

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
_____ DIVISION**

IN RE) Case No: _____
)
)
) Chapter 13
)
 Debtor)

CHAPTER 13 PLAN

Extension ()

Composition ()

You should read this Plan carefully and discuss it with your attorney. Confirmation of this Plan by the Bankruptcy Court may modify your rights by providing for payment of less than the full amount of your claim, by setting the value of the collateral securing your claim, and/or by setting the interest rate on your claim.

Debtor or Debtors (hereinafter called "Debtor") proposes this Chapter 13 Plan:

1. Submission of Income. Debtor submits to the supervision and control of the Chapter 13 Trustee ("Trustee") all or such portion of future earnings or other future income of Debtor as is necessary for the execution of this Plan.

2. Plan Payments and Length of Plan. Debtor will pay the sum of \$_____ per _____ to Trustee by [] Payroll Deduction(s) or by [] Direct Payment(s) for the applicable commitment period¹ of _____ months, unless all allowed claims in every class, other than long-term claims, are paid in full in a shorter period of time. The term of this Plan shall not exceed sixty (60) months.² See 11 U.S.C. §§ 1325(b)(1)(B) and 1325(b)(4). Each pre-confirmation plan payment shall be reduced by any pre-confirmation adequate protection payment(s) made pursuant to Plan paragraph 6(A)(i) and § 1326(a)(1)(C).³

The following alternative provision will apply if selected:

___ IF CHECKED, Plan payments will increase by \$_____ on _____, 20__ upon completion or termination of _____.⁴

3. Claims Generally. The amounts listed for claims in this Plan are based upon Debtor's best estimate and belief. An allowed proof of claim will be controlling, unless the Court orders otherwise. Objections to claims may be filed before or after confirmation.

4. **Administrative Claims.** Trustee will pay in full allowed administrative claims and expenses pursuant to §507(a)(2)⁵ as set forth below, unless the holder of such claim or expense has agreed to a different treatment of its claim.

(A). **Trustee's Fees.** Trustee shall receive a fee for each disbursement, the percentage of which is fixed by the United States Trustee.

(B). **Debtor's Attorney's Fees.** The total attorney fee as of the date of filing of the petition is \$ _____. The amount of \$ _____ was paid prior to the filing of the case. The balance of \$ _____ will be paid as follows: \$ _____ to be paid at the initial disbursement following confirmation of the plan. \$ _____ will be paid on a monthly basis until the fee is paid in full.

5. **Priority Claims.**

(A). **Domestic Support Obligations.**⁶

_____ None. If none, skip to Plan paragraph 5(B).

(i). Debtor is required to pay all post-petition domestic support obligations directly to the holder of the claim.

(ii). The name(s) and address(es) of the holder of any domestic support obligation are as follows.⁷ See 11 U.S.C. §§ 101(14A) and 1302(b)(6).

(iii). Anticipated Domestic Support Obligation Arrearage Claims

(a). Unless otherwise specified in this Plan, priority claims under 11 U.S.C. § 507(a)(1) will be paid in full pursuant to 11 U.S.C. § 1322(a)(2).⁸ These claims will be paid at the same time as claims secured by personal property, arrearage claims secured by real property, and arrearage claims for assumed leases or executory contracts.

_____ None; or

(a) Creditor (Name and Address)	(b) Estimated arrearage claim	(c) Projected monthly arrearage payment

(b). Pursuant to §§ 507(a)(1)(B) and 1322(a)(4), the following domestic support

obligation claims are assigned to, owed to, or recoverable by a governmental unit.⁹

_____ None; or

Claimant and proposed treatment:

(B). **Other Priority Claims (e.g., tax claims).** These priority claims will be paid in full, but will not be funded until after all secured claims, lease arrearage claims, and domestic support claims are paid in full.

(a) Creditor	(b) Estimated claim

6. Secured Claims.

(A). Claims Secured by Personal Property Which Debtor Intends to Retain.

(i). **Pre-confirmation adequate protection payments.**¹⁰ No later than 30 days after the date of the filing of this plan or the order for relief, whichever is earlier, the Debtor shall make the following adequate protection payments to creditors pursuant to § 1326(a)(1)(C). If the Debtor elects to make such adequate protection payments on allowed claims to the Trustee pending confirmation of the plan, the creditor shall have an administrative lien on such payment(s), subject to objection. If Debtor elects to make such adequate protection payments directly to the creditor, Debtor shall provide evidence of such payment to the Trustee, including the amount and date of the payment.

Debtor shall make the following adequate protection payments:

_____ directly to the creditor; or

_____ to the Trustee pending confirmation of the plan.

(a) Creditor	(b) Collateral	(c) Adequate protection payment amount

(ii). **Post confirmation payments.** Post-confirmation payments to creditors holding claims secured by personal property shall be paid as set forth in subparagraphs (a) and (b).

If Debtor elects to propose a different method of payment, such provision is set forth in subparagraph (c).

(a). **Claims to Which § 506 Valuation is NOT Applicable.**¹¹ Claims listed in this subsection consist of debts secured by a purchase money security interest in a vehicle for which the debt was incurred within 910 days of filing the bankruptcy petition, or, if the collateral for the debt is any other thing of value, the debt was incurred within 1 year of filing. *See* § 1325(a)(5). After confirmation of the plan, the Trustee will pay to the holder of each allowed secured claim the monthly payment in column (f) based upon the amount of the claim in column (d) with interest at the rate stated in column (e). Upon confirmation of the plan, the interest rate shown below or as modified will be binding unless a timely written objection to confirmation is filed and sustained by the Court. Payments distributed by the Trustee are subject to the availability of funds.

_____ None; or

(a) Creditor	(b) Collateral	(c) Purchase date	(d) Claim amount ¹²	(e) Interest rate ¹³	(f) Monthly payment ¹⁴

(b). **Claims to Which § 506 Valuation is Applicable.** Claims listed in this subsection consist of any claims secured by personal property not described in Plan paragraph 6(A)(ii)(a). After confirmation of the plan, the Trustee will pay to the holder of each allowed secured claim the monthly payment in column (f) based upon the replacement value as stated in column (d) or the amount of the claim, whichever is less, with interest at the rate stated in column (e). The portion of any allowed claim that exceeds the value indicated below will be treated as an unsecured claim. Upon confirmation of the plan, the valuation and interest rate shown below or as modified will be binding unless a timely written objection to confirmation is filed and sustained by the Court. Payments distributed by the Trustee are subject to the availability of funds.

_____ None; or

(a) Creditor	(b) Collateral	(c) Purchase date	(d) Replacement value ¹⁵	(e) Interest rate	(f) Monthly payment

(c). **Other provisions.**

(B). **Claims Secured by Real Property Which Debtor Intends to Retain.** Debtor will make all post-petition mortgage payments directly to each mortgage creditor as those payments ordinarily come due. These regular monthly mortgage payments, which may be adjusted up or down as provided for under the loan documents, are due beginning the first due date after the case is filed and continuing each month thereafter, unless this Plan provides otherwise. Trustee may pay each allowed arrearage claim at the monthly rate indicated below until paid in full. Trustee will pay interest on the mortgage arrearage if the creditor requests interest, unless an objection to the claim is filed and an order is entered disallowing the requested interest.

(a) Creditor	(b) Property description	(c) Estimated pre-petition arrearage	(d) Projected monthly arrearage payment ¹⁶

(C). **Surrender of Collateral.** Debtor will surrender the following collateral no later than thirty (30) days from the filing of the petition unless specified otherwise in the Plan. Any claim filed by a secured lien holder whose collateral is surrendered will be treated as unsecured. Any involuntary repossession/foreclosure prior to confirmation of this Plan must be obtained by a filed motion and Court order, unless the automatic stay no longer applies under § 362(c). Upon Plan confirmation, the automatic stay will be deemed lifted for the collateral identified below for surrender and the creditor need not file a Motion to Lift the Stay in order to repossess, foreclose upon or sell the collateral. Nothing herein is intended to lift any applicable co-Debtor stay, or to abrogate Debtor's state law contract rights.

(a) Creditor	(b) Collateral to be surrendered

7. **Unsecured Claims.** Debtor estimates that the total of general unsecured debt not separately classified in Plan paragraph 10 is \$_____. After all other classes have been paid, Trustee will pay to the creditors with allowed general unsecured claims a pro rata share of \$_____ or _____%, whichever is greater. Trustee is authorized to increase this dollar amount or percentage, if

necessary, in order to comply with the applicable commitment period stated in paragraph 2 of this Plan.¹⁷

8. Executory Contracts and Unexpired Leases. The following executory contracts and unexpired leases are assumed, and payments due after the filing of the case will be paid directly by Debtor, not through Trustee, as set forth below in column (c).

Debtor proposes to cure any default by paying the arrearage on the assumed leases or contracts in the amounts projected in column (d) at the same time that payments are made to secured creditors. All other executory contracts and unexpired leases of personal property are rejected upon conclusion of the confirmation hearing.¹⁸

_____ None; or

(a) Creditor	(b) Nature of lease or executory contract	(c) Payment to be paid directly by Debtor	(d) Projected arrearage monthly payment through plan (for informational purposes)

9. Property of the Estate. Property of the estate shall not vest in Debtor until the earlier of Debtor's discharge or dismissal of this case, unless the Court orders otherwise.

10. Other Provisions:

(A). **Special classes of unsecured claims.**¹⁹

(B). **Other direct payments to creditors.**

Date: _____, 20____.

Debtor

Debtor's Attorney

Debtor

ENDNOTES

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1. Section 1325(b)(1)(B) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the “Act”) provides that if the trustee or an unsecured creditor objects, the court may not approve the plan unless, as of the effective date of the plan, “the plan provides that all of the debtor’s projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.” “Applicable commitment period” is defined in § 1325(b)(4) and, depending on circumstances, may range from three to five years. The definition of “disposable income” has also been amended. “Disposable income” is now a calculation of current monthly income, less certain expenses, including those amounts “reasonably necessary” to be expended on behalf of the debtor and dependents. § 1325(b)(2). The determination of whether expenses are “reasonably necessary” is made by examining § 707(b)(2)(A) and (B) if the debtor has income in excess of the median family income of the applicable state depending on the number of persons in the household. § 1325(b)(3). “Median family income” is defined in § 101(39A). Statistics for median family income (in 1999 U.S. dollars) are available at www.abiworld.net/bankbill/median.html, but must be adjusted to account for the time of filing by using the consumer price index, available at <http://www.abiworld.net/bankbill/median.html#cpi>.
 2. *See* § 1322(d) (“The plan may not provide for payments over a period that is longer than 3 years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than 5 years.”)
 3. *See infra* notes 12 and 22.
 4. This permits a debtor to provide for an increase in plan payments upon the occurrence of some expected event, such as the termination of a lease or other direct payment. The plan does not mandate that a debtor provide for such a “step” increase in payments, but failure to do so may result in an objection to confirmation by the trustee. In addition, parties may wish to consider how or whether to structure a “step” increase in payments in light of new requirements that a debtor must provide the trustee with proof of income and expenses on an annual basis. *See* § 521(f)(4) and (g).
 5. The priority of expenses and claims has been changed under the new Act. Administrative expenses under § 503(b), and any fees and charges assessed against the estate under chapter 123 of Title 28, are now covered by § 507(a)(2).
 6. There are significant changes to the treatment of domestic support obligations under the new Act. “Domestic support obligation” is a newly defined term in § 101(14A).
 7. Because § 1302(b)(6) requires the Trustee to provide statutory notices to the holder of a domestic

support obligation (whether the debtor is current or not), the debtor will be required to provide the name and last known address for the holder of such a claim. Section 1302(d) requires, among other things, a trustee to provide written notice to the holder of a domestic support obligation of such claim and of the right of such holder to use the services of the State child support enforcement agency for assistance in collecting child support during and after the bankruptcy case.

8. There is an exception to the full payment requirement. Under newly created § 1322(a)(4), “notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor’s projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.” This provision is limited to “domestic support obligations that, as of the date of the filing of the petition are assigned by a spouse, former spouse, child of the debtor, or such child’s parent, legal guardian, or responsible relative to a governmental unit (unless such obligation is assigned voluntarily by the spouse, former spouse, child, parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt) or are owed directly to or recoverable by a governmental unit under applicable nonbankruptcy law.” § 507(a)(1)(B).

9. *See supra* note 8.

10. This section is new. Section 1326 has been amended significantly and now differentiates between plan payments made to the trustee and adequate protection payments made to a secured creditor. *See* § 1326(a)(1)(A) and (C). Specifically, § 1326(a)(1) provides that within 30 days of the date of filing of the plan or order for relief, whichever is earlier, the debtor shall commence making payments in the amount “proposed by the plan to the trustee” (§ 1326(a)(1)(A)) and “that provides adequate protection directly to a creditor holding an allowed claim secured by personal property to the extent the claim is attributable to the purchase of such property by the debtor for that portion of the obligation that becomes due after the order for relief” (§ 1326(a)(1)(C)). If a debtor makes any adequate protection payments directly to a creditor under § 1326(a)(1)(C), such payments are accounted for by “reducing the payments under [1326(a)(1)(A)] by the amount so paid and providing the trustee with evidence of such payment, including the amount and date of payment.”

11. This is one of the most significant changes to current law. Section 1325(a)(5)(b)(ii) requires that, with respect to a secured creditor, the plan provide that “the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim.” However, the new Act now provides under § 1325(a)(5) that “for purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910 day[s] preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.” In other words, any motor vehicle purchased within 910 days

of filing for the debtor's personal use is not subject to valuation under § 506. Likewise, any other personal property, such as appliances or electronics, purchased within 1 year is not subject to valuation under § 506.

12. Because "value" is not an issue for claims listed in Plan paragraph 6(A)(ii)(a), *see supra* note 11, the debtor should list the claim amount.

13. *See In re Till*, 541 U.S. 465 (2004).

14. Section 1325(a)(5)(B)(iii)(I) and (II) requires that a secured creditor receive payments in "equal monthly amounts" and that such payments "shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan."

15. Amended § 506(a)(2) specifies that in a chapter 13 case, the "value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined."

16. New § 1325(a)(5)(B)(iii)(I) provides that, with respect to an allowed secured claim, "if property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts."

17. *See supra* note 1.

18. Newly created § 365(p)(3) provides that in a chapter 13 case, "if the debtor is the lessee with respect to personal property and the lease is not assumed in the plan confirmed by the court, the lease is deemed rejected as of the conclusion of the hearing on confirmation. If the lease is rejected, the stay under section 362 and any stay under section 1301 is automatically terminated with respect to the property subject to the lease."

19. For each specially classified claim, the Debtor should identify the creditor, the nature and amount of the claim, the basis for the special classification, and the proposed treatment.