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## 2019 Winter Leadership Conference

# **Walk a Mile in My Shoes: The Ethics Challenges of Bankruptcy Attorneys Who Represent Debtors in Chapter 13 Cases**

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*Chapter 13 Trustee; Las Vegas*

# WALK A MILE IN MY SHOES

The Ethics Challenges of Bankruptcy Attorneys  
Who Represent Debtors in Chapter 13 Cases

## Panelists

- Honorable Martin R. Barash
  - U. S. Bankruptcy Court - Central District of California-Woodland Hills
- Misty Perry Isaacson
  - Pagter and Perry Isaacson, APLC; Santa Ana, California
- Rita Kostopoulos
  - Kostopoulos & Associates PLLC; Warren, Michigan and Oakland, California
- Kathleen A. Leavitt
  - Chapter 13 Trustee; Las Vegas, Nevada

## Debtor's Attorney

What is your role and what are your responsibilities in a Chapter 13 case?

- Be compassionate to debtor's situation and at times inability to understand the process.
- Analyze debtor's situation and advise of filing chapter 7 vs chapter 13 based on financial situation, types of debts and debtor's financial goals.
- Prepare all schedules, plan and pleadings to review with client prior to filing and file the documents.
- Obtain all required information and documentation.
- Appear at all hearings, review and/or respond to necessary motions, claims or objections.

## Debtor's Attorney

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- Maintain communication with debtor throughout the process- Is debtor making plan payments?
- Contact debtor regarding all hearings and adjournments
- Prepare debtor for 341 or confirmation hearings
- Represent debtor's best interests as best as possible based on circumstances of each case
- Confirm Chapter 13 Plan and get paid

## Chapter 13 Trustee

What is your role and what are your duties in a Chapter 13 case?

- Statutory Duties
  - 11 USC §1302, §704 and §1106 Statutory Duties
- Handbook for Chapter 13 Trustees
  - 126 pages promulgated by the U. S. Trustee Program (USTP) to establish the position of the USTP and set forth duties of a Chapter 13 Trustee for the purpose of supervising standing trustees in the administration of Chapter 13 cases.
- Local Rules

## Chapter 13 Trustee

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- Generally –
  - Perform fiduciary duties in the administration of the Office of the Chapter 13 Trustee and in the administration of Chapter 13 plans
  - Review schedules, statements, plans and other documents and, where applicable, assess compliance with bankruptcy laws
  - Appear and be heard at hearings and meetings
  - Assist the debtor in matters other than legal matters
  - Provide information to the Court and parties as requested and when appropriate
  - Administer the confirmed plan, collect payments and distribute funds
  - File a Final Report

## A Chapter 13 Trustee must:

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- Perform her duties with diligence and professionalism
- Exhibit compassion and understanding
- Be perceptive when assessing needs and motivations of all parties
- Be decisive, practical and prudent in all matters
- Be knowledgeable about the rights of all parties

### Creditor's Attorney

What is your role and what are your responsibilities in a Chapter 13 case?

- Generally:
  - Familiarize yourself with the Local Rules and Court procedures
  - Keep open lines of communication with the Debtor and Trustee's counsel
- Pre-Confirmation:
  - Review and analyze Chapter 13 Plan to determine if plan is providing for and classifying creditor's claim properly
  - Review Debtor's schedules and statement of financial affairs
  - Advise client whether an objection to confirmation and/or an adversary to determine the dischargeability of debt is appropriate same
  - Assist client with the filing of:
    - Proof of Claim
    - Objection to Plan
    - Adversary Proceeding

## Creditor's Attorney

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- Post-Confirmation
  - Monitor case and review documents and pleadings filed
  - When appropriate file:
    - Notice of payment changes and/or post-petition fees, expenses, and charges [FRBP 3002.1]
    - Change of address with the Court
  - File motions seeking relief from the automatic stay when Debtor falls behind on post-petition mortgage payments
  - Respond to notices of final cure
  - Review the Trustee's proposed final report and account

### The Honorable Bankruptcy Judge

What is your role and what are your duties in a Chapter 13 case?

- Ensure procedural due process for all parties.
- Adjudicate justiciable controversies presented to the court.
- Facilitate a fair and just outcome.
- Encourage the consensual resolution of legal disputes and the reduction of costs.
- Ensure that chapter 13 cases are moving towards a prompt resolution.
- Ensure that the debtor has a fair opportunity to obtain bankruptcy relief, while respecting the rights of creditors under the law.

## Challenges of Debtors Attorneys

- Gather documents from debtors--Don't want to/don't know how
- Debtors failure to disclose information-I have rigorous sign up process
- Working through some trustees "unreasonable" objections=\$45 pet food, \$80 diapers/wipes etc
- Debtors can't budget= Upset debtors-- no safety cushion in chapter 13 for savings, Christmas, etc
- Making sure debtors making plan payments--"emergencies" come up
- Turning over tax refunds
- Creditor objections
- Explaining trustee objections to debtors

## Consultation

### **Initial Consultation**

- Fill out intake form—15 pages
- Meet with attorney—Approximately 30-45 minutes

## Sign Up Process

### **Fee agreement**

- 9 pages long and 82 paragraphs
- Client initials after each paragraph
- List just about every issue that can come up
  - When issue comes up later, clients say “You never told me that or I didn’t know”. I can then point to the paragraph they initialed next to.

## Additional Disclosures During Sign Up

### **Each disclosure is signed by client**

- Plan of Action- Brief explanation of future appointments with missing documents list
- Homework list
- Office phone call/email/message policy
- Bankruptcy timeline sheet
- Mandatory Credit Counseling Disclosure
- Document List Policy
- Additional Documents for chapter 13—Insurance Declarations, receipts of most expenses, etc
- Tax Refund turnover disclosure
- Credit Report Authorization
- Successful Chapter 13 requirements
- Required BAPCPA disclosure

Even with all the above information/disclosures we still hear  
“I never knew I had to turn over tax refunds, or you never told me that”



## Petition Signing Process

- Usually takes 2-4 hours
- First meets with legal assistant
- Then meets with attorney and go over each page
- Client reads each page, and initials at bottom
- Again, several disclosures are then signed as in the initial signup process.

## WHAT DO WE DO AND HOW DO WE DO IT?

### Hypothetical Cases

## Scenario #1: Mentally Ill Debtor

- Dina Debtor is a single mother of 4 children ages 2-13 who works as a cashier at Costco earning \$35,000 per year & lives with her grandmother.
- Since Dina filed a Chapter 7 in 2015, she had to file a Chapter 13 in 2019.
- Dina's paychecks were being garnished by a former auto loan creditor.
- Unsecured debt was \$30,000. No secured creditors. 50% payback proposed.
- Dina misses first 341 hearing. Blocks our phone number and emails. Eventually calls us. Confused. Told of new 341 date.

## Scenario #1: Mentally Ill Debtor - Page 2

- At continued 341, Dina flip flops on answers to trustee regarding rental lease & payments to family members.
- After 341 Dina flop flops & tells us she is bipolar. Changes the answers again.
- Trustee files objections-wants motion to incur nunc pro tunc and tolling agreement for family members to sign and wants their names/addresses.
- Dina becomes very hostile. Refuses. Blocks our email and phone number. MIA
- Dina had made all of her trustee payments.
- Trustee unreasonable in not understanding why lay people would not just sign the tolling agreements. Trustee dismisses case.

## Scenario #2: Lien Avoidance and Plan Objection

- Darren Debtor is a high school math teacher with an annual salary of \$100,000
- Darren only receives paychecks September through May of each year
- Darren files his Chapter 13 case on 12/1/2019 and proposes to pay 10% to his unsecured creditors
- Darren's plan proposes to avoid creditor Cash4You's judgment lien
- Debtor files Motion to Avoid Judgment lien pursuant to 11 U.S.C. § 522(f)

## Scenario #2: Lien Avoidance and Plan Objection - Page 2

- Debtor files Motion to Avoid Judgment lien pursuant to 11 U.S.C. § 522(f)
- Cash4You objects to confirmation arguing that:
  - Means Test is not an accurate reflection of Darren's monthly disposable Income
  - Darren's expenses on Schedule J are unreasonable
- Court sets an evidentiary hearing to determine the proper amount of Darren's income and reasonableness of his expenses

## Scenario #3: Business Debtor-Joint Petition

- Debtors have a very large home (7 bdrm, 5 bath), in a guard gated community, purchased 15 years ago. Value is \$900,000. May be fully encumbered. Pre-petition mortgage arrearage = \$120,000.
- Donald Debtor is self-employed in insurance sales. Donna Debtor works retail.
- This is the debtors 3<sup>rd</sup> bankruptcy: (1) 2013 - Chapter 7 Discharged. (2) March, 2019 – Pro Se Chapter 13 - §521(i) dismissal. (3) May, 2019 – current case filed by competent attorney.
- There have been five (5) scheduled 341 meetings; the 5<sup>th</sup> having finally been concluded.
- Debtors are two (2) plan payments delinquent causing the conduit mortgage payment to be one (1) payment delinquent.
- Confirmation is scheduled for December 19.

## Scenario #4: Ex-Spouse and Chapter 13

- Danny Debtor is a recently divorced self-employed gas pump mechanic earning about \$75,000 per year, and required to pay child support and other \$ to ex-wife.
- Danny had 2 previous chapter 13 failed cases with other attorneys- #1 failed to make child support pmts and #2 could not afford plan payments (mortgages).
- Unsecured debt \$200K, Tax debt \$30K, ~\$11K PD alimony and child support. No mortgages. Properties under receivership and sale in process.

## Scenario #4: Ex-Spouse and Chapter 13

### Page 2

- Lots of hostility, animosity and hate between Danny and ex-wife.
- Motion to impose stay granted to all creditors EXCEPT ex-wife.
- Opens door for ex-wife to file state court action after action and multiple creditor exams. Ex-wife attorney equally as hostile as ex-wife. He is owed in excess of \$60,000 in attorney fees. Will not settle for anything less than dismissing this Ch 13.
- Motion in state court to determine if ex-wife attorney fees can be discharged.

## Scenario #4: Ex-Spouse and Chapter 13

### Page 3

- Motion in state court to recharacterize property settlement \$ as DSO.
- Motion in BK court to prevent funds from sale of house to be turned over to trustee.
- Ex-wife garnishing Danny's income prevents him from making Ch 13 payment
- If case fails, is Danny in any worse of a position than now? How do I get paid.

## Scenario #5: Cram Down and Debtor's Attorney Fees

- Debbie Debtor is a professional individual earning a significant annual salary
- Debbie's residence is encumbered by a \$200,000 second mortgage owed to Cranky Creditor
- Debbie's mortgage owing to Cranky became all due and payable on 11/1/2019
- Debbie files her Chapter 13 on 12/1/2019 and proposes to cram down Cranky's interest rate from 12% to 5%
- Debbie's Plan extends the mortgage repayment to Cranky over 60 months to be paid through her plan

## Scenario #5: Cram Down and Debtor's Attorney Fees Page 2

- Cranky objects to Debbie's plan arguing that it is entitled to receive its default interest rate of 17%
- Court sets an evidentiary hearing to determine the proper interest rate to be applied to Cranky's mortgage through the plan
- The day prior to the evidentiary hearing the parties agree that Cranky will receive 8% interest and plan is confirmed
- Debbie's counsel files fee application seeking allowance of its fees and costs in the amount of \$20,000
  - Trustee opposes granting of counsel's fees because if approved, Debbie's plan will no longer be feasible
  - Court continues fee application to allow Debbie to file a plan modification

## Scenario #5: Cram Down and Debtor's Attorney Fees

### Page 3

- Debbie falls behind on plan payments. Trustee files Motion to Dismiss
  - Counsel opposes Motion to Dismiss
  - Counsel files a Motion to Modify and Suspend Plan payments that provides for sale of property within 6 months
  - Modification is approved, but Motion to Dismiss continued to make sure sale closes
  - Court approves Counsel's fee application
- Debbie is unresponsive to her Counsel regarding update of sale
  - At the 11<sup>th</sup> hour Counsel is informed Debbie is attempting a refinance and not sale of her Residence
  - Refinance falls apart and case is dismissed
- Debbie's Counsel is owed \$24,000 in fees and costs at time of dismissal.

## Scenario #6: Student Loans and Season Tickets to the Raiders

- Debtors file joint petition and they have no dependents.
- Debtors have residential property, vehicle leases and all payments are current
- Danielle Debtor is self-employed and owns an Eye Lash & Brow Boutique.
- David Debtor is a grocery store manager.
- David Debtor is paying directly monthly payments on his 401(k) loan

Scenario #6: Student Loans  
and Season Tickets to the Raiders  
Page 2

- Debtors have \$240,000 in general unsecured debt of which \$121,000 is Student Loan debt
- Debtors purchased 2 PSLs (personal seat license) for the new Raider's football stadium for which they still owe \$26,000. The contract also requires them to purchase season tickets for the Raiders at an unknown cost for 30 years. Debtors want to accept this contract.
- Debtors Plan currently proposes plan payments per Schedule I & J which is \$800 less than Monthly Disposable Income on the means test and will \$25,000 or 10% to general unsecured creditors.

Scenario #6: Student Loans  
and Season Tickets to the Raiders  
Page 3

- Debtors Plan currently proposes plan payments per Schedule I & J which is \$800 less than Monthly Disposable Income on the means test and will \$25,000 or 10% to general unsecured creditors.
- To overcome the Trustee's Opposition to Confirmation, Debtors' attorney is getting creative. He suggests that Debtors be allowed to accept the Raiders contract and they will modify their plan to:
  - Resume regular contractual payments on their Student Loans as long term debts under §1322(b)(5)
  - Pay 100% to all other general unsecured creditors



## CONCLUSION

Such are the challenges to the roles that counsel to debtors and creditors have played in Chapter 13 cases since the enactment of BAPCPA, with little recognition that the success in completing a case through discharge is directly proportional to the professionals involved in the proceeding, often in the face of contending with very difficult clients and circumstances.

**CHALLENGES OF DEBTORS ATTORNEYS**

**SCENARIO 1: MENTALLY ILL/BIPOLAR CLIENT WHO FLIP FLOPS**

Client “Dina Debtor” who lives with her grandmother filed a Ch 13 to stop a garnishment. She had previously filed a chapter 7 ( 5 years before) and not eligible for Ch 7 until 2022. Initially she was easy to communicate with during early parts of the case. during intake process, she told us she lived with the grandmother and had signed a formal lease. At the second signing appointment (balance of pleadings appt), she told us that she no longer had a lease with her grandma because it had expired and would just continue to live with her. She also told us she had never paid back any creditors or family members during the one year prior to filing (I have clients sign disclosures regarding such issues in order to foster “truthfulness”). The petition was filed.

Dina was notified of the 341 and confirmation hearing dates, via mail, email and phone call reminder the day before. Dina confirmed. However, she missed her 341 hearing and our calls to her were going straight to voicemail. our emails to her bounced back unanswered. She had blocked our email address. Eventually, she called us back asking why her 341 had not yet taken place. We notified her of the adjourned date.

At the adjourned 341 hearing, Dina disclosed on the record that she just signed a new lease with her grandma without telling us. the trustee asked us to file a motion to incur. Client also disclosed that she spent her tax refund by paying her family back for loans. The trustee asked for a tolling agreement to be signed should her case ever be converted. (keep in mind she could not convert due to the prior Ch. 7.) After the hearing concluded the client informed us that she misspoke, was bipolar, and she signed the lease before she came to the second signing appointment. She said she would send us the lease.

After the trustee objections were filed (asking for tolling agreement and motion to incur Nunc Pro Tunc), we attempted to get a hold of the client to resolve the issues, but she had changed her number and would not respond to emails (bounced back) or letters or texts. which resulted in adjourning the confirmation.

The stipulations to adjourn required us to provide the trustee’s office with a signed tolling agreement, a residential lease and a motion to incur by date certain. After several more attempts, the client emails us complaining that we have not updated her on her case and gave us her new phone number.

When we began discussing the outstanding issues with the client, she began backtracking on what she said during her 341 meeting. She could not provide us with a lease because her grandmother tore it up and she never paid her family for loans. the payments she made were for them babysitting her kids while she was at work. We made an appointment for the client to come in to discuss these changes.

The client came to the office in a good mood, she was cordial and pleasant with the staff. During the meeting told us that she never had signed a lease with her grandmother and that she would sign an affidavit stating as much. She also said that she could not get her family to sign the tolling agreements because they lived out of state and she could not get their contact information for us but she will try to. The client then began to get angry and yelling about the whole process, after a few minutes she began to calm down on her own. We continued with the meeting. This flip flopping and mood swings continued throughout the meeting.

A few days later we tried contacting the client to get her families contact info and she became hostile again, screaming that her family does not want anything to do with her bk and that they will not give her their addresses and that she never paid them back for loans. We informed the trustee attorney about the family member's refusal to sign the tolling agreements. The trustee attorney became angry about the situation, which was ridiculous. She said "just explain to them it's a formality". She expected lay people to fully understand what a tolling agreement was and that they would sign a legal agreement without hesitation.

Dina refused and insisted that they will not sign it and she will not help us get their info. The deadline to provide the trustee the documents passed and her case was dismissed. This was a case where client was 100% paid into the plan.

We called the client multiple times to discuss the dismissal and strategy going forward to possibly file motion to reinstate, and her number kept going to voicemail. We tried texting her as well and she had blocked our phone numbers. All of our emails to her were rejected. A few weeks later, she responds asking why we didn't get the tolling agreements filed!!!!

### SCENARIO 2: LIEN AVOIDANCE AND PLAN OBJECTION

Darren Debtor is a high school math teacher. His annual salary is \$100,000. however, he only receives paychecks 9 months out of the year (September through May). Darren files his Chapter 13 case on 12/1/2019 and as such his Means Test does not accurately reflect his projected monthly income. Darren's Chapter 13 Plan proposes to avoid Cash4You's judgment lien pursuant to § 522(f) and also to distribute 10% to his unsecured creditors. Based on the value of the property, there is no equity for the creditor's lien to attach to and therefore no basis for an opposition to the 522(f) motion. However, upon review of the Debtor's income and expenses, Cash4You objects to confirmation of Darren's Plan arguing that he is not pledging all of his disposable income and that his monthly expenses are unreasonable. The Court sets an evidentiary hearing to determine the Darren's average monthly income and the reasonableness of his expenses.

**SCENARIO 3: BUSINESS DEBTOR – JOINT PETITION**

Donald and Donna Debtors file a Joint Petition represented by competent counsel. Based on the Bankruptcy Schedules: Debtors own real property valued by the debtors at \$900,000. The Property is encumbered by a 1<sup>st</sup> Mortgage of \$905,000, a junior lien for a home equity loan of \$15,000, utility and HOA liens of \$10,000. Also scheduled is a lien on the real property for an unknown amount to two private investors.

The claims bar dates have passed. The only proof of claim related to liens on the real property was filed by the holder of the 1<sup>st</sup> Mortgage in the amount \$620,000 with \$120,000 in pre-petition arrearages. A priority unsecured debt of \$150,000 to the IRS was scheduled but no proof of claim was filed. Unsecured debt was scheduled at \$154,000 but only \$73,000 has been asserted in filed proofs of claims. Of the \$73,000, student loans equal \$13,000. Debtors have two auto leases which are current.

Donald Debtor sells insurance. The Trustee's Business Review concludes that the business is still viable but sales and policy renewals are lagging. In the month after filing, Donald Debtor received a \$75,000 from renewals but he will use the funds to live on and make plan payments for the next 4-6 mos. Donald Debtor is in a Masters Program in Secondary Education with the intent to teach. Donna Debtor works a retail job. Debtors have one (1) teenaged child at home who is a functional teenager but has a serious medical condition.

Pursuant to the means test, Debtors are over-median income with a negative monthly disposable income. Debtors Applicable Commitment Period is 60 mos. Their Schedule J monthly net income is \$3,625/mo.

Debtors' Plan provides for 60 monthly payments with 3 graduated increases. TRUSTEE WILL PAY conduit mortgage payments, pre-petition arrears to all secured creditors, the unknown investor lien on residence as a modified claim, IRS priority debt and 0% to general unsecured creditors. DEBTORS WILL PAY DIRECTLY auto lease payments. SPECIAL PROVISIONS: \$15,000 home equity lien on residence to be stripped.

This is the debtors 3<sup>rd</sup> bankruptcy: (1) 2013 - Chapter 7 Discharged. (2) March, 2019 – Pro Se Chapter 13 - §521(i) dismissal. (3) May, 2019 – current case filed by competent attorney. The Trustee has had a difficult time getting necessary documents from the Debtors. There have been 5 scheduled 341 mtgs; the 5<sup>th</sup> having been concluded.

Debtor Attorney is fulfilling his obligation competently representing his client and facilitating the production of documents. However, Debtors' Attorney is wondering why the trustee is being so lenient by continuing hearings and giving the debtor more time. 1st Mortgage creditor attorney has filed a Request for Special Notice but there have been no objections to confirmation filed except for the Trustee's opposition. Six (6) plan payments have come due. Debtor is currently 2 plan payments delinquent. Conduit mortgage is one (1) payment delinquent.

**SCENARIO 4: Ex-Spouse and Chapter 13**

Danny Debtor is a self-employed gas-pump mechanic who was recently divorced in early 2018. In the Judgment of Divorce, he was ordered to pay child support, spousal support, and various other property settlement payments to his ex-wife.

Danny Debtor was pro se during the divorce while his wife retained a divorce attorney. During the divorce process, the wife's attorney subpoenaed some of his clients for depositions and according to Danny, he lost a lot of business because these clients did not appreciate being dragged into his personal matters; and the potential legal exposure didn't help.

Danny Debtor came to our office after having filed two prior chapter 13 cases which were dismissed. The first case was dismissed because he failed to make child support payments on time. The second case was dismissed because the plan payment was too much for him to handle; he ended up not making ANY payments (first case payment was \$450 per month, while the second case was \$3,800 per month). Danny and wife owned real estate (marital home and a 2<sup>nd</sup> home plus a business).

In the JOD, Danny was required to take his wife's name off the communal home or refinance it as to not further damage her credit history. He has failed to do that. So, at some point between the second case and filing this present case, the ex-wife petitioned the family court to hire a receiver to sell the properties in Danny's possession in order to satisfy the debts. These properties include the communal home and his business warehouse. The properties were recently sold and closing is pending.

The animosity between Danny and ex-wife aside, the ex-wife has also incurred substantial attorney fees (\$60,000 and growing every day) in trying to enforce the JOD via the bankruptcy by hiring aggressive bankruptcy attorney Alan Attorney in the previous chapter 13 cases to assist her. It's fairly clear that Alan was counting on the sale of the properties in order to get paid for his services. This chapter 13 case clearly irritated him, and he is on a warpath to get the case dismissed. He also does not want the funds turned over to the ch13 trustee due to the % trustee will take.

A brief summary of Danny's debts include the following. Secured debts: mortgage (which will become unsecured upon sale of the house), car loan. Priority: IRS past taxes, child support, spousal support. Unsecured: various business debts, credit card purchase, attorney fees for the prior bankruptcy cases, and property settlement to ex wife. The property settlement being the biggest points of contention in this case. Ex wife's counsel maintains that her debts should not be dischargeable in the chapter 13 case, the same goes for his fees. He argues they are in the nature of §523(a)(5) and not under (a)(15), And our position is that they are indeed under (a)(15). The JOD is unclear and does not indicate that her debts nor her attorneys are in the form of domestic support.

This case is plagued with difficulties. Danny's son (17), for whom he is paying child support, has been living with him for a year now because according to Danny, son can't stand

“his b... of a mother”. Danny has been spending and accruing actual costs in the maintenance and care of son, as such he didn’t feel he needed to pay child support.

Motion to Impose Automatic Stay-- This became a big problem on the motion to impose the automatic stay because Judge found that this case was not filed in good faith against ex wife, and as such the Judge lifted the stay as to ex wife only. Judge admitted he has not ruled like this in the past. This freed up lots of options for ex wife and her counsel to pursue legal actions against Danny.

The trustee in this case is somewhat in favor of this case getting confirmed because they will obviously get a big chunk of trustee fees through the sale proceeds of the properties. They have maintained the position that the proceeds need to be turned over the trustee as property of the estate, and the court agreed, ruling that the proceeds must be turned over to the trustee.

With all the newfound freedom granted to them, ex wife filed a motion to determine dischargeability in the state court. Even though such motions are not binding on the bankruptcy court (they are still persuasive), we felt that it was necessary to challenge it in the state court. The case was rather complex and to date the judge has NOT ruled on that motion, even though it has been over 30 days.

Ex wife also petitioned for creditor exam in state court as well as for separate 2004 exam. At the first scheduled creditor exam, Danny was unable to produce any meaningful documents because we were served on a short notice and they asked for 49 items. He did produce a list of the jobs he did for October 2019, and ex wife and her attorneys will be contacting them and/or filing writ of garnishments against Danny.

Ex wife’s attorney has made it clear that he will not settle short of dismissing the case. He has STRONGLY urged our office on several occasions to dismiss the case, as well as call us “stupid for not dismissing” and to allow his client to be paid by the receiver as it is a waste of money to allow the trustee to profit if they receive the funds. He also thinks the client would be entitled to file chapter 7 bankruptcy and he should set up a payment plan with the IRS separately. We discuss all options with the client, he rejected the idea.

Going forward, the likelihood of confirmation may be based on what comes out of the creditor/2004 exam and if ex wife succeeds on garnishing his income. We need to balance between his livelihood and the success of the bankruptcy with the costs associated with legal proceedings. How do we get paid? And frankly if case continues, there’s a very good chance that we might get paid for the hours we put into this case.

By lifting the stay as to ex-wife, Judge allows for garnishment of Danny’s income/wages, which means he cannot make chapter 13 payments which means dismissal. To date, Danny is 100% paid to trustee, and child support payments being made by trustee.

Other outstanding issues: Are her attorney fees dischargeable? Ex wife attorney seems to think state court judge can rule on this and modify the language of the JOD regarding what is support.

**SCENARIO 5: Cram Down and Debtors Attorney Fees**

Debbie Debtor owns real property that is her primary residence in Orange County, CA (“Property”). She believes that the Property is worth \$1,150,000. The Property is encumbered by a first mortgage in the amount of \$595,000, which is current. The Property is further encumbered by Cranky Creditor’s hard money second mortgage in the amount \$200,000 that became all due and payable prior to the bankruptcy filing. The contract rate of the hard money loan is 12% and the default rate is 17%. Other than student loan debt in the approximate amount of \$120,000, the Debbie has minimal unsecured debt.

Debbie’s Chapter 13 Plan proposes to make direct payments to the first mortgage and to cram down the second mortgage interest to 5% to be amortized and paid over 60 months. Cranky objects to confirmation arguing that it is entitled to interest at the default rate of 17%. Confirmation is scheduled for an evidentiary hearing regarding the proper rate of interest that the hard money lender is entitled to receive. Debbie retains a financial expert who testifies that the proper interest rate is approximately 6%. Cranky’s expert claims that based on Debtor’s credit rating, the proper interest that should be applied to the loan should be 12%. Ultimately, the parties agree to 8% to be paid to Cranky through the Plan. The Plan is confirmed. The confirmation of the case occurs approximately 12 months after the filing.

Debbie’s attorney (“Attorney”) files an application for fees and costs (including the expert’s fees) in the amount of \$20,000. At the hearing on the application for fees, the Court is not willing to approve the fee application because the Trustee comments that if Attorney’s fees are approved the case will no longer be feasible. The hearing on the fee application is continued to allow Debbie to file a motion to modify her plan. Attorney attempts to counsel Debbie that the Residence is too much for her to handle and suggests that she sell the same in order to maintain any remaining equity. About 1.5 years after filing, Debbie falls behind on her mortgage payments to the first mortgage holder. The first mortgage lender files a motion for relief stay and Attorney negotiates an APO. Debbie now falls behind on her plan payments to the Trustee. Attorney opposes the Trustee’s motion to dismiss and files a motion to modify the plan indicating that Debbie has had a change in circumstances reducing her monthly income. The modification motion also proposes to sell the Residence within 6 months. The modification is approved, however, Court continues the Trustee’s motion to dismiss and Attorney’s pending fee application to make sure that the Debbie sells her property within the next six months.

Notwithstanding Attorney’s prodding, five months fly by and Debbie does not provide any updates to Attorney regarding a sale. At the 11th hour, Attorney obtains information from the Debbie that she is attempting to “refinance” the Residence not sell it. Attorney files a motion to authorize the refinance. The Court continues the pending motion to dismiss, but thankfully approves Attorney’s fee application in the amount of \$20,000 and gives Debbie one more month to close the refinance closed and payoff her Chapter 13 paid in full (including Attorney’s fees).

After obtaining an initial appraisal the refinancing lender decides that it is not willing to loan as much money as it had initially said it would. Now there will not be sufficient funds to pay off the first, second, Trustee’s administrative fee and Counsel’s fees. Attorney supplements

the refinance motion indicating that Debbie will need to stay in her plan to continue to pay the administrative expenses and minimal unsecured debt. Ultimately, the refinance falls apart and the case gets dismissed. Attorney is owed \$24,000 in fees and costs.

**SCENARIO 6: Student Loans and Season Tickets to the Las Vegas Raiders**

Derek and Daisy Debtors file a Joint Petition represented by competent counsel. Derek Debtor has been a Grocery Store Manager for 20 yrs. Daisy Debtor is self-employed and owns a business called Eyelash & Brow Boutique which has been open for 9 yrs. They have no children in the household.

Debtors are over median with an applicable commitment period of 5 yrs. Their means test “monthly disposable income” is \$1,331/mo. However, their Schedule J reflects a “monthly net income” of \$588/mo.

Debtors owes \$345,000 related to secured debt on residential real estate and cars for which monthly payments are current. They owe a small amount to IRS. They owe \$240,000 in general unsecured debt including \$121,000 in Student Loans and \$119,000 in credit cards, personal loans, etc.

This appears to be a typical, over-extended, married couple. Until, I review the Schedule C which lists an exemption of TWO Personal Seat Licenses (PSL’s) for the Las Vegas Raiders new Football Stadium. The contract requires annual payments of \$6,600 for 5 yrs and the requirement to purchase season tickets annually for 30 yrs. The annual payments are not listed on Schedule J.

The Debtors’ current plan does not meet liquidation value. They have not provided evidence of the value of the PSL contract. Debtors’ plan does not provide for all “monthly disposable income.”

Bottom Line: Debtors want to accept the Raiders PSL contract and pay 10% (or \$24,000) to general unsecured creditors.

Debtors’ Attorney recognizes that said plan is not confirmable. He gets creative and asks: If the debtors resume monthly on-going payments to the Student Loan creditors and 100% to all other general unsecured claims, can they accept the PSL contract.





**Dear Potential Client(s),**

Attached is a questionnaire for you to fill out in preparation for your consultation.

Please try to complete it as best as you can. The information will allow us to accurately evaluate your financial situation and to determine the best solution for you.

If you are having trouble with some of the information, just leave it blank and discuss this with the attorney you will be meeting with.

It is our goal to help and assist you through this difficult time in the best way possible.

Thank you for your cooperation.

Sincerely,

*Rita Kostopoulos*

*Kostopoulos & Associates PLLC*

*A Bankruptcy Law Firm*

# AMERICAN BANKRUPTCY INSTITUTE

Ch. 7 \_\_\_\_\_  
Ch. 13 \_\_\_\_\_  
Ch. 13 Lien Strip \_\_\_\_\_  
Motion to Extend / Impose \_\_\_\_\_

## BANKRUPTCY INTAKE FORM

OFFICE USE ONLY
Interviewing Attorney

**Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_ **Time In/Out:** \_\_\_\_\_

**Social Security Number:** \_\_\_\_\_ **Date of Birth:** \_\_\_\_\_

**Address:** \_\_\_\_\_ **Phone Number:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip:** \_\_\_\_\_ **Cell Phone Number:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_ **Work Phone Number:** \_\_\_\_\_

**County of Residence:** \_\_\_\_\_ **Length of Time at Current Address:** \_\_\_\_\_

**Prior Address if Less Than 3 Years:** \_\_\_\_\_

**Marital Status:** ☐ Single ☐ Married ☐ Divorced → How long? \_\_\_\_\_ ☐ Separated ☐ Widowed

**Spouse Name:** \_\_\_\_\_

**Social Security Number:** \_\_\_\_\_ **Date of Birth:** \_\_\_\_\_

**Address (if living separately):** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip:** \_\_\_\_\_ **Phone Number:** \_\_\_\_\_

### DEPENDENTS

Name	Age	Relationship to You	Is this person/child living with you?

**Have you ever filed for Bankruptcy before, even if dismissed or did not go through with it?** ☐ YES ☐ NO

If the answer is yes, what year and case number? Year: \_\_\_\_\_ Case Number: \_\_\_\_\_

**Are both you and your spouse filing this bankruptcy together?** ☐ YES ☐ NO

Have either you or your spouse been known by any other name during the past 8 years? ☐ YES ☐ NO

**Name Used:** \_\_\_\_\_ **Dates Used:** \_\_\_\_\_

**Name Used:** \_\_\_\_\_ **Dates Used:** \_\_\_\_\_

### How did you hear about us?

☐ Referral ☐ Social Media ☐ Radio ☐ Internet ☐ TV ☐ Billboard ☐ Other \_\_\_\_\_

**Attorney Notes:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**INCOME HISTORY**

**Employers Name:** \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Length of time at this job? \_\_\_\_\_ Job Title: \_\_\_\_\_

Rate of pay: \_\_\_\_\_ How often do you get paid: ☐ weekly ☐ Bi-weekly ☐ Bi-monthly ☐ Monthly

Child support / Alimony ☐ YES ☐ NO If yes, how much: \_\_\_\_\_ How often: \_\_\_\_\_ For how long: \_\_\_\_\_

Food stamps ☐ YES ☐ NO If yes, how much: \_\_\_\_\_ How often: \_\_\_\_\_ For how long: \_\_\_\_\_

FIA assistance ☐ YES ☐ NO If yes, how much: \_\_\_\_\_ How often: \_\_\_\_\_ For how long: \_\_\_\_\_

Unemployment ☐ YES ☐ NO If yes, how much: \_\_\_\_\_ How often: \_\_\_\_\_ For how long: \_\_\_\_\_

Workman's comp ☐ YES ☐ NO If yes, how much: \_\_\_\_\_ How often: \_\_\_\_\_ For how long: \_\_\_\_\_

Pension/Social Security ☐ YES ☐ NO If yes, how much: \_\_\_\_\_ How often: \_\_\_\_\_ For how long: \_\_\_\_\_

Disability income ☐ YES ☐ NO If yes, how much: \_\_\_\_\_ How often: \_\_\_\_\_ For how long: \_\_\_\_\_

Rental/Roomate Income ☐ YES ☐ NO If yes, how much: \_\_\_\_\_ How often: \_\_\_\_\_ For how long: \_\_\_\_\_

Commissions ☐ YES ☐ NO If yes, how much: \_\_\_\_\_ How often: \_\_\_\_\_ For how long: \_\_\_\_\_

Annuity OR Trust Income ☐ YES ☐ NO If yes, how much: \_\_\_\_\_ How often: \_\_\_\_\_ For how long: \_\_\_\_\_

Any Other Income ☐ YES ☐ NO If yes, how much: \_\_\_\_\_ How often: \_\_\_\_\_ For how long: \_\_\_\_\_

**Will you be receiving a bonus check or profit sharing check within the next year?** ☐ YES ☐ NO Amount? \_\_\_\_\_

**Have you received a bonus check or profit sharing check within the last year?** ☐ YES ☐ NO Amount? \_\_\_\_\_

**Are you or your spouse expecting to receive a buyout/buydown from your current Employer within the next year?** ☐ YES ☐ NO

**Have you or spouse received a buyout/ buydown/severance pay from any employer during the last 2 years?** ☐ YES ☐ NO

**Do you have a second job?** ☐ YES ☐ NO If yes, Employer name: \_\_\_\_\_

Employer address: \_\_\_\_\_

Length of time at this job? \_\_\_\_\_ Job Title: \_\_\_\_\_ Rate of pay: \_\_\_\_\_

How often do you get paid: ☐ weekly ☐ Bi-weekly ☐ Bi-monthly ☐ Monthly

**Spouse's Employment Information: Please see next page.**

**Are you self-employed, own your own business or receive a 1099? If yes, complete next page.**

## AMERICAN BANKRUPTCY INSTITUTE

### SPOUSE'S EMPLOYMENT INFORMATION

This information is needed whether you are filing alone or jointly with your spouse

Is your Spouse employed? ☐ YES ☐ NO

If yes, Employers Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Length of time at this job? \_\_\_\_\_ Job Title: \_\_\_\_\_ Rate of pay: \_\_\_\_\_

How often do you get paid: ☐ weekly ☐ Bi-weekly ☐ Bi-monthly ☐ Monthly

### SELF EMPLOYMENT INCOME

Are you self employed, own your own business or receive a 1099? Please complete below:

Are you paid as an independent contractor (1099)? ☐ YES ☐ NO

Do you have your own business? ☐ YES ☐ NO

Name of company: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

For how long: \_\_\_\_\_ LLC, Corp, or DBA: \_\_\_\_\_ Partners?: \_\_\_\_\_

Type of business: \_\_\_\_\_

Has the business been appraised/valued? \_\_\_\_\_ Current value if you were to sell the business? \_\_\_\_\_

How much did you purchase the business for? \_\_\_\_\_

What are the assets of the business & their values (equipment, vehicles, etc)?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Is there an agreement in place where you plan to sell your business? \_\_\_\_\_

Have you owned a business ***other*** than the one mentioned above in the last 6 years? ☐ YES ☐ NO

What is the name of the company:

\_\_\_\_\_

LLC, Corporation or D/B/A? \_\_\_\_\_

How long was it operational? \_\_\_\_\_

## 2019 WINTER LEADERSHIP CONFERENCE

### MONTHLY BUDGET

This form is necessary to determine how much you spend each month on living expenses. Be sure to write in the average MONTHLY amounts in the spaces to the right of each expense for the entire household, even if you are the only one filing.

#### **HOUSING EXPENSES**

Rent Payment (monthly) \_\_\_\_\_

1<sup>st</sup> Mortgage payment or  
mobile home monthly payment \_\_\_\_\_

2nd Mortgage / Equity Loan \_\_\_\_\_

3<sup>rd</sup> Mortgage / Equity Loan \_\_\_\_\_

Lot Rent payment (if applicable) \_\_\_\_\_

Real Estate taxes included in  
your mortgage payment? ☐ YES ☐ NO

**Taxes** NOT included in your  
mortgage payment \_\_\_\_\_

**Insurance** NOT included in your  
mortgage payment \_\_\_\_\_

#### **UTILITIES**

Electricity \_\_\_\_\_

Gas \_\_\_\_\_

Water \_\_\_\_\_

Telephone Land line \_\_\_\_\_

Cell Phone \_\_\_\_\_

Trash Pickup \_\_\_\_\_

Cable TV /Internet service \_\_\_\_\_

#### **BASIC NEEDS (monthly)**

Home maintenance  
(for homeowners) \_\_\_\_\_

Food (monthly) \_\_\_\_\_

Clothing \_\_\_\_\_

Supplies (napkins, toilet paper etc) \_\_\_\_\_

Laundry (dry cleaning, soap etc) \_\_\_\_\_

Medical expenses NOT paid by  
insurance (co-pays, glasses etc) \_\_\_\_\_

#### **INSURANCE**

Renters Insurance \_\_\_\_\_

Life Insurance paid direct \_\_\_\_\_

Health Insurance paid direct \_\_\_\_\_

Automobile Insurance \_\_\_\_\_

Non Filing Spouses credit cards \_\_\_\_\_

Work Lunches \_\_\_\_\_

Jewelry Payments \_\_\_\_\_

Gym/Spa \_\_\_\_\_

#### **TRANSPORTATION**

Gasoline for Vehicles \_\_\_\_\_

Auto Payments, other Vehicles \_\_\_\_\_

#### **TAXES**

IRS / State Tax Payments \_\_\_\_\_

#### **OTHER EXPENSES**

Alimony or Child Support \_\_\_\_\_

Support for a person(s)  
outside your home \_\_\_\_\_

College Tuition / Books \_\_\_\_\_

Union Dues/Professional Dues \_\_\_\_\_

Oil Changes/Maint. For Autos \_\_\_\_\_

License Fees/Tabs \_\_\_\_\_

Church Tithes/Contributions \_\_\_\_\_

Baby Sitter/Day Care Expenses \_\_\_\_\_

Children's Activities \_\_\_\_\_

Children's Dental, Braces \_\_\_\_\_

School Lunches \_\_\_\_\_

School Expenses \_\_\_\_\_

Diapers/Formula \_\_\_\_\_

Physical Therapy \_\_\_\_\_

Psychiatrist/Therapist \_\_\_\_\_

Prescriptions (out of pocket) \_\_\_\_\_

Personal Care Items \_\_\_\_\_

Pet Supplies/Food/Vet \_\_\_\_\_

Newspapers, Books, Magazines \_\_\_\_\_

Cigarettes/Tobacco \_\_\_\_\_

Condo Association Fees / H.O.A \_\_\_\_\_

Time Share Expenses \_\_\_\_\_

Alarm System Fees \_\_\_\_\_

Storage Fees \_\_\_\_\_

Lawn/Snow Service \_\_\_\_\_

Rent to Own Furniture / Loans \_\_\_\_\_

Loans to Family/Friends \_\_\_\_\_

Student Loans \_\_\_\_\_

Probation Fees/Restitution \_\_\_\_\_

Recreation/Eating Out \_\_\_\_\_

Credit Card Payments \_\_\_\_\_

Manicures/Hair stylist \_\_\_\_\_

# AMERICAN BANKRUPTCY INSTITUTE

## YOUR REAL ESTATE

Including Mobile Homes and all other property

Check the type of real estate you own ☐ House ☐ Condo ☐ Mobile home ☐ Vacant Lot ☐ Rental Property  
☐ Inherited Real Estate ☐ Time Share ☐ Out of state/other country ☐ Other ☐ Co-op

**Do you rent your residence or own?** \_\_\_\_\_ **How many properties do you own?** \_\_\_\_\_

**Name(s) on Deed or Title:** \_\_\_\_\_ **Do you own with someone else?** ☐ YES ☐ NO

Address of Property: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Country: \_\_\_\_\_

**1<sup>st</sup> Mortgage Company:** \_\_\_\_\_

Monthly payment: \_\_\_\_\_ What is the payoff amount? \_\_\_\_\_

**Are you behind on payments?** ☐ YES ☐ NO If yes, how many months? \_\_\_\_\_

**Have you refinanced your home in the last 2 years?** ☐ YES ☐ NO **Date:** \_\_\_\_\_ **Amount received:** \_\_\_\_\_

**What is the value of your home?** \_\_\_\_\_ **Are you past due on property taxes?** ☐ YES ☐ NO

**Do you intend to keep your home or surrender your real estate?** ☐ KEEP ☐ SURRENDER

**Is there a Trustee/Sheriff Sale scheduled?** ☐ YES ☐ NO If yes, date of sale: \_\_\_\_\_

**When did you purchase your home?** \_\_\_\_\_ **Purchase price?** \_\_\_\_\_

Have you had an appraisal? ☐ YES ☐ NO Amount of appraisal: \_\_\_\_\_ Date of appraisal: \_\_\_\_\_

**Do you own any real estate with other people, or has someone added your name to their property in case something happens to them?** ☐ YES ☐ NO

**Do you own any real estate via land contract?** ☐ YES ☐ NO

**2nd Mortgage/Equity Loan or 3<sup>rd</sup> Mortgage Company:** \_\_\_\_\_

Monthly payment: \_\_\_\_\_ What is the payoff amount? \_\_\_\_\_

Are you behind on payments? ☐ YES ☐ NO If yes, how many months? \_\_\_\_\_

**Have you sold, transferred, or lost through foreclosure any other real estate in the last 6 years?** ☐ YES ☐ NO

Address: \_\_\_\_\_

**Are there IRS or State of Michigan Tax liens against your property?** ☐ YES ☐ NO

### RENTAL PROPERTY OR VACANT LAND

Do you own other real estate or have an interest in other real estate, such as rentals or vacant property OR are on someone else's property for purposes of inheritance or if something happens to them? ☐ YES ☐ NO

If yes, location of property : \_\_\_\_\_

Mortgage Company: \_\_\_\_\_ Payoff amount: \_\_\_\_\_ Monthly payment: \_\_\_\_\_

Rents received monthly: \_\_\_\_\_ Value of property: \_\_\_\_\_

## 2019 WINTER LEADERSHIP CONFERENCE

### **IF YOU ARE RENTING—LEASES AND LANDLORDS**

Landlord name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Term of lease: \_\_\_\_\_ Date lease began: \_\_\_\_\_

Does your landlord have a landlord/tenant judgment against you? ☐ YES ☐ NO

Are you past due? ☐ YES ☐ NO If yes, amount past due: \_\_\_\_\_

### **TIME SHARE: FINANCE COMPANY and MAINTENANCE COMPANY**

Do you have an interest in a time share? ☐ YES ☐ NO Do you want to keep or surrender? ☐ KEEP ☐ SURRENDER

If yes, location of property: \_\_\_\_\_

Date purchased: \_\_\_\_\_ Monthly payments: \_\_\_\_\_ Purchase amount: \_\_\_\_\_

Name of Finance company: \_\_\_\_\_ Account number: \_\_\_\_\_ Value: \_\_\_\_\_

### **FOR CONDOMINIUMS: CONDO / H.O.A. ASSOCIATION COMPANY**

#### **Name & Address of Association that you pay your monthly fees to:**

Name of company: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Payment amount: \_\_\_\_\_

Are you past due? ☐ YES ☐ NO If yes, amount past due: \_\_\_\_\_

### **FOR MOBILE HOMES: LOT RENT COMPANY**

#### **Name & Address of Association that you pay your lot rent to:**

Name of company: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Payment amount: \_\_\_\_\_

Are you past due? ☐ YES ☐ NO If yes, amount past due: \_\_\_\_\_

### **FOR STORAGE UNITS:**

#### **Name & Address of Company that you pay your fees/dues to:**

Name of company: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Payment amount: \_\_\_\_\_

Are you past due? ☐ YES ☐ NO If yes, amount past due: \_\_\_\_\_

### **FOR RENT TO OWN FURNITURE OR FURNITURE LOANS:**

If yes, Name of company: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Payment amount: \_\_\_\_\_

What things are you renting or buying: \_\_\_\_\_

Are you past due? ☐ YES ☐ NO If yes, amount past due: \_\_\_\_\_

## YOUR MOTOR VEHICLES

Motor vehicles include cars, trucks, SUV's, motorcycles, RV's, boats, trailers, campers etc..., that are **TITLED IN YOUR NAME OR YOUR SPOUSES NAME, OR WITH ANYONE ELSE**. Include all vehicles even if they are **paid in full** or **not running**, or **someone else drives**.

**(1) VEHICLE TYPE:** ☐ Automobile ☐ Truck ☐ Motorcycle ☐ Boat ☐ Trailer/Camper ☐ Other  
 Year: \_\_\_\_\_ Make: \_\_\_\_\_ Model: \_\_\_\_\_ Lease or Purchase? ☐ Lease ☐ Purchase  
 Condition: ☐ Excellent ☐ Good ☐ Fair ☐ Poor ☐ Not running Mileage: \_\_\_\_\_  
 Name(s) on vehicle title: \_\_\_\_\_  
 Name of company you make payments to: \_\_\_\_\_  
 Vehicle value: \_\_\_\_\_ Monthly payments: \_\_\_\_\_ Do you want to keep or surrender: ☐ Keep ☐ Surrender  
 Are you behind on your payments? ☐ Yes ☐ No If yes, how many months? \_\_\_\_\_

---

**(2) VEHICLE TYPE:** ☐ Automobile ☐ Truck ☐ Motorcycle ☐ Boat ☐ Trailer/Camper ☐ Other  
 Year: \_\_\_\_\_ Make: \_\_\_\_\_ Model: \_\_\_\_\_ Lease or Purchase? ☐ Lease ☐ Purchase  
 Condition: ☐ Excellent ☐ Good ☐ Fair ☐ Poor ☐ Not running Mileage: \_\_\_\_\_  
 Name(s) on vehicle title: \_\_\_\_\_  
 Name of company you make payments to: \_\_\_\_\_  
 Vehicle value: \_\_\_\_\_ Monthly payments: \_\_\_\_\_ Do you want to keep or surrender: ☐ Keep ☐ Surrender  
 Are you behind on your payments? ☐ Yes ☐ No If yes, how many months? \_\_\_\_\_

---

**(3) VEHICLE TYPE:** ☐ Automobile ☐ Truck ☐ Motorcycle ☐ Boat ☐ Trailer/Camper ☐ Other  
 Year: \_\_\_\_\_ Make: \_\_\_\_\_ Model: \_\_\_\_\_ Lease or Purchase? ☐ Lease ☐ Purchase  
 Condition: ☐ Excellent ☐ Good ☐ Fair ☐ Poor ☐ Not running Mileage: \_\_\_\_\_  
 Name(s) on vehicle title: \_\_\_\_\_  
 Name of company you make payments to: \_\_\_\_\_  
 Vehicle value: \_\_\_\_\_ Monthly payments: \_\_\_\_\_ Do you want to keep or surrender: ☐ Keep ☐ Surrender  
 Are you behind on your payments? ☐ Yes ☐ No If yes, how many months? \_\_\_\_\_

---

**(4) VEHICLE TYPE:** ☐ Automobile ☐ Truck ☐ Motorcycle ☐ Boat ☐ Trailer/Camper ☐ Other  
 Year: \_\_\_\_\_ Make: \_\_\_\_\_ Model: \_\_\_\_\_ Lease or Purchase? ☐ Lease ☐ Purchase  
 Condition: ☐ Excellent ☐ Good ☐ Fair ☐ Poor ☐ Not running Mileage: \_\_\_\_\_  
 Name(s) on vehicle title: \_\_\_\_\_  
 Name of company you make payments to: \_\_\_\_\_  
 Vehicle value: \_\_\_\_\_ Monthly payments: \_\_\_\_\_ Do you want to keep or surrender: ☐ Keep ☐ Surrender  
 Are you behind on your payments? ☐ Yes ☐ No If yes, how many months? \_\_\_\_\_

**OTHER ADDITIONAL VEHICLES?** ☐ Yes ☐ No \_\_\_\_\_



## 2019 WINTER LEADERSHIP CONFERENCE

### YOUR HOUSEHOLD INVENTORY

Please check the items below that you currently have in your home, even if they were a gift OR you believe they have no value. To the Right of each item, provide the value of each item in its current condition (used, "garage sale value"), and the brand name if known

<input type="checkbox"/> Stove/Cooking Unit	\$ _____	<input type="checkbox"/> Franchise/Liquor Licenses	\$ _____
<input type="checkbox"/> Refrigerator	\$ _____	<input type="checkbox"/> Business Assets or Business	\$ _____
<input type="checkbox"/> Washer/Dryer	\$ _____	<input type="checkbox"/> Real Estate or Broker License	\$ _____
<input type="checkbox"/> Microwave	\$ _____	<input type="checkbox"/> Hair Dresser License	\$ _____
<input type="checkbox"/> Cookware (pots & pans)	\$ _____	<input type="checkbox"/> Buyouts	\$ _____
<input type="checkbox"/> Cooking Utensils	\$ _____	<input type="checkbox"/> Pets	\$ _____
<input type="checkbox"/> Living Room Furniture	\$ _____	<input type="checkbox"/> Tax Refund 2018	\$ _____
<input type="checkbox"/> Dining Room Furniture	\$ _____	<input type="checkbox"/> Season Game Tickets	\$ _____
<input type="checkbox"/> Tables & chairs	\$ _____	<input type="checkbox"/> Swimming Pool	\$ _____
<input type="checkbox"/> Big Screen Tv's	\$ _____	<input type="checkbox"/> Storage Unit(s) / Contents	\$ _____
<input type="checkbox"/> DVD / Blu Ray Players	\$ _____	<input type="checkbox"/> Sports Equipment	\$ _____
<input type="checkbox"/> Dvd's	\$ _____	<input type="checkbox"/> Rent Deposit w/Landlord	\$ _____
<input type="checkbox"/> Compact Discs	\$ _____	<input type="checkbox"/> Collectibles	\$ _____
<input type="checkbox"/> Stereo Equipment	\$ _____	<input type="checkbox"/> Off Shore Bank Accounts	\$ _____
<input type="checkbox"/> Bedroom Furniture	\$ _____	<input type="checkbox"/> Baseball Cards, Sports Stuff	\$ _____
<input type="checkbox"/> Dressers / Nightstands	\$ _____	<input type="checkbox"/> Train Sets, Hobbies	\$ _____
<input type="checkbox"/> Lamps & Accessories	\$ _____	<input type="checkbox"/> Inheritance	\$ _____
<input type="checkbox"/> Wedding Rings	\$ _____	<input type="checkbox"/> Cemetery Plot(s)	\$ _____
<input type="checkbox"/> Jewelry / Diamonds	\$ _____	<input type="checkbox"/> Antiques, Coins, Stamps	\$ _____
<input type="checkbox"/> Costume Jewelry	\$ _____	<input type="checkbox"/> Copyrights, Patents, Trademarks	\$ _____
<input type="checkbox"/> Trust Beneficiary / Trustee	\$ _____	<input type="checkbox"/> Medical Equipment	\$ _____
<input type="checkbox"/> Computers / Printers	\$ _____	<input type="checkbox"/> Aircraft	\$ _____
<input type="checkbox"/> Bicycles	\$ _____	<input type="checkbox"/> 1 <sup>st</sup> Checking Account	\$ _____
<input type="checkbox"/> Desk / Office Furniture	\$ _____	Name of Bank	_____
<input type="checkbox"/> Computer Equipment	\$ _____	Joint Account?	<input type="checkbox"/> yes <input type="checkbox"/> no
<input type="checkbox"/> Accounts Receivables	\$ _____	<input type="checkbox"/> 2 <sup>nd</sup> Checking Account	\$ _____
<input type="checkbox"/> Cash on Hand	\$ _____	Name of Bank	_____
<input type="checkbox"/> Photo Equipment / Cameras	\$ _____	Joint Account?	<input type="checkbox"/> yes <input type="checkbox"/> no
<input type="checkbox"/> Health Care Aids	\$ _____	<input type="checkbox"/> Savings Account	\$ _____
<input type="checkbox"/> Cell Phone(s)	\$ _____	Name of Bank	_____
<input type="checkbox"/> Paintings / Art	\$ _____	Joint Account?	<input type="checkbox"/> yes <input type="checkbox"/> no
<input type="checkbox"/> Annuity	\$ _____	<input type="checkbox"/> HAS/Flex Medical Saving Accts	\$ _____
<input type="checkbox"/> Books	\$ _____	<input type="checkbox"/> 401K, IRA, TSP, Education IRA	\$ _____
<input type="checkbox"/> Guns / Firearms	\$ _____	<input type="checkbox"/> Certificate of Deposit	\$ _____
<input type="checkbox"/> Corp, DBA, or LLC Share	\$ _____	<input type="checkbox"/> Money Market Accounts	\$ _____
<input type="checkbox"/> Clothes OR Fur Coats	\$ _____	<input type="checkbox"/> Stocks, Bonds, Mutual Funds	\$ _____
<input type="checkbox"/> Lottery Tickets	\$ _____	<input type="checkbox"/> Safe Deposit Box / Contents	\$ _____
<input type="checkbox"/> Gym Equipment	\$ _____	<input type="checkbox"/> Life Insurance Policy	\$ _____
<input type="checkbox"/> Carpenter / Mechanic tools	\$ _____	<input type="checkbox"/> Pre-Paid Debit Card/Payroll Card	\$ _____
<input type="checkbox"/> Lawnmower/Yard Tools	\$ _____	<input type="checkbox"/> Employer stock purchase plan	\$ _____
<input type="checkbox"/> Inherited IRA	\$ _____	<input type="checkbox"/> PayPal Account	\$ _____
<input type="checkbox"/> Musical Instruments	\$ _____	<input type="checkbox"/> Vacation Fund	\$ _____

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### WORK HISTORY AND OTHER INCOME:

Places where you and/or your spouse have worked for the last 6 months and ALL sources of income for the last 6 months. Including gifts of money, rental/roommate income, gambling/lottery winnings, buyouts, 401k loans, unemployment compensation, etc.

Employer: \_\_\_\_\_ Date of hire/termination \_\_\_\_\_

Employer: \_\_\_\_\_ Date of hire/termination \_\_\_\_\_

Have your wages or property or tax refunds been garnished or attached in the last 90 days? ☐ YES ☐ NO

By whom? \_\_\_\_\_ How much/what was taken? \_\_\_\_\_ Time period? \_\_\_\_\_

Other Income: (401K Loans, IRA Distributions, Life Insurance Proceeds, Gifts of money, Lottery winnings, Gambling winnings, Inheritance, Roommate assistance, Rental Income, Buyouts, etc received in the last 2 years)

\_\_\_\_\_  
\_\_\_\_\_

### CO-SIGNERS OR AUTHORIZED USERS ON YOUR DEBTS/ACCOUNTS

Name: \_\_\_\_\_ Name of Creditor: \_\_\_\_\_

Address: \_\_\_\_\_ City/State: \_\_\_\_\_ Zip: \_\_\_\_\_

Does anyone owe you money? ☐ YES ☐ NO If yes, who & how much: \_\_\_\_\_

Do you pay or owe child support? ☐ YES ☐ NO

If yes, Name & Address of person receiving the support & FOC involved: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Country: \_\_\_\_\_

Amount paid or owed: \_\_\_\_\_

### PAYMENTS TO CREDITORS AND FAMILY MEMBERS AND FRIENDS:

Have you paid back any family or friends in the past year for loans? ☐ YES ☐ NO

How much and when? \_\_\_\_\_ Name of friend or relative: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Have you paid back any creditors/credit cards/utilities, etc... more than \$600.00 in the last 90 days? ☐ YES ☐ NO

Name of Creditor: \_\_\_\_\_ Date and amount paid back: \_\_\_\_\_

Name of Creditor: \_\_\_\_\_

Date and amount paid back: \_\_\_\_\_

Have you made any GIFTS within the last 12 months to family members of churches totaling more than \$100?

☐ YES ☐ NO If yes, Name of recipient/church and type of gift: \_\_\_\_\_

## 2019 WINTER LEADERSHIP CONFERENCE

### PLEASE CHECK THE TYPES OF DEBTS YOU OWE & ESTIMATED AMOUNTS OF DEBT

<input type="checkbox"/> Auto Repossession _____	<input type="checkbox"/> Student Loans _____
<input type="checkbox"/> IRS/State Taxes/debts _____	<input type="checkbox"/> Credit Union Loans _____
<input type="checkbox"/> Credit Cards _____	<input type="checkbox"/> Child support or Alimony _____
<input type="checkbox"/> Medical Bills _____	<input type="checkbox"/> Unemployment comp fees _____
<input type="checkbox"/> Judgments/Garnishments _____	<input type="checkbox"/> Traffic tickets/Restitution _____
<input type="checkbox"/> Payday/Cash advance loans _____	<input type="checkbox"/> Rent to own furniture _____
<input type="checkbox"/> Apartment/lease deficiency _____	<input type="checkbox"/> Furniture Loans/payments _____
<input type="checkbox"/> Storage unit fees _____	<input type="checkbox"/> Life Insurance Loans _____
<input type="checkbox"/> 401k /IRA Loans _____	<input type="checkbox"/> Other _____
<input type="checkbox"/> Business Debt _____	<input type="checkbox"/> Jewelry Loans _____
<input type="checkbox"/> Pawn Shop Debt _____	

### DO YOU OWE FAMILY MEMBERS OR FRIENDS MONEY? ☐ YES ☐ NO

(1) Name AND Address and Amounts: \_\_\_\_\_

(2) Name AND Address and Amounts: \_\_\_\_\_

### LOTTERY/GAMBLING/INHERITENCE MONEY:

Have you had any lotto or gambling winnings in the last 2 years? ☐ YES ☐ NO How much and when? \_\_\_\_\_

Have you had any lotto or gambling losses in the last 2 years? ☐ YES ☐ NO How much and when? \_\_\_\_\_

Do you expect to receive an inheritance or life insurance proceeds in the next year? ☐ YES ☐ NO

How much and when? \_\_\_\_\_

Have you received an inheritance or life insurance proceeds in the last 6 years? ☐ YES ☐ NO

How much and when? \_\_\_\_\_

### LAWSUITS AND ACCIDENTS:

Have you sued anyone in the last 5 years or been sued or are now involved in a lawsuit, including divorce?

☐ YES ☐ NO If yes, why? \_\_\_\_\_

Have you been injured at work, in a car accident, or a slip and fall incident in the last 6 years? ☐ YES ☐ NO

Are you currently receiving medical care for an injury? ☐ YES ☐ NO

Are you expecting to receive a monetary settlement pursuant to a judgment of divorce? ☐ YES ☐ NO

Have you received a monetary settlement pursuant to a judgment of divorce in the last 2 years? ☐ YES ☐ NO

Are you thinking of suing anyone? ☐ YES ☐ NO Why? \_\_\_\_\_

Is anyone holding property belonging to you? ☐ YES ☐ NO

Are you holding property that belongs to others? ☐ YES ☐ NO

EXAMPLE: Your parents have a vehicle in their name because you did not have good credit but it is your car and you make the payments and pay the insurance. What are the items? \_\_\_\_\_

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**Have you returned any property to creditors or was any property repossessed?** ☐ YES ☐ NO

If yes, date of sale/seizure: \_\_\_\_\_ Items sold/seized: \_\_\_\_\_

Name of person who sold/seized the property: \_\_\_\_\_

**Does your spouse have any property in his/her name alone?** ☐ YES ☐ NO

**Have you transferred any money or property to family members and/or friends in the last 6 yrs?**

☐ YES ☐ NO If yes, what and when: \_\_\_\_\_

**How did you spend the most recent tax refund you received?** \_\_\_\_\_

**Have you used your credit cards, obtained cash advances or incurred loans in the last 6 months?** ☐ YES ☐ NO

If yes, what did you purchase/charge? \_\_\_\_\_

**Have you paid real estate taxes or income taxes with your credit cards?** ☐ YES ☐ NO If yes, when? \_\_\_\_\_

### CLOSED BANK ACCOUNTS OR RETIRMENT ACCOUNTS OR OTHER FINANCIAL ACCOUNTS:

**Have you or your bank closed bank accounts or Retirement/Stock/Brokerage acct in last 2 yrs?** ☐ YES ☐ NO

If yes, name of bank, account number and balance at time of closing: \_\_\_\_\_

Date of Closing: \_\_\_\_\_ Why was the account(s) closed? \_\_\_\_\_

**Have you participated in a debt counseling/consolidation program or**

**paid a deposit to another bankruptcy attorney in the last year?** ☐ YES ☐ NO

If yes, how much did you pay & dates of payments: \_\_\_\_\_

Name of counseling agency: \_\_\_\_\_

**Is any of your property being held by a Receiver, Custodian or other court appointed official?** ☐ YES ☐ NO

**Have you received any type of insurance settlement money, or received money for losses from theft or fire OR any type of settlement award or divorce settlement in the last 2 years for any reason?** ☐ YES ☐ NO

**Do you have a pending social security or disability of a workman's comp case / appeal pending?** ☐ YES ☐ NO

**Is your jewelry insured?** ☐ YES ☐ NO

**Have you filed all required tax returns?** ☐ YES ☐ NO If not, why? \_\_\_\_\_

**Have you received all tax refunds you are entitled to receive for the last 4 years?** ☐ YES ☐ NO

**Do you intend to amend any income tax returns?** ☐ YES ☐ NO If yes, why and when? \_\_\_\_\_

**Are Tax Refunds Owed to You?** ☐ YES ☐ NO \_\_\_\_\_

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Who will be paying for the attorney fees for this bankruptcy and in what form? \_\_\_\_\_

Have you sold any property or transferred any property or given away any property or lost any property for any reason or due to theft or fire in the last 2 years (including garage sales, craigs list, Ebay, pawn shops, sales, gifts, auto trade-ins ,etc) ? ☐ YES ☐ NO

- ☐ Autos \_\_\_\_\_
- ☐ Real Estate \_\_\_\_\_
- ☐ Furniture \_\_\_\_\_
- ☐ Jewelry \_\_\_\_\_
- ☐ Boats \_\_\_\_\_
- ☐ Recreational Vehicles \_\_\_\_\_
- ☐ Bank Accts/CD's/Stocks/Bond \_\_\_\_\_
- ☐ Other \_\_\_\_\_

Do you have a power of attorney in the event something were to happen to you? ☐ YES ☐ NO

Do you have a Health Care Power of Attorney if you were to be hospitalized, incapacitated and need someone to make health care decisions for you? ☐ YES ☐ NO

Do you have a Last Will & Testament in the event you were to pass away? ☐ YES ☐ NO

**BRIEFLY DESCRIBE THE CIRCUMSTANCES THAT GAVE RISE TO YOUR CURRENT FINANCIAL SITUATION THAT CAUSED YOU TO SEEK HELP AND POSSIBLY FILE FOR BANKRUPTCY:**

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**BRIEFLY DESCRIBE WHAT YOUR EXPECTATIONS ARE OF FILING FOR BANKRUPTCY? WHAT BENEFITS DO YOU EXPECT TO RECEIVE?**

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Signature of debtor 1: \_\_\_\_\_

Signature of debtor 2: \_\_\_\_\_

**QUESTIONNAIRE**

Important: Please answer all questions below so that we may better assess your situation.

Select YES or NO

- 1) Do you own any house or real estate? (assume for these questions "house or real estate" includes houses, mobile homes, buildings, land, etc...) ☐ YES ☐ NO  
 If you have a house, is it: ☐ "stick built" (built out of lumber at the site)  
☐ a manufactured mobile home (such as a double wide; these have titles)  
☐ a modular home  
 How much land? ☐ city lot ☐ acres \_\_\_\_\_  
 If it has been appraised in the last 4 years, state: when: \_\_\_\_\_ and for how much: \_\_\_\_\_
- 2) Do you currently have any agreement regarding the purchase or sale of any asset? (besides the ones on schedule D where you are purchasing) ☐ YES ☐ NO
- 3) Have you owned or had an interest of any type, in any house or real estate in the last 4 years (other than the ones you now own)? ☐ YES ☐ NO
- 4) Is your name now (or within the last 3 years) on anyone else's deed, or mobile home title, bank account, CD, or stock certificate? ☐ YES ☐ NO
- 5) Is there any house or real estate or other asset owned by someone else which if it was sold, you'd be entitled to money for any reason? ☐ YES ☐ NO
- 6) Have you been divorced in the past 4 years?  
 If yes, when: \_\_\_\_\_ ☐ YES ☐ NO
- 7) Does anyone owe you money? ☐ YES ☐ NO
- 8) Do you have a basis to sue anyone?  
 If yes, who? \_\_\_\_\_ ☐ YES ☐ NO
- 9) Are you involved in any lawsuit or court proceeding in which you might receive money? ☐ YES ☐ NO
- 10) Have you received anything from an inheritance, trust, probate estate, or insurance in the last 2 years?  
 If yes, how much? \_\_\_\_\_ ☐ YES ☐ NO
- 11) Do you expect to receive any inheritance or anything from a trust, probate estate or insurance in the next year? ☐ YES ☐ NO
- 12) Do you have any interest in a trust or estate? ☐ YES ☐ NO
- 13) Have you paid any money to relatives in the past 1 ½ years? ☐ YES ☐ NO
- 14) Have you given away or otherwise transferred real estate or anything worth over \$500.00 to friends or relatives in the last 6 years? ☐ YES ☐ NO
- 15) For each vehicle you now have, list:  

Year	Make	Mileage	Condition
_____			
_____			
- 16) Are you subject to or responsible for a domestic support obligation? ☐ YES ☐ NO  
 If yes, please provide the beneficiary's name, current address & phone number.  
 ALSO, identify which court the support obligation is through & case number  
 Beneficiary: \_\_\_\_\_  
 Address & phone: \_\_\_\_\_  
 Court & Case number: \_\_\_\_\_

## 2019 WINTER LEADERSHIP CONFERENCE

- 17) In the past 6 months, have you paid one credit card off or down with another credit card or with a check written against another credit card (balance transfer)? ☐ YES ☐ NO
- 18) Do you collect items which might be valuable (such as coins, stamps, antiques, guns, cards, etc...) or have any musical instrument or household goods worth over \$450.00 or \$900.00 if jointly owned? ☐ YES ☐ NO
- 19) Do you have any IRA's, CD's, stocks, bonds, mutual funds or other investments? ☐ YES ☐ NO
- 20) What tax refunds did you receive for the tax year 2018 or 2019? \_\_\_\_\_  
For tax year 2019 do you expect: ☐ more ☐ less ☐ same
- 21) What day of the week are you paid? \_\_\_\_\_ most recent payday? \_\_\_\_\_  
For how many weeks? \_\_\_\_\_ Is there a one week holdback? \_\_\_\_\_
- 22) Have you received a lump sum payment of \$10,000.00 or more for any reason in the last 4 years? ☐ YES ☐ NO
- 23) Did any creditor get payments totaling over \$600.00 during the 3 months before your bankruptcy was filed? ☐ YES ☐ NO
- 24) Have you filed a bankruptcy case before this one? ☐ YES ☐ NO
- 25) Are you involved in the operation of any business (including home based businesses, partnerships, proprietorships, etc...) ☐ YES ☐ NO
- 26) Were any of your assets seized, repossessed, surrendered, or garnished during the 3 months before your bankruptcy case was filed? ☐ YES ☐ NO
- 27) Have you ever had an accident or injury for which someone else may be at fault or liable? ☐ YES ☐ NO
- 28) Do you have an RV, boat, motor home, camper, trailer, snowmobile, jet ski, or lawn tractor? ☐ YES ☐ NO
- 29) Have you owned any real estate, or other property or a business you did not disclose? ☐ YES ☐ NO

For any yes answer above, please explain:

# \_\_\_\_\_  
# \_\_\_\_\_  
# \_\_\_\_\_  
# \_\_\_\_\_

I have read and understand these questions and the answers are true and correct to the best of my information, knowledge, and belief.

Signature of debtor 1: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of debtor 1: \_\_\_\_\_ Date: \_\_\_\_\_

## **Consultation and Sign Up Process**

### **Initial Consultation:**

- Fill out intake form—15 pages
- Meet with attorney—Approximately 30-45 minutes

### **Sign Up Process:**

#### **Fee agreement :**

- 9 pages long and 82 paragraphs
- Client initials after each paragraph
- List just about every issue that can come up
  - When issue comes up later, clients say “You never told me that or I didn’t know”. I can then point to the paragraph they initialed next to.

### **My Additional Disclosures during Sign Up:**

#### **Each disclosure is signed by client**

- Plan of Action- Brief explanation of future appointments with missing documents list
- Homework list
- Office phone call/email/message policy
- Bankruptcy timeline sheet
- Mandatory Credit Counseling Disclosure
- Document List Policy
- Additional Documents for chapter 13—Insurance Declarations, receipts of most expenses, etc
- Tax Refund turnover disclosure
- Credit Report Authorization
- Successful Chapter 13 requirements
- Required BAPCPA disclosure

Even with all the above information/disclosures we still hear “I never knew I had to turn over tax refunds, or you never told me that”

### **Petition Signing Process:**

- Usually takes 2-4 hours
- First meets with legal assistant
- Then meets with attorney and go over each page
- Client reads each page, and initials at bottom
- Again, several disclosures are then signed as in the initial signup process.



## 2019 WINTER LEADERSHIP CONFERENCE



### **BANKRUPTCY TIMELINE**



- |                               |   |  |
|-------------------------------|---|--|
| <b>STEP 1:</b>                | <b>INITIAL CONSULTATION</b>   | Meeting with an Attorney to analyze and discuss your options   |
| <b>STEP 2:</b>                | <b>2<sup>ND</sup> CONSULTATION / SIGN UP</b><br>At this session you will sign and review documents and retain us to go forward with your case   | You will meet with an attorney or legal assistant to complete this step  |
| <b>STEP 3:</b>                | <b>1<sup>ST</sup> CREDIT COUNSELING SESSION</b><br>This needs to be completed before your case can be filed.  | You may complete this step on your own or assistance in our office.  |
| <b>STEP 4:</b>                | <b>DOCUMENT DROP OFF / REVIEW</b><br>Within 5-7 days of step 2, you will need to drop off <b>ALL</b> the documents from the list you received. We will review them with you to make sure all documents are there  | You will meet with an attorney or legal assistant  |
| <b>STEP 5:</b>                | <b>BANKRUPTCY FILING</b><br>Your bankruptcy case is prepared for filing with the courts.  | You may receive a call from a legal assistant who will review your creditor list and petition and schedule signing.  |
| <b>STEP 6:</b>                | <b>SIGNING APPOINTMENT</b><br>This will be your first signing appointment and your case will be filed. <u>This is a long appointment; 2 hours.</u> This is to review your final bankruptcy petition for accuracy and completeness. It will be reviewed twice. | You will be contacted by a legal assistant. He/She will complete your petition, review all information such as expenses, income, debts. An Attorney will then meet with you to review the petition to ensure its accuracy and explain the various schedules to you. You will initial and sign the completed petition after review. |
| <b>STEP 7:</b>                | <b>COURT PREP APPOINTMENT</b><br>This short appointment will be to briefly explain what to expect at your court hearing.  | You will meet or speak with an attorney or legal assistant.  |
| <b>STEP 8:</b>                | <b>341 MEETING OF CREDITORS</b><br>This is your court hearing   | An Attorney will meet you at the Federal Court House prior to your scheduled hearing. Arrive at least 30 minutes early (due to security line) and bring your driver's license and social security card.  |
| <b>STEP 9:</b>                | <b>2<sup>ND</sup> CREDIT COUNSELING</b>   | This is the 2 <sup>nd</sup> required credit counseling course that must be completed in order to receive your discharge  |
| <b>STEP 10:<br/>DISCHARGE</b> | <b><u>CHAPTER 7 ONLY:</u> BANKRUPTCY</b><br><br>You should receive your official discharge notice from the courts approximately 60 – 90 days from the date of your 341 hearing. These are sent by the courts, not us.   |  |
| <b>STEP 10:<br/>HEARING</b>   | <b><u>CHAPTER 13 ONLY:</u> CONFIRMATION</b><br><br>Your confirmation hearing takes place about 2 months after your 341 hearing  |  |
| <b>STEP 11:</b>               | <b>YOUR FRESH START BEGINS!</b>   |  |

\_\_\_\_\_  
Debtor

Date: \_\_\_\_\_

\_\_\_\_\_  
Debtor

Date: \_\_\_\_\_

**AMERICAN BANKRUPTCY INSTITUTE**

Kostopoulos & Associates PLLC  
Attorneys and Counselors at law  
31201 Chicago Rd. S.  
Suite C-102  
Warren, MI 48093

**NOTICE NO. 4**

**Notice Mandated By Section 342(b)(2) Of The Bankruptcy Code**

**FRAUD & CONCEALMENT PROHIBITED**

If you decide to file bankruptcy, it is important that you understand the following:

1. Some or all of the information you provide in connection with your bankruptcy will be filed with the bankruptcy court on forms or documents that you will be required to sign and declare as true under penalty of perjury. \_\_\_\_\_
2. A person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury in connection with a bankruptcy case shall be subject to fine, imprisonment, or both. \_\_\_\_\_
3. All information you provide in connection with your bankruptcy case is subject to examination by the Attorney General. \_\_\_\_\_

\_\_\_\_\_  
CLIENT SIGNATURE

DATE: \_\_\_\_\_

## KOSTOPOULOS & ASSOCIATES PLLC

### ADDITIONAL DOCUMENT REQUIREMENTS

The following documents are required in order to file for Bankruptcy and **MUST** be provided to our office on or before your 2<sup>nd</sup> signing appointment in addition to the documents on your homework list.

If these documents are not received, your case may be adjourned or dismissed for failure to provide required documents.

- Homeowners Insurance Declaration page if you own a home
- Vehicle Insurance Declaration page/bill for vehicles.
- 2016 and 2017 Income Tax Returns, Federal and State.
- Receipts to prove expenses
  - Gas receipts
  - Tithe receipts
  - Other expenses, such as laundry, clothing, medical if above what court considers “average and reasonable”.

Signed: /s/\_\_\_\_\_ Date: \_\_\_\_\_

Signed: /s/\_\_\_\_\_ Date: \_\_\_\_\_

**AMERICAN BANKRUPTCY INSTITUTE**

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN**

**In re:** \_\_\_\_\_

**Case No:** \_\_\_\_\_  
**Chapter:** \_\_\_\_\_

**AFFIDAVIT OF** \_\_\_\_\_

**NOW COMES**, Debtor(s) \_\_\_\_\_, and states as follows:

I, \_\_\_\_\_ testify and affirm that I have disclosed to my attorney any and all sources of income earned or money received during the four years prior to the filing of my bankruptcy case, including earnings from wages, unemployment, child support, alimony, pension/social security, disability, life insurance proceeds, workers compensation payments, lottery or gambling winnings, gifts of money, 401k or IRA distributions, rental income, roommate income, lawsuit proceeds or any other source not listed above. These assets/sources of income or money, if they exist, are fully disclosed in the bankruptcy schedules which I have reviewed and signed. I testify and affirm that my attorney specifically asked me questions regarding these assets/sources of income or money and I answered truthfully. *Initialed* \_\_\_\_\_

(Income means money or funds received from any source, including but not limited to the categories stated above.) *Initialed* \_\_\_\_\_

I, \_\_\_\_\_ testify and affirm that I have disclosed to my attorney any and all assets owned and/or real or personal property owned, including houses, vacant land, land or houses owned with someone else, land or houses owned by land contract, income tax refunds due, all bank accounts whether or not there is a balance in the account, cars, boats, motorcycles, campers, trailers, snow mobiles, jet skis, 401k accounts, retirement or pension accounts, lottery winnings, garnishment of bank accounts or wages, property received or to be received in a judgment of divorce, future or potential lawsuits or any cause of action that has arisen that may give rise to a lawsuit, inheritance property/funds received in the last 2 years or to be received, lottery tickets, whole life insurance policies or other items not listed above which may be considered property of any type. *Initialed* \_\_\_\_\_

## 2019 WINTER LEADERSHIP CONFERENCE

These assets, if they exist, are fully disclosed in the bankruptcy schedules which I have reviewed and signed. I testify and affirm that my attorney specifically asked me questions regarding these assets and I answered truthfully. **Initialed** \_\_\_\_\_

I, \_\_\_\_\_, testify and affirm that I have disclosed to my attorney all payments made to friends, relatives and creditors within the last year prior to filing. These payments, if they exist, are fully disclosed in the bankruptcy schedules which I have reviewed and signed. I testify and affirm that my attorney specifically asked me questions regarding these payments and I answered truthfully. **Initialed** \_\_\_\_\_

I, \_\_\_\_\_, testify and affirm that I have disclosed to my attorney any and all property, including real estate transferred in the last 6 years and vehicles, jewelry, etc which have been transferred, sold, repossessed, stolen, lost or totaled in an accident within the last 2 years. These transfers, if they exist, are fully disclosed in the bankruptcy schedules which I have reviewed and signed. I testify and affirm that my attorney specifically asked me questions regarding these assets/sources of income or money and I answered truthfully. **Initialed** \_\_\_\_\_

I, \_\_\_\_\_, testify and affirm that I have reviewed all the schedules containing creditors of all types including collection agencies and all other people/entities I owe money to, and the creditor matrix and all my creditors and people I owe money to have been listed. **Initialed** \_\_\_\_\_

I, \_\_\_\_\_, testify and affirm that I have read the entire bankruptcy petition and schedules and fully understand the information contained therein. My attorney reviewed with me and fully explained all the schedules and information. I have been truthful with my attorney(s) and have disclosed to my attorney(s) any and all information as stated in this affidavit. In addition, all the information, property listed, values of property, income, expenses, transfers, creditors, etc contained in the bankruptcy petition and schedules is true and correct and no amendments are required. **Initialed** \_\_\_\_\_

NAME : \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

KOSTOPOULOS & ASSOCIATES, PLLC

CHECKLIST FOR REVIEWING CHAPTER 7 & 13 PETITIONS WITH CLIENTS

Date \_\_\_\_\_

Client \_\_\_\_\_

Legal Assistant \_\_\_\_\_

Attorney \_\_\_\_\_

**Real Estate:**

- ☐ Register of Deeds Recorded Mortgage(s) and Deed in file \_\_\_\_\_
- Property Tax Statement(s) in file \_\_\_\_\_
  - Zillow Printout for value \_\_\_\_\_
  - Mortgage balance statements \_\_\_\_\_
  - Amount of mortgage payments & SEV listed on Sch. A \_\_\_\_\_
  - Recorded mortgages and Recorded deed \_\_\_\_\_

**Income Tax Returns:**

- ☐ Income Tax Returns and W2s for 2017-2018 in the file \_\_\_\_\_
- ☐ Income Tax refund for 2018 added to schedule b & c \_\_\_\_\_
- ☐ ITR for 2018 prorated in sch. B&C? \_\_\_\_\_
- ☐ Reviewed tax returns for business or other income not listed? \_\_\_\_\_

**Income From All Sources:**

- ☐ 6 months of pay stubs \_\_\_\_\_
- ☐ Proof of food stamps \_\_\_\_\_
- ☐ Proof of social security/pension \_\_\_\_\_
- ☐ Profit and Loss statement if self-employed or 1099 \_\_\_\_\_
- ☐ Gambling, lottery winnings, gifts, inheritance, other Income \_\_\_\_\_
- ☐ Bit Coin or other similar accounts, gaming accounts, etc \_\_\_\_\_

**Automobiles:**

- ☐ All titles **AND** registrations to vehicles/mobile homes/boats \_\_\_\_\_
- ☐ All auto balance statements or lease statements \_\_\_\_\_
- ☐ KBB Valuations \_\_\_\_\_

**Bank Accounts and Financials:**

- ☐ Latest 401K or IRA pension statements \_\_\_\_\_
- ☐ Bank account statements for 3 months \_\_\_\_\_
- ☐ Balance **ON THE DATE OF FILING** \_\_\_\_\_
- ☐ Life Insurance policies \_\_\_\_\_
- ☐ Insurance Declaration pages \_\_\_\_\_

**Intake Form:**

- ☐ Review for accuracy of schedule entry items \_\_\_\_\_

**Divorce and Child Support:**

- ☐ Judgment of divorce \_\_\_\_\_
- ☐ Proof of child support payments \_\_\_\_\_
- ☐ Name & Address of child support recipient on Sch.; E & FOC \_\_\_\_\_

**Miscellaneous Requirements:**

- ☐ Means test Calculations in file \_\_\_\_\_
- ☐ Count number of creditors on schedules for extra creditors \_\_\_\_\_
- ☐ Number of items on Sch. A & B listed and noted on Sch. C (A+B=C) \_\_\_\_\_
- ☐ Review the last 3 months of bank statements \_\_\_\_\_
  - Payments > \$200.00 monthly and deposits
- ☐ Client given a copy of the signed petition \_\_\_\_\_
- ☐ Copy of payment order if Chapter 13 \_\_\_\_\_
  - Client brought 1<sup>st</sup> Trustee Payment
- ☐ Client reviewed and initialed every page of petition \_\_\_\_\_
  - Initials next to SS#

- ✓ **Note: Ask who paid their attorney fees, how they were paid and list** \_\_\_\_\_
- ✓ **Note: Ask specifically about jewelry and bank accounts!!!** \_\_\_\_\_
- ✓ **Note: Ask client again if they paid back family members/friends in the last year** \_\_\_\_\_
- ✓ **Note: Review bank account statements for patterns** \_\_\_\_\_
  - Deposits or payments to creditors or family members
- ✓ **Note: Ask again about auto accidents, or any claims they may have** \_\_\_\_\_
- ✓ **Note: Ask if they have sold any property on Ebay, pay pal, Craig's list etc** \_\_\_\_\_
- ✓ **Note: Client completed all disclosure forms – copies to client** \_\_\_\_\_

# AMERICAN BANKRUPTCY INSTITUTE

## PETITION REVIEW QUESTIONNAIRE

Debtor(s) Name(s): \_\_\_\_\_ Case No.: \_\_\_\_\_

### INTRODUCTION AND INSTRUCTIONS

**YOU HAVE A DUTY TO COOPERATE:** As part of your Bankruptcy, the Trustee must examine and investigate your financial affairs and related information. Under the law, it is your duty to fully cooperate with and assist the Trustee in this investigation. These are standard questions that each debtor must answer. You may receive further requests for additional documents from the Trustee. The Trustee may conduct further investigation as needed. You are obligated to provide this additional information and documents as well.

**YOUR ANSWERS MUST BE TRUE, COMPLETE AND ACCURATE:** It is important that all your answers to the questions are true, complete and accurate. If you have made any mistakes in your bankruptcy documents, it is absolutely essential that you inform your Trustee by correcting those mistakes NOW. Failure to do so may result in severe consequences. IT IS A FEDERAL CRIME TO INTENTIONALLY GIVE FALSE OR MISLEADING INFORMATION AND TESTIMONY TO YOUR BANKRUPTCY TRUSTEE.

**ALL YOUR PROPERTY IS NOW THE PROPERTY OF THE ESTATE:** Please note that until such time that your case is closed or notices of abandonment become effective, the Trustee is responsible for the administration of all of your property (real estate, cars and all other property you owned before you filed bankruptcy). Until your case is closed or notices of abandonment have become effective, you cannot sell, refinance, or further encumber any of your property.

**IF YOU HAVE QUESTIONS:** If you have any questions or require further information, you should consult with your attorney or other legal source as the Trustee cannot give you legal advice.

1. Have you reviewed your Petition, Schedules and Statement of Financial Affairs and, if represented by counsel, were they explained to you by that counsel before you signed them?  
Yes \_\_\_\_\_ No \_\_\_\_\_ or  
I am representing myself and have reviewed and understand them.  
Yes \_\_\_\_\_ No \_\_\_\_\_
2. Do you understand you are required to disclose to the Trustee, all pre-bankruptcy rights to property (even if you will realize the property after filing bankruptcy such as lottery tickets and earned but unpaid commissions as non-exclusive examples), and to money, and that failure to do so could result in denial of your discharge of debts and civil, as well as criminal penalties?  
Yes \_\_\_\_\_ No \_\_\_\_\_
3. Do you understand that "property" means anything of any value, whether a present, future or contingent interest?  
Yes \_\_\_\_\_ No \_\_\_\_\_
4. Do you understand that you are to report to the Court and Trustee, by formal written Amendment filed with the Court, any right to an inheritance, property settlement agreement, or life insurance proceeds that occurs within 180 days of the date your case was filed?  
Yes \_\_\_\_\_ No \_\_\_\_\_
5. Are you a beneficiary under a will or insurance policy where someone has died?  
Yes \_\_\_\_\_ No \_\_\_\_\_
6. Are you the beneficiary or trustee of a trust?  
Yes \_\_\_\_\_ No \_\_\_\_\_
7. Within one year of the filing of your bankruptcy, have you made any payments, or transferred any property, on a debt to a family member, friend, business associate, or anyone, or any entity that has influence over you in excess of \$1000.00?  
Yes \_\_\_\_\_ No \_\_\_\_\_
8. Do you now, or have you had in the past 5 years any interests in any corporation, partnerships, LLP's, and/or LLC's?  
Yes \_\_\_\_\_ No \_\_\_\_\_
9. Do you have, or have you had in the past 5 years, any interest in offshore accounts, i.e., accounts outside the borders of the United States of America?  
Yes \_\_\_\_\_ No \_\_\_\_\_



## 2019 WINTER LEADERSHIP CONFERENCE

10. Are you seeking recovery in any current lawsuits, or do you have a belief you have grounds to file a lawsuit or counter suit, whether you desire to do so or not, SEEKING DAMAGES?  
Yes \_\_\_\_\_ No \_\_\_\_\_
11. Have you listed accurate claim amounts in your Schedule D, E, or F to the best of your knowledge?  
Yes \_\_\_\_\_ No \_\_\_\_\_
12. Did you receive or are you entitled to an income tax refund for the previous or current tax year?  
Yes \_\_\_\_\_ No \_\_\_\_\_
13. If your response to question 12 was "yes", approximately how much was, or is, your Federal and State refund?  
FEDERAL: \_\_\_\_\_  
STATE: \_\_\_\_\_
14. Have you read and reviewed the information sheet supplied to you by the Office of the United States Trustee?  
Yes \_\_\_\_\_ No \_\_\_\_\_
15. Have you disclosed all of your assets and all of your creditors in your bankruptcy schedules?  
Yes \_\_\_\_\_ No \_\_\_\_\_
16. Are you receiving now, or do you have the right to receive any payment from a lawsuit, divorce judgment, employment buyout, or any other award or settlement?  
Yes \_\_\_\_\_ No \_\_\_\_\_
17. Do you own, are buying, or have any interest in any real estate?  
Yes \_\_\_\_\_ No \_\_\_\_\_
18. Other than the real estate listed in question 17, have you owned, purchased, or sold any real estate within the last 5 years?  
Yes \_\_\_\_\_ No \_\_\_\_\_
19. Have you obtained a mortgage or refinanced in the last two years?  
Yes \_\_\_\_\_ No \_\_\_\_\_
20. Does anyone owe you any money for any reason?  
Yes \_\_\_\_\_ No \_\_\_\_\_
21. Have you sold or transferred anything in the last 6 years?  
Yes \_\_\_\_\_ No \_\_\_\_\_
22. Do you own any stocks or bonds?  
Yes \_\_\_\_\_ No \_\_\_\_\_
23. Do you have a pension or retirement account, including an IRA, 401(k), or profit sharing account?  
Yes \_\_\_\_\_ No \_\_\_\_\_
24. Have you been divorced in the last 5 years?  
Yes \_\_\_\_\_ No \_\_\_\_\_
25. Are you responsible for Domestic Support (child support, alimony, palimony)?  
Yes \_\_\_\_\_ No \_\_\_\_\_
26. If you answered yes to question number 25, please provide the name and address of the individual to whom you pay support (NOT THE AGENCY): Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_
27. Do you understand the Trustee is relying on your responses in this questionnaire, as well as all other documents and statements you are making to administer the case?  
Yes \_\_\_\_\_ No \_\_\_\_\_

I DECLARE UNDER PENALTY OF PERJURY THAT THE STATEMENTS MADE HEREIN ARE TRUE AND CORRECT.

DEBTOR: \_\_\_\_\_

DATE: \_\_\_\_\_

DEBTOR: \_\_\_\_\_

DATE: \_\_\_\_\_

PRQ rev.01 may 2009



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\*\* Admitted to District Ct of Colorado  
+ Of Counsel  
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## PLAN OF ACTION FOR FILING BANKRUPTCY

You have made the decision to file for bankruptcy. The process now is to start gathering documents so your petition can be prepared and filed. You will need 2 appointments. One is to bring us the required documents and the other is your signing appointment for the schedules. Your signing appointment will be made during your document appointment.

**Document Appointment:** \_\_\_\_\_

## MISSING DOCUMENT LIST

The following is a list of documents we are still missing.

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_
8. \_\_\_\_\_

\_\_\_\_\_  
Debtor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Debtor

\_\_\_\_\_  
Date

## KOSTOPOULOS & ASSOCIATES PLLC

### TAX RETURNS AND CHAPTER 13 CASE ADDITIONAL REQUIREMENTS

Please be advised that all Income Tax Returns (both Federal and State) for the past 4 years **MUST** be filed prior to attending the 1<sup>st</sup> court hearing (341 Meeting of Creditors). Failure to file means the trustee could adjourn your court hearing .

If you need assistance in obtaining Income Tax Returns, W2s, etc, please ask how we may help you.

Please be advised that all Federal Tax Refunds **MUST** be turned over to the Chapter 13 Trustee during the life of your plan if you are paying your creditors back less than 100%.

Signed: /s/\_\_\_\_\_ Date: \_\_\_\_\_

Signed: /s/\_\_\_\_\_ Date: \_\_\_\_\_



AMERICAN  
BANKRUPTCY  
INSTITUTE

# FINAL REPORT OF THE ABI COMMISSION ON CONSUMER BANKRUPTCY

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## THE ABI COMMISSION ON CONSUMER BANKRUPTCY

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HON. WILLIAM H. BROWN (RET.)

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REPORTER: PROF. ROBERT M. LAWLESS

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**AMERICAN BANKRUPTCY INSTITUTE**

**2017~2019**

FINAL REPORT AND RECOMMENDATIONS

# IV: MAKING CHAPTER 13 WORK FOR ALL STAKEHOLDERS

## A. Chapter 13 Practice

### § 4.01 Racial Justice in Bankruptcy

- (a) The empirical evidence establishes that African American bankruptcy debtors are both disproportionately more likely to file chapter 13 cases than debtors of other races and disproportionately less likely to obtain a discharge.
- (b) All professionals working in the bankruptcy system should strive to ensure that all persons have equal access to justice. Nothing beyond the applicable legal standards should affect a person's access to the bankruptcy system. No one should experience disparate treatment based on any nonlegal factor, including race, color, religion, sex, pregnancy, disability, national origin, ancestry, marital status, sexual orientation, or gender identity.
- (c) Insolvency organizations should develop and widely disseminate educational and training programs that can help bankruptcy professionals reduce implicit racial bias.
- (d) Congress should amend 28 U.S.C. § 159 to require both the collection of race and ethnicity information on the petition and the dissemination of that information by the director of the Administrative Office of U.S. Courts (AO).
- (e) In the absence of congressional action, both the Advisory Committee on Rules of Bankruptcy Procedure and the AO should consider the feasibility and practicality of collecting race and ethnicity information about bankruptcy filers through official bankruptcy forms, with appropriate privacy protections.

*Background.* Numerous academic studies establish that African American debtors are overrepresented among chapter 13 filers. Over half of African American bankruptcy debtors file chapter 13 cases, compared to just over one-quarter of other filers, a disparity that remains even after controlling for factors such as assets and income.<sup>1</sup> Chapter 13 can be the better choice for some debtors, but there is no apparent reason for a racial disparity after controlling for financial and personal circumstances. Because

<sup>1</sup> See Dov Cohen, Robert M. Lawless & Faith Shin, *Opposite of Correct: Inverted Insider Perceptions of Race and Bankruptcy*, 91 AM. BANKR. L.J. 623, 631, 633 (2017) (reporting a study where 55.0% of African American filers were in chapter 13 as compared to 26.3% for debtors from households where no debtor identified as African American); Jean Braucher, Dov Cohen & Robert M. Lawless, *Race, Attorney Influence, and Bankruptcy Chapter Choice*, 9 J. EMPIRICAL LEGAL STUD. 393, 398, 402 (2012) (reporting a study where 54.7% of African American filers were in chapter 13 compared to 26.7% for debtors from households where no debtor identified as African American).

chapter 13 is more expensive, requires repayment of income over a period of three to five years, and grants a discharge only after successful completion of the proposed payments, the racial disparity in chapter 13 filers raises concerns about equal access to justice.

Academic papers first noted the racial disparity in chapter 13 filers thirty years ago. The initial reports of racial disparity, however, were not widely noticed, likely because the racial disparity finding was a byproduct of a different research question or because the papers used procedures that limited their ability to draw statistical inferences. In a paper published in 1987, Professor Michelle White explored whether the increase in bankruptcy filings after the 1978 passage of the Bankruptcy Code was due to increases in exemptions or general economic factors. Using a data set of 75,000 cases provided by the AO, she found that the percentage of African Americans in a county increased the number of chapter 13 cases filed in that county.<sup>2</sup>

As part of her pioneering work on the concept of local legal culture, Professor Jean Braucher did in-depth qualitative interviews with bankruptcy professionals in Ohio and Texas. In these interviews, two chapter 13 trustees in Ohio said they thought African Americans were overrepresented in chapter 13, with one of the trustees commenting that he was worried these debtors were “being taken advantage of.”<sup>3</sup>

Several later papers, more specifically mentioning racial disparities in bankruptcy, were based on data from the long-running Consumer Bankruptcy Project (CBP).<sup>4</sup> In a study using 2001 data from the CBP and using households as the unit of analysis, Professor Robert Chapman stated that over half of the African American debtors in the data filed for chapter 13.<sup>5</sup> In a study based on the same 2001 data, Professor Rory Van Loo explored racial disparities in bankruptcy discharge rates. As part of that study, he found that 61.8% of African Americans “chose Chapter 13, compared to 28.4% of Hispanics and 20.5% of whites.”<sup>6</sup>

As technology changed, it became easier for researchers to create data sets that allowed for more robust statistical techniques. These techniques built on the earlier findings; evidence accumulated that the racial disparity in bankruptcy chapter choice in prior work was not an artifact of the earlier research designs. Professors Jean Braucher, Dov Cohen, and Robert Lawless used the nationally representative 2007 CBP data to explore more fully the overrepresentation of African Americans in chapter 13. They

2 Michelle J. White, *Personal Bankruptcy Under the 1978 Bankruptcy Code: An Economic Analysis*, 63 IND. L.J. 1, 45, 47 (1987).

3 Jean Braucher, *Lawyers and Consumer Bankruptcy: One Code, Many Cultures*, 67 AM. BANKR. L.J. 501, 559-60 (1993).

4 The CBP has collected data on U.S. bankruptcy filers in waves in 1981, 1991, 2001, and 2007, and began continuous data collection in 2013. The CBP collects court-record data and does surveys and telephone interviews with bankruptcy filers. Information about the CBP’s methodologies can be found at Robert M. Lawless, Angela K. Littwin, Katherine M. Porter, John A.E. Pottow, Deborah K. Thorne & Elizabeth Warren, *Did Bankruptcy Reform Fail? An Empirical Study of Consumer Debtors*, 82 AM. BANKR. L.J. 349, 387-98 (2008), and Pamela Foohey, Robert Lawless, Katherine Porter & Deborah Thorne, “No Money Down” *Bankruptcy*, 90 S. CAL. L. REV. 1055, 1072-74 (2017).

5 Robert B. Chapman, *Missing Persons: Social Science and Accounting for Race, Gender, Class, and Marriage in Bankruptcy*, 76 AM. BANKR. L.J. 347, 387 n.266 (2002) (finding that 42.6% of African American filers went into chapter 7 and therefore implying that over half filed chapter 13).

6 Rory Van Loo, *A Tale of Two Debtors: Bankruptcy Disparities by Race*, 72 ALB. L. REV. 231, 234 (2009). A limitation on the Chapman study and this study was that, because of the technology of the time, the CBP drew on five judicial districts that together were believed to be nationally representative but were not true national random samples. See Lawless, et al., *supra* note 4, at 389-90.

found that 54.7% of African American bankruptcy filers were in chapter 13, compared to 28.2% of filers of all other races.<sup>7</sup> The differences remained even after regressions that statistically controlled for (1) legal and financial variables such as attorney representation, income, and assets; (2) prebankruptcy workout efforts such as attempts to consolidate debts, attempts to “work with” creditors, and attempts at refinancing; (3) demographic variables such as educational level, occupational prestige, and number of dependents; and (4) the rate at which non-African Americans filed under chapter 13 in the district.<sup>8</sup> After controlling for these variables, the regressions estimated an African American bankruptcy filer was about twice as likely to be in chapter 13 compared to a similarly situated debtor of another race.

Braucher, Cohen, and Lawless also sent an experimental vignette to a random sample of consumer bankruptcy attorneys. The vignette described a couple who had come to an attorney for bankruptcy advice. The researchers designed the vignette to be a close question as to whether chapter 7 or chapter 13 was a better choice. The responding attorneys, without being told, each received one of several different versions of the vignette. In one version, the clients had names and church denominations that were stereotypically African American, while another version included stereotypically white names and church denominations. There also was a control group for which the vignette used only initials and gave no cues about the likely race of the client. Different versions also specified whether the clients stated a preference for chapter 7 or chapter 13 or, as a control condition, the clients did not state a preference.<sup>9</sup>

If the attorney had received a vignette with stereotypical African American names, the attorney recommended a chapter 13 filing 47% of the time while recommending that chapter only 36% of the time for the control condition and only 32% of the time if the vignette had stereotypical white names.<sup>10</sup> Moreover, attorneys were more likely to override the stated preference of the client to file chapter 7 if the vignette used the stereotypical African American names.<sup>11</sup> Attorneys also viewed the fictitious African American couple as being more “competent” and having “good values” if the couple had expressed a preference for chapter 13 but had the opposite reaction for the fictitious white couple.<sup>12</sup>

Cohen and Lawless were joined by Faith Shin in a partial replication of their earlier work using 2013-15 data from the CBP. Again, African American bankruptcy filers were in chapter 13 at higher rates

7 Braucher, et al., *supra* note 1, at 400. Preliminary findings from this paper were published at Dov Cohen & Robert M. Lawless, *Less Forgiven: Race and Chapter 13 Bankruptcy*, in *BROKE: HOW DEBT BANKRUPTS THE MIDDLE CLASS* 175 (Katherine Porter ed., 2012). The American Bankruptcy Institute sponsored a symposium about the paper for which the authors shared their data with other researchers who confirmed the study’s findings. See Symposium, *Bankruptcy and Race: Is There a Relation?*, 20 AM. BANKR. INST. L. REV. 611 (2012) (publishing articles by A. Mechele Dickerson, Joseph W. Doherty, Theodore Eisenberg, Daniel Keating, and Stephen Lubben).

8 Braucher, et al., *supra* note 1, at 402.

9 *Id.* at 406-09. In research terms, the different versions of the vignette were two experimental manipulations of three possibilities that were “fully crossed” such that there were nine versions of the vignette.

10 *Id.* at 412.

11 *Id.*

12 *Id.* at 413-16.

(55.0%) than persons of other races (26.3%).<sup>13</sup> The differences again remained even after regressions controlling for legal and financial variables, prebankruptcy workout efforts, demographic information, and the overall chapter 13 rate in the district.<sup>14</sup> Cohen, Lawless, and Shin also gave consumer bankruptcy lawyers a survey asking them to make estimates about bankruptcy chapter choice. The attorneys overestimated the propensity of whites to file chapter 13, guessing that 46.3% of the time they filed chapter 13, compared to the real-world rate at the time of the survey of 28.6%. At the same time, they underestimated the propensity of African Americans to file chapter 13, stating that the rate was 22.0%, compared to the real-world rate of 54.6%.<sup>15</sup> Attorneys also made large overestimates for homeowners and large underestimates for prior bankrupts. In the authors' words:

The attorney estimates appear to line up with American stereotypes of who is a responsible person. Attorneys see homeowners and whites as more likely to attempt repayment to creditors through chapter 13 whereas they see African Americans and prior bankrupts as more likely to seek a full discharge in chapter 7. There is no reason to think that attorneys, as a group, should not hold prevailing American cultural biases about who is a responsible person. That the attorneys are the system's insiders and have a front-row seat to witnessing a 2:1 racial disparity is not enough to overcome the bias.<sup>16</sup>

Professor Edward Morrison and Antoine Uettwiller used a data set from Cook County, Illinois, to explore the relationship between the overrepresentation of African Americans in chapter 13 and parking fines. They find that in Cook County, African Americans not only are overrepresented among chapter 13 filers but also are overrepresented among bankruptcy filers with more than \$500 of government fines.<sup>17</sup> Because governmental fines are dischargeable in chapter 13, Morrison & Uettwiller observe that such filers have a greater incentive to choose chapter 13. After excluding African Americans with more than \$500 in governmental fines, the disparity in chapter choice remains but is "substantially smaller."<sup>18</sup> In a working paper, Morrison & Uettwiller joined Belisa Pang to look at African American debtors in Atlanta, Chicago, and Memphis. They find that African Americans with longer commuting times in those three cities are more likely to file chapter 13.<sup>19</sup> Using a subset of their data for Chicago only, they find that the beginning of more aggressive parking enforcement and fines was more likely to lead to

13 Cohen, et al., *supra* note 1, at 631.

Given the publicity of the prior work, it was likely that many bankruptcy professionals were aware of it, and it was possible that practices had changed to erase the disparity. For example, the Braucher, Cohen & Lawless paper received substantial media attention, including a front-page story in the *New York Times*. See Tara Siegel Bernard, *Blacks Face Bias in Bankruptcy, Study Suggests*, N.Y. TIMES, Jan. 20, 2012, at A1. Thus, it was somewhat surprising that not only had the overall picture remained basically the same but also that the disparities remained almost exactly in the same percentages. See *id.* at 632 (commenting the results in the replication are "strikingly similar" to the results from the earlier paper).

14 *Id.* at 633.

15 *Id.* at 637.

16 *Id.* at 639.

17 Edward R. Morrison & Antoine Uettwiller, *Consumer Bankruptcy Pathologies*, 173 J. INSTITUTIONAL & THEORETICAL ECON. 174 (2017).

18 *Id.* at 185-86.

19 Edward R. Morrison, Belisa A. Pang & Antoine Uettwiller, *Race and Bankruptcy* (Columbia Law and Economics Working Paper), available at <https://ssrn.com/abstract=3137112>.



an increase in chapter 13 filings in zip codes with predominately African American residents. They summarize this line of research as saying, “Among those who file, African Americans are more likely than other debtors to select Chapter 13. This preference is due, at least in part, to systematic differences by race in the value of cars and driver licenses.” Whether this work generalizes beyond Chicago is yet to be explored. A *ProPublica Illinois* news story details the link between aggressive parking enforcement in Chicago and bankruptcy filings.<sup>20</sup>

Professors Pamela Foohey, Robert Lawless, Katherine Porter, and Deborah Thorne used CBP data from 2007 and 2013-15 to examine the phenomenon of “no money down” chapter 13s where the bankruptcy filer funds the attorney’s fees through the chapter 13 plan. African American debtors were more likely to file a “no money down” chapter 13 than debtors of other races, a result that held up even after statistically controlling for other factors through regression analysis.<sup>21</sup> Indeed, the two most important factors that determined whether a debtor filed a “no money down” chapter 13 were the debtor’s race and the percentage of chapter 13s in the district.<sup>22</sup> The authors summarized their findings as follows: “[T]hese two characteristics align with prior research about bankruptcy attorneys’ role in creating regional and racial disparities in debtors’ chapter choice, further suggesting that attorneys play a very important, though likely unintentional, role in facilitating people’s use of bankruptcy.”<sup>23</sup>

In an extensive piece of data journalism for *ProPublica*, Paul Kiel and Hannah Fresques matched zip code-level data with bankruptcy-filing data. They found that persons living in majority African American zip codes were twice as likely to file chapter 13 than persons of other races. They then used Census-tract data to drill down into the data for the Northern District of Illinois and the Western District of Tennessee, two districts with high chapter 13 rates where they found the pattern remained even after controlling for income and assets.<sup>24</sup>

Most recently, Professors Robert Lawless and Angela Littwin used a similar methodology to Kiel & Fresques, matching the Federal Judicial Center’s (FJC) national bankruptcy petition database containing data on all bankruptcy filings to zip code-level data from the Census. Using all chapter 7s and chapter 13s filed across the country from 2012-2016, they find that case-level characteristics (e.g., assets and income) and zip code-level characteristics (e.g., mean income, presence of payday lending, and percentage of African Americans) drive chapter 13 rates. After controlling for judicial district, however, the only zip code-level variable that remained significant was the percentage of African Americans living in the zip

20 See Melissa Sanchez & Sandhya Kambhampati, *Driven to Bankruptcy: How Chicago Debt Sends Black Motorists into Bankruptcy*, PROPUBLICA ILL., Feb. 27, 2018, <https://features.propublica.org/driven-into-debt/chicago-ticket-debt-bankruptcy/>.

21 See Foohey, et al., *supra* note 4, at 1082, 1087 tbl.3.

22 See *id.* at 1089, fig. 4.

23 *Id.* at 1106.

24 See Paul Kiel & Hannah Fresques, *Data Analysis: Bankruptcy and Race in America*, PROPUBLICA, Sept. 27, 2017, <https://projects.propublica.org/graphics/bankruptcy-data-analysis>. A shorter narrative describing the data analysis and including interviews with bankruptcy filers and bankruptcy attorneys was simultaneously published. See Paul Kiel & Hannah Fresques, *How the Bankruptcy System Is Failing Black Americans*, PROPUBLICA, Sept. 27, 2017, <https://features.propublica.org/bankruptcy-inequality/bankruptcy-failing-black-americans-debt-chapter-13/> [hereafter, Kiel & Fresques, *How the Bankruptcy System Is Failing*].

code area.<sup>25</sup> Lawless & Littwin considered their findings significant because they were consistent with prior studies based on the CBP data set but used different, nonsurvey techniques.

Because a chapter 13 discharge comes only after completion of plan payments and with only 38.8% of chapter 13s having a completed plan,<sup>26</sup> the disparity in chapter choice means African Americans are less likely to receive a discharge. Even among chapter 13 filers, however, research suggests African Americans are less likely to receive a discharge. Braucher, Cohen, and Lawless noted that, in their data, African American chapter 13 filers were more likely to have their cases dismissed as compared to other debtors.<sup>27</sup> Using 2007 data from the CBP, Professors Sara Green, Parina Patel, and Katherine Porter looked at the determinants of successful completion for chapter 13 plans. Using regression analysis, they identified several variables that affect plan completion: the amount of unsecured and priority debt, housing affordability, dependents, prior bankruptcies, attorney representation, saving a home as a reason for the filing, the availability of health insurance, and household employment.<sup>28</sup> But race also mattered: “Blacks have less than half the chance of bankruptcy success as non-blacks. . . . More than amount of debt, prior bankruptcies, or having a job — all features that the bankruptcy system does account for in considering a person’s eligibility for chapter 13 — race matters.”<sup>29</sup>

*Recommendations.* After considering the evidence on racial disparities in chapter 13, the Commission decided it was important both to acknowledge the empirical fact of the disparities and to make a strong statement regarding the issue. Although the studies have focused on the role of attorneys, the dramatic variation in racial disparities among judicial districts suggests that one group of actors cannot be driving the entire effect. It may be the complex interactions among debtors, attorneys, trustees, judges, and other system actors that are creating the context for the disparities.<sup>30</sup> The mechanisms that create the disparities are still being explored, and the Commission encourages scholars to continue to study the intersection of race and bankruptcy. Regardless of the precise causes, consumer bankruptcy professionals should do whatever they can to help to ensure that everyone has an equal opportunity to achieve a fresh start.

As part of its recommendations, the Commission has issued a statement of nondiscrimination in the bankruptcy system, not just against racial discrimination but against all forms of discrimination based on legally irrelevant factors. The Commission’s statement is consistent with lawyers’ professional duties to assist in providing access to the legal system and the administration of justice.<sup>31</sup> The Commission’s commitment to nondiscrimination is the one recommendation that every reader of this report can

25 See Robert M. Lawless & Angela Littwin, *Local Legal Culture from R2D2 to Big Data*, 96 TEX. L. REV. 1352, 1368 tbl.1 (2018).

26 See Ed Flynn, *Success Rates in Chapter 13*, AM. BANKR. INST. J., Aug. 2018, at 38 tbl.1.

27 Braucher, et al., *supra* note 1, at 405.

28 See Sara S. Greene, Parina Patel & Katherine Porter, *Cracking the Code: An Empirical Analysis of Consumer Bankruptcy Outcomes*, 101 MINN. L. REV. 1031, 1087 tbl. 1 (2017).

29 *Id.* at 1036, 1087 tbl. 1.

30 See Braucher, *supra* note 3, at 503 (describing local legal culture as “the context created by” the local “administrative practices of judges and trustees, and prevailing professional attitudes” that varied “dramatically” across the four cities she studied).

31 See MODEL RULES OF PROF’L CONDUCT pmbl. ¶ 6.

implement on his or her own and indeed will only be effectively implemented through the individual commitment of bankruptcy professionals to equal access to justice.

At its most basic level, the Commission's recommendation is a call for a commitment to the rule of law that respects everyone's right to access the bankruptcy system and to have all the actors in the bankruptcy system base their decisions only on legally relevant factors.

None of the studies discussed above have identified conscious racism as the culprit for the disparities. Rather, implicit racial bias may lie beneath the disparities observed in the studies. Implicit bias refers to the unconscious attitudes and stereotypes that studies suggest are pervasive in the population. These biases are involuntary and can contradict a person's consciously held beliefs in equality. Studies suggest that implicit bias is associated with widespread discriminatory outcomes, including poor social interactions, constricted job opportunities, "a decreased likelihood of receiving life-saving emergency medical treatments,"<sup>32</sup> and negative outcomes throughout the U.S. legal system.<sup>33</sup> The goal of the Commission is to provide equality-minded bankruptcy professionals with the opportunity to live up to their consciously held beliefs. Implicit biases are pervasive across all societies. The disparities in bankruptcy chapter choice give consumer bankruptcy professionals an opportunity to provide leadership across the legal profession by creating examples of how to combat implicit bias.

The Commission therefore recommends that bankruptcy organizations conduct sessions on implicit racial bias as part of their continuing legal education (CLE) offerings. State bars should approve such panels for ethics CLE credits and consider going further to require implicit racial bias training as its own class of CLE credit, similar to the rules in many states for ethics, mental health, or substance-abuse training. Sessions dedicated to implicit racial bias training already are occurring at bankruptcy CLEs. At the risk of omission, the Commission is aware of such panels at meetings of the American Bankruptcy Institute, the National Conference of Bankruptcy Judges, the National Association of Consumer Bankruptcy Attorneys, the National Association of Chapter 13 Trustees, and the FJC, as well as meetings of state and local bar associations. In addition to continuing legal education panels, the Commission recommends that bankruptcy groups offer training to their members to assist them in overcoming implicit bias.

Finally, the commissioners believe that the disparities in treatment based on race might have been less pronounced had the data cited here been more widely available. As the saying goes, sunlight is the best disinfectant. At the least, the availability of bankruptcy data on race and ethnicity (and perhaps other demographic information) would give researchers opportunities to better understand who files bankruptcy and how the system can be improved. The Commission therefore recommends that Congress amend 28 U.S.C § 159 to authorize the collection of race and ethnicity information as part of the bankruptcy petition process. Congress should require the AO to disseminate statistics on the race

32 Patricia G. Devine, Patrick S. Forscher, Anthony J. Austin & William T.L. Cox, *Long-Term Reduction in Implicit Race Bias: A Prejudice Habit-Breaking Intervention*, 48 EXPERIMENTAL SOC. PSYCHOL. 1267, 1267 (2012).

33 Jerry Kang, Mark Bennett, Devon Carbado, Pam Casey, Nilanjana Dasgupta, David Faigman, Rachel Godsil, Anthony G. Greenwald, Justin Levinson & Jennifer Mnookin, *Implicit Bias in the Courtroom*, 59 UCLA L. REV. 1124 (2012).

and ethnicity of bankruptcy filers. If Congress does not act, the Advisory Committee on Bankruptcy Rules of Procedure should work with the AO to consider implementation of the recommendation through the rules process.

The Commission recognizes that collecting race and ethnicity information may raise privacy issues. Race and ethnicity should not be relevant to the legal issues in bankruptcy cases, but putting such information in the bankruptcy filing might be understood as suggesting that these pieces of information somehow are considered in administering a case and perhaps might be especially confusing for pro se filers. It is not unusual, however, for many organizations to collect demographic information for statistical purposes, and the forms could simply state the information would not be used in the case and is being requested only to better track who comes into contact with the bankruptcy system. It would also be important that the statistical information on race and ethnicity be stored separately from the rest of the information in the case. The Commission decided it was best to leave the precise implementation of this recommendation to the expertise of the AO. The Commission does not intend to downplay the costs and risks of collecting race and ethnicity information, but in light of the evidence and history of racial disparities in the bankruptcy system, it believes that the benefits of collecting the information outweigh these costs and risks.

**§ 4.02 Nonuniform Court Practices**

- (a) Uniform practices reduce costs and facilitate access to justice for all parties. Courts should adopt local rules, standing orders, and practices that promote uniformity within their district and across the nation.
- (b) In multi-judge districts, judges should confer to reduce differences in courtroom procedures.
- (c) The ABI should work with the U.S. Trustee Program (USTP), the FJC, and other professional associations to promote uniformity in the bankruptcy system.

*Background.* Variations in local practices have many benefits, such as tailoring procedures to local needs and piloting innovations that can spread to other localities across the country and even prompt a change in national practice. Indeed, chapter 13 itself began this way.<sup>34</sup> By “local practices,” the Commission is referring to local court rules, standing orders, or even unwritten norms that “everyone” knows they must follow in the local bankruptcy court.

<sup>34</sup> See Teresa A. Sullivan, Elizabeth Warren & Jay Lawrence Westbrook, *The Persistence of Local Legal Culture: Twenty Years of Evidence from the Federal Bankruptcy Courts*, 17 HARV. J. L. & PUB. POL’Y 801, 842 (1994) (explaining that the origins of chapter 13 came from the Northern District of Alabama and judges who followed the innovations in that district).

On the other hand, local practices can cause problems. Local practices can deviate from the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure.<sup>35</sup> Perhaps most troublingly, these practices can override choices that the statute or national court rules leave to the debtor. Such practices can lead to unequal results for debtors based on where they live and interfere with the ability of debtors to obtain a fresh start. Even where local practices are consistent with national law, they create burdens on all parties to know the local practice. As both debtor and creditor lawyers increasingly work in multiple judicial districts, local practices are increasingly raising costs.

Federal Rule of Bankruptcy Procedure 9029 authorizes bankruptcy courts to adopt local rules and standing orders “which are consistent with — but not duplicative of — Acts of Congress and these rules and which do not prohibit or limit the use of the Official Forms.” The Advisory Committee note cautions the courts about excessive reliance on local rules and standing orders:

This rule recognizes that courts rely on multiple directives to control practice. Some courts regulate practice through the published Federal Rules and the local rules of the court. Some courts also have used internal operating procedures, standing orders, and other internal directives. Although such directives continue to be authorized, they can lead to problems. Counsel or litigants may be unaware of various directives. In addition, the sheer volume of directives may impose an unreasonable barrier. For example, it may be difficult to obtain copies of the directives . . . .

There should be no adverse consequence to a party or attorney for violating special requirements relating to practice before a particular judge unless the party or attorney has actual notice of those requirements.

Appellate litigation can resolve geographic inconsistencies in the law, but, for several reasons, appellate litigation is an incomplete solution to the problems caused by local practices. First, although an appellate court might consider whether a local rule or standing order exceeds the authority of the court,<sup>36</sup> nonuniformity alone would not be grounds to void a local rule or court order. Second, informal, unwritten norms generally do not create a record that can be addressed through appellate litigation. Third, practical barriers may limit appellate litigation on local rules. For example, consumer bankruptcy attorneys working on a flat-fee structure or any party without financial resources or lacking a large pecuniary interest often cannot afford to bring appeals. Finally, attorneys for all types of parties may be concerned that appealing established local rules or standing orders might cause resentment in judges and trustees in their communities.

35 See, e.g., *Roseberry v. U.S. Trustee (In re Roseberry)*, 2018 WL 6624202 (S.D. Ill. 2018) (local rule requiring chapter 13 plans to contain language treating postpetition acquired property as disposable income improperly imposed confirmation requirements beyond those in section 1325).

36 See *Coffey v. Marina Mgmt. Serv. (In re Kool, Mann, Coffee & Co.)*, 23 F.3d 66 (3d Cir. 1994) (invalidating local rule that allowed appeals to bypass bankruptcy appellate panel); *Roseberry v. U.S. Trustee*, 2018 WL 6624202 (S.D. Ill. Dec. 18, 2018) (holding local rule that required amendment of schedules during chapter 13 improperly added nonstatutory confirmation requirements).

*Recommendations.* Through written statements and in-person testimony as well as its committee process, the Commission heard how nonuniform practices can burden debtors, creditors, and practitioners. These statements were consistent with the personal experiences of the commissioners. Examples of nonuniform practices include:

- requirements that debtors pay a minimum dividend to general unsecured creditors beyond the amounts mandated under the disposable income and best-interest tests;<sup>37</sup>
- local forms for chapter 13 plans that do not permit debtors to include lien avoidances or collateral valuations in their plans, despite permission to do so as set forth in Federal Rules of Bankruptcy Procedure 4003(d) and 3012(b), respectively incorporated in Official Form 113, and required to be included in any local form adopted pursuant to Federal Rule of Bankruptcy Procedure 3015.1;
- significant disparities across localities in the percentage of chapter 13 cases in which debtors pay no attorney fees before filing for bankruptcy;<sup>38</sup>
- differences in case management (CM) and electronic case filing (ECF) practices from district to district, both in docketing practices and rules about file size and attachments;<sup>39</sup>
- varying time limits in a chapter 13 case during which a secured creditor can file a deficiency claim;<sup>40</sup>
- different deadlines for objections to a chapter 13 plan other than the seven-day deadline before the date set for confirmation as provided in Federal Rule of Bankruptcy Procedure 3015(f);<sup>41</sup> and
- provisions resulting in the automatic dismissal of cases, despite a statutory requirement for a hearing.<sup>42</sup>

37 An older example of this phenomenon comes from Braucher, *supra* note 3, *passim*. Professor Braucher documents four judicial districts with preset “floors” requiring a minimum distribution to creditors for routine confirmation to occur. The floors ranged from 10% repayment to 100%. *Id.* at 532.

38 Pamela Foohey, *supra* note 4, at 1081 (2017) (noting judicial districts with a high percentage of chapter 13 cases tend to have more chapter 13s where debtors pay no attorney’s fees before filing).

39 These differences are documented at § 5.07 Case Management (CM)/Electronic Case Filing (ECF) & Docketing Improvements, where the Commission has made several specific recommendations to promote uniformity in CM/ECF practices.

40 See, e.g., BANKR. E.D. KY. R. 4001-1(e)(i)-(ii) (if a secured claim is paid through the plan, 90 days after order terminating stay for personal property and 210 days for real property); BANKR. E.D. TENN. R. 3002-1(a)-(b) (60 days after rejection of a lease, 120 days from confirmation if debtor surrenders the collateral). The U.S. Bankruptcy Court for the Northern District of West Virginia has a form order that imposes a limit of 90 days from the liquidation of the collateral. See BANKR. N.D. W. VA. R. APP. K-2. The nonuniform location of these filing deadlines in the local rules makes it even more difficult for attorneys to inform themselves of the local requirements.

41 The District of Arizona’s official local chapter 13 plan form provides that objections are due not less than 14 days after the date set for the first meeting of creditors or 28 days after service of the plan, whichever deadline is later. The official local chapter 13 plan form for the Western District of Texas requires plan objections to be filed at least 14 days before the confirmation hearing date.

Because Federal Rule of Bankruptcy Procedure 3015(f) provides that objections must be filed *at least* 7 days prior to the confirmation hearing, these local forms arguably do not conflict with the national rule by providing longer time frames. But regardless of whether these local forms are authorized by rule 3015(f), their nonuniformity is problematic.

42 See *No v. Gorman*, 891 F.3d 138 (4th Cir. 2018).

The long-standing, widespread geographic variation in bankruptcy chapter use also can be seen as a problem of nonuniform local practices.<sup>43</sup> The major differences in chapter 13 rates suggest that informed choice by the debtor may not be the driving factor in chapter selection. Attorneys' values and incentives, as well as local legal expectations regarding which chapter is appropriate under a given set of circumstances, may have an important effect on this crucial decision.<sup>44</sup> "Given the law's technical complexities, lawyers' income expectations and clients' mixed needs,"<sup>45</sup> some lawyers do not counsel each client to the point of being fully informed. Some attorneys may be so wedded to a particular chapter that they may not provide their clients with enough information to make a choice at all.<sup>46</sup> (By making these observations, the Commission does not intend to suggest they excuse the ethical obligation of consumer bankruptcy attorneys to fully and properly counsel their clients.) To point out that there is variation in chapter 13 rates is not to say the rates are too high or too low, but only that the widespread differences in chapter use suggest that similarly situated debtors are obtaining very different outcomes in a national bankruptcy system based on where they live.

*Recommendations.* The Commission believes that nonuniform practices are a problem in the bankruptcy system that should be minimized to the greatest extent possible. Although nonuniformity is a problem across consumer bankruptcy, it is particularly a problem in chapter 13 practice, perhaps because chapter 13's complexity and the lengths of chapter 13 plans create more opportunities for nonuniform local practices to arise. In discussing this problem, the Commission recognized that nonuniformity cannot simply be eradicated by declaration. Also, as this section noted at the start, local practices can bring innovation and are often necessary to adapt to local conditions. Some amount of nonuniformity is not only inevitable but also desirable.

The Commission's primary recommendation is an encouragement of uniformity in the bankruptcy system. The recommendation is hortatory to all actors in the bankruptcy system, setting uniformity as an ideal the bankruptcy system should pursue. The scope and limits of the recommendation should be understood in light of the discussion in this section.

The Commission recommends several steps to promote uniformity. First, judges in multi-judge districts should confer and reduce nonuniformity within the district. Second, national bankruptcy organizations — including, without limitation, the American Bankruptcy Institute, the National Conference of

43 Jeffrey A. Logan, *The Troubled State of Chapter 13 Bankruptcy and Proposals for Reform*, 51 SMU L. REV. 1569, 1583 (1998); Scott E. Norberg & Nadja Schreiber Compo, *Report on an Empirical Study of District Variations, and the Roles of Judges, Trustees, and Debtors' Attorneys in Chapter 13 Bankruptcy Cases*, 81 AM. BANKR. L.J. 431, 432 (2007); Sullivan et al., *supra* note 34, at 828-29; William C. Whitford, *The Ideal of Individualized Justice*, 68 AM. BANKR. L.J. 408-09 (1994).

44 The most in-depth research on local legal culture remains Professor Jean Braucher's qualitative study of four cities, where she interviewed 45 bankruptcy attorneys as well as trustees and judges. Braucher, *supra* note 3, at 504. She found that each city had a distinctive local legal culture that was, in three instances, shaped by a veteran standing chapter 13 trustee. *Id.* at 560. Individual lawyers also played a major role in chapter selection. *Id.* at 582. She explored the financial and social interests of both lawyers and clients and concluded that these factors interacted with each other in a complex way and were difficult to tease apart. *Id.* at 509.

45 *Id.* at 510.

46 See Kiel & Fresques, *How the Bankruptcy System Is Failing*, *supra* note 24 (interviewing a lawyer who "was not troubled" to learn that a former client had not understood the difference between the two chapters: "As required by law, he said, he provides clients with documents explaining the difference, but any client who asks about Chapter 7 will get an argument from him.").

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Bankruptcy Judges, the National Association of Chapter 13 Trustees, and the National Association of Consumer Bankruptcy Attorneys — should work to promote uniformity. These organizations should include uniformity issues in their continuing legal education programming, as well as create working groups that can reach out to one another to promote uniformity. The judiciary also should coordinate through the AO and take advantage of national and circuit judicial conferences to confer about uniform practices. Finally, through its oversight function, the USTP and bankruptcy administrators should also promote uniformity.<sup>47</sup>

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47 The director of the USTP has advocated for more uniformity in chapter 13 practice:

In so many ways chapter 13 practices diverge from district to district, and even from judge to judge. For example, local practices vary with respect to the re-vesting of estate property at confirmation, use of conduit or non-conduit plans, and varying applications of confirmation standards. Sometimes, this may place chapter 13 trustees in the crossfire between disagreeing judges. Some suggest the USTP should take a more active role in forging consistent chapter 13 practice. That is advice we will keep in mind. . . .

Overwhelmingly, chapter 13 trustees perform superbly and with great efficiency. I would ask all of you to consider whether there is maximum coordination and consistency within your district and how the USTP may promote greater consistency that makes sense.

U.S. Dep't of Justice, "Director Addresses the 52nd Annual Seminar of the National Association of Chapter 13 Trustees" (July 17, 2017), <https://www.justice.gov/ust/speeches-testimony/director-addresses-52nd-annual-seminar-national-association-chapter-13-trustees>.



## B. Chapter 13 Plans

### *§ 4.03 Reserve Fund in Chapter 13 Cases*

(a) Statutory and Rules Amendments for a Reserve Fund.

(1) Section 1322(b) should allow a plan to provide —

(A) for contributions from the debtor to a reserve fund held by the trustee for the payment of nonrecurring necessary expenses of the debtor, with the amount of the fund limited, in the absence of unusual circumstances, to one month of the debtor's scheduled expenses; and

(B) for restoration of the fund by additional debtor contributions to the extent of any disbursements from the fund.

(2) Section 1325(b)(2)-(3) should allow a deduction from disposable income for contributions to a reserve fund under § 1322(b).

(3) The Federal Rules of Bankruptcy Procedure should provide —

(A) that to access the reserve fund the debtor shall file a notice setting out the funds reasonably needed to address a nonrecurring necessary expense; and

(B) that the trustee shall disburse the requested funds to the debtor fourteen days after filing of the debtor's notice in the absence of objection from the trustee or an unsecured creditor.

(4) Changes to the Official Forms and Local Forms.

(A) The official form for determining disposable income for an “above median” debtor should include a deduction for contributions to create a reserve fund.

(B) The official form for chapter 13 plans should include a separate paragraph for contributions from the debtor to a reserve fund.

(C) The Federal Rules of Bankruptcy Procedure should require that a local form include a separate paragraph for contributions from the debtor to a reserve fund.

(b) Best Interpretation of Current Law. The current provisions of chapter 13 should be interpreted to allow a debtor's plan to include a nonstandard provision for a reserve fund, held by the trustee, for payment of nonrecurring necessary expenses, subject to the following nonstandard plan provisions:

(1) The reserve fund must be limited to a reasonable amount — one month of the debtor's scheduled expenses in the absence of unusual circumstances.

(2) The debtor may make additional contributions of disposable income to restore any disbursements from the fund.

(3) The trustee will make disbursements from the reserve fund to the debtor on notice, setting out a reasonable amount needed to address a nonrecurring necessary expense, with the payment made in fourteen days of the filing of the notice in the absence of objection from the trustee or an unsecured creditor.

(4) If the debtor's income is equal to or below the median specified in section 1325(b)(3), any contributions of disposable income remaining in the fund at the time the case terminates will be returned to the debtor.

(5) If the debtor's income is above the median specified in section 1325(b)(3), any contributions of disposable income remaining in the fund at the time the case terminates will be paid on unsecured claims.

*Background.* Bankruptcy debtors are economically fragile, and their chapter 13 plans often teeter on the edge of feasibility. Car repairs, home repairs, and medical emergencies can put a chapter 13 plan in jeopardy when they put the debtor in the dilemma of missing a plan payment or failing to meet a crucial nonrecurring household need. For most households, financially draining unanticipated events are almost certain to occur during the three- to five-year life of a chapter 13 plan. Often, the only means of addressing these emergencies is through a modification of a chapter 13 plan, seeking reduced or waived payments. Such modifications cannot necessarily, despite the emergency, be speedily granted and carry additional costs for debtors, both in terms of time and additional attorney's fees.

Almost universally, financial management counseling services recommend that families seeking to stabilize their family budgets establish a fund to pay for unanticipated and nonrecurring expenses, thereby preventing a small problem from becoming a crisis. Indeed, the USTP mandates that the personal financial management courses required for an individual's discharge include discussions on the importance of "saving for emergencies."<sup>48</sup> An academic paper found that households that save for emergencies "experienced slightly less overall hardship and were less likely to report several specific hardships, such as food insecurity and having a phone disconnected, three years later."<sup>49</sup> An unpublished paper found that income earners in the bottom quintile on average experience unanticipated expenses of \$2,000 annually.<sup>50</sup> Outside of academic research, a Wells Fargo website recommends an emergency fund and states that three to six months of salary is a reasonable size.<sup>51</sup> Dave Ramsey, a widely followed author and radio host who offers financial advice, suggests \$1,000 is a good starter emergency fund and, for those holding a steady job, recommends a fund with three months of salary.<sup>52</sup>

48 28 C.F.R. 58.33(f)(2)(iv); *see also* 11 U.S.C. § 727(a)(11) (requiring a bankruptcy debtor to complete a personal financial management course as a condition of discharge).

49 Leah Gjertson, *Emergency Saving and Household Hardship*, 37 J. FAMILY & ECON. ISSUES 1 (2016).

50 Stephen Brobeck, "The Essential Role of Banks and Credit Unions in Facilitating Lower-Income Household Saving for Emergencies," at 2 (2008), available at [https://consumerfed.org/wp-content/uploads/2010/08/Essential\\_Role\\_of\\_Banks\\_June\\_2008.pdf](https://consumerfed.org/wp-content/uploads/2010/08/Essential_Role_of_Banks_June_2008.pdf).

51 *See* Wells Fargo Bank, "Saving for an Emergency," available at <https://www.wellsfargo.com/financial-education/basic-finances/manage-money/cashflow-savings/emergencies/> (last visited Nov. 18, 2018).

52 *See* Dave Ramsey, "A Quick Guide to Your Emergency Fund," available at <https://www.daveramsey.com/blog/quick-guide-to-your-emergency-fund> (last visited Nov. 18, 2018).

Several commentators commended the example of the U.S. Bankruptcy Court for the Southern District of Texas, whose uniform local plan allows for an emergency savings fund.<sup>53</sup> In a law review article, Judge David Jones discussed this plan provision, including a random sample of pending cases to consider the effects of the provision.<sup>54</sup> (The provision had not been in effect long enough to have a sufficient sample of completed cases.) The data suggested that the pending cases with reserve funds were lasting longer in the process.<sup>55</sup> Judge Jones concluded:

The savings program implemented in the Southern District of Texas is a practical tool for increasing the viability of chapter 13 plans. From an economic perspective, it provides a legal means of assisting debtors in dealing with financial shocks that inevitably occur during the term of a chapter 13 plan. . . .

As demonstrated by the above study, the program's effects are not limited to providing an economic buffer. To the contrary, if properly implemented, the program serves as an incentive not only to debtors but to creditor constituents as well. A chapter 13 plan that runs its term is a positive impact on society. A debtor receives a discharge and goes on to immerse herself in the commercial world, while creditors minimize their losses with meaningful distributions.

A proper implementation of the savings program is dependent upon sufficient and repeated exposure of debtors' counsel to the program and its benefits. First, this necessitates educational programs that involve interaction with the judiciary. Second, chapter 13 trustees must embrace the program and encourage its use. Finally, all members of the judiciary must be knowledgeable about the savings program and actively promote its use.<sup>56</sup>

The Commission debated the merits of a fund for nonrecurring expenses and concluded both that all stakeholders could benefit from a such a fund in a chapter 13 case and that debtors in chapter 13 should be allowed to propose the creation of such funds in their plans. Given the likelihood that nonrecurring expenses will be experienced at some point, the Commission prefers the term "reserve fund" to "emergency fund." A reserve fund would make it more likely that chapter 13 debtors will complete their plans and achieve a discharge, without the need for unnecessary and expensive modifications of their plans. By increasing completion rates, a reserve fund also would provide a greater recovery to creditors in the chapter 13 process.

53 U.S. District & Bankruptcy Court for the Southern District of Texas, Uniform Plan and Motion for Valuation of Collateral ¶ 22 (effective Dec. 1, 2017), <http://www.txs.uscourts.gov/content/new-uniform-chapter-13-plan-plan-summary-and-related-documents-plan-modification-documents>.

54 David R. Jones, *Savings: The Missing Element in Chapter 13 Bankruptcy Cases?*, 26 AM. BANKR. INST. L. REV. 243 (2018).

55 *See id.* at 256-67.

56 *Id.* at 271-72.

At the same time, it is not reasonable for a bankruptcy debtor to have a fund large enough to cover any contingency. The Commission discussed the appropriate size for a reserve fund and, given the wide variety of chapter 13 debtors, decided against a rigid amount. Rather, the Commission decided that in most cases one month of expenses as shown on Schedule J would be a reasonable figure for the reserve fund. Calculations from the 2016 data for the bankruptcy cases at FJC's Integrated Database<sup>57</sup> suggested that the mean figure on Schedule J is around \$3,200, with a median figure of \$2,700. These amounts are generally in line with the financial advice for the size of a reserve fund. But the Commission determined that the Schedule J amount should only be a starting point; the ultimate test should be reasonableness. Where unusual situations indicate that the Schedule J figure would be too low or too high, the figure should be subject to change.

The Commission discussed the best way of providing for reserve funds and concluded that statutory and rule amendments should expressly authorize the funds and provide for the means of using them. But the Commission also concluded that existing statutory provisions allow the creation of reserve funds, though they require different disposition of the funds depending on the debtor's income level.

*Statutory Amendments.* The Commission proposes an amendment to section 1322(b) that would allow, but not require, the debtor to make contributions from postconfirmation income to a reserve fund that would be held by the trustee and that would pay reasonable amounts for necessary nonrecurring expenses. To be an eligible use of the fund, it would not be enough just that the expense is nonrecurring; the expense would also need to be necessary. A debtor could use the fund to meet unanticipated expenses that threaten the ability of the debtor to maintain his or her chapter 13 case. Examples include home repairs, car repairs, or medical expenses. Any individual disbursement would need to be "reasonable," as would the overall size of the fund. As discussed above and in the absence of unusual circumstances, the Commission believes that one month of a debtor's scheduled expenses would typically be a reasonable amount. If the debtor used the fund, the debtor could replenish it. The trustee's custody of the fund would shield it from unnecessary uses or unreasonable payment amounts.

Although the Commission believes the existing statutory language authorizes the creation of a reserve fund, the cleanest implementation of a reserve fund would be through amending section 1325. The existing provisions do not provide clear guidance on how to avoid any conflict between a reserve fund and the disposable-income provisions of chapter 13 or on the disposition of the fund at the end of a case.

As a condition for confirmation, section 1325(b)(1) requires that a debtor's plan devote the debtor's disposable income to payments under the plan. Section 1325(b)(2) defines "disposable income" as "current monthly income"<sup>58</sup> less amounts reasonably necessary to be expended for the support and maintenance of the debtor and the debtor's dependents.<sup>59</sup> The Bankruptcy Code does not impose any

<sup>57</sup> Federal Judicial Center, Integrated Database, <https://www.fjc.gov/research/idb>, (last visited Nov. 18, 2018).

<sup>58</sup> "Current monthly income" is statutorily defined as the debtor's average monthly income for the six months preceding the filing of the bankruptcy petition. 11 U.S.C. § 101(10A).

<sup>59</sup> The debtor also can subtract payments on a postpetition domestic support obligation, charitable contributions not exceeding 15% of gross income, and any business expenditures if the debtor is engaged in business. *Id.* § 1325(b)(2).

restrictions on the debtor's use of income that a debtor may expend for support and other allowed purposes, or "nondisposable income."

The Commission proposes that section 1325(b) should provide that in determining disposable income, there should be an additional deduction for contributions to a reserve fund. The deduction would be available to debtors who are both above and below the median income for their state. Under these amendments, contributions to the reserve fund would not be disposable income, thus any balance remaining in a reserve fund at the termination or conversion of the case would be returned to the debtor. The return of the reserve fund would encourage debtors to maintain the fund after the bankruptcy case concludes.

*Rules and Form Amendments.* The Commission believes that the best procedure for disbursements from a reserve fund would be through "negative notice," with the debtor filing a notice proposing a disbursement and the trustee disbursing the funds absent an objection. Accordingly, the Federal Rules of Bankruptcy Procedure should provide for the debtor to file a notice setting out the funds reasonably needed to address a nonrecurring necessary expense. Absent objection from the trustee or an unsecured creditor, the trustee must disburse the requested funds fourteen days later.

The Commission also recommends conforming amendments to the bankruptcy forms. First, Official Form 122C-2 should provide a deduction for contributions to a reserve fund in determining the disposable income of an "above median" debtor. Second, Federal Rule of Bankruptcy Procedure 3015.1, which sets out requirements for local chapter 13 plan forms, should require these forms to include a paragraph providing for debtor contributions to a reserve fund. Finally, the Official Form and the local forms for chapter 13 plans should be amended to include a paragraph providing for reserve fund contributions.

*Best Interpretation of Existing Law — "Below Median" Debtors.* The Commission believes that existing law is best interpreted as allowing a debtor to make contributions to a reserve account, but that the treatment of funds in the account depends on whether the funds are contributed from disposable or nondisposable income. In making this recommendation, the Commission intends no changes to the law regarding formal modification of the plan for reduced or waived payments. Section 1325(b)(1) allows a chapter 13 trustee or any unsecured creditor to require that disposable income be used to make payments on unsecured claims. As discussed above, section 1325(b)(2) defines disposable income as current monthly income less allowed deductions, including deductions for necessary support. How the allowed deductions are determined depends on whether the debtor's income is above or below the state median income for the debtor's size of household, as set out in section 1325(b)(3).

The court determines a "below median" debtor's deductions under section 1325(b)(2), which affords substantial discretion to the court to decide what are the reasonably necessary support expenses that can be deducted from current monthly income. Many courts start with the monthly expenses listed on Schedule J filed with the bankruptcy petition. Nonrecurring expenses are unanticipated in the sense that

one does not know when the expense will occur or the form that the expense will take. At the same time, however, nonrecurring expenses are virtually certain to occur. As the financial advice discussed above recognizes, budgeting for nonrecurring expenses is reasonably necessary. The Commission believes, therefore, that the best interpretation of § 1325(b)(2) would be to treat reasonable contributions to a reserve fund as allowed deductions from current monthly income, resulting in these contributions being treated as nondisposable income. If payments under the plan are completed with a balance of nondisposable income remaining in the reserve fund, the plan should provide for the balance to be returned to the debtor.

*Best Interpretation of Existing Law — “Above Median” Debtors.* The calculation of disposable income for above-median debtors diverges on how to determine the expenses that can be deducted from current monthly income.<sup>60</sup> Rather than allowing the court to determine the appropriate expense amounts, section 1325(b)(3) provides that section 707(b)(2)(A) and (B) determine the expenses for above-median debtors. These provisions are used in the chapter 7 means test and determine expenses, in part, under guidelines used by the Internal Revenue Service for the payment of delinquent taxes.<sup>61</sup> However, section 707(b)(2)(B) allows a court to find that a debtor may use current monthly income to pay for itemized expenses that are due to “special circumstances.” The Commission believes that section 707(b)(2)(B) is best interpreted as allowing the creation of a reserve fund with disposable income and that this income may be used to pay a reasonable amount to cover necessary nonrecurring expenses, because these would be expenses arising from special circumstances. But if disposable income contributed to the fund is not required for the payment of such expenses, it would remain disposable, and the plan should provide, pursuant to § 1325(b)(1), that any balance of this income remaining in the fund after plan payments are completed will be paid on unsecured claims.<sup>62</sup> The Commission’s recommendations about how “special circumstances” allow creation of a reserve fund in a chapter 13 case is not intended to take any position on whether the need for savings can be “special circumstances” in a chapter 7 case for purposes of rebutting the means test.

*Best Interpretation of Existing Law — Additional Plan Provisions.* To comply with section 1325(a)(3)’s confirmation requirement that the debtor propose the plan in good faith, the reserve fund needs to be in a reasonable amount. Absent unusual circumstances, a reasonable amount in the fund would be one month of expenses as scheduled by the debtor. Good faith also would require a reasonable mechanism for the debtor to access the fund. Consistent with its recommendation for a statutory amendment, the Commission believes a reasonable procedure would be the debtor’s notice to creditors specifying the nonrecurring, necessary expense to be paid and a reasonable amount for the payment, all subject to the ability of the trustee or unsecured creditors to object.

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60 See *id.* § 1325(b)(3).

61 For more background on the means test and the Commission’s recommendations relating to the means test, see § 3.07 Means Test Revisions & Interpretations.

62 If the case is dismissed or converted with a balance in the fund, the trustee would be required to dispose of the balance consistent with sections 348 and 349 and the Supreme Court’s decision in *Harris v. Viegelahn*, 135 S. Ct. 1829 (2015), regardless of contrary plan provisions.

**§ 4.04 Chapter 13 Transfer of Debtor's Principal Residence Subject to an Underwater Mortgage**

Federal Rule of Bankruptcy Procedure 6004 should provide that if a debtor seeks to satisfy a claim secured by the debtor's principal residence pursuant to section 1325(a)(5)(B) by conveying the property to the holder of the first-priority mortgage lien or selling the property free and clear of liens:

- (a) the plan must provide the holder with sixty days from confirmation of the plan to review and respond to the proposed treatment of the mortgage;
- (b) if the holder accepts a direct transfer, the debtor must issue a deed to the holder within fourteen days of the holder's acceptance of this option; and
- (c) if the holder rejects a direct transfer, then within fourteen days of the holder's rejection, the debtor must file and serve in accordance with Federal Rule of Bankruptcy Procedure 9014 a motion to sell the property pursuant to section 363(f),
  - (1) providing that the sale is to take place no later than ninety days after notice of the motion, and
  - (2) specifying that any interests attaching to the property with a higher priority than those of the holder of the first-priority mortgage will be paid no more than they would have received under applicable nonbankruptcy law had the property been subject to a foreclosure sale or deed in lieu of foreclosure at the same sale price.

*Background.* Debtors often come to bankruptcy court with property that they no longer want and that is only creating more liabilities through real estate taxes or homeowners association (HOA) fees.<sup>63</sup> Judge Eugene Wedoff described a common scenario:

A couple with only moderate income has had to relocate, and the mortgage on their vacated home is underwater, with a balance greater than the home's value. The homeowners can't sell the home unless their mortgage lender agrees, and the mortgage lender won't agree to a sale and chooses not to foreclose the mortgage. So the homeowners still have the obligation to make mortgage payments on the vacated home — and insure it, and maintain it, and pay its property taxes, and (if it's a condo) pay their homeowners' assessments — but now they also have whatever costs are incurred in their new living space. They don't have enough income to cover all of these expenses.<sup>64</sup>

<sup>63</sup> The Commission has made a recommendation to broaden the dischargeability of HOA fees that should work together with the recommendations in this section to reduce the incidence of the problems described in the text. See § 1.03 Dischargeability of Homeowners Association (HOA) Fees.

<sup>64</sup> Eugene R. Wedoff, *Underwater Homeowner to Uncooperative Lender Mortgage Lender: Take My Home, Please! Does Dirt for Debt Work in Chapter 13?*, BANKR. L. LETTER, Sept. 2016, at 1.

Such a situation is sometimes referred to as a “zombie mortgage,” because the debtor no longer wants the property but the mortgage lives on despite the debtor’s best efforts to kill it.<sup>65</sup> Closer to the 2008 financial crisis, RealtyTrac estimated there were 300,000 vacant properties subject to a “zombie mortgage.”<sup>66</sup> A more recent article put the number in the thousands for selected metropolitan areas for the third quarter of 2016.<sup>67</sup>

Some debtors have proposed chapter 13 plans that would transfer ownership of an underwater property to the principal mortgage holder. These plans purport to satisfy the requirements for treatment of a secured claim by surrendering the property to the creditor as permitted under section 1325(a)(5)(C) and then “force vesting” title in the property in the secured property as permitted under section 1322(b)(9).<sup>68</sup> After the case, the debtor has thus given up the property to the secured creditor in satisfaction of the debt. In the chapter 11 context, such plans are sometimes called “dirt for debt” plans. The principal argument against such a plan in the chapter 13 context is that, as a general background principle of property law, the transferee’s consent is necessary to effectuate a property transfer. Under this reasoning, the debtor cannot use the chapter 13 plan process to vest title in a secured creditor without the secured creditor’s consent. The decisions at the bankruptcy court level have split as to whether this approach is permissible, but district court decisions on the question have rejected the approach. No circuit court has yet ruled on the question.<sup>69</sup>

*Recommendation.* The Commission decided not to take a position on the interpretive issues as they have been currently framed. Instead, the Commission recommends an alternative approach: paying the secured creditor through a transfer of the collateral under sections 1322(b)(8) and 1325(a)(5)(B). The Commission’s proposal is similar to an approach approved by the Second Circuit under the parallel provisions of chapter 12.<sup>70</sup>

Section 1322(b)(8) allows payment of a secured claim with “property of the estate,” and section 1325(a)(5)(B) allows payment of a secured claim with property equal in value to the amount of the creditor’s allowed claim; neither provision requires creditor consent. Because the debtor would be treating the claim other than as permitted under the mortgage, the property could not be the debtor’s principal

65 See Andrea Boyack & Robert Berger, *Bankruptcy Weapons to Terminate a Zombie Mortgage*, 54 WASHBURN L.J. 451, 455 (2015) (“These mortgage loans exist in a sort of un-dead state, with unresolved liens haunting collateral realty long after borrowers have attempted to divest their equity, bury their debt, and move forward.”).

66 See Barbara Liston, “More Than 300,000 Homes Are Foreclosed ‘Zombies,’ Study Says,” REUTERS, <https://www.reuters.com/article/us-usa-housing-zombies/more-than-300000-homes-are-foreclosed-zombies-study-says-idUSBRE92R0YQ20130328> (last visited Jan. 29, 2019).

67 See Deborah Swann & Daniel Gill, “Holding Back the Invasion of the Zombie Mortgages,” BLOOMBERG LAW’S BANKR. LAW NEWS, Mar 2, 2017, <https://www.bna.com/holding-back-invasion-n57982084687/> (last visited Jan. 30, 2019).

68 See Andrew C. Hellman & Nathaniel R. Hull, *You Take It: Force-Vesting Under a Chapter 13 Plan*, AM. BANKR. INST. J., Apr. 2016, at 42.

69 The cases are collected at Wedoff, *supra* note 64, at 8 n.1, and Selene Finance LP v. Brown (*In re Brown*), 563 B.R. 451, 455-56 (Bankr. D. Mass. 2017).

70 See First Brandon National Bank v. Kerwin (*In re Kerwin*), 996 F.2d 552 (2d Cir. 1993) (ruling transfer of property to creditor satisfied chapter 12 payment rules for a secured creditor).



residence. Otherwise the antimodification provision of section 1322(b)(2) may be applicable.<sup>71</sup> And of course, any transfer of estate property in payment of a claim would be subject to the good faith requirement of § 1325(a)(3). To establish good faith, the Commission recommends several additional plan provisions and a rule amendment to make the procedures for such a transfer uniform.

The centerpiece of the Commission's recommendation is that courts should interpret sections 1322(b)(8) and 1325(a)(5)(B) to allow payment of a mortgage claim by transferring the property to the principal mortgage holder.<sup>72</sup> To meet the good-faith confirmation requirement of section 1325(a)(3), the plan would have to give the mortgage holder the option of having the property sold free and clear of liens by consenting to a sale under section 363(f)(2). Good faith also would require the plan to give the principal mortgage holder sixty days from confirmation to choose between taking a direct transfer of the property or allowing it to be sold free and clear of liens. Finally, the plan would have to specify deadlines for either issuance of a deed to the lender or the conduct of a section 363(f) sale following the mortgage holder's decision.

Some states grant priority over the claims of mortgage holders to homeowners' association assessments but provide a safe harbor for the mortgage holders who initiate foreclosure proceedings and thereafter take title running from the time of the foreclosure filing. The mortgage lender who takes title through the Commission's recommendation should not receive less than this protection provided under nonbankruptcy law. Good faith also would require the plan to result in no lower payment to the mortgage holder than the holder would have received under the law of the state in which the property is located.

Because the Commission recommendation follows the plain language of sections 1322(b)(8) and 1325(a)(5)(B) and uses the statutory good-faith requirement of section 1325(a)(3) to fill out the details, the Commission believes the recommendation could be implemented through the rules process. If it was believed the Commission's recommendation needed to be implemented through amendments to the Bankruptcy Code, the Commission also would support such statutory amendments. The locus of the process the Commission recommends is less important than the process itself that the Commission believes gives debtors a way to deal with an underwater property while providing a fair opportunity to secured creditors to act in their best interests.

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71 The Commission separately recommended that the time for determination of principal residence be the petition filing date. See § 2.06 Defining and Valuing the Principal Residence, Timing Issues.

72 The Commission does not intend its recommendation to address situations where the debtor's principal residence is secured only by a tax lien.

**§ 4.05 Loan Modifications in Chapter 13**

(a) The Commission supports the use of loan modification in bankruptcy proceedings. Loan-modification programs vary widely from district to district. There should be more uniformity, and that uniformity could be encouraged through the bankruptcy rulemaking process.

(b) Courts should not delay confirmation of a chapter 13 plan because there is a pending loan modification. Instead, the terms of a successful mortgage modification should be incorporated into an amended plan that is approved through the plan-modification process under section 1329 and Federal Rule of Bankruptcy Procedure 3015, with appropriate notice. This process also should include amended Official Bankruptcy Forms B106I and B106J if the loan modification changes the monthly mortgage payment by 10% or more.

(c) Attorneys should be encouraged to participate in loan modifications and should be appropriately compensated for their time in the loan-modification process. An amended plan incorporating a loan modification should state the amount of fees to which debtor's counsel is entitled because of additional services rendered and how those fees will be paid. The plan also should specify any additional fees, costs, or expenses to which the debtor agrees that the mortgage holder or servicer is entitled.

(d) Because the plan-modification process will provide appropriate notice to all parties, a loan modification incorporated into an amended plan does not require a payment-change notice that would otherwise be required by Federal Rule of Bankruptcy Procedure 3002.1 because of a change in the mortgage payment or because of the fees, costs, or expenses due the mortgage holder or servicer.

(e) Transparency in the production of documents required for loan modification is vital to the success of loan modification. Too often, loan modifications fail due to a lack of communication between debtors and mortgage servicers, resulting in the other participants in the bankruptcy (debtor's and creditor's attorneys, trustees and the bankruptcy court itself) being unable to determine what problems have arisen and how to resolve them. Loan-modification rules should encourage transparency through online portals, the case management and electronic case filing (CM/ECF) system, or through other processes.

*Loan Modifications Generally.* Consensual mortgage loan modification, sometimes called “loss mitigation,” negotiates an adjustment to the terms of a mortgage secured by a debtor's principal residence or other real property. Mortgage loan modifications occur outside of bankruptcy, but they also can occur while the debtor is in a bankruptcy case. Several chapter 13 trustees and their courts have instituted loan-modification programs, which typically involve some form of mediation between the mortgage lender or servicer and debtors.<sup>73</sup> This recommendation addresses mortgage loan modifications during a chapter 13 case.

<sup>73</sup> The Commission believes several dozen judicial districts have loan-modification programs but is not aware of any comprehensive list of such programs. Examples include BANKR. S.D. FLA. ADMIN. ORDER 14-03; BANKR. S.D.N.Y. R. 9019-2; BANKR. D.R.I. R. APP. VII; and BANKR. W.D. WASH. 4001-2. The topic also has been the subject of extensive commentary, much of which discusses the content of loan-modification programs in bankruptcy court. See, e.g., Kevin R. Anderson & Rebecca B. Connolly, *Helping Chapter 13 Homeowners Keep Homes*, AM. BANKR. INST. J., Mar. 2011, at 40; Linda Elizabeth Coco, “Foaming the Runway” for Homeowners: U.S. Bankruptcy Courts “Preserving Homeownership” in the Wake of Home Affordable Modification Program, 23 AM. BANKR. INST. L. REV. 421 (2015); Heather D. McGivern, *Loan Modifications: Short-Term Gain, Long-Term Pain*, AM. BANKR. INST. J., June 2015, at 36; Cathleen Cooper Moran, *Reconsidering the Virtue of Loan Modifications in Chapter 13 Cases*, AM. BANKR. INST. J., June 2015, at 37; Cecilia G. Morris & Mary K. Guccion, *The Loss Mitigation Program Procedures for the United States Bankruptcy Court for the Southern District of New York*, 19 AM. BANKR. INST. L. REV. 1 (2011); John Rao, *Bankruptcy Courts Respond to Foreclosure Crisis with Loss-Mitigation Programs*, Mar. 2011, at 14.

The Commission supports the use of loan modification in bankruptcy. Loan modification, when done well, helps chapter 13 debtors retain their homes, provides better alternatives for home mortgage lenders, and benefits all creditors in chapter 13 cases. Lower mortgage payments obviously improve the debtors' chances of successfully rehabilitating a failing mortgage, which allows families to keep their homes. Lenders avoid foreclosure and other dispositions that are less economically advantageous than a performing loan. Loan modification can stabilize or reduce monthly mortgage payments, provide for payment of arrearages, and address payment of other components such as taxes and insurance. Loan modification also enhances the financial stability of the chapter 13 case, increasing the likelihood that the debtor will complete plan payments while also making possible increased payments to other creditors.

The loan-modification programs in effect are diverse. Some loan-modification programs are prescribed by local bankruptcy rules; others are less formal. Some are modeled as “mediations” using third-party neutrals; others are court-based and supervised by judges or trustees. Some programs are triggered automatically at the beginning of every chapter 13 case containing a home mortgage; others require initial action by a debtor or trustee. Some loan modifications are “motion and order” systems in which courts order temporary or permanent modifications of loans based on stipulations; others use the chapter 13 plan confirmation and modification as the platforms for loan modification. Debtors' attorneys drive the process in some districts, while lenders/servicers carry a greater burden in others — sometimes with little or no involvement by debtors' counsel.

Lenders and servicers have expressed frustration with the complexity, uncertainty and expense of the many different loan-modification programs. Lenders willing to offer loan modifications must consult professionals district by district — and sometimes judge by judge — to navigate the varying local cultures for loan modifications. Nonuniformity increases the costs of mortgage modification, and those costs are routinely passed on to debtors as postpetition fees, costs and expenses.

Consistent with its general recommendation in favor of more uniformity in the consumer bankruptcy system,<sup>74</sup> the Commission believes that it would be desirable to standardize important aspects of consensual mortgage loan modification in chapter 13 cases. This standardization should occur through the national rules process as well as new official forms, providing general authorization and structure for loan-modification programs. In doing so, the national rules also would encourage the development of programs in districts that do not already have them.

*Loan Modifications and the Chapter 13 Plan.* In most chapter 13 cases that contain a successfully negotiated mortgage loan modification, the terms are not known, and the process is not completed until after a plan has been confirmed. The meeting of creditors in a chapter 13 case commences within fifty days of the petition being filed,<sup>75</sup> and plan confirmation must be addressed within forty-five days after the meeting of creditors.<sup>76</sup> Loan-modification programs rarely adhere to that schedule in chapter 13 cases.

<sup>74</sup> See § 4.02 Nonuniform Court Practices.

<sup>75</sup> See FED. R. BANKR. P. 2003(a).

<sup>76</sup> See 11 U.S.C. § 1324(b).

Many loan-modification protocols include trial periods that run three months or more before the terms of a final agreement are known. Other creditors in chapter 13 cases — particularly creditors with depreciating collateral such as car lenders — rightfully demand commencement of payments before the uncertain terminus of loan-modification discussions between a lender and a chapter 13 debtor. Loan modification can occur in chapter 13 cases months after confirmation or even years later if necessary to address the debtor’s inability to comply with the terms of an unmodified mortgage loan.

Bankruptcy courts have adopted various procedural mechanisms to temporarily confirm plans that allow distributions to other creditors to begin without having complete information about a pending loan modification. Some courts order an “interim” confirmation. Others confirm plans that reference the pending loan modification without details. Some courts delay confirmation altogether, but enter orders allowing payment of adequate protection to some creditors while accumulating funds to be paid to other creditors after the loan modification completes.

Chapter 13 plans should be confirmed expeditiously to begin distributions to creditors. Except in the rare case in which the loan modification becomes final before plan confirmation, a successfully negotiated loan modification should be incorporated into the chapter 13 plan through the plan-modification process of section 1329.

Consensual mortgage modification necessarily changes the terms of payment of the mortgage claim — typically, the largest debt in a chapter 13 case. The mathematics of the chapter 13 case are changed in ways that will often require other adjustments to the plan. If loan modification reduces the monthly mortgage payment, for example, the freed-up income may be available to increase plan payments to other creditors. If the loan modification changes the treatment of an arrearage or changes the amount or method of paying taxes and insurance, those changes will also affect the availability of funds to pay other claims. The plan-modification process is the readily available, best understood and most appropriate vehicle for managing the mortgage loan-modification process in most chapter 13 cases.

Mortgage modification through modification of the chapter 13 plan should always include a motion to modify the plan consistent with Federal Rule of Bankruptcy Procedure 3015(h) and should always lead to an order under section 1329. In conduit districts, the plan-modification process thus will produce a court order on which debtors, trustees, and lenders can rely in altering any payment schedule.<sup>77</sup> This motion-and-order procedure is also important in nonconduit districts where, too often, only the debtor and lender are aware of the terms of the modified loan.

Any court rules governing mortgage modification should specify a date by which the plan modification must be filed; the Commission recommends no later than forty-five days after the negotiated change in contract terms is finalized by the parties. Failure to file the motion should be considered a serious failure — perhaps “cause” for conversion or dismissal. The motion to approve the modified plan should contain the terms of the

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<sup>77</sup> In a conduit plan, payments to the mortgage holder are made through the chapter 13 trustee, and in a nonconduit plan, the debtor continues to make payments directly to the mortgage holder during the pendency of the chapter 13 case. A fuller discussion about the differences between conduit and nonconduit plans can be found in the Commission’s recommendation about conduit plans. See § 4.06 Conduit Mortgage Payments.

modified mortgage loan with a comparison to the terms of the original loan; a comparison of the monthly amounts due for principal, interest, taxes and insurance in the original and modified loan; the amount of arrears capitalized into the modified mortgage; any additional fees or deposit the debtor must pay to the lender; the date the first payment is due on the modified loan; and a certification from the lender that no pre- or postpetition amount is due or a statement of exceptions to the certification. This information could be required as part of a new official bankruptcy form, to be attached to any motion for approval of a modified plan that included mortgage modification.

Amended budget information — in the form of amended Official Forms 106I for income and 106J — should be filed and served together with the motion to modify the confirmed plan whenever loan modification changes the original monthly mortgage payment by a substantial amount. The trustee and creditors cannot meaningfully evaluate a consensual mortgage modification to determine whether to object to the plan as modified without amended budget information. When the payment changes are small and the financial impact of the proposed mortgage modification is insubstantial, debtors should not be put to the expense and delay of producing amended schedules unless requested by a creditor or the trustee. When payment changes are substantial, amended budgets should be required and should be served with the motion to approve the modified mortgage and plan. The Commission believes a 10% change in mortgage expenses should be considered “substantial.”

Chapter 13 trustees must be fully engaged in the loan-modification process. In some districts, the chapter 13 trustee is a full participant in any loan modification undertaken by a debtor and a mortgage holder. In other districts, loan modification routinely proceeds without the involvement of the trustee, often becoming binding on debtors and lenders before the trustee knows the terms. The Commission was told that some chapter 13 trustees only became aware of consensually modified mortgage loans months or years after the modification was entered into, when payment-change notices or claims disputes revealed payment terms different from those disclosed at the beginning of the chapter 13 case. This lack of transparency and uncertain involvement by the trustee is inconsistent with the interests of creditors in individual cases. The plan-modification process will ensure the trustee is fully aware of any loan modification.

*Encouraging Attorneys to Participate in Loan Modifications.* Chapter 13 debtors’ attorneys should be encouraged to vigorously represent their clients in the loan-modification process. Courts should allow fees for those services as a component of the plan-modification process. Loan modification is complicated, technical and tedious. Gathering the necessary documents and information, navigating the online portals for loan modification, responding promptly to questions from lenders and servicers, digesting and understanding loan-modification terms and documents — aspects common to all loan-modification programs — are usually not within the competence of unrepresented debtors. Once the information is gathered, determining whether the terms of a proposed loan modification are in the debtor’s best interest is also commonly beyond the ability of unrepresented debtors. Consistent with its recommendation on presumptively reasonable fees in chapter 13 cases,<sup>78</sup> reasonable fees for representation in connection with loan modification should be allowed in addition to the fees normally allowed for representing debtors in chapter 13 cases.

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<sup>78</sup> See § 3.03 Presumptively Reasonable Attorney’s Fees in Chapter 13s.

*Loan Modifications and Payment Change Notices (PCNs).* The plan-modification process will provide detailed information about any mortgage payment change produced by the loan-modification process. As recommended above, a new official bankruptcy form should include specific information about how the loan modification changed the original mortgage payment. If the Commission's recommendation is adopted, approval of the mortgage modification in the judicial order should substitute for any PCN that Federal Rule of Bankruptcy Procedure 3002.1 otherwise would require.

*Transparency in the Loan-Modification Process.* Throughout the Commission's recommendations on loan modifications is the theme of transparency to all parties in the bankruptcy process. Indeed, the Commission's recommendation to use the plan-modification process rests largely on providing notice and the ability to be heard to all parties. Participation not only allows all parties in the bankruptcy to protect their own interests but also to help resolve problems that have arisen in the loan-modification process. The rules process that the Commission recommends should consider how to promote transparency in loan modifications through existing online portals and who can access them. The rules process also should consider changes to which documents should be made available through the case management/electronic case filing (CM/ECF) system or through other processes.

**§ 4.06 Conduit Mortgage Payments**

- (a) The Commission supports conduit payment of mortgage claims. The Commission takes no position on whether conduit payment is beneficial for nonmortgage claims.
- (b) Congress should amend the Bankruptcy Code to clarify that conduit payment of mortgage claims is required unless there are compelling reasons for the debtor to make direct payments to the mortgage holder. Examples of compelling reasons include:
  - (1) The commission a trustee would charge on conduit mortgage payments would cause an unreasonable burden on debtors in that district.
  - (2) In a particular case, the debtor would not be able to make plan payments because of the trustee commission.
  - (3) A nonfiling co-debtor is making the payment.
- (c) The USTP and bankruptcy administrators should facilitate the adoption and use of conduit payment of mortgage claims, including allowing bifurcated commission rates.
- (d) Congress should adopt a clarifying amendment to 28 U.S.C. § 586(e) to allow bifurcated commission rates on mortgage payments and other payments in the plan.

*Background.* Section 1326(c) requires that the chapter 13 trustee serve as the disbursement agent, making payments to creditors under the plan unless the plan or confirmation order provides otherwise. Courts have long understood the statutory language as giving the court discretion whether to allow a

debtor to propose a plan where the debtor makes certain payments directly to creditors.<sup>79</sup> Such a plan is known as a “direct payment plan” and most often arises in the context of payments to mortgage holders. In contrast, a “conduit plan” is a chapter 13 plan where the debtor’s mortgage obligation is part of the debtor’s monthly chapter 13 plan payment, and the trustee passes through to the mortgage holder that portion of the chapter 13 payment that represents the amount the debtor owes on the mortgage.

A little less than half of chapter 13 trustees appear to be primarily administering plans providing for conduit mortgage payments. In the 2017 government fiscal year, 45.7% of chapter 13 trustees reported making ongoing mortgage payments that were 10% or more of their total disbursements.<sup>80</sup> In many jurisdictions, the use of conduit payments is simply implemented through the practices of the local chapter 13 trustee, subject to the customary judicial oversight. In some places, local rules enforce the statutory presumption, requiring conduit mortgage payments unless the court orders otherwise.<sup>81</sup> Other districts require a conduit payment only when a prepetition arrearage exists,<sup>82</sup> although arrearages obviously are common in bankruptcy cases. It is also possible that a local plan form might require a debtor to disclose ongoing direct payments outside the plan’s distribution, effectively allowing the chapter 13 trustee to assess whether to demand conduit payments as a condition for not objecting to the plan.<sup>83</sup>

Three published studies have examined whether conduit payments contribute to the successful completion of a case, and none have found a relationship. Norbert and Schreiber looked at chapter 13 cases closed from 1994-2000 in six judicial districts. The discharge/completion rate (33.3%) was identical for conduit and direct-payment plans.<sup>84</sup> Examining the 1999 annual reports to the USTP, Bermant and Flynn reported that the data did not “support the conclusion that moving the ongoing mortgage payments through the trustee operation increases the rate of successful terminations” of chapter 13 cases.<sup>85</sup> Greene, Patel, and Porter ran a regression analysis on a national random sample of 770 chapter 13 cases filed in 2007. In a regression model that accounted for the length of the plan, the number of prior bankruptcies, pro se status, a court order requiring the debtor’s wages be paid directly to the trustee (known as a “wage order”), and whether there were conduit payments, only the number

79 See, e.g., *In re Aberegg*, 961 F.3d 1307, 1309 (7th Cir. 1992); *Foster v. Heitkamp* (*In re Foster*), 670 F.2d 478, 486-88 (5th Cir. 1982); see also *Wagner v. Armstrong* (*In re Wagner*), 36 F.3d 723, 726-28 (8th Cir. 1994) (reaching the same conclusion for chapter 12 plans based on identical statutory language); *In re Sanford*, 390 B.R. 873 (Bankr. E.D. Tex. 2008); *In re Vigil*, 344 B.R. 624 (Bankr. D.N.M. 2006); *In re Tartaglia*, 61 B.R. 439, 442 (Bankr. D.R.I. 1986); see also Gordon Bermant & Jean Braucher, *Making Post-petition Mortgage Payments Inside Chapter 13 Plans: Facts, Law & Policy*, 80 AM. BANKR. L.J. 261, 263 (2006) (noting the statutory language “has been read to give bankruptcy courts discretion to permit or not permit direct payments by debtors”).

80 The figure in the text is based on a calculation from the U.S. Department of Justice, United States Trustee Program, FY-2017 Chapter 13 Trustee Audited Annual Reports, available at <https://www.justice.gov/ust/private-trustee-data-statistics/chapter-13-trustee-data-and-statistics> (last visited Nov. 20, 2018). The spreadsheet available at this webpage identifies mortgage payments being 10% of total disbursements as the cutoff to identify trustees who regularly make mortgage payments through the plan.

Using 2005 data, a paper concluded that 47% of trustees used conduit payments “almost exclusively.” Bermant & Braucher, *supra* note 79, at 696. This figure is very similar to the current data. The use of conduit plans thus appears to be fairly consistent through time.

81 See, e.g., BANKR. E.D.N.C. R. 3070-2; BANKR. S.D. TEX. R. 3015-1.

82 See, e.g., BANKR. M.D. GA. R. 3015-1(c); BANKR. S.D. IND. R. 3015-1; BANKR. D. KAN. R. 3015(B)2; BANKR. D. NEV. R. 3015(g).

83 See, e.g., BANKR. D. ARIZ. LOCAL FORM 2084-2 (CHAP. 13 PLAN) ¶ 4; BANKR. N.D. CAL. CHAP. 13 PLAN ¶ 3.1.

84 See Norberg & Compo, *supra* note 43, at 449-50.

85 Gordon Bermant & Ed Flynn, *Bankruptcy by the Numbers: Who Pays the Mortgage?*, AM. BANKR. INST. J., June 2001, at 20, 21.

of prior bankruptcies had a relationship with plan completion, and a negative one at that. Conduit payments did not affect plan-completion rates for better or worse.<sup>86</sup>

The Commission has based its recommendations for conduit mortgage payments on reasons other than improving plan-completion rates. Conduit payments allow chapter 13 trustees to have accurate recordkeeping regarding the postpetition payments for what is almost certainly the debtor's largest obligation. The chapter 13 trustee's records are likely to be more accurate than the debtor's records or recall without records. The oversight from a chapter 13 trustee means fewer motions for relief from stay and greater scrutiny of postpetition fees, costs, and charges assessed by mortgage servicers.

Those benefits can come with a price. In a conduit plan, debtors must pay the trustee's statutory percentage fee on the monthly mortgage payment. Most trustees who administer conduit plans can reduce their percentage fees due to the increase in receipts realized from the mortgage payments.<sup>87</sup> Examining 2005 data from the USTP, Bermant and Braucher found that trustees making conduit payments "charge a lower percentage fee and less in dollars per case" than nonconduit trustees.<sup>88</sup> But these effects are effects that will occur on average. In an individual case or a district with few cases, conduit plans could increase costs.

*Recommendation.* Considering all of the evidence as well as the professional experience of the commissioners with conduit plans, the Commission supports the use of conduit payment in the context of mortgages only. The Commission does not take a position on whether conduit payment is desirable for other types of secured debt. In the Commission discussion about conduit payments, commissioners observed that further evidence about its effectiveness and cost would be welcome, especially in the context of nonmortgage conduit payments. The Commission encourages academic researchers to study these issues.

Although the Commission endorses conduit plans in the mortgage context, it is aware that the circumstances in which conduit payments are used vary considerably across the country. The Commission believes Congress should amend the Bankruptcy Code to create a uniform rule that requires conduit payment of consumer mortgages but allows a court to permit a direct payment if compelling circumstances existed. A compelling circumstance would include a case where payment of the chapter 13 trustee percentage fee would mean the debtor would not be able to complete the plan. Congress also should except judicial districts with few cases where the increase in trustee receipts would not substantially lower the percentage fee such that conduit payments would work a hardship on all

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<sup>86</sup> See Greene, et al., *supra* note 28, at 1069-77 (2017).

<sup>87</sup> Chapter 13 trustee compensation is sometimes misunderstood. "Unlike chapter 7 trustees, chapter 13 trustees do not 'eat what they kill.'" Henry E. Hildebrand, III, *Behind the Curtain: The Chapter 13 Percentage Fee*, AM. BANKR. INST. J., Dec. 2014, at 24, 24. Instead, chapter 13 trustees are paid a fixed compensation that comes out of the percentage fee. See 28 U.S.C. § 586(e). The percentage fee also covers the chapter 13 trustee's office expenses. The percentage fee is set in an amount in each judicial district to cover the chapter 13 trustee's salary and office expenses. See *id.*; Hildebrand, *supra*, at 24. As receipts on which the fee is charged go up — perhaps because the trustee is running conduit plans — the percentage fee will go down.

<sup>88</sup> Bermant & Braucher, *supra* note 79, at 277.



debtors in the district. Cases where a codebtor pays the mortgage also should be excepted from the requirement of a conduit plan.

Also, a two-tiered fee structure, with a lower percentage fee charged against conduit payments, would lower the costs of those payments. The Commission understands that currently no trustees have different commission rates on conduit mortgage payments versus regular plan payments. The USTP has only allowed “bifurcated commissions” to the extent that a chapter 13 trustee takes a 0% fee on ongoing mortgage payments or child support payments. The USTP has not taken a legal position on whether the current statutes authorize a bifurcated fee structure. The Commission believes the USTP has the authority under the existing statute<sup>89</sup> to authorize a two-tiered fee structure but also that Congress should pass a clarifying amendment expressly authorizing it.

*Missed Direct Payments and the Chapter 13 Discharge.* Section 1328 provides that the court is to order a discharge upon (among other things) “completion of all payments under the plan.” Courts have grappled with whether direct payments occur “under the plan” such that a chapter 13 debtor who has missed direct payments can still receive a discharge. The seminal case is *In re Heinzle*,<sup>90</sup> which held that direct payments are “under the plan” for purposes of section 1328(a) and denied discharge. Most other courts have agreed.<sup>91</sup>

The contrary position is cogently articulated by *In re Gibson*.<sup>92</sup> The *Gibson* court points out that Federal Rule of Bankruptcy Procedure 3002.1 now requires the mortgage holder, in response to the trustee’s notice of final cure, to state whether the debtor is current on postpetition mortgage payments. Before the adoption of rule 3002.1, the chapter 13 trustee would not have known that the debtor had missed direct postpetition mortgage payments, and courts routinely ordered a discharge when trustee payments were completed. There had been no long-standing interpretation of direct payments as payments “under the plan,” so a payment by the debtor could be understood not to occur “under the plan.” At least one commentator has agreed.<sup>93</sup>

The Commission debated whether to express an opinion on this interpretive debate. The Commission decided the better approach was a more comprehensive solution that would move most debtor payments to conduit plans. When debtors use conduit plans, there will not be a surprise at the end of the case with missed direct payments to a mortgage creditor. Any missed payments will be dealt with during the case. The Commission’s recommendations for improvements to Federal Rule of Bankruptcy Procedure

89 See 28 U.S.C. § 586(e). The Commission’s recommendation applies to bankruptcy administrator districts as well.

90 511 B.R. 69 (Bankr. W.D. Tex. 2014).

91 See *In re Finley*, 2018 WL 4172599 (Bankr. S.D. Ill. 2018); *In re Dowey*, 580 B.R. 168 (Bankr. D.S.C. 2017); *In re Thornton*, 572 B.R. 738 (Bankr. W.D. Mo. 2017); *In re Gonzales*, 570 B.R. 788 (Bankr. S.D. Tex. 2017); *In re Coughlin*, 568 B.R. 461 (Bankr. E.D.N.Y. 2017); *In re Young*, 2017 WL 4174363 (Bankr. M.D. La. 2017); *In re Hoyt-Kieckhoben*, 546 B.R. 868 (Bankr. D. Colo. 2016); *In re Evans*, 543 B.R. 213 (Bankr. E.D. Va. 2016); *In re Ramos*, 540 B.R. 580 (Bankr. N.D. Tex. 2016); *In re Gonzales*, 532 B.R. 828 (Bankr. D. Colo. 2015); *In re Kessler*, 2015 WL 4726794 (Bankr. N.D. Tex. 2015); *In re Doggett*, 2015 WL 4099806 (Bankr. D. Colo. 2015).

92 582 B.R. 15 (Bankr. C.D. Ill. 2018).

93 See David Cox, *Consumer Point: Don’t Move the Goalposts*, AM. BANKR. INST. J., May 2018, at 20. But see Elizabeth L. Gunn, *Consumer Counterpoint: With Notice Comes Responsibility*, AM. BANKR. INST. J., May 2018, at 21.

3002.1<sup>94</sup> also will minimize the possibility of uncertainty on whether the debtor is current on a mortgage. Together, these proposed solutions will help to minimize the possibility that legal issues will arise in the first place and thus will lower costs.

**§ 4.07 No Automatic Dismissal When Chapter 13 Plan Payments Are Not Completed Within Sixty Months**

If a debtor is making monthly chapter 13 plan payments routinely and the remaining balance to be paid under the plan is nominal or an amount that could be paid by the debtor within a reasonable period of time, a bankruptcy court should not dismiss a chapter 13 case because the debtor has not completed making plan payments within sixty months.

*Background.* It is a commonplace shorthand to state that a chapter 13 plan can last for no more than sixty months or five years.<sup>95</sup> This shorthand reflects the rule of some courts that sixty months is the absolute maximum time that a chapter 13 plan can last. At the end of sixty months, these courts have found that they must dismiss the case if the debtor has not completed the chapter 13 plan payments.<sup>96</sup>

Congress intended the sixty-month cap as a protection against unfairness to the debtor.<sup>97</sup> Because chapter 13 requires that a debtor devote his or her disposable income to repayment under the plan,<sup>98</sup> a reasonable time limit on plan length balances the policy goals of maximizing creditor repayment with the debtor's fresh start. But a strict application of the sixty-month rule does not balance these goals. When a debtor has missed a few plan payments and could complete payments soon after the deadline, dismissal and denial of discharge only deprives a debtor of a fresh start without any material improvement in creditor repayment.

*Recommendation.* Although describing chapter 13 plans as having a sixty-month cap is generally correct, this description does not track the precise statutory law. Section 1322 provides what may be in a chapter 13 plan and is the origin of the idea that plans cannot last for more than sixty months. Subsection (d) states that "the plan may not provide for payments over a period that is longer than 5 years." The same provision provides the general rule for a debtor below the state-median income, specifying that the plan cannot last longer than three years unless the court, for cause, approves a longer period capped at five years. But, section 1322 delineates only

94 See § 2.07 Improvements to Federal Rule of Bankruptcy Procedure 3002.1 — Payment Change Notices and Notices of Final Cure.

95 See, e.g., American Bankruptcy Institute, *Frequently Asked Questions: What Are the Different Kinds of Bankruptcy?* (last visited Nov. 28, 2018), available at <http://bankruptcyresources.org/faq-page#t4n510> (chapter 13 is a "three to five year process"); U.S. Courts, *Chapter 13 — Bankruptcy Basics* (last visited Nov. 28, 2018), available at <http://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-13-bankruptcy-basics> ("[D]ebtors propose a repayment plan to make installments to creditors over three to five years").

96 See *In re Humes*, 579 B.R. 557 (Bankr. D. Colo. 2018) (60 months is absolute bar); *In re Jackson*, 189 B.R. 213 (Bankr. M.D. Ala. 1995) (dismissing case because chapter 13 plans cannot last more than 60 months); *In re Woodall*, 81 B.R. 17 (Bankr. E.D. Ark. 1987) (dismissing case because it ran past 60 months).

97 See, e.g., *In re Nahat*, 315 B.R. 368, 374 (Bankr. N.D. Tex. 2004) (citing concerns about involuntary servitude); *In re Woodall*, 81 B.R. 17, 18 (Bankr. E.D. Ark. 1987) ("[T]he legislative history . . . clearly indicates that chapter 13 cases should not be extended beyond five years, otherwise a debtor could become a 'wage slave.'").

98 See 11 U.S.C. § 1325(b).

what can be in a chapter 13 plan that a bankruptcy court may confirm. Nowhere does section 1322 provide the consequences for the failure to follow the terms of a plan or the circumstances under which the court can dismiss a chapter 13 case.

Rather, the dismissal rules are in section 1307.<sup>99</sup> None of these rules expressly state that a court can dismiss a case for failure to finish the plan within sixty months. Instead, section 1307(c)(6) provides that the court “may dismiss” a chapter 13 case “for cause, including . . . material default by the debtor with respect to a term of a confirmed plan.” Failing to make plan payments would be a default under the plan. Thus, it is true that a court has the power to dismiss a chapter 13 case where the debtor’s missed payments cause the plan to stretch beyond 60 months.

Packed within that power, however, is a substantial amount of court discretion. First, to constitute grounds supporting dismissal a default must be material. Not all defaults are material.<sup>100</sup> More significantly, section 1307(c) provides that a court “may” dismiss a case even if it finds cause. The word “may” suggests courts should exercise discretion in dismissing a case, even if the court finds that one of the factors in section 1307(c) is present. The Supreme Court has cautioned that a statute’s use of the word “may” is not alone conclusive of discretion but must be read in the context of the statute as a whole.<sup>101</sup> That test is easily met in the context of the Bankruptcy Code. The dismissal provisions for chapters 7, 9, and 12 all use the word “may” in describing the court’s power to dismiss a bankruptcy case.<sup>102</sup> In contrast, section 1112 uses the mandatory “shall” to specify when a court must dismiss a case versus circumstances when a court “may” dismiss a case.<sup>103</sup> In the context of its dismissal provisions, the Bankruptcy Code draws a distinction between “may” and “shall,” with the former being a permissive power.

Some courts find significance in section 1329(c), which expressly prohibits modification of a chapter 13 plan that extends payments beyond sixty months, reasoning that section 1307(c) cannot grant discretion to do what section 1329(c) expressly prohibits.<sup>104</sup> But, the two sections can live comfortably together. Sections 1322 and 1329 prohibit a debtor from proposing an initial plan or a subsequent modification that lasts more than sixty months, but neither section addresses what happens when later circumstances prevent the debtor from following through on the debtor’s intentions, which is the function of section 1307.

99 Section 1307 also applies to the conversion of chapter 13 cases to other chapters of the Bankruptcy Code. For ease of exposition, the text only refers to dismissal of chapter 13 cases. The analysis would be the same if the question was whether the case should be converted.

100 See *Shovlin v. Klaas*, 539 B.R. 465 (W.D. Pa. 2015) (allowing cure beyond 60 months for default that was less than one-half of a monthly payment under the plan); *In re White*, 126 B.R. 542 (Bankr. N.D. Ill. 1991) (default that arises from beyond the debtor’s control is not “material”); *In re Durben*, 70 B.R. 14 (Bankr. S.D. Ohio 1986) (finding two missed payments that occurred because of repairs to debtor’s commercial truck that the debtor was prepared to cure were not a “material” default).

101 See *Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co.*, 529 U.S. 193, 198-99 (2000).

102 See 11 U.S.C. §§ 707(a)-(b), 921(c), 1208(c).

103 Compare *id.* § 1112(b)(1) (court “shall” dismiss a case unless the court determines the appointment of a trustee or examiner is in the best interest of creditors) with § 1112(e) (court “may” dismiss if the debtor does not file the information required by section 521).

Section 1112 allows a party to put forward evidence that dismissal is not in the best interest of creditors, coupled either with the likelihood of plan confirmation within a reasonable period of time or the ability to cure within a reasonable time an act or omission that was reasonably justified. *Id.* § 1112(b)(2). That a court might make these findings and fail to dismiss does not undermine the interpretive point that absent such a finding, dismissal is mandatory.

104 E.g., *In re Humes*, 579 B.R. 557, 564 (Bankr. D. Colo. 2018) (“[Section] 1329 reinforces the five-year limitation by forbidding a debtor from doing through modification what it could not do at plan confirmation.”).

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The Commission believes the best interpretation of section 1307 is that failure to complete plan payments within sixty months is not automatically grounds for dismissal, as several courts have held.<sup>105</sup> Courts should not dismiss a chapter 13 case where missed payments are nominal or in an amount the debtor could pay within a reasonable time.

At the same time, the original reasons for the sixty-month rule remain important. Chapter 13 plans should not last indefinitely. The Commission debated and rejected the idea of fixing a set maximum amount of time for the debtor to cure missed payments and complete the plan. A reasonableness standard is most consistent with the judicial discretion Congress has embedded in section 1307. Also, it was impossible to set a fixed time that would account for the varied circumstances in all cases. Finally, there would be the danger that any fixed period would become a new de facto rule for how long chapter 13 plans could last.

The Commission discussed the amount of time a debtor typically would need to cure and believes it would be rare that a reasonable time would exceed six months. Of course, in many cases a reasonable amount of time might be less than six months. In considering what is a reasonable amount of time, the case law suggests that courts should consider the reasons for the default, whether those reasons will persist, and whether the debtor is or soon will be able to cure the default.

The Commission's recommendation reflects what it believes is the best interpretation of the existing statutory language. As such, the Commission does not believe congressional action is necessary to implement this recommendation, but the Commission would support clarifying amendments to section 1307 consistent with the recommendation.

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<sup>105</sup> See *In re Klaas*, 858 F.3d 820 (3d Cir. 2017); *Marshall v. Henry (In re Henry)*, 368 B.R. 696 (N.D. Ill. 2007); *In re Hill*, 374 B.R. 745 (Bankr. S.D. Cal. 2007); *In re Brown*, 296 B.R. 20 (Bankr. N.D. Cal. 2003); *In re Black*, 78 B.R. 840 (Bankr. S.D. Ohio 1987); see also *In re Grant*, 428 B.R. 504 (Bankr. N.D. Ill. 2010) (refusing to allow 12- to 18-month extension beyond 60-month rule but suggesting dismissal was discretionary).

**§ 4.08 Conflicts Between Proofs of Claim and Chapter 13 Plan Terms**

The Federal Rules of Bankruptcy Procedure should provide that, absent an objection and unless the court orders otherwise, the amount in a timely filed proof of claim takes precedence over a contrary amount in a chapter 13 plan with respect to the following:

- (a) if the debtor proposes to cure defaults and maintain payments:
  - (1) the amount necessary to cure any default; and
  - (2) the amount of the current installment payment;
- (b) the total amount of a creditor's claim (including the amount of a creditor's claim subject to lien avoidance under § 522(f)); and
- (c) the amount of a secured claim excluded from section 506.

*Background.* There is an inherent tension between the chapter 13 plan-confirmation process and the claims-allowance process. Confirmation of a plan binds the parties to the terms of the plan.<sup>106</sup> Unless there is an objection, a proof of claim is deemed allowed.<sup>107</sup> When the claim amount in the plan differs from the amount in a later-filed proof of claim, there are not always clear rules to harmonize the two, particularly when a plan is confirmed before the claims bar date.<sup>108</sup>

One obvious example is when the plan states and proposes to cure a prepetition arrearage. Because the plan must be filed within fourteen days of the petition filing date and before the deadline for proofs of claim,<sup>109</sup> the plan usually represents only the debtor's good-faith estimate of the past-due amount. In contrast, the creditor has records with the exact amount of the arrearage. Nevertheless, some courts have held that at confirmation and absent an objection the plan establishes the amount of an arrearage claim.<sup>110</sup> If the plan underpays the arrearage, the courts are further split on the question of whether the remaining unpaid arrearage survives discharge.<sup>111</sup> Other courts have concluded that a confirmed chapter 13 plan binds a creditor with respect to the treatment of a secured claim but not necessarily the

<sup>106</sup> 11 U.S.C. § 1327.

<sup>107</sup> *Id.* § 502(a).

<sup>108</sup> See, e.g., *In re Larry*, 2013 WL 1187880 (Bankr. W.D. La. 2013) (noting costs and delay created when creditor filed a postconfirmation proof of claim asserting mortgage arrearages when the plan did not provide for any arrearages).

<sup>109</sup> FED. R. BANKR. P. 3002(c), 3015(b) (providing respectively that a proof of claim is due within 70 days of filing and a chapter 13 plan is due within 14 days of filing).

<sup>110</sup> See, e.g., *In re Hadfeg*, 585 B.R. 208 (Bankr. S.D. Fla. 2018); *In re Smith*, 575 B.R. 869 (Bankr. W.D. Ark. 2017); *In re Franklin*, 448 B.R. 744 (Bankr. M.D. La. 2011); *In re Nelson*, 408 B.R. 394, 403 (Bankr. D. Colo. 2008); *In re Sanders*, 243 B.R. 326 (Bankr. N.D. Ohio 2000).

<sup>111</sup> Compare *In re Bateman* (Universal American Mortgage Co. v. Bateman), 331 F.3d 821 (11th Cir. 2003) (arrearage fixed in plan for bankruptcy purposes, but creditor could exercise its state-law rights postbankruptcy with respect to unpaid arrearage), with *In re Franklin*, 448 B.R. 744 (Bankr. M.D. La. 2011) (plan set amount of arrearage to which creditor was entitled).

amount of the claim.<sup>112</sup> Similar issues arise regarding secured claims not subject to valuation under the hanging paragraph of section 1325(a).<sup>113</sup>

Some jurisdictions have resolved the arrearage issues proactively by including in the local uniform chapter 13 plan provisions that the proof of claim controls the amount of the arrearage. Under these provisions, if the debtor or trustee disputes the amount set forth in the proof of claim, the amount of the claim would then be determined on a party's objection to the claim without necessarily delaying confirmation.

*Federal Rules of Bankruptcy Procedure Amendments.* Amendments to the Federal Rules of Bankruptcy Procedure effective December 1, 2017, took important steps toward reconciling a chapter 13 plan with a contrary proof of claim. The amendments now clearly require that secured creditors must file proofs of claim.<sup>114</sup> The amendments also shortened the bar date for filing proofs of claim.<sup>115</sup> These amendments will more closely align the timing of the claims-allowance process and the confirmation process.

Most importantly, the amended rules specify that a secured claim of a nongovernmental creditor may be valued in a plan, and unless the court orders otherwise, the amount of the claim valued in the plan will control over a contrary proof of claim.<sup>116</sup> Taken together, these amendments start to build the framework for striking the balance between the proof of claim and the plan, but they unnecessarily leave open issues. It appears the Advisory Committee's intention was to let the official form for chapter 13 plans — the so-called “national plan” — resolve these issues.<sup>117</sup>

*Recommendation — Adoption of “National Plan” Outcomes.* Legal uncertainty about how to resolve conflicts between the chapter 13 plan and contrary proofs of claim helps no one. The uncertainty adds costs to both debtor and nondebtor parties and can invite debtors to game the system by slipping provisions into their plan that a creditor might miss and then might become bound by the provision. The rules should clearly provide what a plan can and cannot control. Although the national plan form provides certainty, most jurisdictions have opted out and use a local form. For unresolved conflicts between a plan and contrary proofs of claim, the Commission recommends amendments to Federal Rules of Bankruptcy Procedure to incorporate the outcomes in the national plan form.

112 See *In re Euliano*, 442 B.R. 177, 189 (Bankr. D. Mass. 2010).

113 See, e.g., *Nissan Motor Acceptance Corp. v. Smith*, 2010 WL 4005056 (E.D. Wis. 2010) (terms in a confirmed plan arguably in conflict with the hanging paragraph held binding on a creditor who did not object to confirmation).

114 FED. R. BANKR. P. 3002(a).

115 *Id.* 3002(c).

116 *Id.* 3012(b); 3015(g).

117 The Advisory Committee Note to Federal Rule of Bankruptcy Procedure 3015 expressly excepts the “amount of any current installment or arrearages” from the binding effect of a chapter 13 plan, distinguishing those figures from the amount of the secured claim. There is no Federal Rule of Bankruptcy Procedure that provides that the amount on the proof of claim for arrearages controls over the plan, but Official Bankruptcy Form 113 — the national plan form — does so. See FED. R. BANKR. P. 3015(c) (providing for a uniform national chapter 13 plan form unless a local form is adopted); Official Form 113 §§ 3.1-3.3 (providing that arrearages on proofs of claim control over contrary amounts in the plan), [http://www.uscourts.gov/sites/default/files/b\\_113\\_and\\_cn\\_0.pdf](http://www.uscourts.gov/sites/default/files/b_113_and_cn_0.pdf) (last visited Nov. 18, 2018).

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Throughout its various drafts since it was first proposed in 2013, the national plan form has consistently identified when the plan controls over a contrary proof of claim, and when the claim amount is to be used. The national form balances the tension between the plan and the proof of claim as follows, unless otherwise ordered by the court:

1. The proof of claim controls as to the amount of an arrearage and the amount of a current installment payment.<sup>118</sup>
2. The amount of a secured claim valued under section 506(a) is determined in the plan, and the total amount of the claim is determined in the proof of claim.<sup>119</sup>
3. The amount of a claim not subject to valuation under the “hanging paragraph” of section 1325(a) is fixed by the proof of claim.<sup>120</sup>

The Commission recommends that the Advisory Committee incorporate these provisions from the national form into a Federal Rule of Bankruptcy Procedure. If the Advisory Committee does not act, the Commission recommends that courts adopt local rules to this effect or include similar provisions in their local plan forms.

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118 Official Form 113 § 3.1, [http://www.uscourts.gov/sites/default/files/b\\_113\\_and\\_cn\\_0.pdf](http://www.uscourts.gov/sites/default/files/b_113_and_cn_0.pdf) (last visited Nov. 18, 2018).

119 *Id.* § 3.2.

120 *Id.* § 3.3. The “hanging paragraph” of section 1325(a) provides an exception for the rule in section 506(a) that the amount of a secured claim is the value of the collateral. Under the “hanging paragraph,” the debtor cannot reduce the amount of the secured claim to the value of the collateral for (i) purchase-money security interests in automobiles acquired for personal use within 910 days of the bankruptcy filing or (ii) a purchase-money security interest in any other thing of value acquired within one year of the filing. It is referred to as the “hanging paragraph” because the paragraph is an unnumbered subsection of 1325(a).

**§ 4.09 Interest Rates in Chapter 13 Plans**

In the fifteen years since the decision in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004), courts and lawyers have settled on law and practices about the appropriate rate of interest in a chapter 13 plan. The Commission does not recommend any changes to this body of law.

*Background.* In most every case where the debtor does not surrender collateral, a chapter 13 plan will propose to pay a secured claim in installment payments over time. To be confirmable over a creditor's objections, the plan's installment payments on a secured claim must include not just the principal amount owing, but also interest. This rule comes out of section 1325(a)(5)(B)(ii), which requires payment of the "value" of the secured claim. A later payment is not equivalent value to payment today. The plan must propose an interest rate that makes the plan's installment payments the same as receiving the value of the secured claim at confirmation.

In any particular case, it will rarely be evident what the interest rate should be to make the value of a stream of future payments the same as receiving payment in full today. The correct rate will depend on the general cost of funds, the creditor's other investment opportunities, the rate at which the creditor can obtain capital, the risk of nonpayment, and other factors. Calculating the correct rate thus requires not only estimates about today's facts but also projections about the future. Moreover, in chapter 13 the dollar amounts involved rarely justify the engagement of costly financial experts to testify about the factors necessary to set an interest rate for secured creditors. The challenge is crafting not only legally appropriate but also practicably administrable rules to arrive at an interest rate in a chapter 13 plan.

In *Till v. SCS Credit Corp.*,<sup>121</sup> the Supreme Court granted certiorari on the issue. The Court first considered three approaches: (1) the "coerced loan approach," under which the court deduces the interest rate the creditor would charge if forced to make a loan to a similarly situated creditor; (2) the "presumptive contract approach," under which the court presumes the rate in the original contract is appropriate; and (3) the "cost-of-funds approach," under which the court calculates the creditor's cost of borrowing. The Court rejected these three approaches in favor of the "formula approach," which requires a court to start with the national prime rate and then make an upward risk-adjustment based on such "factors as the circumstances of the estate, the nature of the security, and the duration and feasibility of the reorganization plan."<sup>122</sup>

Concerns about administrability were at the core of the Court's reasoning: "[T]he formula approach entails a straightforward, familiar, and objective inquiry, and minimizes the need for potentially costly additional evidentiary proceedings."<sup>123</sup> Although the "presumptive contract approach" might also

<sup>121</sup> 541 U.S. 465 (2004).

<sup>122</sup> *Id.* at 478-79.

<sup>123</sup> *Id.* at 479.



be administrable, the “prime-plus” formula approach considers “the state of financial markets, the circumstances of the bankruptcy estate, and the characteristics of the loan” and not just “the creditor’s circumstances or its prior interactions with the debtor.”<sup>124</sup>

*Recommendation.* The Commission discussed the bankruptcy system’s experience with the *Till* decision. On balance, the Commission decided this experience has borne out the Supreme Court’s belief in the administrability of the “formula approach” endorsed by *Till*. There is now little litigation over the issue. In many jurisdictions, local norms or court decisions have settled on an interest rate. The Commission does not believe any change is warranted in the body of law about interest rates in chapter 13 plans.

The Commission’s position is an endorsement of the *Till* framework. The Commission did not consider whether chapter 13 interest rates need to be systematically higher or lower, changed in particular categories of cases, or recalculated as a matter of local practice. In setting chapter 13 interest rates across all contexts, the *Till* framework works well and should be left in place.

Since the *Till* decision, courts have grappled with whether it applies outside of the chapter 13 context and especially whether it applies in a chapter 11.<sup>125</sup> As discussed in the Foreword,<sup>126</sup> the Commission debated its recommendations only in the context of consumer bankruptcy and takes no position on whether these recommendations have merit outside the context of consumer cases.

#### **§ 4.10 Section 1306 Improvements**

In addition to the events already listed, section 1306(a) also should provide that property ceases accumulating in the chapter 13 estate after the debtor completes payments under the plan.

*Background.* Section 541 provides that the bankruptcy estate consists of all “legal and equitable interests of the debtor in property as of the commencement of the case.” Generally speaking, the bankruptcy estate thus consists of all the debtor’s property at the moment of filing. Postpetition property acquired by the bankruptcy estate also becomes part of the estate, but the statute creates an exception for “earnings from services performed by an individual debtor after the commencement of the case.”<sup>127</sup> The exception is the proverbial “fresh start” whereby postpetition income and assets belong to the debtor. Almost every chapter 13 debtor funds their plan out of postpetition earnings, however, creating a potential doctrinal puzzle of how plan payments can occur if the debtor’s postpetition earnings are not property of the

<sup>124</sup> *Id.*

<sup>125</sup> See, e.g., *Momentive Performance Materials, Inc. v. BOKF, N.A. (In re MPM Silicones, L.L.C.)*, 874 F.3d 787, 798-800 (2d Cir. 2017); *Wells Fargo Bank v. Texas Grand Prairie Hotel Realty, L.L.C. (In re Texas Grand Prairie Hotel Realty, L.L.C.)*, 710 F.3d 324, 331-37 (5th Cir. 2013); *Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566-70 (6th Cir. 2005); 7 COLLIER ON BANKRUPTCY ¶ 1129.05[2][c][i] (16th ed. Rich Levin & Henry Sommer eds.).

<sup>126</sup> See *supra* Foreword.

<sup>127</sup> 11 U.S.C. § 541(a)(6).

estate. Section 1306 solves this puzzle by adding to the chapter 13 estate income and assets the debtor acquires postpetition.<sup>128</sup>

Section 1306 provides that postpetition earnings and property cease to accumulate in the bankruptcy estate upon the earlier of case closing, dismissal, or conversion.<sup>129</sup> Case closing can be an arbitrary date, because the closing of the case is a ministerial act in the court clerk's office that, depending on the district, can occur months or even more than a year after the debtor completes the plan. In such a situation, earnings and property received by a debtor after completion of plan payments but before case closing thus literally are property of the estate under section 1306(a). The Commission is concerned that cases could arise that work an injustice to a debtor who has completed all plan payments — and thus has done everything necessary for a fresh start — but who faces a claim from a trustee or creditor for substantial earnings or assets received after completion of the plan payments but before the ministerial act of closing the case. A different debtor who was lucky enough to have the case flagged in the court system as “closed” would not face such a claim. The Bankruptcy Code should not distinguish between debtors based on the happenstance of when the clerk's office makes a docket entry.

*Recommendation.* The Commission thus recommends adding the completion of the plan payments to the list of events in section 1306 that cause postpetition earnings and assets to cease accumulating in the bankruptcy estate. The existing language would remain such that property would cease accumulating upon the earliest of the completion of plan payments or the closing, dismissal or conversion of the case. The Commission's recommendation is to require completion of all payments made “under the plan,” leaving it to case law to determine what payments are deemed to occur “under the plan.”<sup>130</sup>

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128 *Id.* § 1306(a)(2) (“Property of the estate includes, in addition to the property specified in section 541 . . . all property . . . that the debtor acquires after the commencement of the case . . . and earnings from services performed by the debtor after the commencement of the case.”).

129 Section 1306 does not take any property out of the bankruptcy estate. It merely specifies when the debtor's postpetition earnings or postpetition assets stop becoming part of the bankruptcy estate. Thus, the Commission's proposal does not affect when property of the estate reverts in the debtor. *See* 11 U.S.C. § 1327(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.”).

130 A split has developed in the case law over whether payments made directly to a secured creditor are payments “under the plan.” The Commission has not taken a position on this split in the case law. *See* § 4.06 Conduit Mortgage Payments for a discussion of “direct payment plans” and “conduit plans” and the meaning of “payments to be made to the chapter 13 trustee.”

(b) **Notice.**

- (1) A motion for an order releasing unclaimed funds must be served on at least the following parties:
  - (A) United States attorney for the Central District of California;
  - (B) United States trustee for the Central District of California;
  - (C) The trustee appointed in the case and the trustee's counsel (if any);
  - (D) The debtor, debtor in possession, reorganized debtor, or other fiduciary appointed to supervise the distribution of funds and assets of the estate and its counsel (if any); and
  - (E) If movant is not the original creditor or an employee thereof, the original creditor, addressed to the attention of the managing officer or person of that creditor, if applicable, and upon the creditor's counsel (if any).
- (2) The motion will be denied if not served properly on all parties listed in subsection (b)(1) of this rule.

(c) **Order.**

The motion may be ruled upon without a hearing pursuant to LBR 9013-1(p).

**LBR 3015-1. PROCEDURES REGARDING CHAPTER 13 CASES**

(a) **Applicability.**

- (1) Except as provided herein, this rule relates to chapter 13 cases in all divisions of the bankruptcy court and supersedes any previous orders in conflict with these provisions.
- (2) To the extent that this rule conflicts with any other provisions of the Local Bankruptcy Rules, the provisions of this rule prevail. In all other respects, the Local Bankruptcy Rules apply in all chapter 13 cases.

(b) **Filing and Service of Petitions, Plans, Proofs of Claim, and Other Forms.**

- (1) **Filing of Petition and Case Commencement Documents; Effect of Not Filing Timely.**  
An original of the petition, schedules and all other documents required to initiate the case must be filed with the court in accordance with procedures found in the [Court Manual](#).

Except as provided by FRBP 1019(1)(A), if the chapter 13 schedules, plan, and all other required documents are not filed with the petition, the clerk will issue a notice advising the debtor that, if the missing documents are not filed within 14 days from

the date of the filing of the petition, the court may dismiss the case, unless the court grants a motion to extend time filed within the 14 days.

- (2) Time Extension. A motion for extension of time must comply with LBR 1007-1(b).
  - (3) Notice and Service of Chapter 13 Plan and Notice of the Hearing on Confirmation. The debtor must serve a notice of the hearing on confirmation of debtor's chapter 13 plan, along with a copy of the chapter 13 plan, on all creditors and the chapter 13 trustee at least 14 days before the date first set for the § 341(a) meeting of creditors, using the court-mandated [F 3015-1.01.CHAPTER13.PLAN](#) form. A proof of service must be filed with the court and served on the chapter 13 trustee at least 7 days prior to the date first set for the meeting of creditors.
  - (4) Forms. The chapter 13 petition, schedules, statement of financial affairs, and proofs of claim must be prepared on the appropriate Official Forms, as required by FRBP 1007(b)(1). All other chapter 13 documents filed by the debtor must be filed using applicable court-approved forms, if any, or be prepared in the same format.
  - (5) Proof of Claim. Each proof of claim must be filed in accordance with FRBP 3002 and must be served on the debtor's attorney, the debtor, and on the chapter 13 trustee. Each proof of claim must include a proof of service.
  - (6) Domestic Support Obligations. In all cases in which there is a domestic support obligation, regardless of the entity holding such claim, the debtor must provide to the chapter 13 trustee prior to or at the meeting of creditors the name, current address, and current telephone number of the holder of the claim along with any applicable case number and account number. Throughout the duration of the case, the debtor must inform the chapter 13 trustee of any new or changed information regarding this requirement. Should a domestic support obligation arise after the filing of the petition, the debtor must provide the required information to the chapter 13 trustee as soon as practicable but no later than 28 days after the duty arises to pay the domestic support obligation.
  - (7) Deadline to File Pleadings to Avoid Liens under 11 U.S.C. §§ 506(a) and 522(f). Unless otherwise ordered by the court, the debtor shall file any document to value collateral pursuant to 11 U.S.C. § 506(a) and/or any document to avoid a judgment lien pursuant to 11 U.S.C. § 522(f) within 28 days of commencement of the case.
- (c) Meeting of Creditors – § 341(a).
- (1) Notice and Service. The Clerk's Notice of the § 341(a) meeting of creditors and initial confirmation hearing date will be served on all creditors by the court at least 28 days before the date first set for the § 341(a) meeting of creditors.
  - (2) Attendance Requirement. The debtor and debtor's attorney (if any) must attend the § 341(a) meeting of creditors. If the case is a joint case, both debtors must appear.

- (3) Evidence of Income. The debtor must provide evidence of current income (pay stubs, tax returns, or other equivalent documentation) to the chapter 13 trustee at least 7 days before the § 341(a) meeting of creditors. If income from third party contributors will be used to fund the plan, the debtor must also provide evidence (declarations and pay stubs or other appropriate evidence) of the commitment and the contributor's proof of income for a full month.
- (4) Required Reports when the Debtor is Self-Employed and has No Employees. If the debtor is self-employed but has no employees, the debtor must submit to the chapter 13 trustee at least 7 days before the § 341(a) meeting of creditors, the following:
- (A) Projection of average monthly income and expenses for the next 12 months;
  - (B) Bank statements for the 6 months prior to the filing of the case for all bank accounts;
  - (C) Tax returns for at least 2 years or since the start of the business, whichever period is shorter; and
  - (D) Such other reasonable evidence requested by the chapter 13 trustee.
- (5) Required Reports when a Debtor is Self-Employed and Has Employees. If the debtor is operating a business or is otherwise self-employed, the debtor must submit to the chapter 13 trustee at least 7 days before the § 341(a) meeting of creditors, the following:
- (A) Projection of average monthly income and expenses for the next 12 months;
  - (B) Evidence of appropriate business insurance;
  - (C) Inventory of goods as well as a list of business furnishings and equipment as of the date of the filing of the petition;
  - (D) Monthly income and expense statements for at least the 6 months preceding the date of the filing of the petition, or for such shorter time if the business has been in operation for less than the requisite 6 months, signed by the debtor under penalty of perjury;
  - (E) Tax returns for at least 3 years or since the start of the business, whichever period is shorter; and
  - (F) Such other reasonable evidence requested by the chapter 13 trustee, including bank statements, canceled checks, contracts, or other information relevant to the debtor's ability to fund the proposed plan.

- (6) Failure to Comply. If the debtor fails to comply with any of the requirements of this subsection (c) of this rule, such failure may result in:
  - (A) Disgorgement of attorneys' fees if the failure is attributed to the debtor's attorney;
  - (B) Continuance of the § 341(a) meeting or confirmation hearing; and/or
  - (C) Dismissal of the case either (i) without prejudice or (ii) with a 180-day bar to being a "debtor" in accordance with 11 U.S.C. § 109(g), if the court finds willful failure of the debtor to abide by orders of the court or to appear before the court in proper prosecution of the case.
- (d) Confirmation Hearing. The debtor's attorney or the debtor, if not represented by counsel, must appear at the confirmation hearing unless specifically excused by court order or by the trustee prior to the confirmation hearing in conformance with procedures of the judge to whom the case is assigned.
  - (1) Date of Confirmation Hearing. Unless otherwise ordered by the court, a confirmation hearing will be held no earlier than 20 days after the commencement of the § 341(a) meeting of creditors.
  - (2) Preparation of Order Confirming Plan.
    - (A) Lodgement of Order. Unless otherwise ordered by the court, the chapter 13 trustee will prepare on the mandatory form and lodge a proposed Order Confirming Plan ("Order") using procedures established by the Clerk's Office that will docket and serve the Notice of Lodgment and a copy of the lodged order to all CM/ECF users registered to receive notices on the case. In the case of a self-represented debtor who does not automatically receive service of the Notice of Lodgment and a copy of the lodged order, the trustee must serve such debtor by first class mail.
    - (B) Opportunity to Object. Within 7 days of the Notice of Lodgment, any party may file an objection to the proposed Order, attaching an alternative proposed Order at the objector's discretion. The objecting party shall set a hearing on the objection on not less than 7 and no more than 28 days' notice on a regular chapter 13 miscellaneous motion calendar.
    - (C) Entry of Order if No Objection. If no objection is filed within 7 days, the proposed Order will then be reviewed and approved or modified by the court and entered on the docket.
    - (D) Hearing on Objection and Entry of Order. At the noticed hearing, the court shall rule on the objection and the form of Order, after which an Order will be entered at the court's direction.

- (E) Service of Entered Order. The Order will be served by the court on the debtor and the debtor's attorney.

(e) **Personal Property, including Vehicles.**

- (1) Postpetition Payments. The plan may provide that postpetition contractual payments on leases of personal property and claims secured by personal property, including vehicles, will be made directly to the creditor. All such direct payments must be made as they come due postpetition. If there are arrearages or the plan changes the amount of payment, duration, or interest rate for any reason, including the fact that a portion of the claim is deemed unsecured, then all payments so provided in the plan must be paid through the chapter 13 trustee. If the plan provides for postpetition contractual payments to be made through the chapter 13 trustee, the debtor must pay the lease and adequate protection payments required by 11 U.S.C. §§ 1326(a)(1)(B) and 1326(a)(1)(C) through the chapter 13 trustee.
- (2) Property Surrendered in Confirmed Plan. When the confirmed plan provides for the surrender or abandonment of property, the trustee is relieved from making any payments on the creditor's related secured claim, without prejudice to the creditor's right to file an amended unsecured claim for a deficiency, when appropriate. The stay is terminated as to the surrendered collateral upon entry of the order confirming the plan.
- (3) Evidence of Payment.
  - (A) Filing and Service of Declaration. At least 14 days prior to the dates set forth below in subparagraph (e)(3)(B), the debtor must file and serve on the chapter 13 trustee and all secured creditors to whom the debtor is required to make payments under this subsection a declaration on court-mandated form [F 3015-1.4.DEC.PRECONF.PYMTS](#), evidencing that the debtor has made all of the payments required by subsection (e)(1) of this rule. Unless otherwise ordered by the court, copies of all money orders, cashier's checks or other instruments used to make the payments need not be attached to the form. The first form, and each updated form, must reflect, cumulatively, all payments made between the date of the petition and the date of the form.
  - (B) Events Requiring Evidence of Payment. The events requiring evidence of payment are:
    - (i) the date scheduled for each § 341(a) meeting of creditors; and
    - (ii) the date scheduled for each hearing to consider confirmation of a chapter 13 plan in the case.
  - (C) Bring Declarations to All § 341(a) Meetings of Creditors and Hearings on Plan Confirmation. The debtor must bring a copy of an executed form [F 3015-](#)

[1.4.DEC.PRECONF.PYMTS](#), together with a proof of service reflecting service establishing compliance with subparagraph (e)(3)(B).

- (f) **Domestic Support Obligations.** The plan may provide for current payments of domestic support obligations directly to the creditor. The plan may provide for payment of a domestic support obligation arrearage and any such arrearage must be paid through the chapter 13 trustee.
- (g) **Objections to Plan.**
- (1) **Filing and Service.** Objections, if any, to the confirmation of the plan must be in writing, supported by appropriate declarations or other admissible evidence, filed with the court, and served on debtor's attorney, the debtor (if not represented by counsel), and the chapter 13 trustee not less than 14 days before the date set for the confirmation hearing.
  - (2) **Form of Objection and Caption.** A written objection must state in the caption the date, time, and place of the § 341(a) meeting of creditors and the date, time, and place of the confirmation hearing.
  - (3) **Failure to Object or to Prosecute Objection.** The failure to file a written objection on a timely basis may be deemed a waiver of the objection.
  - (4) **Attendance.** If the objecting creditor does not appear at the confirmation hearing, the court may overrule the objection.
- (h) **Amendments to Plan Prior to the Confirmation Hearing.**
- (1) **Filing and Service.** Failure to comply with these requirements may result in continuance of the confirmation hearing or dismissal of the case.
    - (A) **Amendments Not Treating Claims Adversely.** If a debtor wishes the court to confirm a plan other than the plan originally filed with the court and files the amended plan, the amended plan must be filed and served on the chapter 13 trustee at least 7 days before the confirmation hearing.
    - (B) **Amendments Treating Claims Adversely.** If the amended plan will adversely affect any creditor (for example, if it treats any creditor's claim less favorably than the previously filed plan), the amended plan must be filed and served on all affected creditors and the chapter 13 trustee at least 28 days before the confirmation hearing.
  - (2) **Caption of Amended Plan.** The caption of an amended plan must identify that it is an amended plan (*e.g.*, "First Amended Plan," "Second Amended Plan") and must state the date, time, and place of the confirmation hearing at which the debtor will seek confirmation.



- (3) Effects of Amended Plan on Plan Payments. If the debtor files an amended plan, the debtor must tender plan payments which come due after the filing date of the amended plan in the amount set forth in the amended plan. The amended plan shall also take into account all prior plan payments tendered to the chapter 13 trustee and shall state the amount of each prior payment and the month to which that prior payment is attributed to.
- (4) Amendments to Plan at the Confirmation Hearing. If a debtor wishes the court to confirm a plan other than the plan originally filed with the court, and the proposed amendments are not contained in the original plan or a timely filed amended plan, the amendment may be made by oral motion at the confirmation hearing if the amendment to a plan does not adversely affect creditors. The proponent of the amendment should give the chapter 13 trustee an opportunity to review the proposed amendment prior to the confirmation hearing.
- (i) INTENTIONALLY LEFT BLANK.
- (j) Payment on Proofs of Claim Subject to Objections to Claims. Pending resolution, the chapter 13 trustee will make payments on only the uncontroverted portion of the claim subject to the objection to claim, until such time as the court orders otherwise.
- (k) Plan Payments to Chapter 13 Trustee.
  - (1) Plan Payment Procedure.
    - (A) Plan payments are due on the same day of each month beginning not later than 30 days after the petition is filed. If the case was converted from chapter 7, the first plan payment is due 30 days from the date of conversion. However, if the plan payment due date falls on the 29<sup>th</sup>, 30<sup>th</sup>, or 31<sup>st</sup> of the month, then the plan payment is due on the 1<sup>st</sup> of the following month. Unless otherwise instructed by the assigned chapter 13 trustee, all plan payments that accrue before the § 341(a) meeting of creditors must be tendered, in the form described in subsection (k)(3) of this rule, to the chapter 13 trustee or the trustee's representative at the § 341(a) meeting of creditors.
    - (B) All plan payments that accrue after the § 341(a) meeting of creditors but prior to confirmation must be tendered on a timely basis to the chapter 13 trustee, as instructed by the chapter 13 trustee at the § 341(a) meeting of creditors.
    - (C) All plan payments that accrue after confirmation of the plan must be sent to the address provided by the chapter 13 trustee.
    - (D) To the extent the debtor has made plan payments under an original or modified plan prior to confirmation that differ from payments required by the confirmed plan, the confirmation order must account for plan payments made through the date of confirmation and adjust the on-going plan payments accordingly so that

the debtor will complete payment of all plan amounts within the term of the confirmed plan.

- (2) Adequate Protection Payments. The debtor cannot reduce the amount of the plan payments to the chapter 13 trustee under 11 U.S.C. §§ 1326(a)(1)(B) or 1326(a)(1)(C) without an order of the court.
  - (A) Pending confirmation of the plan, the chapter 13 trustee will promptly disburse payments received from the debtor as proposed in the debtor's chapter 13 plan to a creditor holding an allowed claim secured by personal property where such security interest is attributable to the purchase of such property.
  - (B) The chapter 13 trustee may assess an administrative fee for effecting the payments required in subsection (k)(2)(A) of this rule and may collect such fee at the time of making the payment. The allowed expense fee must be no more than the percentage fee established by the Attorney General pursuant to 28 U.S.C. § 586(e)(1)(B) in effect at the time of the disbursement.
  - (C) Should the case be dismissed or converted prior to or at the hearing on confirmation of the plan, any portion of the balance on hand which has been tendered to the chapter 13 trustee for adequate protection must be disbursed to the creditor to whom those adequate protection payments are owed as soon as practicable.
- (3) Form of Payment. Unless and until a payroll deduction order is effective, all plan payments must be paid electronically, in the form of cashier's check, certified funds, money order made payable to the "Chapter 13 Trustee," or other means approved by the chapter 13 trustee in advance, and tendered by the debtor as instructed by the chapter 13 trustee. The court may require plan payments through a payroll deduction order. If a payroll deduction order is not authorized in the confirmation order, whenever a plan payment is more than 21 days late, the chapter 13 trustee may file and serve a motion requesting the court to issue such an order. The entered order must be served upon the debtor's employer, the debtor, and the debtor's attorney (if any).
- (4) Dismissal or Conversion for Non-Payment. If the debtor fails to make a plan payment, the case may be dismissed or converted to a case under chapter 7. If the case is dismissed for willful failure of the debtor to abide by an order of the court, or to appear before the court in proper prosecution of the case, the court may impose a 180-day bar to being a "debtor" in accordance with 11 U.S.C. § 109(g).

(l) INTENTIONALLY LEFT BLANK.

(m) Payments on Mortgages or Trust Deeds.

- (1) Scope of Rule. The term "Real Property" as used in this subsection includes both (A) commercial and residential real property and undeveloped land owned by the

debtor; and (B) mobile and manufactured homes owned by the debtor and installed on a permanent foundation or used as a dwelling, but does not include any property that the debtor's filed plan specifically states will be surrendered.

- (2) Postpetition Payment Procedure. Except for plans in which the debtor elects to make postpetition mortgage payments through the plan, until a plan is confirmed, a debtor must pay in a timely manner directly to each secured creditor all payments that fall due postpetition on debt secured by Real Property, as defined above, and must provide evidence of such payments on court-mandated form [F 3015-1.4.DEC.PRECONF.PYMTS](#) in the manner set forth below.

The plan may provide that postpetition mortgage payments will be made directly to the creditor. All such direct payments must be made as they come due postpetition. If there are arrearages or the plan changes the amount of payment, duration, or interest rate for any reason, including the fact that a portion of the claim is deemed unsecured, then all payments so provided in the plan must be paid through the chapter 13 trustee. If the debtor elects to pay postpetition mortgage payments through the chapter 13 trustee, then the amount of the mortgage payment must be included in each monthly plan payment tendered to the chapter 13 trustee for the term of the plan.

- (3) Determination of Due Date. With the exception of the payment due for the month in which the petition is filed (the "Filing Month Payment"), the due date of a payment for the purpose of this subsection is the last day that the payment may be made without a late charge or penalty. The due date of the Filing Month Payment will be the date on which such payment first becomes due under the terms of the applicable promissory note. If that date falls on or before the petition date, the Filing Month Payment will be considered prepetition and need not be paid in order to comply with this subsection.
- (4) Real Property Surrendered in Confirmed Plan. When the confirmed plan provides for the surrender of real property, the trustee is relieved from making any payments on the creditor's related secured claim, without prejudice to the creditor's right to file an amended unsecured claim for a deficiency, when appropriate. The stay is terminated as to the surrendered collateral upon entry of the order confirming the plan.
- (5) Form of Payment. The payments required by subsection (m)(2) of this rule must be in the form of money order, cashier's check, wire transfer (including direct payments over the Internet or by automatic withdrawals from the debtor's checking account), certified funds, or other instruments used to make the payments and must indicate on each item the debtor's name, the bankruptcy case number, and the appropriate loan number or credit account number.
- (6) Evidence of Payment

- (A) Filing and Service of Declaration. At least 14 days prior to the dates set forth

below in subparagraph (m)(6)(B), the debtor must file with the court and serve on the chapter 13 trustee and all secured creditors to whom the debtor is required to make payments under this subsection a declaration on court-mandated form [F 3015-1.4.DEC.PRECONF.PYMTS](#), evidencing that the debtor has made all of the payments required by subsection (m)(2) or (3) of this rule. Unless otherwise ordered by the court, copies of all money orders, cashier's checks, wire transfers (including direct payments over the Internet or by automatic withdrawals from the debtor's checking account), certified funds, or other instruments used to make the payments need not be attached to the form. The first form, and each updated form must reflect, cumulatively, all payments made between the date of the petition and the date of the form. If the debtor owns more than one parcel of Real Property, the debtor must prepare and submit a separate form [F 3015-1.4.DEC.PRECONF.PYMTS](#) for each parcel of Real Property.

- (B) Events Requiring Evidence of Payment. The events requiring evidence of payment are:
  - (i) the date scheduled for each § 341(a) meeting of creditors; and
  - (ii) the date scheduled for each hearing to consider confirmation of a chapter 13 plan in the case.
- (C) Bring Declaration to All § 341(a) Meetings of Creditors and Hearings on Plan Confirmation. The debtor must bring a copy of an executed form [F 3015-1.4.DEC.PRECONF.PYMTS](#), together with a proof of service reflecting service in accordance with this subsection, to all dates set forth above in subparagraph (m)(6)(B).
- (7) Failure to Make Postpetition Payments. Failure to make all of the payments required by subsection (m)(2) or (3) of this rule in a timely manner will generally result in dismissal of the case. In determining whether a debtor has complied with this subsection at a confirmation hearing, the court will disregard payments as to which a late penalty has not yet accrued or which are due on the date of the confirmation hearing. The failure to submit form [F 3015-1.4.DEC.PRECONF.PYMTS](#) at each § 341(a) meeting of creditors and each confirmation hearing, with all required attachments, may result in dismissal of the case, and the court may impose a 180-day bar to being a debtor pursuant to 11 U.S.C. § 109(g).
- (n) **Modification of Confirmed Plan or Suspension of Plan Payments.** After a chapter 13 plan has been confirmed, its terms can be modified only by court order upon a motion to modify the plan or a stipulation between the debtor and the chapter 13 trustee. A motion to modify a confirmed plan or to suspend plan payments must be made in accordance with subsections (w) and (x) of this rule and must be filed using court-mandated forms.
- (o) **Tax Returns.** For each year a case is pending after the confirmation of a plan, the debtor must provide to the chapter 13 trustee within 14 days after the return is filed with the

appropriate tax agencies a copy of: (1) the debtor's federal and state tax returns; (2) any request for extension of the deadline for filing a return; and (3) the debtor's forms W-2 and 1099. The debtor must timely file with the appropriate tax authority all tax returns that come due after commencement of the case.

- (p) **Sale or Refinance of Real Property.** A sale or refinancing of the debtor's principal residence or other real property must be approved by the court. A motion to approve a sale or refinance of real property may be made by noticed motion in accordance with subsections (w) and (x) of this rule.

- (q) **Dismissal or Conversion of Case.**

- (1) Debtor Seeks Dismissal.

- (A) Case Has Not Been Previously Converted. If the case has not been converted from another chapter, a debtor may seek dismissal of the case by filing with the clerk of the bankruptcy court a request for voluntary dismissal pursuant to 11 U.S.C. § 1307(b) and may be ruled on without a hearing pursuant to LBR 9013-1(q). The proof of service must evidence that the request for dismissal was served upon the chapter 13 trustee and the United States trustee.
- (B) Case Has Been Previously Converted. If the case has been converted from another chapter, a debtor must file and serve a motion in accordance with LBR 9013-1 (d) or (o) and LBR 1017-2(e). Notice must be given to the chapter 13 trustee, any former trustee, all creditors, and any other party in interest entitled to notice under FRBP 2002.
- (C) Mandatory Disclosure. Whether dismissal is sought by request or motion, a debtor must disclose under penalty of perjury whether the present case has been converted from another chapter of the Bankruptcy Code, and whether any motion for relief from, annulment of, or conditioning of the automatic stay has been filed against the debtor in the present case.

- (2) Debtor Seeks Conversion.

- (A) Debtor Seeks First Time Conversion of Chapter 13 to Chapter 7. Pursuant to 11 U.S.C. § 1307(a), FRBP 1017 and LBR 1017-1(a)(1), the conversion of a chapter 13 case to a case under chapter 7 (for the first time) will be effective upon:
- (i) The filing by the debtor with the clerk of the bankruptcy court of a notice of conversion using court-mandated form [F 3015-1.21.NOTICE.CONVERT.CH13](#) and a proof of service evidencing that the notice of conversion was served upon the chapter 13 trustee and the United States trustee; and
- (ii) Payment of any fee required by 28 U.S.C. § 1930(b).

- (B) Debtor Seeks Subsequent Conversion of Chapter 13 to Chapter 7. If the case has previously been converted from another chapter, a debtor must file and serve a motion in accordance with LBR 9013-1(d) or (o). Notice must be given to the chapter 13 trustee, any former trustee, and all creditors.
- (C) Debtor Seeks Conversion of Chapter 13 to Chapter 11. A motion by the debtor to convert a chapter 13 case to a case under chapter 11 must be filed, served and set for hearing in accordance with LBR 9013-1(d). Notice must be provided to the chapter 13 trustee and all creditors.
- (3) Interested Party Seeks Dismissal or Conversion of Chapter 13 to Chapter 7, 11, or 12. A motion by any other party in interest to either dismiss a chapter 13 case, or alternatively, to convert a chapter 13 case to a case under chapter 7, 11, or 12, must be noticed for hearing by the moving party pursuant to LBR 9013-1(d). This notice must be given to the debtor, debtor's attorney (if any), all creditors, the chapter 13 trustee, any former trustee, and the United States trustee.
- (4) Lodging and Service of Order. When an order is required, the moving party must prepare and lodge the proposed order of dismissal or conversion in accordance with LBR 9021-1 and the [Court Manual](#). The Clerk will prepare a separate notice of dismissal or conversion.
- (5) Distributions before Notice to the Chapter 13 Trustee. Any distributions of estate funds made by the chapter 13 trustee in the ordinary course of business for the benefit of the debtor's estate prior to receipt of notice of dismissal or conversion will not be surcharged to the chapter 13 trustee.
- (6) Distributions after Notice to Chapter 13 Trustee. Unless the court orders otherwise, and subject to the provisions below regarding contested distributions, the following procedures implement the requirement that the chapter 13 trustee return to the debtor (i) any postpetition earnings and (ii) any other property that is no longer property of the estate and that is vested in the debtor, after deduction for any unpaid administrative expense and certain other claims, under 11 U.S.C. §§ 348(f), 349(b), 1326(a)(2), and FRBP 1019(5) or (6).
  - (A) 14 Day Holding Period. The chapter 13 trustee must hold any remaining property until at least 14 days have passed after entry of the order dismissing or converting the case. Within 14 days of dismissal or conversion any person or entity asserting an administrative expense under 11 U.S.C. § 503 (including, without limitation, a claim for professional fees), or a claim under §1326(a)(2) and (3), must file an application, motion or other written request for payment thereof, set it for hearing if required, serve it pursuant to the applicable rules, and, if the document is not filed electronically, deliver it to the chapter 13 trustee so that it is received before the end of such 14-day period. If the claimant fails to do all of these things timely (the "Claim Prerequisites"), then the chapter 13 trustee may treat such request as having been filed after the 14 day deadline and of no force of effect, absent a court order to the contrary.

After the deduction of any applicable chapter 13 trustee fees, the chapter 13 trustee must make distributions as follows:

- (i) Distributions to Administrative Claimants. First, pro rata distributions to the holders of administrative expenses under 11 U.S.C. § 503(b) as to which (1) the Claim Prerequisites have been satisfied timely and (2) as to which the court has entered an order approving payment.
  - (I) Administrative expenses to which subparagraph (6)(A)(i) is applicable include without limitation: (a) any unpaid attorney's fee or expense asserted under a Rights and Responsibilities Agreement signed by the debtor's attorney and the debtor or an FRBP 2016(b) statement, (b) any supplemental fee or expense under 11 U.S.C. § 330, (c) any administrative expenses scheduled under FRBP 1019(5)(B) or (C), and (d) any other administrative expense.
  - (II) Unless a different deadline has been established in connection with a scheduled hearing, any application, motion or other request for payment of an administrative expense under 11 U.S.C. § 503(b) must advise parties in interest that any objection to the allowance and payment of such expense must be filed and served no later than 14 days following service of such application or request, or such objection must be deemed waived. Any objection must be served on the applicant, the chapter 13 trustee and the debtor. If the objection is not filed electronically, it must be served so that it is received by these parties within such 14-day period. If an objection is timely filed, the applicant must schedule a hearing with the court and serve notice of such hearing on interested parties.
- (ii) Distributions to Certain Creditors. Second, after any distributions to the holders of administrative expenses as provided above, pro rata distributions on the allowed claims of any persons who have filed an application for payment of amounts due and owing pursuant to 11 U.S.C. § 1326(a)(2) and (3) that satisfies the above Claim Prerequisites.
- (iii) Distributions to the Debtor.
  - (I) Postpetition Earnings. After the foregoing distributions, the chapter 13 trustee must distribute any remaining postpetition earnings to the debtor, or to the chapter 11 trustee if the chapter 13 trustee has been served with an order or notice of appointment of a chapter 11 trustee.
  - (II) Other Property. If the chapter 13 trustee holds any property known to the chapter 13 trustee to come from a source other than postpetition earnings, such as proceeds from the sale of property, and that property is not automatically vested in any entity (e.g.,

under 11 U.S.C. § 349(b)(3)), then the chapter 13 trustee must treat such property as a contested distribution pending an order, on an application by a party in interest, authorizing a proposed distribution to the debtor or other persons pursuant to 11 U.S.C. § 348(f)(1) (for conversion) or 11 U.S.C. § 349(b) (for dismissal) and 11 U.S.C. § 1326(a)(2).

- (B) Contested Distributions. Notwithstanding the foregoing, if an application, motion request or objection regarding distribution is pending, or if the chapter 13 trustee files an application for instructions from the court for direction concerning the distribution of funds, then the chapter 13 trustee must reserve sufficient funds to pay the maximum requested amounts, pending resolution by order or by consent of the affected persons.

**(r) Motions Regarding Stay of 11 U.S.C. § 362.**

- (1) Required Format and Information. A motion regarding the stay of 11 U.S.C. § 362 must comply with LBR 4001-1.
- (2) Motions Regarding Default in Payment.
  - (A) Preconfirmation Default. A motion for relief from the automatic stay based solely upon a preconfirmation payment default is premature until a late charge has accrued under the contract on the postpetition obligation that the creditor seeks to enforce. If no late charge is provided, the motion may be brought 14 days after the postpetition payment is due. A motion for relief from stay based on other grounds may be brought at any time.
  - (B) Postconfirmation Default. A motion for relief from the automatic stay based solely on postconfirmation payment default is premature until a late charge has accrued under the contract on the obligation that the creditor seeks to enforce. If no late charge is provided, the motion may be brought 14 days after payment is due.
- (3) Stipulations Regarding the Stay of 11 U.S.C. § 362. A stipulation for relief from the automatic stay or to modify the automatic stay, or to impose or continue the stay, does not require the consent or signature of the chapter 13 trustee unless the provisions of the stipulation require the trustee to continue payment, discontinue payment, or perform other actions. Such stipulations must be approved by a court order that must be prepared and lodged in accordance with LBR 4001-1(b)(2)(B).
- (4) Payments after Relief from Automatic Stay. If an order is entered granting relief from the automatic stay, unless otherwise specified in the order, the chapter 13 trustee is relieved from making any further payments to the secured creditor that obtained such relief. The secured portion of that creditor's claim is deemed withdrawn upon entry of the order for relief, without prejudice to filing an amended unsecured claim for a deficiency when appropriate. The secured creditor that obtains



relief from the automatic stay must return to the chapter 13 trustee any payments the creditor receives from the chapter 13 trustee after entry of the order unless the stipulation or order provides otherwise.

- (5) No Surcharge of Chapter 13 Trustee. The chapter 13 trustee will not be surcharged for any distribution of funds in the ordinary course of business prior to receiving written notice that the automatic stay is not in effect or a claim should not be paid.

(s) **Postconfirmation Adequate Protection Orders.**

- (1) Filing and Service. After an order confirming a plan is entered, if the debtor proposes to modify the payments by the chapter 13 trustee to the secured creditor by way of an adequate protection/relief from the automatic stay agreement, the debtor must file and serve a motion for an order approving the modification of the plan by the agreement pursuant to subsections (w) and (x) of this rule.
- (2) Payments Pending Plan Modification. Notwithstanding court approval of an adequate protection/relief from the automatic stay agreement, the trustee will continue to make payments and otherwise perform the trustee's duties in accordance with the plan as confirmed unless: (A) the debtor receives a separate court order approving a modification to the plan; or (B) the adequate protection/relief from the automatic stay agreement specifically modifies the treatment of the claim under the confirmed plan.

(t) **Discharge Procedures.**

- (1) General. When the chapter 13 trustee has completed payments under the plan and all other plan provisions have been consummated, the clerk will send to the debtor and the debtor's attorney (if any), a Notice of Requirement to File a Debtor's Certification of Compliance Under 11 U.S.C. § 1328 and Application for Entry of Discharge. Before any discharge may be entered, the debtor must comply with the requirements of the Certification of Compliance and file the certification with the court.
- (2) Instructional Course on Personal Financial Management. Debtor must also file a certification that an instructional course concerning personal financial management, as required by 11 U.S.C. § 1328(g)(1), has been completed or that completion of such course is not required under 11 U.S.C. § 1328(g)(2).
- (3) Case Closure without Discharge. If the certifications required by this subsection have not been filed within 60 days of the notice provided under subsection (t)(1) of this rule, then the case may be closed without an entry of discharge.

(u) **Attorney Representation.**

- (1) **Scope of Employment.** LBR 2090-1(a) is modified in chapter 13 cases as follows: Any attorney who is retained to represent a debtor in a chapter 13 case is responsible for representing the debtor on all matters arising in the case, other than adversary proceedings, subject to the provisions of a “Rights and Responsibilities Agreement Between Chapter 13 Debtors and Their Attorneys,” into which the debtor and the attorney have entered and that complies with these rules.
- (2) **Debtor Unavailable or Unopposed to Request, Application, or Motion Scheduled for Hearing.** If an attorney for a debtor is unable to contact the debtor in connection with a request, application or motion (*e.g.*, a motion for relief from the automatic stay) that is scheduled for a hearing, the attorney may file and serve a statement informing the court of this fact. If a debtor does not oppose the request, application or motion, the attorney may file a statement so informing the court and need not appear at the hearing.
- (3) **Change of Address.** An attorney representing a chapter 13 debtor must provide written notice to the chapter 13 trustee and to the court of any change to the attorney’s address during the pendency of the case as required by LBR 2091-1(f).

(v) **Attorneys’ Fees.**

- (1) **Rights and Responsibilities Agreement.** The use of court-approved form [F 3015-1.7.RARA](#), Rights and Responsibilities Agreement Between Chapter 13 Debtors and Their Attorneys (“RARA”) in any case is optional. However, if the debtor’s attorney elects to proceed under the RARA, the RARA form is mandatory. If the RARA form is signed by the attorney and the debtor, filed, and served on the chapter 13 trustee, the fees and included costs (excluding the petition filing fee) outlined therein may be approved without further detailed fee application or hearing, subject to the terms of both the RARA and the Guidelines for Allowance of Attorneys’ Fees in Chapter 13 Cases (“Guidelines”) adopted by the court. The RARA may be used only once in any chapter 13 case.
- (2) **Duties of Debtors and their Attorneys if the RARA is Signed, Filed, and Served.** The RARA sets forth the duties and obligations that must be performed by the debtor and debtor’s attorney, both before and after the case is filed and before and after confirmation of a plan, if the parties elect to use the RARA. The RARA also specifies the fees that the attorney will charge and the procedures for seeking and objecting to payment of fees. An attorney who elects to use the RARA may not charge more than the maximum fees outlined in subsection (v)(1) of this rule for performing services described in bold face type in the RARA. If the attorney performs tasks on behalf of the debtor not set forth in bold face, the attorney may apply to the court for additional fees and costs, but such applications will be reviewed by both the chapter 13 trustee and the court. Counsel may apply for additional fees if and when justified by the facts of the case.

An application for additional fees and costs must be made by noticed motion subject to subsections (w) and (x) of this rule. The application must be supported by evidence of the nature, necessity, and reasonableness of the additional services rendered and expenses incurred, and in accordance with [Court Manual](#) Section 2.9. When additional fees are sought, the court may, in its discretion, require additional supporting information or require a hearing, even though no opposition is filed. In such application, the applicant must disclose to the court any fees paid or costs reimbursed by the debtor and the source of those payments.

If the parties elect to utilize the RARA, the lists of duties and obligations set forth in the RARA may not be modified by the parties. Other portions of the RARA may be modified in the following respects only: (A) the attorneys' fees provided for in the RARA may be reduced; and (B) the agreement may be supplemented to include any additional agreements that may exist between the parties concerning the fees and expenses that the attorney will charge for performing services required by the RARA that are not in bold face type.

- (3) Debtor's Signature. The debtor's signature on the RARA certifies that the debtor has read, understands, and agrees to the best of the debtor's ability to carry out the terms of the RARA and has received a signed copy of the RARA.
  - (4) Attorney's Signature. The attorney's signature on the RARA certifies that before the case was filed the attorney personally met with, counseled, and explained to the debtor all matters set forth in the RARA and verified the number and status of any prior bankruptcy case(s) filed by the debtor or any related entity, as set forth in LBR 1015-2. The RARA does not constitute the written fee agreement contemplated by the California Business and Professions Code.
  - (5) An Attorney May Elect to be Paid other than Pursuant to the RARA and the Guidelines. At any time, when a RARA has not been entered into, or has been withdrawn with the written consent of the client(s), or when the attorney is seeking supplemental fees beyond the services in boldface that are "Included Costs" under the RARA, the debtor's attorney may elect to seek an allowance of fees and costs other than pursuant to the RARA and the Guidelines. In that event, the attorney must file and serve an application for fees in accordance with 11 U.S.C. §§ 330 and 331, FRBP 2016 and 2002, and LBR 2016-1 and 3015-1, as well as the "Guide to Applications for Professional Compensation" issued by the United States trustee for the Central District of California.
  - (6) Court Review of any Attorney's Fee. Upon notice and opportunity for hearing, the court may review any attorney's fee agreement or payment, in accordance with 11 U.S.C. § 329 and FRBP 2017.
- (w) **Motions and Applications Filed on Notice of Opportunity to Request a Hearing.**
- (1) Motions and Applications. The following motions and applications may be made on notice of opportunity to request a hearing pursuant to LBR 9013-1(o):

- (A) Chapter 13 trustee's motion to modify a confirmed plan or dismiss a case;
  - (B) Motion to modify a confirmed plan or to suspend or extend plan payments, subject to subsections (n) and (x) of this rule, provided that 21 days' notice of the motion is given in accordance with FRBP 3015(g);
  - (C) Motion for approval of sale or refinancing of debtor's residence, subject to subsection (p) of this rule, if the entire equity therein is exempt from the claims of creditors; provided, however, notice is not required if the sale or refinance will pay off the plan and the plan allows 100% to the unsecured claims; and
  - (D) Application for supplemental attorney's fees, subject to subsections (u), (v) and (x) of this rule.
- (2) No Response Filed. If no response has been timely filed and served with respect to a motion or application listed in subsection (w)(1) of this rule, or the chapter 13 trustee's only response is to take no position, the provisions of LBR 9013-1(o)(3) must be complied with, subject to the following modifications:
- (A) Motion to Modify a Confirmed Plan or to Suspend or Extend Plan Payments. The declaration must also attest that the chapter 13 trustee did not timely file and serve a response to the motion, and the declaration must be served on the chapter 13 trustee.
  - (B) Application for Supplemental Fees. The declaration must attest that the chapter 13 trustee did not timely file and serve a response to the application, or took no position, and the declaration must be served on the chapter 13 trustee.
- (3) Response Filed. If a response is filed with respect to any motion or application listed in subsection (w)(1) of this rule, the provisions of LBR 9013-1(o)(4) must be complied with, subject to the following modifications:
- (A) Trustee's Motion to Dismiss a Case; Trustee's Motion to Modify a Confirmed Plan. The person or entity who timely files and serves a response to a trustee's motion to dismiss a case, or a trustee's motion to modify a confirmed plan, must, prior to filing and serving the response, obtain a hearing date from the court (or use the court's self-calendaring system) and the hearing date, time and location must be indicated on the caption page of the response. The hearing date must be the court's next available chapter 13 calendar that provides the chapter 13 trustee with at least 7 days of notice, but the hearing date must not be more than 30 days after the response is filed. The court may grant the motion without a hearing if the hearing is not set timely.
  - (B) Debtor's Motion to Modify a Confirmed Plan or Suspend or Extend Plan Payments, or Application for Supplemental Fees. If the chapter 13 trustee timely files and serves any comments regarding the motion or application, the

debtor must promptly lodge a proposed order, and, when serving a judge's copy of the notice of lodgment, include a copy of the motion/application and the trustee's comments.

- (x) **Service of Motions and Applications.** All motions and applications must be served, subject to the electronic service provisions of LBR 9036-1, on the chapter 13 trustee, debtor (and debtor's attorney, if any), and all creditors, with the following exceptions:
- (1) A chapter 13 trustee's motion to dismiss a case need be served only on the debtor, debtor's attorney (if any), any prior chapter 7 trustee, and that trustee's attorney (if any);
  - (2) An objection to a claim must be served on the chapter 13 trustee, the claimant, and the claimant's attorney (if any). If the claimant is the United States or an officer or agency of the United States, the objection must be served as provided in FRBP 7004(b)(4) and (5) and LBR 2002-2;
  - (3) A motion for modification, suspension, or extension of the due date of plan payments must be filed using court-mandated forms and must be served on the chapter 13 trustee, but need not be served on creditors if: (A) the proposed modification does not have an adverse effect on the rights of creditors; or (B) the proposed suspension or extension, combined with any prior approved suspensions or extensions, does not exceed 90 days of suspended payments or 90 days of extensions to the plan's term. Any other motion for modification, suspension, or extension must be served on all creditors pursuant to LBR 9013-1(o) in addition to being served on the chapter 13 trustee;
  - (4) A motion regarding the stay of 11 U.S.C. § 362, which is subject to the notice and service requirements of LBR 4001-1; and
  - (5) An application by debtor's counsel for additional fees and costs not exceeding \$1,000 over and above the limits set forth in the RARA and Guidelines need be served only on the chapter 13 trustee and the debtor.

**LBR 3017-1. CHAPTER 11 DISCLOSURE STATEMENT – APPROVAL IN CASE OTHER THAN SMALL BUSINESS CASE**

- (a) **Notice of Hearing on Motion for Approval of Disclosure Statement.** A hearing on a motion for approval of a disclosure statement must not be set on less than 42 days notice, unless the court, for good cause shown, prescribes a shorter period.
- (b) **Objections to Disclosure Statement.** Objections to the adequacy of a disclosure statement must be filed and served on the proponent not less than 14 days before the hearing, unless otherwise ordered by the court.

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Attorney for Debtor Name, Address, Telephone & FAX Numbers, State Bar Number & Email Address	FOR COURT USE ONLY
<b>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - **SELECT DIVISION**</b>	
In re:	CASE NUMBER: CHAPTER 13
Debtor(s).	<b>RIGHTS AND RESPONSIBILITIES AGREEMENT BETWEEN DEBTOR AND ATTORNEY FOR DEBTOR IN A CHAPTER 13 CASE (RARA)</b>  <b>[LBR 3017-1(v)]</b>

**TO DEBTOR (INCLUDING BOTH DEBTOR 1 AND DEBTOR 2 IF THIS IS A JOINT CASE):**

It is important for a Debtor who files a Chapter 13 bankruptcy case to understand his or her rights and responsibilities. It is also important for a Debtor to know what the attorney's responsibilities are and to communicate carefully with the attorney to make the case successful. A Debtor is also entitled to expect certain services to be performed by the attorney. In order to assure that Debtor and the attorney understand their rights and responsibilities in the Chapter 13 process, the following rights and responsibilities have been adopted by the court. The signatures below indicate that the responsibilities outlined in the agreement have been accepted by Debtor(s) and the attorney. Nothing in this agreement is intended to modify, enlarge or abridge the rights and responsibilities of a "debt relief agency," as that term is defined and used in 11 U.S.C. § 101, *et seq.*

Once an attorney is retained to represent a Debtor in a Chapter 13 case, the attorney is responsible for representing Debtor on all matters arising in the case, other than adversary proceedings, unless otherwise ordered by the court. (Once retained, the attorney is referred to as Attorney for Debtor, or Attorney.) Attorney may not withdraw absent consent of Debtor for withdrawal or substitution of counsel and/or approval by the court of a motion for withdrawal or substitution of counsel considered after notice and a hearing. When

*"Bankruptcy Code" and "11 U.S.C." refer to the United States Bankruptcy Code, Title 11 of the United States Code.  
"FRBP" refers to the Federal Rules of Bankruptcy Procedure. "LBR" and "LBRs" refer to the Local Bankruptcy Rule(s) of this court.*

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appropriate, Attorney may apply to the court for compensation additional to the maximum initial fees set forth below in this agreement.

### BEFORE THE CASE IS FILED, DEBTOR AGREES TO:

1. Discuss with Attorney why the case is being filed.
  2. Timely provide Attorney with accurate information, financial and otherwise.
  3. Timely provide Attorney with all documentation requested by Attorney, including but not limited to, true and correct copies of the following documents\*:
    - a. Certificate of Credit Counseling, together with the debt repayment plan, if any, prepared by the nonprofit budget and credit counseling agency that provided individual counseling services to Debtor prior to bankruptcy.
    - b. Proof of income from all sources received during the period of six (6) months before the date of the filing of the petition, including but not limited to paycheck stubs, Social Security statements, worker's compensation, rental, pension, disability, and self-employment income, and other payment advices. For businesses, Debtor should provide report(s) disclosing monthly income and expenses for the period of 6 months before the date of the filing of the bankruptcy petition for businesses with annualized gross income of less than \$120,000 and 12 months of monthly income and expenses for businesses with annualized gross income of \$120,000 or more.
    - c. Proof of ability to pay from any person contributing financial assistance to Debtor in the case, including a declaration with copies of paystubs or other deposits or checks to show the person's ability to make the contribution.
    - d. Federal and state income tax returns, or transcripts of such returns, for the most recent tax year ending immediately before the commencement of the case.
    - e. Proof of debtor's identity, including a driver's license, passport, or other document containing a photograph of Debtor. Also proof of Debtor's Social Security number or Individual Tax Identification Number (ITIN).
    - f. A record of Debtor's interest, if any, in an educational individual retirement account or under a qualified State tuition program.
    - g. The name, address and telephone number of any person to whom Debtor owes back child or spousal support, the name, address and telephone number of any person to whom Debtor makes current child or spousal support payments and all supporting documents for the child or spousal support payments. Examples of supporting documents are a court order, declaration of voluntary support payments, separation agreement, marital dissolution or divorce decree and a property settlement agreement.
    - h. Insurance policies owned by Debtor, including homeowner's insurance, business insurance, automobile insurance, fire insurance, flood insurance, earthquake insurance, and credit life insurance.
- \* All documents submitted to Attorney must be copies as the documents will not be returned to Debtor.

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### AFTER THE CASE IS FILED, DEBTOR AGREES TO:

1. Timely make the required monthly payments.
2. Comply with the Chapter 13 rules and procedures.
3. Keep the Chapter 13 Trustee and Attorney informed of Debtor's current address and telephone number, and Debtor's employment status.
4. Sign a payroll deduction order, if one is required.
5. Inform Attorney of any change in Debtor's marital status, the commencement of any child support or spousal support obligation, or a change in any existing child support or spousal support obligation.
6. Inform Attorney of any wage garnishments or liens or levies on assets that occur or continue after the filing of the case.
7. Contact Attorney promptly if Debtor loses his or her job, encounters other new or unexpected financial problems, if Debtor's income increases, or if Debtor receives, or learns of the right to receive, money or other proceeds of an inheritance or legal action.
8. Timely inform Attorney of any change in a creditor's address or payment amount.
9. Keep records of all mortgage, vehicle and personal property payments made to all secured creditors during the case.
10. Provide Attorney with any federal tax returns or transcripts requested pursuant to 11 U.S.C. § 521(f).
11. Contact Attorney promptly if Debtor is sued during the case or if Debtor commences a lawsuit or intends to settle any dispute.
12. Inform Attorney if any tax refunds to which Debtor is entitled are seized or not received when expected by Debtor from the IRS or Franchise Tax Board.
13. Contact Attorney promptly before buying, refinancing, or selling real property, and before incurring substantial additional debt such as for the purchase of a car.
14. Pay directly to Attorney any court filing fees.
15. Cooperate with Attorney to identify and preserve electronically stored information (ESI).

### BEFORE THE CASE IS FILED, ATTORNEY AGREES TO PROVIDE AT LEAST THE FOLLOWING LEGAL SERVICES FOR THE BASE FEE AGREED TO WITH DEBTOR:

As used herein, the term "Personally" means that the described service must be performed only by an attorney who is a member in good standing of the State Bar of California and admitted to practice before this court. The service must not be performed by a non-attorney even if such individual is employed by the attorney and under the direct supervision and control of such attorney.

1. **Personally meet with Debtor to review Debtor's assets, liabilities, income, and expenses.**
2. **Personally counsel Debtor regarding the advisability of filing either a Chapter 13 or a Chapter 7 bankruptcy case, discuss both procedures with Debtor, and answer Debtor's questions.**

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3. Personally review with Debtor the completed bankruptcy petition, plan, statements, and schedules, as well as all amendments thereto, whether filed with the petition or later.
4. Personally explain to Debtor that Attorney is being engaged to represent Debtor on all matters arising in the case, as required by Local Bankruptcy Rule 3015-1(t).
5. Personally explain to Debtor how and when Attorney's fees and expenses and the Chapter 13 Trustee's fees are determined and paid, and provide an executed copy of this RARA document to Debtor.
6. Timely prepare and file the Debtor's bankruptcy petition, plan, statements, schedules, and required documents and certificates.
7. Explain to Debtor and confirm in writing which payments must be made directly to creditors by Debtor and which payments will be made through Debtor's Chapter 13 plan, with particular attention to mortgage and vehicle loan or lease payments.
8. Explain to Debtor and confirm in writing how, when, and where to make the Chapter 13 plan payments.
9. Explain to Debtor how, when, and where to make postpetition mortgage, mobile home, manufactured home, and vehicle loan and lease payments and confirm this information in writing.
10. Advise Debtor of the necessity to maintain appropriate insurance, including homeowner's insurance and liability, collision and comprehensive insurance on vehicles securing loans or leases.
11. Meet with Debtor to determine the scope of Debtor's duty to preserve electronically stored information (ESI) and to take reasonable steps (proportionate to the needs of the case) to identify and preserve potentially relevant ESI.

**AFTER THE CASE IS FILED, ATTORNEY AGREES TO PROVIDE AT LEAST THE FOLLOWING LEGAL SERVICES WHICH ARE COVERED BY THE BASE FEE AGREED TO WITH DEBTOR:**

1. Advise Debtor of the requirement to attend the 11 U.S.C. § 341(a) meeting of creditors, and instruct Debtor as to the date, time, and place of the meeting. In a joint bankruptcy case, inform Debtor that both spouses must appear.
2. Inform Debtor that Debtor must be punctual for the 11 U.S.C. § 341(a) meeting of creditors. "Punctual" means that Attorney and Debtor(s) must be present on time for check-in. After checking in, if Attorney finds it necessary to request "second [calendar] call," the attorney and Debtor(s) must be present for examination before the end of the calendar.
3. Attend the 11 U.S.C. § 341(a) meetings and any court hearing, either personally or through another attorney from Attorney's firm or through an appearance attorney who has been adequately briefed on the case.
4. Advise Debtor if an appearance attorney will appear on Debtor's behalf at the 11 U.S.C. §341(a) meeting or any court hearing, and explain to Debtor in advance, if possible, the role and identity of the appearance attorney. In any event, Attorney is responsible to prepare adequately the appearance attorney in a timely fashion and to furnish the appearance attorney with all necessary documents, hearing notes, and other necessary information in sufficient time to allow for review of such information and proper representation of Debtor.

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5. Timely serve the plan and mandatory notice on all creditors.
6. Timely – seven (7) days prior to the first scheduled 11 U.S.C. §341(a) meeting of creditors - submit to the Chapter 13 Trustee properly documented proof of all sources of income for Debtor, including business reports and supporting documentation required by Local Bankruptcy Rules.
7. Timely respond to objections to plan confirmation and, where necessary, prepare, file, and serve an amended plan.
8. Timely prepare, file, and serve any necessary amended statements and schedules and any change of address, in accordance with information provided by Debtor.
9. Monitor all incoming case information throughout the case (including, but not limited to, Order Confirming Plan, Notice of Intent to Pay Claims, and the Chapter 13 Trustee's status reports) for accuracy and completeness. Contact the Chapter 13 Trustee promptly regarding any discrepancies.
10. Review the claims register after expiration of the period during which claims may be timely filed.
11. Review the Chapter 13 Trustee's notice of intent to pay claims after entry of a plan confirmation order.
12. Timely prepare and file Debtor's Certificate of Compliance under 11 U.S.C. §1328(a) and Application for Entry of Discharge (F 3015-1.8.DISCHARGE.APPLICATION)

AFTER THE CASE IS FILED, ATTORNEY IS RESPONSIBLE FOR PROVIDING THE FOLLOWING SERVICES AND MAY REQUEST APPROVAL OF ADDITIONAL COMPENSATION FOR THESE SERVICES FROM THE COURT:

13. File objections to improper or invalid claims, when appropriate.
14. Prepare and file a proof of claim, when appropriate, if a creditor fails to do so.
15. Prepare, file, and serve timely motions to modify the plan after confirmation, when necessary.
16. Prepare, file, and serve motions to buy, sell, or refinance real or other property, when appropriate.
17. Prepare, file, and serve any other motion that may be necessary to appropriately represent Debtor in the case, including but not limited to, motions to impose or extend the automatic stay.
18. Timely respond to all motions filed by the Chapter 13 Trustee, and represent Debtor in response to all other motions filed in the case, including but not limited to, motions for relief from stay.
19. When appropriate, prepare, file, and serve motions to avoid liens on real or personal property, and motions to value the collateral of secured creditors.
20. Be available to respond to Debtor's questions throughout the term of the plan, and provide such other legal services as are necessary for the administration of the case before the bankruptcy court.
21. Represent Debtor at a discharge hearing, if required.
22. If a response to a Notice of Final Cure Payment is filed by a secured creditor and the response shows post-petition delinquencies, Attorney must contact Debtor and determine whether Debtor agrees with the

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Notice as filed by the Creditor. If Debtor disagrees, Attorney must file a motion for determination of final cure and payment under the provisions of FRBP 3002.1(h).

23. If not representing Debtor in adversary proceedings, confirm this fact in writing and refer Debtor to at least one attorney qualified to assist Debtor in any adversary proceeding filed in the case.

### ALLOWANCE AND PAYMENT OF ATTORNEYS' FEES AND COSTS:

The guidelines of this court for allowance and payment of attorneys' fees and related expenses incurred for performing the services in Chapter 13 cases which are to be included in the Base Fee without a detailed fee application provide for the following maximum Base Fee: \$6,000 (excluding the petition filing fee and with a maximum of \$5,000 to be paid prior to Plan confirmation) in cases where Debtor is engaged in a business; or \$5,000 (excluding the petition filing fee) in all other cases. In this case, the parties agree that the Base Fee (excluding the petition filing fee) will be \$ \_\_\_\_\_.

Other than the initial retainer, Attorney may not receive fees directly from Debtor before Plan confirmation. All other fees due through confirmation must be paid through the Plan unless otherwise ordered by the court.

If Attorney performs tasks on behalf of Debtor for which Additional Fees may be awarded, Attorney may apply to the court for such Additional Fees and costs, but such applications will be reviewed by both the Chapter 13 Trustee and the court. Attorney agrees to charge for such additional services at the rate of \$\_\_\_\_\_ per hour. Attorney agrees to give Debtor written notice of any change in the hourly rate prior to rendering additional services. Alternatively, Attorney may charge a reasonable flat fee for some specified service(s) consistent with § 2.9 of the Court Manual. In either event, Attorney must disclose to the court in the fee application any fees paid or costs reimbursed by Debtor and the source of those payments. Any fees received directly from Debtor must be deposited in the attorney's client trust account until a fee application is approved by the court.

If Debtor disputes the legal services provided or the fees or costs charged by the attorney, Debtor may file an objection with the court and request a hearing. Should the representation of Debtor create a hardship, Attorney may seek a court order allowing Attorney to withdraw from the case. Debtor may discharge Attorney at any time.

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\*\*\*\*\*IMPORTANT\*\*\*\*\*

BY SIGNING THIS (*name of Debtor(s)*) \_\_\_\_\_  
AGREES THAT ATTORNEY (*name of Attorney*) \_\_\_\_\_  
WILL RECEIVE A BASE FEE OF (*amount*) \$ \_\_\_\_\_ AND (*amount*) \$ \_\_\_\_\_ PER HOUR  
FOR ANY EXTRA WORK.

Debtor's Signature. Debtor's signature below certifies that Debtor has read, understands and agrees to the best of his or her ability to carry out the terms of this agreement, agrees to the scope of this agreement, and has received a signed copy of this agreement.

Attorney's Signature. Attorney's signature below certifies that before the case was filed, Attorney personally met with, counseled, and explained the foregoing matters to Debtor and verified the number and status of any prior bankruptcy case(s) filed by Debtor or any related entity, as set forth in Local Bankruptcy Rule 1015-2. This RARA agreement does not constitute the written fee agreement contemplated by the California Business & Professions Code.

\_\_\_\_\_  
Signature of Debtor 1

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Debtor 2

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
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Attorney Name, Address, Telephone & FAX Numbers, State Bar Number & Email Address	FOR COURT USE ONLY
<b>UNITED STATES BANKRUPTCY COURT          CENTRAL DISTRICT OF CALIFORNIA - **SELECT DIVISION**</b>	
In re:	CASE NUMBER: CHAPTER 13
Debtor(s).	<div style="text-align: center;"> <b>APPLICATION OF ATTORNEY FOR DEBTOR          FOR ADDITIONAL FEES AND RELATED          EXPENSES IN A PENDING CHAPTER 13          CASE SUBJECT TO A RIGHTS AND          RESPONSIBILITIES AGREEMENT (RARA)</b> </div> <div style="text-align: center; margin-top: 10px;">         [11 U.S.C. § 330(a)(4)(B); LBR 3015-1(v)(2)]       </div>

TO DEBTOR, CHAPTER 13 TRUSTEE, AND PARTIES IN INTEREST:

1. **Rights and Responsibilities Agreement.** The undersigned Attorney and Debtor are parties to a Rights and Responsibilities Agreement (RARA) filed as docket number \_\_\_\_\_.
2. **RARA Fee Agreement** Pursuant to the RARA, Debtor agreed to pay Attorney (i) a flat fee of \$\_\_\_\_\_ for those services identified in boldface type in the RARA (Basic Services) and (ii) an hourly fee of \$\_\_\_\_\_ per hour, or a reasonable flat fee, for services other than the Basic Services (Additional Services).

(If the RARA contains any other or different provisions regarding fees for Additional Services, Attorney must (i) check this box ☐ and (ii) attach an addendum providing the details.)

3. **Request for Additional Fees.** Pursuant to 11 U.S.C. § 330(a)(4)(B) and LBR 3015-1(v)(2), Attorney requests allowance and payment of the following:

Fees for Additional Services	\$ _____
Expenses related to Additional Services	\$ _____
Total	\$ _____

"Bankruptcy Code" and "11 U.S.C." refer to the United States Bankruptcy Code, Title 11 of the United States Code.  
 "FRBP" refers to the Federal Rules of Bankruptcy Procedure. "LBR" and "LBRs" refer to the Local Bankruptcy Rule(s) of this court.

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**4. Case Status.** This Chapter 13 case has not been dismissed or converted.

**5. Plan Status.**

- ☐ A Chapter 13 Plan was confirmed in this case by order entered as docket number \_\_\_\_\_.
- ☐ A Chapter 13 Plan has not yet been confirmed in this case; a hearing is set for *(date)* \_\_\_\_\_.

**6. Fee Award for Basic Services.**

- ☐ Attorney was awarded fees for Basic Services in the amount of \$ \_\_\_\_\_ in the order confirming the plan and/or a separate order of the court.

**7. Prior Applications for Additional Fees.**

- ☐ Attorney has not previously applied for Additional Fees in this case.
- ☐ Attorney has previously applied for Additional Fees in this case. A total of \$ \_\_\_\_\_ has been awarded to Applicant for Additional Fees pursuant to prior requests.
- ☐ One or more applications for Additional Fees in this case are pending. See docket number(s). \_\_\_\_\_  
A total of \$ \_\_\_\_\_ in Additional Fees has been requested pursuant to those pending applications.

**8. Disclosure of Amounts Previously Paid To Attorney.** Pursuant to LBR 3015-1(v)(2), Attorney discloses the following amounts paid to date (including prepetition payments) by Debtor or the Chapter 13 Trustee to Attorney and the source of those payments:

Date Received	Amount Received	Source of Payment
<b>TOTAL</b>		

**9. Amount and Basis for Compensation Requested.**

- A. ☐ Presumptively Reasonable Fees (No Look Fees). Attorney requests an award of fees for Additional Services identified in the following table; these amounts are equal to or less than the maximum No Look Fee specified in Section 2.9(b) of the Court Manual for those services.

*(If you are requesting fees for more than one instance of the same type of service, you must provide the pertinent details in the "Explanation" box or in an addendum.)*

Fee Requested	Maximum No Look Fee	Legal Service	Docket No.
\$	\$750.00	Unopposed motion to extend/impose automatic stay	
\$	\$350.00	Unopposed application for order shortening time	
\$	\$1,250.00	Unopposed motion to avoid lien (11 U.S.C. § 506(a))	
\$	\$1,500.00	Unopposed motion to avoid lien (11 U.S.C. § 506(a)), with stipulation and order	

This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

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\$	\$750.00	Unopposed motion to avoid lien (11 U.S.C. § 522(f))	
\$	\$950.00	Unopposed motion to disallow claim	
\$	\$350.00	Opposition to Chapter 13 Trustee's motion to dismiss or convert case	
\$	\$750.00	Unopposed motion to modify plan	
\$	\$750.00	Unopposed motion to refinance/sell real property	
\$	\$750.00	Unopposed motion to incur debt	
\$	\$300.00	Application for order confirming that loan modification discussion does not violate the automatic stay	
\$	\$2,000.00	Complaint to avoid lien	
\$		Total Requested	

B. ☐ Hourly or Other Additional Fees. Attorney requests an award of fees for Additional Services on an hourly or other basis.

a. Dates during which the Additional Services were provided: from (dates) \_\_\_\_\_ to \_\_\_\_\_.

b. Summary of hourly fees requested for the Additional Services.

Name	Attorney or Paralegal?	Hourly Rate	Hours Billed	Total Requested
		\$		\$
		\$		\$
		\$		\$
		\$		\$
		\$		\$
<b>TOTAL</b>				

c. Description of the nature, necessity, and results of the Additional Services for which hourly fees are requested in this Section 10.B: (Check here ☐ if an addendum containing additional information is attached.)

d. A billing statement is attached as Exhibit A, identifying each service performed, the service provider, the date rendered, the time spent, and the amount billed (*required*).

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- e. If fees for the Additional Services are requested other than on an hourly basis, the amount requested and the basis for that request are as follows:

- 10. Expenses.** Attorney requests an award of expenses incurred in connection with the Additional Services in the amounts summarized in the following table.

Expense Category	Amount Requested
	\$
	\$
	\$
	\$
	\$
	\$
	\$
<b>TOTAL</b>	\$

Additional Explanation: (Check here ☐ if an addendum containing additional information is attached.)

*(Note: If you are requesting the allowance of expenses related to No Look Fee services, you must explain above why the requested expenses are extraordinary.)*

**11. Request for Payment.**

- ☐ Attorney requests that all fees and expenses allowed hereunder be awarded and paid by the Chapter 13 Trustee through the plan that has been or may be confirmed in this case.
- ☐ Attorney requests that the fees and expenses allowed hereunder be awarded and paid in the following manner (*specifically describe the proposed source(s) of payment and the proposed timing of that payment*):

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### 12. Consent and Declaration of Debtor.

CONSENT AND DECLARATION OF DEBTOR(S)	
The undersigned Debtor declares that s/he has reviewed the foregoing Application and consents to approval of payment of the fees and expenses requested by Attorney.	
Executed this ____ day of _____, 20__ at (city) _____, (state) _____	
Signature of Debtor 1: _____	
Printed name of Debtor 1: _____	
Signature of Debtor 2: _____	
Printed name of Debtor 2: _____	

### 13. Certifications of Counsel.

- a. **No Prior Request.** I certify that Attorney has not previously requested fees or expenses for any of the Additional Services that are the subject of this Application. If I cannot make this certification, I have checked this box ☐ and attached an addendum that discloses the details of that prior request.
- b. **No Debtor Consent and Declaration.** If Debtor has not executed the Consent and Declaration in Paragraph 13, the reason Debtor has not done so is as follows:
- c. **True and Correct.** I certify that the information contained in and attached to this Application is true and correct.

Date: \_\_\_\_\_

Respectfully submitted,

\_\_\_\_\_  
Signature of Attorney for Debtor

\_\_\_\_\_  
Printed name of Attorney for Debtor

---

This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

<div>Attorney or Party Name, Address, Telephone &amp; FAX Nos., State Bar No. &amp; Email Address</div>		<div>FOR COURT USE ONLY</div>	
<div><input type="checkbox"/> Individual appearing without attorney <input type="checkbox"/> Attorney for:</div>			
<div>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - **SELECT DIVISION**</div>			
<div>In re:</div> <div>Debtor(s).</div>		<div>CASE NO.: CHAPTER 13</div>	
		<div>DEBTOR'S MOTION FOR AUTHORITY TO INCUR DEBT [PERSONAL PROPERTY]</div>	
		<div>[No Hearing Required]</div>	

1. Debtor's Chapter 13 Plan (Plan), providing for a payment in the amount of \$\_\_\_\_\_ per month for \_\_\_\_\_ months, was confirmed on: \_\_\_\_\_.

2. Debtor desires to purchase: \_\_\_\_\_

Copies of the proposed purchase and loan agreements are attached as Exhibit "A."

3. The purchase price of the \_\_\_\_\_ is \$\_\_\_\_\_ from dealership/store name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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## 2019 WINTER LEADERSHIP CONFERENCE

4. After the loan is made and any down payment is credited, there will remain owing on the loan the sum of \$\_\_\_\_\_, to be paid over \_\_\_\_\_ months at \$\_\_\_\_\_ per month.

5. Debtor desires to acquire the property to be financed for the following reasons:

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(Please attach additional pages if needed.)

6. Debtor's monthly income at this time (take home pay plus any other income received) is \$\_\_\_\_\_. Debtor's monthly expenses at this time (**excluding** the Plan payment and the contemplated monthly finance payment) total \$\_\_\_\_\_.

The attached *Declaration of Current/Post-Petition Income and Declaration of Current/Post-Petition Expenses* accurately reflect Debtor's monthly income and expenses at this time.

Date: \_\_\_\_\_

\_\_\_\_\_  
Attorney for Debtor

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
Debtor

Date: \_\_\_\_\_

\_\_\_\_\_  
Joint Debtor

---

This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

A true and correct copy of the foregoing document entitled: **DEBTOR'S MOTION FOR AUTHORITY TO INCUR DEBT [PERSONAL PROPERTY]** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On *(date)* \_\_\_\_\_, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☐ Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL:**

On *(date)* \_\_\_\_\_, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on *(date)* \_\_\_\_\_, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Printed Name*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
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<p>Attorney or Party Name, Address, Telephone &amp; FAX Nos., State Bar No. &amp; Email Address</p> <p><input type="checkbox"/> Individual appearing without attorney <input type="checkbox"/> Attorney for:</p>	<p>FOR COURT USE ONLY</p>
<p><b>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - **SELECT DIVISION**</b></p>	
<p>In re:</p> <p>Debtor(s).</p>	<p>CASE NO.: CHAPTER 13</p> <p><b>MOTION UNDER LBR 3015-1(n) AND (w) TO MODIFY PLAN OR SUSPEND PLAN PAYMENTS</b></p> <p>[No Hearing Required]</p>

1. The Debtor hereby moves this court to modify the confirmed Chapter 13 Plan or suspend plan payments, as set forth in detail below.
2. The purpose of this motion is to **(check all that apply)**:
  - ☐ Cure the delinquency.
  - ☐ Address the expiration of the plan.
  - ☐ Cure the infeasibility of the plan.
  - ☐ Modify the amount of the plan payment, the length of the plan and/or the percentage to be paid to unsecured creditors because of a change in financial circumstances.
3. Terms of original confirmed Chapter 13 Plan:  
The Order Confirming Plan was entered on \_\_\_\_\_.  
Plan payment amount(s): \$\_\_\_\_\_ per month.  
Length of plan: \_\_\_\_\_ months.  
Percentage paid to Class 5 general unsecured creditors: \_\_\_\_\_%.

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4. There have been \_\_\_\_\_ previous modification or suspension orders.  
Plan payments have been suspended for \_\_\_\_\_ months and/or the plan has been extended for \_\_\_\_\_ months.
5. Current plan terms **(complete this section if the confirmed chapter 13 plan has been subject to a previous modification or suspension order)**:  
Plan payment amount(s): \$\_\_\_\_\_ per month.  
Length of plan: \_\_\_\_\_ months.  
Percentage paid to Class 5 general unsecured creditors: \_\_\_\_\_%.
6. Proposed modification:
- ☐ Suspend (indicate number of plan payments) \_\_\_\_\_ plan payments.
  - ☐ Extend the term by (indicate number of months) \_\_\_\_\_ month(s).
  - ☐ Reduce the term by (indicate number of months) \_\_\_\_\_ month(s).
  - ☐ Increase the plan payment from \$\_\_\_\_\_ to \$\_\_\_\_\_  
from (date) \_\_\_\_\_ to (date) \_\_\_\_\_.
  - ☐ Reduce the plan payment from \$\_\_\_\_\_ to \$\_\_\_\_\_  
from (date) \_\_\_\_\_ to (date) \_\_\_\_\_.
7. Since the Order Confirming Plan or the last modification or suspension order was entered, the debtor's circumstances have changed in the following respect:

***File and serve amended schedules I and J (if appropriate) and supporting documentation concerning the basis for this motion including, but not limited to, proof of income.***

8. If this motion is granted, the last plan payment due would be payable \_\_\_\_\_ months after the first plan payment was due.
9. If this motion is granted:
- a. ☐ There will be no change in the percentage paid to Class 5 general unsecured creditors,
- OR
- b. ☐ The percentage paid to Class 5 general unsecured creditors will change from \_\_\_\_\_% to \_\_\_\_\_%.

Date: \_\_\_\_\_

\_\_\_\_\_  
Attorney for Debtor

I declare under penalty of perjury that the following is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
Debtor

Date: \_\_\_\_\_

\_\_\_\_\_  
Joint Debtor

---

This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

A true and correct copy of the foregoing document entitled: **MOTION UNDER LBR 3015-1(n) AND (w) TO MODIFY PLAN OR SUSPEND PLAN PAYMENTS** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) \_\_\_\_\_, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☐ Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL:**

On (date) \_\_\_\_\_, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) \_\_\_\_\_, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

---

This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

<p>Attorney or Party Name, Address, Telephone &amp; FAX Nos., State Bar No. &amp; Email Address</p> <p><input type="checkbox"/> Individual appearing without attorney <input type="checkbox"/> Attorney for:</p>	<p>FOR COURT USE ONLY</p>
<p><b>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - **SELECT DIVISION**</b></p>	
<p>In re:</p> <p>Debtor(s).</p>	<p>CASE NO.: CHAPTER 13</p> <p><b>DEBTOR'S MOTION FOR AUTHORITY TO REFINANCE REAL PROPERTY UNDER LBR 3015-1(p)</b></p> <p>[No Hearing Required]</p>

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3. Debtor requests authority to borrow the sum of \$ \_\_\_\_\_ from

Lender Name: \_\_\_\_\_

Address: \_\_\_\_\_

Debtor also requests authority to execute a promissory note secured by a \_\_\_\_\_ deed of trust on the Property.

4. From the proceeds of this loan, the following encumbrances of record against the Property will be paid through escrow:

a) \_\_\_\_\_

b) \_\_\_\_\_

c) \_\_\_\_\_

5. After payment of the foregoing encumbrances and all costs of sale:

☐ there will remain the approximate sum of \$ \_\_\_\_\_; OR

☐ no proceeds will remain.

6. ☐ (a) The chapter 13 trustee is hereby authorized to make demand upon escrow for sufficient funds to pay off the Plan with a:

☐ 100% dividend to unsecured creditors; OR

☐ \_\_\_\_\_% dividend as indicated in the confirmed plan.

After escrow's payment of the encumbrances listed above, any remaining funds shall be paid directly to debtor.

**OR**

- ☐ (b) The chapter 13 trustee is hereby authorized to make demand upon escrow for the balance remaining after escrow's payment of the encumbrances listed above even though the amount is insufficient to pay off the Plan. The refinance is in the best interest of the creditors.

7. The escrow is being processed by:

Escrow company name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Escrow officer: \_\_\_\_\_

Escrow number: \_\_\_\_\_

8. Supporting documents attached to this Motion are:

a. Exhibit "A" – Legal Description with street address

b. Exhibit "B" – Escrow Instructions and Documents

c. Exhibit "C" – Estimated Closing Statement

d. Exhibit "D" – Schedules I and J of the bankruptcy petition

9. Debtor agrees to provide to chapter 13 trustee a certified copy of the escrow closing statement within 14 days of the close of escrow as a condition to any approval of this motion.

Date: \_\_\_\_\_

\_\_\_\_\_  
Attorney for Debtor

I declare under penalty of perjury that the following is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
Debtor

Date: \_\_\_\_\_

\_\_\_\_\_  
Joint Debtor

---

This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

A true and correct copy of the foregoing document entitled: **DEBTOR'S MOTION FOR AUTHORITY TO REFINANCE REAL PROPERTY UNDER LBR 3015-1(p)** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On *(date)* \_\_\_\_\_, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

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☐ Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on *(date)* \_\_\_\_\_, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Printed Name*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

## 2019 WINTER LEADERSHIP CONFERENCE

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address	FOR COURT USE ONLY
<input type="checkbox"/> <i>Individual appearing without attorney</i> <input type="checkbox"/> <i>Attorney for:</i>	
<b>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - **SELECT DIVISION**</b>	
In re:	CASE NO.: CHAPTER 13
	<b>DEBTOR'S MOTION FOR AUTHORITY TO SELL REAL PROPERTY UNDER LBR 3015-1(p)</b>
Debtor(s).	[No Hearing Required]

Debtor moves this court for an order authorizing the Debtor to sell the real property, described below, pursuant to the terms and conditions described herein.

1. Debtor's Chapter 13 Plan (Plan) was confirmed on: \_\_\_\_\_.

2. Debtor wishes to sell the real property (Property) located at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Property is more particularly described in Exhibit "A" attached hereto.

☐ Debtor wishes to modify the Plan for early payment of the Plan as described in the *Motion to Modify Plan* submitted by Debtor concurrently with this Motion.

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3. The sale price of the Property is \$\_\_\_\_\_. The following are all of the encumbrances of record against the Property:

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_
- e. \_\_\_\_\_

(Add additional page if necessary)

4. After payment of the foregoing encumbrances and all costs of sale:

- ☐ there will remain the approximate sum of \$\_\_\_\_\_; OR  
☐ no proceeds will remain.

5. ☐ (a) The chapter 13 trustee is hereby authorized to make demand upon escrow for sufficient funds to pay off the Plan with a:

- ☐ 100% dividend to unsecured creditors; OR  
☐ \_\_\_\_\_% divided as indicated in the confirmed plan.

After escrow's payment of the encumbrances listed above, any remaining funds shall be paid directly to debtor.

OR

- ☐ (b) The chapter 13 trustee is hereby authorized to make demand upon escrow for the balance remaining after escrow's payment of the encumbrances listed above even though the amount is insufficient to pay off the Plan. The sale is for the fair market value of the Property.

6. The escrow is being processed by:

Escrow company name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Escrow officer: \_\_\_\_\_  
Escrow number: \_\_\_\_\_

7. Supporting documents attached to this Motion are:

- a. Exhibit A – Legal description with street address
- b. Exhibit B – Escrow instructions and documents
- c. Exhibit C – Estimated closing statement
- d. Exhibit D – Schedules I and J of the bankruptcy petition

9. Debtor agrees to provide to chapter 13 trustee a certified copy of the escrow closing statement within 14 days of the close of escrow as a condition to any approval of this motion.

Date: \_\_\_\_\_

\_\_\_\_\_  
Attorney for Debtor

I declare under penalty of perjury that the following is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
Debtor

Date: \_\_\_\_\_

\_\_\_\_\_  
Joint Debtor

This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

A true and correct copy of the foregoing document entitled: **DEBTOR'S MOTION FOR AUTHORITY TO SELL REAL PROPERTY UNDER LBR 3015-1 (p)** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On *(date)* \_\_\_\_\_, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

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☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.