. E.D.N.Y. 2017) (Allowing the chapter 13 debtor to modify his plan in the sixtieth month to cure a default under his plan, holding debtor's motion to modify met the requirements of § 1329(b)).

3. ***In re Hill*****,** 374 B.R. 745, 749-50 (Bankr. S.D. Cal. 2007) (Declining to dismiss the chapter 13 debtor's case where the debtor failed to make all payments within five years, holding § 1327 (c) does not require dismissal even in the face of a material breach).

4. ***In re Brown*****,** 296 B.R. 20, 22 (Bankr. N.D. Cal. 2003) (Finding that the dismissal of a debtor's chapter 13 plan that takes more than five years to complete is not mandatory under the Code. The *Brown* court provided a four-factor test that courts should apply when determining whether a debtor's case should be dismissed if the debtor's chapter 13 plan cannot be completed within 60 months, including: (1) how much longer the plan would take to complete; (2) whether the debtor had diligently made plan payments; (3) how much time elapsed since confirmation and seeking dismissal; and (4) the debtor's culpability).

5. ***In re Aubain***, 296 B.R. 624, 634 (Bankr. E.D.N.Y. 2003) (Holding that the debtor could cure defaults under the chapter 13 plan after 60 months had expired, reasoning that § 1322(c) does not prohibit payments made after five years when the debtor utilizes § 1322(b)(5)).

6. ***In re Harter***, 279 B.R. 284, 288 (Bankr. S.D. Cal. 2002) (Holding that § 1322(d) does not contain a "drop dead provision that requires dismissal of the case after five years." The debtor cured his plan defaults within a month after the completion of his chapter 13 plan).

7. ***In re Black,*** 78 B.R. 840, 843 (Bankr. S.D. Ohio 1987) (Holding that § 1322(c) did not provide for dismissal of a debtor's chapter 13 plan where payments would exceed the five-year period).

III. Cases Declining to Extend Chapter 13 Debtors a "Grace Period"

A. Circuit Court Decisions

1. *In re Kinney*[14]

The Tenth Circuit held a debtor could not cure her chapter 13 plan defaults after the plan's five-year period expired.[15] The debtor made missed mortgage payments shortly after her five-year chapter 13 plan ended and requested a discharge. The issue before the Tenth Circuit was whether the bankruptcy court could grant the debtor a discharge.[16] Looking at the language of § 1328(a), which states that a debtor's discharge is necessary upon "completion . . . of all payments under the plan," the Tenth Circuit considered whether plan payments could come after the expiration of a plan's five-year term and still be considered "under" the plan.[17] The Tenth Circuit held that payments could fall "under the plan only if the debtor's plan was still in existence at the time the payments were made.[18] The Tenth Circuit concluded that the debtor was not entitled to a discharge.[19]

2. *In re Black*[20]

The Tenth Circuit BAP implicitly held that bankruptcy courts do not have the discretion to grant chapter 13 debtors a "grace period" to cure deficiencies under a five-year plan.[21] In In *Black*, the bankruptcy court deemed all the debtor's plan payments under her original chapter 13 plan, which covered a 2 year and 4 month period, a "lump sum contribution."[22] The bankruptcy court approved the debtor's modified plan proposal to make payments for another 4 years and 6 months, extending the life of debtor's repayment period over seven years.[23] On appeal, the Tenth Circuit BAP held that "lump sum contribution" method of plan modification does not satisfy the five-year plan duration limit under § 1329(c).[24]

B. Lower Court Decisions

1. ***In re Stanke***, 2022 WL 99498, at *3 (Bankr. N.D. Tex. Jan. 10, 2022) (Rejecting the trustee's proposed plan modification because it violated the sixty-month limit under § 1329(c)).

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[14] *In re Kinney*, 5 F.4th 1136 (10th Cir. 2021).
[15] *Id.* at 1147.
[16] *Id.* at 1139.
[17] *Id.* at 1145.
[18] *Id.* at 1143.
[19] *Id.* at 1147.
[20] *In re Black*, 292 B.R. 693, 700 (B.A.P. 10th Cir. 2003).
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*

2. ***In re Humes****,* 579 B.R. 557, 564 (Bankr. D. Colo. 2018) *(*Holding that plan modifications cannot extend the length of a five year chapter 13 plan because § 1329 does not allow a debtor to use plan modification to accomplish what he could not have achieved through plan confirmation).

3. ***In re Hanley***, 575 B.R. 207, 217-19 (Bankr. E.D.N.Y. 2017) (Holding that the debtor could not cure his post-petition mortgage defaults after his five-year plan concluded because §§ 1322(d) and 1329(c) prohibits a plan from extending beyond five years).

4. ***In re Leahey***, 2017 WL 4286136, at *5 (Bankr. D.N.J. Sept. 26, 2017) (Holding that a chapter 13 case could not be reopened after five years to allow for distribution of lawsuit proceeds that were never accounted for under the original plan).

5. ***In re Ramsey***, 507 B.R. 736, 739 (Bankr. D. Kan. 2014) (Holding § 1329(c) only allows a bankruptcy court to extend the time frame of the chapter 13 plan up to five years after the first payment was due under the debtor's original plan).

6. ***In re Grant***, 428 B.R. 504, 508 (Bankr. N.D. Ill. 2010) (Dismissing the debtor's chapter 13 case where the debtor failed to satisfy her obligations under her five-year plan, finding § 1322(d) limits chapter 13 plans to five years).

7. ***In re Goude***, 201 B.R. 275, 277 (Bankr. D. Or. 1996) (The debtor made 60 monthly payments under his chapter 13 plan, but certain claims were not paid in full. The court dismissed the case without a discharge, holding § 1322 does not allow a debtor to extend a chapter 13 plan past five years through plan modification).

8. ***In re Jackson***, 189 B.R. 213, 214 (Bankr. M.D. Ala. 1995) (Dismissing the debtor's chapter 13 case because § 1322(d) requires the maximum duration of any plan to expire five years after the date of the initial payment under the plan).

IV. Chapter 13 Plan Modifications Due to COVID-19

A. The CARES Act

In response to the COVID-19 pandemic, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") into law on March 27, 2020.[25] The CARES Act amended § 1329(d) to provide that a chapter 13 plan confirmed before March 27, 2020, may be modified upon request of the debtor if the debtor is experiencing or has experienced a "material financial hardship" due, directly, or indirectly to COVID-19. Section 1329(d)(2) extended the maximum commitment period for a chapter 13 plan from five years to seven years. Section 1329(d) has sunset on March 27, 2022.[26]

[25] Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), Pub. L. No. 116-136, 134 Stat. 218 (2020).
[26] COVID-19 Bankruptcy Relief Extension Act of 2021, H.R. 1651, 117th Cong. (2021).

B. Cases Implementing § 1329(d) Post-CARES Act

1. Permissible Extension of a Chapter 13 Plan Under § 1329(d)

   a. ***In re Bennett***, 2021 WL 5917971, at *3 (Bankr. E.D. Ky. Dec. 14, 2021) (Holding the debtors may modify their chapter 13 plan under § 1329(d) even if they were currently experiencing a financial hardship unrelated to COVID because they had previously experienced a financial hardship due to COVID).

   b. ***Winnegrad***, 2021 WL 219519, at *3 (Bankr. D.N.J. Jan. 21, 2021) (Holding the debtors qualified under § 1329(d) for plan modification due to COVID but denied debtors' proposal of a zero-dollar plan payment for two years, finding a zero-dollar plan payment would function as a moratorium on debtors' chapter 13 plan).

   c. ***In re Harbin***, 626 B.R. 888, 891 (Bankr. E.D. Mich. 2021) (Allowing an extension of a chapter 13 plan beyond 60 months under § 1329(d)(1) because the debtor had suffered illness and lack of employment due to COVID, which was considered a "material financial hardship").

   d. ***In re Albert***, 634 B.R. 380, 394 (Bankr. D. Colo. 2021) (Allowing a debtor who had increased expenses and decreased income due to COVID to extend his five - year chapter 13 plan by two months under § 1329(d). The court concluded that modifications under § 1329(d) must be accompanied by factual allegations that demonstrate financial hardship).

   e. ***In re Fowler***, 2020 WL 6701366, at *5 (Bankr. M.D. Ala. Nov. 13, 2020) (Holding that the CARES ACT does not require that a debtor be current on her plan payments to extend her chapter 13 plan under § 1329(d)).

   f. ***In re Gilbert***, 622 B.R. 859, 865 (Bankr. E.D. La. 2020) (Holding that § 1329(d) allows a debtor to modify his chapter 13 plan regardless of whether the debtor was current on his plan payments before COVID or whether the debtor's "material financial hardship" was solely caused by COVID).

2. Impermissible Extension of a Chapter 13 Plan Under § 1329(d)

   In re Robinson, 2020 WL 7234031, at *3 (Bankr. E.D. Wis. Dec. 8, 2020) (Denying debtor's proposed modification request under § 1329(d)(1) because the debtor confirmed her plan four days before the effective date of the CARES Act).

Faculty

Alane A. Becket is an AV-rated attorney and managing partner of Becket & Lee LLP, a Malvern, Pa., law firm providing comprehensive nationwide representation of financial institutions in bankruptcy matters, with a focus on consumer lenders and debt-purchasers. In addition to client and industry relations, she focuses on litigation strategy, and Becket & Lee has been lead or co-counsel in some of the most influential decisions in consumer bankruptcy over the last 20 years. In addition to her duties at the firm, Ms. Becket is Chairman of ABI, co-chair of the Bankruptcy Section and of the Professional Standards and Grievance Committees of the National Creditors Bar Association (NCBA), and a member of the National Association of Chapter Thirteen Trustees (NACTT) and the National Association of Bankruptcy Trustees. She also co-chaired ABI's Consumer Bankruptcy Committee. Ms. Becket has written and lectured extensively on consumer bankruptcy issues for a variety of professional organizations, including ABI, the Federal Judicial Conference, NACTT, NABT, *Norton Bankruptcy Law Advisor*, NCBA, the National Conference of Bankruptcy Judges, and a host of local and regional organizations. She also served as a commissioner on ABI's Commission on Consumer Bankruptcy, and she has authored articles for many of the same organizations, as well as the Norton Institute on Bankruptcy Law. She served as editor of the fourth edition of ABI's *Consumer Bankruptcy: Fundamentals of Chapter 7 and Chapter 13 of the U.S. Bankruptcy Code*. She also served as editor for the 2011, 2012 and 2013 editions of *The Best of ABI: The Year in Consumer Bankruptcy*. In 2016, *Collection Advisor* magazine named her as one of the "25 Most Influential Women in Collections" in its September/October cover story. In 2018, *Collection Advisor* once again recognized her among her peers, this time in its September/October cover story on the "20 Most Powerful Women in Collections." Ms. Becket received her undergraduate degree from Pennsylvania State University and her J.D. from Widener University School of Law.

Hon. Daniel P. Collins is a U.S. Bankruptcy Judge for the District of Arizona in Phoenix, appointed on Jan. 18, 2013. He served as chief judge from 2014-18. Previously, he was a shareholder with the law firm of Collins, May, Potenza, Baran & Gillespie, P.C. in downtown Phoenix, practicing primarily in the areas of bankruptcy, commercial litigation and commercial transactions. Judge Collins serves on the Ninth Circuit's Bankruptcy Education Committee, is the education chair for the National Conference of Bankruptcy Judges, will be NCBJ's president in 2022-23, is a member of ABI's Board of Directors, sits on ABI's Education Committee and Diversity Committee, is on the board of the Phoenix Chapter of the Federal Bar Association, is a Fellow of the American College of Bankruptcy and is a member of the University of Arizona Law School's Board of Visitors. He also is a founding member of the Arizona Bankruptcy American Inn of Court. Judge Collins received both his B.S. in finance and accounting in 1980 and his J.D. in 1983 from the University of Arizona.

Richard P. Cook is the founder of Cape Fear Debt Relief, a boutique bankruptcy firm in Wilmington, N.C., that represents individuals and small businesses in chapter 7, 11 and 13 cases before the U.S. Bankruptcy Courts in Eastern North Carolina. In February 2020, Mr. Cook was named a subchapter V trustee for the Eastern District of North Carolina. He is one of only three attorneys in Wilmington recognized by the North Carolina State Bar as a Board-Certified Specialist in both Business and Consumer Bankruptcy Law. Mr. Cook served on the board of the North Carolina State Bar Association's Bankruptcy Section Council from 2013-16. He currently serves as the Fourth Circuit

chair for the National Association of Consumer Bankruptcy Attorneys. Prior to founding Cape Fear Debt Relief, Mr. Cook was an associate with Butler & Butler, LLP in Wilmington, N.C., and prior to that, he was an associate with Brock & Scott, PLLC in Winston-Salem, N.C. He received his undergraduate degree and J.D. from the University of North Carolina at Chapel Hill in 2003 and 2007, respectively.

Nancy J. Whaley is an attorney serving as a chapter 12 and 13 trustee for the Northern District of Georgia in Atlanta. She is a Fellow of the American College of Bankruptcy and serves on ABI's Board of Directors. She also is a past chair of ABI's Southeast Bankruptcy Workshop. Ms. Whaley is a member of the Northern District of Georgia Bankruptcy Court's Bench and Bar Committee and served on the Executive Committee and co-chaired the Community Service Committee for the W. Homer Drake, Jr. Georgia Bankruptcy American Inn of Court. She is a past chair of the Atlanta Bar Association's Bankruptcy Section and the Bankruptcy Section of the State Bar of Georgia. Ms. Whaley served as president of the Georgia Association for Women Lawyers and of the GAWL Foundation. She has served on the State Bar of Georgia's Executive Committee, is a member of its board of governors and currently chairs its Investment Committee. Ms. Whaley is on the board of directors for the Association of Chapter 12 Trustees, and she is a member of the National Association of Chapter 13 Trustees and is their representative to the Advisory Committee on Bankruptcy Rules. She also serves as Treasurer for NACTT Foundation. Ms. Whaley retired from the Air Force Reserve as a Lieutenant Colonel. She received her B.A. *cum laude* from Eureka College, where she was a Ronald Reagan Scholar, and her J.D. from Emory Law School.