

Consumer Track

**Chapter 11 vs. Chapter 13:
An Individual Chapter 11 Is Not
Just a Chapter 13 on Steroids**

Donald L. Gaffney, Moderator

Snell & Wilmer, LLP; Phoenix

Hon. Laurel E. Davis

U.S. Bankruptcy Court (D. Nev.); Las Vegas

Scott D. Fleming

Armstrong Teasdale LLP; Las Vegas

Heather A. LaSalle

McGlinchey Stafford, PLLC; New Orleans

DISCOVER



Access circuit court opinion summaries





***From the Courts to You
within 24 Hours!***

With Volo:

- **Receive case summaries and view full decisions**
- **Automatically have opinions in your circuit delivered**
- **Search by circuit, case name or topic**
- **Access it FREE as an ABI member**

Be the First to Know with Volo
volo.abi.org

66 Canal Center Plaza • Suite 600 • Alexandria, VA 22314-1583 • phone: 703.739.0800 • abi.org

Join our networks to expand yours:   

© 2014 American Bankruptcy Institute All Rights Reserved.

**CHAPTER 11 FOR INDIVIDUALS v. CHAPTER 13:
A COMPARATIVE ANALYSIS**

**Heather A. LaSalle
McGlinchey Stafford PLLC
New Orleans, Louisiana**

© McGlinchey Stafford, PLLC 2014

SOUTHWEST BANKRUPTCY CONFERENCE 2014

EFFECT OF BANKRUPTCY FILING AND BANKRUPTCY BASICS		
	CHAPTER 11	CHAPTER 13
Automatic Stay	The filing of a bankruptcy petition (voluntary cases) and the order of relief entered by the court (involuntary cases) acts as a stay against, among other things, the commencement or continuation of any action or proceeding against the debtor, any act of enforcement against the debtor or property of the estate and any action to obtain possession or exercise control over property of the estate. <i>See</i> 11 U.S.C. § 362.	Same, except there are no involuntary chapter 13 cases.
Co-Debtor Stay	There is no co-debtor stay; however, a stay of actions against third parties may be imposed in very limited circumstances. <i>See</i> 11 U.S.C. § 105.	A creditor is prohibited from seeking to collect on consumer debts from a co-debtor (unless and until the co-debtor stay is lifted as to the co-debtor). <i>See</i> 11 U.S.C. § 1301.
Property of the Estate	All property of the debtor is included in the bankruptcy estate, including the debtor's interest in community property. <i>See</i> 11 U.S.C. § 541(a). Post-petition income and property of the debtor also is property of the estate. <i>See</i> 11 U.S.C. § 1115(a).	Same. Same. <i>See</i> 11 U.S.C. § 1306(a).
Debt Limits	None.	Only an individual with regular income that owes, on the petition date, noncontingent, liquidated unsecured debts of less than \$383,175(*) and noncontingent, liquidated secured debts of less than \$1,149,525(*) can be a chapter 13 debtor. <i>See</i> 11 U.S.C. § 109(e). (*) These amounts are adjusted every three years and are to be readjusted effective April 1, 2006.

AMERICAN BANKRUPTCY INSTITUTE

<p>Disposable Income</p>	<p>Disposable income must be calculated pursuant to 11 U.S.C. § 1325(b)(2) rather than through a means test deduction (used for higher income chapter 13 debtors); <u>Official Form 22B</u> must be filed. <i>See</i> 11 U.S.C. § 1129(a)(15). Note: this is not required in a corporate chapter 11 case.</p> <p>If a creditor objects to the plan, the individual debtor must pay all of his/her disposable income. <i>See</i> 11 U.S.C. § 1129(a)(15).</p>	<p>Debtors are required to submit their monthly disposable income to fund their plans. If the debtor’s income exceeds the applicable median for their state, then the debtor’s disposable income is determined in accordance with the means test of 11 U.S.C. § 707(b)(2) (A) and (B). <u>Official Form 22C</u> must be filed, which is more detailed than Official Form 22B required in an individual chapter 11 case. <i>See</i> 11 U.S.C. § 1325(b)(2).</p>
<p>Supervision of Debtor and Case</p>	<p>The United States Trustee and a chapter 11 trustee, if one is appointed.</p>	<p>The standing chapter 13 trustee.</p>
FINANCIAL FILINGS BY THE DEBTOR		
	CHAPTER 11	CHAPTER 13
<p>Statements and Schedules</p>	<p>All debtors must file a list of creditors, schedules of assets and liabilities, a schedule of current income and current expenditures, a statement of financial affairs, a certificate pursuant to 11 U.S.C § 342(b) (only if debts are primarily consumer debts), copies of employer payment advices, a statement of monthly net income and statement of reasonably anticipated increases in income or expenditures. <i>See</i> 11 U.S.C. § 521(a)(1).</p>	<p>Same. However, in chapter 13 cases, if these documents are not filed within 45 days of the filing of the petition, the case is “automatically” dismissed on the 46th day, which does not occur in chapter 11 cases. <i>See</i> 11 U.S.C. § 521(i)(1).</p>
<p>Disclosure Statement</p>	<p>The plan of reorganization must be accompanied by a disclosure statement, which must be approved by the court as including “adequate information” necessary for a “hypothetical investor” to make an informed judgment about the plan before acceptances to the plan are solicited. <i>See</i> 11 U.S.C. § 1125.</p>	<p>Not applicable; no disclosure statement is required. In a chapter 13 case, the standing chapter 13 trustee investigates the financial affairs of the debtor.</p>

SOUTHWEST BANKRUPTCY CONFERENCE 2014

	In a small business case, a separate disclosure statement is not required; the court may permit a combined plan and disclosure statement or the use of a form disclosure statement. The court also may approve the disclosure statement conditionally subject to the final approval at the confirmation hearing. <i>See</i> 11 U.S.C. § 1125(f) and Bankruptcy Rules 3016(b) and 3017.1.	
Financial Reports	Monthly reports of the debtor's post-petition business operations are required. Small business debtors must report their current and recent financial status, profitability, cash flow projections, comparisons of actual and projected receipts and disbursements, compliance with the post-petition requirements imposed by the Bankruptcy Code and Rules, filing of tax returns and payment of all administrative expenses and taxes.	Reports of increases in income and expenses may be required.
CREDITOR PROOFS OF CLAIM		
	CHAPTER 11	CHAPTER 13
Filing a Proof of Claim	A creditor may file a proof of claim; if the creditor fails to file the proof of claim, the debtor may file a proof of claim for the creditor. <i>See</i> 11 U.S.C. § 501(a) and (c).	Same.
Requirements for Filing Proofs of Claim	Creditor must file an Official Form B-10. Bankruptcy Rule 3001(c) and (d) require the following in an individual debtor case: <ul style="list-style-type: none"> • An itemized statement of the debt if the amount owed includes interest, fees, charges, etc. (in addition to the principal balance). The official form 	Same. Same.

AMERICAN BANKRUPTCY INSTITUTE

	<p>must be used for the itemization if the debt owed is secured by the debtor's principal residence. <i>See</i> Bankruptcy Rule 3001(c)(2)(A).</p> <ul style="list-style-type: none"> • The amount necessary to cure any default existing as of the petition date if a security interest in the debtor's property is claimed. <i>See</i> Bankruptcy Rule 3001(c)(2)(B). • An escrow statement generated at the time of the bankruptcy filing if the debt is for an escrowed home loan. <i>See</i> Bankruptcy Rule 3001(c)(2)(C). • If the creditor's claim is based on a writing (<i>e.g.</i>, a promissory note), a copy of the writing must be filed. <i>See</i> Bankruptcy Rule 3001(c)(1). • If a security interest is claimed in the debtor's property, evidence of the perfected security interest (<i>e.g.</i>, copy of recorded mortgage or deed of trust) must be filed. <i>See</i> Bankruptcy Rule 3001(d). 	
<p>Timeline for Filing Proof of Claim</p>	<p>Set by order of the court. The court shall fix and, for cause shown, may extend the time within which proofs of claim may be filed. <i>See</i> Bankruptcy Rule 3003(c)(3). Notwithstanding the expiration of such time, a proof of claim may be filed to the extent and under the conditions stated in Bankruptcy Rule 3002(c)(2), (c)(3), (c)(4), and (c)(6).</p>	<p>Set by rule. With limited exceptions, a proof of claim must be filed by a non-governmental creditor within 90 days after the first date set for the meeting of creditors. <i>See</i> Bankruptcy Rule 3002(c).</p>
<p>Treatment of Untimely Proofs of Claim</p>	<p>A creditor may be granted an extension of time to file a late proof of claim upon a showing of excusable neglect.</p>	<p>Untimely claims generally are not allowed unless approved by the court (based on meeting one of the exceptions provided for in Bankruptcy Rule 3002(c)).</p>

SOUTHWEST BANKRUPTCY CONFERENCE 2014

THE PLAN		
	CHAPTER 11	CHAPTER 13
Who May File a Plan and When	<p>In a small business case, only the debtor may propose a plan of reorganization in the first 180 days of the case. Thereafter, any party may file a plan. However, any plan proposed by an entity other than the debtor may not commit exempt property without the debtor's consent. All plans must be proposed by the 300th day. <i>See</i> 11 U.S.C. § 1121(e).</p> <p>In all other cases without trustee, only the debtor may file the plan in the first 120 days. If filed, the debtor has until the 180th day to solicit acceptances of the plan. If a trustee is appointed and no plan is filed in the first 120 days, or if the debtor fails to obtain the acceptance of the plan by the 180th day, any party in interest may propose a plan. <i>See</i> 11 U.S.C. § 1121(a), (c) and (d).</p> <p>These time periods may be extended for up to 18 months after the petition date (to file a plan) and 20 months after the petition date (for acceptances). <i>See</i> 11 U.S.C. § 1121(d)(2)(A)&(B).</p>	<p>Only the debtor may propose a payment plan. <i>See</i> 11 U.S.C. § 1321. The plan must be filed within 14 days of the filing of the petition. <i>See</i> Bankruptcy Rule 3015(b).</p>
Form of Plan Documents	<p>Except in small business cases, where there is an optional consent form (see Official Form 25A and 25B), there is no standard chapter 11 plan.</p> <p>The plan of reorganization must be accompanied by a disclosure statement, which must be approved by the court as including adequate information necessary for a hypothetical investor to make an informed judgment about the plan before acceptances to the plan are solicited. <i>See</i> 11 U.S.C. § 1125.</p>	<p>Typically a form plan is used in chapter 13 cases. 11 U.S.C. § 1322 sets forth the mandatory and permissive provisions for chapter 13 plans.</p> <p>Disclosure statements are not applicable in chapter 13.</p>

AMERICAN BANKRUPTCY INSTITUTE

	<p>In a small business case, a separate disclosure statement is not required; the court may permit a combined plan and disclosure statement or the use of a form disclosure statement. The court also may approve the disclosure statement conditionally subject to the final approval at the confirmation hearing. <i>See</i> 11 U.S.C. § 1125(f) and Fed. R. Bankr. P. 3016(b) and 3017.1.</p>	
<p>Plan Commitment Period</p>	<p>Without creditor objection, any time period. With creditor objection, at least five years. <i>See</i> 11 U.S.C. § 1129(a)(15).</p>	<p>Between three to five years; determined by the means test. A plan cannot exceed five years. <i>See</i> 11 U.S.C. §§ 707 and 1322(d).</p>
<p>Earliest Confirmation Date</p>	<p>The United States Trustee shall call a meeting of creditors to be held no fewer than 21 and no more than 40 days after the order for relief. <i>See</i> Bankruptcy Rule 2003(a). Nothing in a chapter 11 requires that the meeting occur or be completed prior to confirmation. If the debtor solicited pre-petition acceptances to a “prepackaged” plan, the court may dispense with the meeting of creditors. <i>See</i> 11 U.S.C. § 341(e).</p> <p>28 day notices are required both for a hearing on approval of the disclosure statement and for the deadline to object to disclosure statement; a 28 day notice is required for the confirmation hearing; and the deadline to object to confirmation must be given. <i>See</i> Bankruptcy Rule 2002(b).</p> <p>In a small business case, the hearing could take place as early as the 25th day of the case, if certain pre-conditions are met. The plan of a small business debtor be confirmed no later than 45 days after the plan is filed. <i>See</i> 11 U.S.C. § 1129(e).</p>	<p>The United States Trustee shall call a meeting of creditors to be held no fewer than 21 and no more than 50 days after the order for relief. <i>See</i> Bankruptcy Rule 2003(a).</p> <p>Parties must receive at least 21 days notice of the meeting. <i>See</i> Bankruptcy Rule 2002(a)(1).</p> <p>28 day notice of a confirmation hearing and deadline to object to confirmation must be given. <i>See</i> Bankruptcy Rule 2002(b).</p> <p>The confirmation hearing may take place no earlier than 20 days and no later than 45 days after the meeting of creditors. <i>See</i> 11 U.S.C. § 1324(b).</p> <p>The confirmation hearing could occur as early as the 40th day of the case, if certain pre-conditions are met.</p>

SOUTHWEST BANKRUPTCY CONFERENCE 2014

CONFIRMATION STANDARDS		
	CHAPTER 11	CHAPTER 13
Priority Debt	<p>Must be paid in full. <i>See</i> 11 U.S.C. § 1129(a)(9).</p> <p>Priority tax claims may be paid in installments. If so, interest must be paid, the installments must be regular and be over a period ending not later than five years after the order for relief. <i>See</i> 11 U.S.C. § 1129(a)(9)(C).</p> <p>Non-tax priority claims must be paid in full on the effective date of the plan unless the class votes to accept deferred cash payments through the plan. When deferred cash payments are made, interest must be paid. <i>See</i> 11 U.S.C. § 1129(a)(9)(B).</p> <p>Claims allowed under 507(a)(2) and (a)(3) must be paid in cash on the effective date, unless the holder of such a claim agrees otherwise. <i>See</i> 11 U.S.C. § 1129(a)(9)(A).</p> <p>Debtor must be current on all post-petition domestic support obligations in order to confirm a plan. <i>See</i> 11 U.S.C. § 1129(a)(14).</p>	<p>Must be paid in full; but if the plan has a term of five years and provides for the payment of all disposable income to creditors, the plan may provide for less than the full payment of a domestic support obligation assigned to, owed directly to or recoverable by a governmental unit. <i>See</i> 11 U.S.C. §§ 507(a)(1)(b), 1322(a)(4).</p> <p>No requirement that interest be paid on priority claims when they are paid in installments and there are no restrictions on the debtor's ability to pay these claims over the length of the plan. <i>See</i> 11 U.S.C. § 1322(a)(2).</p>
Voting and Objections	<p>Creditors with impaired claims may vote. A class of claims accepts the plan when 1/2 in number and 2/3 in dollar amount of the claims voting accept the plan. <i>See</i> 11 U.S.C. §§ 1124, 1126, 1129(a)(8).</p> <p>Creditors and other parties in interest may object to confirmation of the plan if it does not comply with the requirements of the Bankruptcy Code, primarily 11 U.S.C. §§ 1123 (contents of the plan), 1124 (impairment of claims</p>	<p>Creditors may not vote on the plan; but creditors can file objections pursuant to 11 U.S.C. § 1325.</p>

AMERICAN BANKRUPTCY INSTITUTE

	and interests), 1126 (acceptance of plan) and 1129 (confirmation of plan).	
Absolute Priority Rule	<p>If at least one impaired class of claims accepts the plan, it may be confirmed over the rejection of a class of unsecured claims if all claim holders in the rejecting class will be paid in full, or if no holder of a claim or interest junior to the rejecting class will receive or retain anything on account of such claim or interest, <i>except that in the case of an individual, the debtor may retain property included in the estate under section 1115. See 11 U.S.C. § 1129(b)(2)(B)(i)-(ii) (emphasis added).</i> This carve out allows individual debtors to retain post-petition earnings and income, except to the extent necessary to pay post-petition domestic support obligations.</p> <p>The 4th, 5th, 6th and 10th Circuits have held that the absolute priority rule applies to individuals in chapter 11 cases. <i>See In re Maharaj</i>, 681 F.3d 558 (4th Cir. 2012); <i>In re Lively</i>, 717 F.3d 406 (5th Cir. 2013); <i>Ice House America, LLC v. Cardin</i>, 2014 WL 1887583 (6th Cir. 5/13/14); <i>In re Stephens</i>, 704 F.3d 1279 (10th Cir. 2013). The remaining circuits either have held the opposite (<i>See In re Friedman</i>, 466 B.R. 471 (9th Cir. BAP 2012)), or have not specifically addressed the issue.</p>	Not applicable.
New Value Exception to the Absolute Priority Rule	<p>Requires equity holders to make a substantial and essential contribution in exchange for their continued ownership of the debtor.</p> <p>To be substantial, most courts require that that contribution (<i>i.e.</i>, new value) be (1) a present contribution, (2) freely</p>	Not applicable.

SOUTHWEST BANKRUPTCY CONFERENCE 2014

	<p>tradable in the market, and (3) money or money's worth.</p> <p>To be essential, the case law generally mandates that this new contribution be directly related to the success of the reorganized plan.</p>	
Feasibility	<p>To confirm a plan, the debtor must demonstrate that the plan satisfies 11 U.S.C. § 1129(a) by a preponderance of the evidence.</p> <p>Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor of the debtor under the plan, unless such liquidation or reorganization is proposed in the plan. <i>See</i> 11 U.S.C. § 1129(a)(11).</p>	<p>A debtor's resources are measured by the debtor's anticipated income over a three to five year time period, as well as assets that a debtor may sell or liquidate under 11 U.S.C. § 363 during the life of the plan with proceeds contributed to the plan. <i>See</i> 11 U.S.C. § 1325(a)(4).</p>
Good Faith	<p>The court shall confirm a plan only if it has been proposed in good faith and not any means forbidden by law. <i>See</i> 11 U.S.C. § 1129(a)(3).</p>	<p>Same. 11 U.S.C. § 1325(a)(3).</p>
Best Interests of Creditors Test	<p>Unless a claim holder makes an election under 11 U.S.C. § 1111(b), a chapter 11 plan must provide to each holder of a claim in an impaired class not less than the present value of the amount that would be paid on such a claim if the estate were liquidated under chapter 7. <i>See</i> 11 U.S.C. § 1129(a)(7).</p>	<p>A chapter 13 plan must provide to each allowed unsecured claim not less than the present value of the amount that would be paid on such claim if the estate were liquidated under chapter 7. <i>See</i> 11 U.S.C. § 1325(a)(4).</p>
Best Efforts	<p>For individual debtors, if the holder of an allowed unsecured claim objects to confirmation, the plan must pay unsecured claims in full or the value of the property distributed under the plan must be no less than the projected</p>	<p>If the holder of an allowed unsecured claim or the trustee objects to confirmation, the plan either must pay the unsecured claims in full or all projected disposable income must be applied to make payments to unsecured</p>

AMERICAN BANKRUPTCY INSTITUTE

	<p>disposable income of the debtor. <i>See</i> 11 U.S.C. § 1129(a)(15).</p> <p>Disposable income must be projected over at least a five year period following the first plan payment or over the entire period the plan provides for payments, if longer than five years. <i>See</i> 11 U.S.C. § 1129(a)(15).</p> <p>To project disposable income, the debtor’s “actual expenses,” provided they are reasonably necessary for the maintenance or livelihood of the debtor, are deducted from current monthly income. The presumed expenses deducted from current monthly income under 11 U.S.C. § 1325(b)(2) are not applicable. <i>See</i> 11 U.S.C. § 1129(a)(15)(B).</p>	<p>creditors. <i>See</i> 11 U.S.C. § 1325(b)(1).</p> <p>Disposable income projected over three years must be devoted to the payment of unsecured creditors if the debtor’s annualized current monthly income is less than the median family income. If it is more, the commitment period increases to five years. <i>See</i> 11 U.S.C. §§ 1322(d), 1325(b)(1)(B) and (b)(4).</p> <p>The method of projecting disposable income hinges on whether the debtor’s annualized current monthly income is greater than the median family income. If greater, the expenses deductible from the debtor’s current monthly income are limited by the presumed expenses used in the means test in 11 U.S.C. §§ 707(b)(2) and 1325(b)(3). If less than or equal to the median family income, actual expenses that are reasonable and necessary for the maintenance or livelihood of the debtor are deductible from current monthly income as under 11 U.S.C. § 1325(b)(2).</p>
SPECIAL TREATMENT OF CERTAIN CLAIMS		
	CHAPTER 11	CHAPTER 13
<p>Home Mortgages</p>	<p><u>Cure</u>: The plan may provide for the cure of any arrears on a home mortgage. <i>See</i> U.S.C. § 1123(a)(5)(G), (b) and (d).</p> <p><u>Modification</u>: Unmatured, unaccelerated claims secured only by the debtor’s home cannot be modified. <i>See</i> 11 U.S.C. § 1123(b)(5).</p> <p>The exception to the anti-modification</p>	<p><u>Cure</u>: The plan may provide for the cure of any arrears on a home mortgage. <i>See</i> 11 U.S.C. § 1322(b)(3).</p> <p>Chapter 13 debtors may cure defaults under a home mortgage unless and until the home is sold at a foreclosure sale. <i>See</i> 11 U.S.C. § 1322(c)(1).</p> <p><u>Modification</u>: Same. <i>See</i> 11 U.S.C. § 1322(b)(2).</p> <p>Notwithstanding the maturity of a home loan, the chapter 13 plan may provide for payment of a home loan</p>

SOUTHWEST BANKRUPTCY CONFERENCE 2014

	<p>rule in chapter 13 (11 U.S.C. § 1322(c)) is not applicable in chapter 11. As a result, a matured or accelerated home loan cannot be extended unless such is permitted by applicable non-bankruptcy law.</p>	<p>through the plan pursuant to 11 U.S.C. § 1325(c)(2).</p> <p>The anti-modification rule in chapter 13 does not apply to a junior lien that is wholly unsecured by any equity in the debtor’s principal residence. A wholly unsecured junior lien can be stripped off upon the completion of payments under the plan and the issuance of a discharge. If there is equity above the amount of the first mortgage, the junior lien is not wholly unsecured and cannot be stripped off.</p>
<p>Other Secured Claims</p>	<p>Nothing in chapter 11 prevents an individual debtor from stripping down an undersecured claim into its secured and unsecured parts, and treating each part as a separate and distinct claim. <i>See</i> 11 U.S.C. § 1129(b)(1)(A).</p> <p>Periodic payments to secured creditors need not be in equal installments. <i>But see</i> Secured Tax Claims below.</p>	<p>A chapter 13 plan may not bifurcate certain undersecured claims into secured and unsecured constituent parts. This prohibition extends to claims secured by a PMSI incurred within 910 days of the petition and secured by motor vehicles acquired for the personal use of the debtor or incurred during the one year period preceding the petition and secured by any other thing of value. <i>See</i> 11 U.S.C. § 1325(a)(5) hanging paragraph.</p> <p>If a secured claim is being paid through the plan in periodic payments, “such payments shall be in equal installments.” <i>See</i> 11 U.S.C. § 1325(a)(5)(B)(iii)(I).</p>
<p>Secured Tax Claims</p>	<p>Secured tax claims that otherwise would be unsecured tax claims under 11 U.S.C. § 507(a)(8) were they not secured must be paid in regular installments over a period ending not later than five years after the order for relief and “in a manner not less favorable than the most favored non-priority unsecured claim provided for by the plan.” <i>See</i> 11 U.S.C. § 1129(a)(9)(D).</p>	<p>Not applicable.</p>

AMERICAN BANKRUPTCY INSTITUTE

<p>Long Term Debt</p>	<p>There is no maximum duration of a chapter 11 plan. Short-term debt may be converted to long-term debt under a chapter 11 plan.</p>	<p>The only debt that may be treated as long-term debt is a debt that matures after the completion of the plan and is not modified by the chapter 13 plan (but cure is permissible).</p> <p>Provided a chapter 13 plan seeks only to cure an arrearage, payments on long-term debt may continue beyond the length of the plan. <i>See</i> 11 U.S.C. § 1322(b)(3) and (5).</p>
<p>Cosigned Debt</p>	<p>No comparable provision. However, all claims classified together must be substantially similar and, if the plan is not accepted by all classes, it must be fair and equitable. <i>See</i> 11 U.S.C. § 1122, 1129(b)(1).</p>	<p>A chapter 13 plan can separately classify cosigned consumer debt and pay it differently from other debt, provided that the claims classifications may not discriminate unfairly. <i>See</i> 11 U.S.C. § 1322(b)(1).</p>
<p>Student Loans</p>	<p>Student loan are generally not dischargeable in any bankruptcy unless the debtor can prove that they will suffer an “undue hardship” if the debts are not discharge. <i>See</i> 11 U.S.C. § 523(a)(8).</p> <p><i>In re Brunner</i>, 46 B.R. 752 (Bankr. S.D.N.Y. 1985), established a three-part test for bankruptcy discharge of a student loan: (1) debtor must establish “that she cannot maintain, based on current income and expenses, a ‘minimal’ standard of living for herself and her dependents if forced to repay the loans”; (2) debtor must show “that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans”; and (3) debtor has made good faith efforts to repay the loans. The <i>Brunner</i> test has been adopted by the Third, Seventh and Ninth Circuits. <i>See In re Faish</i>, 72 F.3d 298 (3d Cir. 1995);</p>	<p>Same.</p> <p>Same.</p>

SOUTHWEST BANKRUPTCY CONFERENCE 2014

	<p><i>Matter of Roberson</i>, 999 F.2d 1132 (7th Cir. 1993); <i>In re Pena</i>, 155 F.3d 1108, 1114 (9th Cir. 1998) (stating that “We adopt the <i>Brunner</i> test to be applied to determine the ‘undue hardship’ required to discharge student loans in bankruptcy pursuant to 11 U.S.C. § 523(a)(8)(B)”). Moreover, <i>Brunner</i> has been applied by bankruptcy courts and district courts in all circuits.</p>	
DURATION OF PLAN		
	CHAPTER 11	CHAPTER 13
Minimum Length	<p>There is no mandatory minimum chapter 11 plan length. However, if the holder of an allowed unsecured claim objects to a plan that does not pay unsecured claims in full, “the value of the property distributed under the plan [must be] not less than the projected disposable income of the debtor (as defined in 11 U.S.C. § 1325(b)(2)) to be received during the five year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.” <i>See</i> 11 U.S.C. § 1129(a)(15)(B).</p>	<p>There is no mandatory minimum chapter 13 plan length. But if the plan does not provide for payment of unsecured claims in full, and if the trustee or an unsecured creditor objects, the plan must run three to five years depending on whether annualized current monthly income exceeds state median family income. <i>See</i> 11 U.S.C. §§ 1322(d), 1325(b)(4)(A)(ii).</p>
Maximum Length	<p>There is no mandatory maximum chapter 11 plan length.</p> <p>In individual chapter 11 debtor cases, however, if an unsecured creditor objects, the debtor must commit all projected disposable income for at least five years or, if longer, “during the period for which the plan provides payments.” <i>See</i> 11 U.S.C. § 1129(a)(15)(B).</p> <p>Unless the court orders otherwise, an individual chapter 11 debtor is not entitled to a discharge until the</p>	<p>Absent good cause, a plan cannot require payments for more than three years if the debtor’s annualized current monthly income is less than the state median family income. <i>See</i> 11 U.S.C. § 1322(d)(2). If there is good cause to exceed three years, the plan’s length may not exceed five years. <i>See</i> 11 U.S.C. § 1322(d)(1)(C). If the debtor’s annualized current monthly income is equal to or more than the state median family income, a chapter 13 plan may not require payments for more than five years. <i>See</i> 11 U.S.C. § 1322(d)(1).</p>

AMERICAN BANKRUPTCY INSTITUTE

	“completion of all payments under the plan.” <i>See</i> 11 U.S.C. § 1141(d)(5)(A).	
When Payments Begin For the Debtor	Payments start <u>after</u> confirmation of the plan on the effective date of the plan.	Payments start <u>before</u> confirmation of the plan; the first plan payment is due 30 days after the filing of the petition or the plan, whichever is earlier. <i>See</i> 11 U.S.C. § 1326(a)(1).
MODIFICATION OF PLAN		
	CHAPTER 11	CHAPTER 13
Pre-Confirmation	Only the proponent of the plan may modify it prior to confirmation. <i>See</i> 11 U.S.C. § 1127(a).	Only the debtor may modify the plan prior to confirmation. <i>See</i> 11 U.S.C. § 1323(a).
Post-Confirmation	After confirmation, and whether or not the plan has been substantially consummated, the debtor, any trustee, the United States Trustee, or the holder of an unsecured claim may propose a modification. This right ends when the plan payments have been completed. <i>See</i> 11 U.S.C. § 1121(e).	After confirmation, the debtor, the trustee or the holder of an unsecured claim may propose a modification. This right ends when the plan payments have been completed. <i>See</i> 11 U.S.C. § 1329(a).
DISCHARGE		
	CHAPTER 11	CHAPTER 13
Timing	After completion of plan payments. <i>See</i> 11 U.S.C. § 1141(d)(5)(A). But the court may order otherwise under limited circumstances.	After completion of plan payments. <i>See</i> 11 U.S.C. § 1328(a).
Domestic Support Obligations	Individual chapter 11 debtor with a “domestic support obligation” is not required to certify that he/she is current on all required payments before a discharge is entered.	Debtor with a “domestic support obligation” must certify that he/she is current on all required payments before the discharge will be entered. <i>See</i> 11 U.S.C. § 1328(a).
Hardship Discharge	After confirmation but before completion of plan payments an individual debtor may request a	Same. <i>See</i> 11 U.S.C. § 1328(b).

SOUTHWEST BANKRUPTCY CONFERENCE 2014

	hardship discharge. <i>See</i> 11 U.S.C. § 1141(d)(5)(B).	
Super Discharge	Not available.	Available, but watered down. May discharge a debt for willful and malicious injury (11 U.S.C. § 523(a)(6)), as well as domestic nonsupport obligations (11 U.S.C. § 523(a)(15)). But 11 U.S.C. § 1328(a)(4) excepts from discharge restitution/damages awarded in a civil action against the debtor as a result of “willful or malicious injury” that caused personal injury or death.
CONSEQUENCES WHEN CASE IS UNSUCCESSFUL		
	CHAPTER 11	CHAPTER 13
Small Business Debtor Exception to Automatic Stay	<p>The automatic stay does not apply to cases filed by a small business debtor if the debtor was a debtor in an earlier small business case that remains pending, or it was previously a debtor in a small business case that was dismissed or had a plan confirmed within the two years preceding the latest petition.</p> <p>Also, an entity that acquires substantially all of a small business having a petition dismissed or plan confirmed in the preceding two years cannot have the benefit of the automatic stay in its own bankruptcy case unless it proves by a preponderance of the evidence that the acquisition was not for the purpose of evading 11 U.S.C. § 362(n).</p>	Not applicable.
One Case Pending In a Prior Year	If an individual was a debtor in a prior case under chapter 7, 11, or 13 and that prior petition was dismissed, and if the prior petition was pending within one year of the new petition, the automatic stay with respect to a debt, property securing such debt, or any lease	Same.

AMERICAN BANKRUPTCY INSTITUTE

	<p>terminates as to the debtor (but not the estate) on the 30th day after the filing of a new case. <i>See</i> 11 U.S.C. § 362(c)(3)(A). However, 11 U.S.C. § 362(c)(3)(A) does not apply if the new case was filed under a chapter other than a chapter 7 after the prior case was dismissed. <i>See</i> 11 U.S.C. § 707(b).</p> <p>Any party in interest may file a motion to extend the stay as to all or some creditors. Such a request must be made with notice and hearing within 30 days of the filing of the petition. <i>See</i> 11 U.S.C. § 362(c)(3)(B).</p>	<p>Same.</p>
<p>Two Cases Pending in a Prior Year</p>	<p>When an individual debtor has filed two or more prior cases that were pending during the previous year, but were dismissed, the automatic stay never goes into effect. <i>See</i> 11 U.S.C. § 362(c)(4)(A). There is an exception for a case “refiled” under 11 U.S.C. § 707(b).</p> <p>A party in interest may request that the court impose the automatic stay despite the filing and dismissal of multiple prior petitions. The request must be made with notice and a hearing and must be made within 30 days of the filing of the petition. <i>See</i> 11 U.S.C. § 362(c)(4)(B).</p>	<p>Same.</p> <p>Same.</p>
SPECIAL NOTICE REQUIREMENTS FOR THE RESIDENTIAL HOME LOANS		
	CHAPTER 11	CHAPTER 13
<p>Notices for Claims Secured by a Security Interest in Debtor’s Principal Residence</p>	<p>Not applicable in chapter 11 cases.</p>	<p>Creditors in a chapter 13 case within claims secured by a security interest in the debtor’s principal residence must:</p> <ol style="list-style-type: none"> 1) Provide notice of any payment change at least 21 days before the new payment amount is due (<i>See</i> Bankruptcy Rule 3002.1(b)); 2) Provide notice of post-petition fees and costs that the holder of the claim asserts are recoverable against the

SOUTHWEST BANKRUPTCY CONFERENCE 2014

		<p>debtor or their property within 180 days after the post-petition fees and costs are incurred (<i>See</i> Bankruptcy Rule 3002.1(c)); and</p> <p>3) Provide a response to the trustee's notice of final cure payment per Bankruptcy Rule 3002.1(f) within 21 days after service (even if the response is that the trustee's notice is correct) (<i>See</i> Bankruptcy Rule 3002.1(g)).</p>
--	--	--

AMERICAN BANKRUPTCY INSTITUTE

CSD 1152A [7/19/14]

**U.S. Bankruptcy Court
Southern District of California
325 West F Street
San Diego, CA 92101**

**INSTRUCTIONS FOR USING STANDARD-FORM PLAN AND DISCLOSURE STATEMENT
FOR INDIVIDUAL CHAPTER 11 DEBTORS**

1. GENERAL PRINCIPLES

The standard-form combined plan and disclosure statement (the “Plan”) for individual cases was adopted by the court to reduce Debtor’s legal expense, and to provide creditors the clearest possible explanation of how their claims will be treated. Both of these goals are furthered by a plan that is short, simple, and clear. These goals should at all times guide Debtor in completing the Plan. Use of the Plan is not required, but is strongly encouraged by the judges of the Southern District. Any questions about whether use of the Plan is appropriate in a particular case can be raised at a Chapter 11 status conference.

A. Do Not Include Unnecessary Provisions.

The Plan is a word processing document that contains many instructions, blanks, alternate forms of language, and optional provisions that will not be used in every case. Only the language that is needed and appropriate in the particular case should be included in the filed Plan. In this regard, this Plan is different from many standard-form Chapter 13 plans, where Debtor typically reproduces all provisions of the plan and inserts "N/A" (not applicable) where appropriate.

Thus, for example, if Debtor does not intend to create a separate convenience class (Class 2A) for small general unsecured claims, Debtor should not include in the filed Plan the standard-form language designating and providing for such a class. Similarly, the Plan provides language for eight different ways to treat secured claims. Debtor should reproduce only those treatment provisions actually used in the Plan and renumber them as appropriate.

There are four exceptions to this general rule: (1) Debtor should always reproduce the standard-form language regarding general unsecured claims in Section 4(b); (2) Debtor should always reproduce the standard-form language regarding administrative and priority claims in Sections 1 and 2; (3) Debtor should always reproduce the standard-form language regarding executory contracts in Section 5; and (4) Debtor should always reproduce the standard-form language regarding lawsuits in Section 8(f). In each instance, Debtor should insert “none” where applicable.

B. List Each Secured Creditor by Name.

The Plan must list each secured creditor by name, and state with specificity what each creditor will or is likely to receive in respect of its claim — how often payments will be made, when payments will start, how many payments will be made, and the amount of each payment.

C. Certification Regarding Alteration of Standard-Form Language.

A major advantage of any standard form is that parties and the court will become familiar with its language and will learn to find quickly and easily the information they seek. This advantage is lost, and creditors and the court can be misled, if Debtor alters the language of the Plan and does not alert creditors and the court to the changes made. Thus, the Plan includes a Certification Regarding Alteration of Standard-Form Language, which must be completed and signed by Debtor or Debtor's attorney. The certificate requires Debtor to list the page and line in which the standard-form language has been altered in any way. (Merely filling in the blanks and boxes in the Plan does not constitute an alteration.) **The certificate must be completed very carefully. Any failure to list a material alteration in the standard-form language could be viewed as an attempt to mislead the court.**

D. Standard of Compliance Required.

One of the goals of the Plan is clarity for creditors and the court, and this goal will not be fulfilled unless the form is completed in full compliance with these instructions. Debtor must take care that unnecessary standard-form language is not included in the Plan, that classes are numbered appropriately, that cross references are accurate, and that all required information is provided and is set forth in a manner that is neat and clear. The court will review the Plan carefully before it is submitted to creditors, and will require Debtor to modify and resubmit the plan as necessary to achieve full compliance with these instructions.

E. Procedures Regarding Use of Form, Approval of Disclosure Statement, and Confirmation Hearing.

1. Determining when to use this Plan. If the judge does not affirmatively suggest that Debtor use the Plan, Debtor may inquire at any Chapter 11 status conference whether its use is appropriate in that case.

2. Separate disclosure hearing or conditional approval of disclosure. Debtor may inquire at a Chapter 11 status conference whether Debtor should present the completed form to the court for conditional approval of the adequacy of disclosure, with final approval of disclosure to be considered at the confirmation hearing, or whether Debtor should set a separate hearing regarding the adequacy of disclosure. For notice requirements, see Fed. R. Bankr. Proc. 2002(b), 3017(a).

3. Schedule for confirmation hearing. At the time the court gives approval or conditional approval regarding the adequacy of disclosure, the court will set deadlines for ballots and objections to confirmation and a date for the confirmation hearing. At this time, Debtor should fill in those times and dates in the third paragraph of the Introduction to the Plan and should rename the Plan as noted on page 4 of these instructions. For notice requirements, see Fed. R. Bankr. Proc. 2002(b), 2002(d), 3020(b)(2).

4. Procedure regarding contested confirmation hearing. At the hearing at which the court gives approval or conditional approval regarding the adequacy of disclosure, Debtor may wish to discuss with the court how and when the court will resolve objections to confirmation that require an evidentiary hearing.

AMERICAN BANKRUPTCY INSTITUTE

CSD 1152A [7/19/14]

2. DETAILED SECTION-BY-SECTION INSTRUCTIONS HOW TO DOWNLOAD THE PLAN

The Plan is available as a Microsoft Word Document (.docx) and may be downloaded from the United States Bankruptcy Court, Southern District of California's website at: http://www.casb.uscourts.gov/html/individual_forms.htm.

After downloading the Plan, open the document in your word processing application.

Font Type and Size. Debtor should not change the font type or font size of the Plan. The body text should be in 11-point Arial font and the contents of all tables and exhibits should be in 10-point Arial font.

NAMING THE PLAN

Caption. Insert the full name of each Debtor exactly as it appears on the petition.

Case Number. Insert the full 7-digit case number followed by the initials of the judge assigned to the case and the number 11, for example, 14-87654-JJ11.

Title. The title of the Plan contains three optional terms: proposed, conditionally approved, and approved. The initial Plan should be titled "Proposed Combined Plan of Reorganization and Disclosure Statement" followed by the current date. All other alternative terms should be deleted from the title. If Debtor files a modified Plan, the title should remain unchanged, except the date should be updated to the current date. Debtor should not include "Amended" or "First Amended" in the title. Once the court either conditionally approves or approves the Plan, Debtor should file a new Plan titled "Combined Plan of Reorganization and [Approved] or [Conditionally Approved] Disclosure Statement" followed by the current date. All other alternative terms should be deleted from the title.

Page Number. The footer should contain a page number on each page.

INTRODUCTION

The second paragraph of the Introduction to the Plan contains several alternate forms of language. Debtor should include only the appropriate form of language and delete those that are not applicable.

The third paragraph of the Introduction contains a table that shows the various classes of creditors. Secured creditors are in Class 1 and the treatments of their claims are discussed in Section 3 of the Plan. Each secured creditor has its own subclass. Unsecured creditors are in Class 2 and the treatments of their claims are discussed in Section 4 of the Plan.

The fourth paragraph of the Introduction contains two dates: (1) the date that ballots and objections to the Plan are due; and (2) the date of the hearing on confirmation. The initial Plan should leave both dates blank. Once disclosure is either conditionally approved or approved, the court will provide dates to include in this paragraph.

CSD 1152A [7/19/14]

The fifth paragraph of the Introduction lists all exhibits attached to the Plan. Not all exhibits are required, see Exhibit Section below, and Debtor may include additional exhibits. If Debtor deletes an exhibit from the Plan, Debtor should also delete the language in the Introduction referencing the exhibit, and should renumber the remaining exhibits in that paragraph. If Debtor includes an additional exhibit to the Plan, Debtor should include a brief description of the exhibit in the Introduction, and should renumber the remaining exhibits accordingly.

SECTION 1: TREATMENT OF ADMINISTRATIVE CLAIMS

A. Professional Fees. Include the name, role, and estimated amount of payment for each professional, including Debtor's attorney. If the professional was paid a pre-petition retainer, Debtor should only insert the estimated balance of fees owed to the professional on the Effective Date and not the total fees requested by the professional. For example, if Debtor estimates \$10,000 of attorney's fees and paid attorney a \$3,000 pre-petition retainer, the estimated amount would be \$7,000. This is a mandatory category that Debtor should not delete. If Debtor does not owe any professional fees, Debtor should write "none" in the first row under the column Name and Role of Professional.

This category also includes alternative payment terms. Debtor should select the appropriate payment term and delete those that are not applicable.

B. Other Administrative Claims. Include the name and estimated claim amount for each claim entitled to priority under § 503(b). Do not include professionals in this category. This is a mandatory category that Debtor should not delete. If Debtor does not have other administrative claims, Debtor should write "none" in the first row under the column Name of Administrative Creditor.

SECTION 2: TREATMENT OF PRIORITY CLAIMS

A. Tax Claims. Include all tax claims entitled to priority under § 507(a)(8). Debtor should make sure that all of these claims will be paid in full within 5 years after the petition date. See § 1129(a)(9)(C)(ii). This is a mandatory category that Debtor should not delete. If Debtor does not have any tax claims entitled to priority under § 507(a)(8), Debtor should write "none" in the first row under the column Name of Creditor.

SECTION 3: TREATMENT OF SECURED CLAIMS

Section 3 of the Plan contains eight different options for the treatment of secured claims. The purpose of providing standard language for alternate treatments is to make it easier for Debtor to invoke those various treatments, and to make it easier for creditors to understand how their claims are being treated, by carefully defining each treatment and by making sure each treatment addresses all details required under that treatment.

A. When Each Treatment Should Be Used.

Debtor to Make Regular Payments and Pay Arrears Over Time (Section 3(a)). Use when Debtor intends to keep the property, but is in default, and intends to cure the pre-petition default over the term of the Plan and make all post-petition payments as they come due, so that the loan is reinstated according to its original terms when the plan is completed.

CSD 1152A [7/19/14]

Debtor to Cure Default and Obligation to Be Reinstated (Section 3(b)). Use when Debtor intends to keep the property, but is in default, and intends to cure the pre-confirmation default and make all post-confirmation payments as they come due, so that the loan is reinstated according to its original terms as of the date designated in the Plan.

Creditors' Rights Remain Unchanged (Section 3(c)). Use when Debtor intends to keep the property, but is not in default and intends to make all post-petition payments as they come due. The secured creditor is not prevented either by the plan or the automatic stay from enforcing all of its rights under non-bankruptcy law.

Debtor to Reduce Lien to Value of Collateral and Pay over Time (Section 3(d)). Use when the amount owed to the secured creditor exceeds the value of its collateral, and Debtor intends to pay as a secured claim the amount equal to the value of creditor's collateral over time (which may extend beyond completion of the Plan) according to the terms specified in the Plan (which may provide for an interest rate, maturity date, and amortization schedule different from the original loan). Any remaining amount due should be treated as a general unsecured claim in Section 4 of the Plan.

Debtor to Strip Off Lien Entirely (Section 3(e)). Use when the amount of liens (including secured real property tax liens) senior to that of the creditor exceed the value of the property, and when Debtor intends to keep the property without paying any amount to the affected creditor as a secured claim. The total amount of the claim should be treated as a general unsecured claim in Section 4 of the Plan.

Debtor to Adjust Terms and Pay Amount Due in Full over Time (Section 3(f)). Use when Debtor intends to pay the amount due in full, but on terms different from the original loan (e.g. different interest rate, different maturity date, or different amortization schedule).

Property to Be Surrendered (Section 3(g)). Use when Debtor does not intend to keep the property, and intends to surrender the property in full satisfaction of the secured claim. The secured creditor is not prevented either by the plan or the automatic stay from enforcing all of its rights under non-bankruptcy law.

Property to Be Sold (Section 3(h)). Use when Debtor intends to sell the property following confirmation of the Plan and pay the secured claim from proceeds of the sale. Debtor should reproduce the standard-form language regarding payments pending sale, and should insert "none" if no such payments are to be made.

B. Establishing the Value of Property

Value may be established by:

1. A declaration by Debtor or valuation expert stating the basis for the opinion of value;
2. A stipulation of parties; or
3. A motion filed in advance of the confirmation hearing.

CSD 1152A [7/19/14]

C. How to Complete the Form.

1. Delete Unnecessary Provisions. Debtor should include only those treatment options for secured claims that are appropriate for the particular case, and should delete those treatment options that are not applicable. See Section 1(B) above. For example, if Debtor has two properties and intends to surrender one property and pay the full amount of the other property over time, then Debtor would include only the following treatment options in Section 3 of the Plan: **Property to be Surrendered**; and **Debtor to Pay Amount Due in Full Over Time**. Debtor would delete the text and tables regarding all other treatments in Section 3 of the Plan.

2. Separate Classes. Each secured claim should be in a separate class. The first class in Section 3 should be numbered "1A". Each additional class in Section 3 should be numbered using a "1" followed sequentially by the next letter in the alphabet. For example, if Debtor has four secured claims in Section 3, the classes would be "1A", "1B", "1C", and "1D".

Debtor should place each secured claim in a separate class, even if Debtor proposes the same treatment option for more than one secured claim. For example, if Debtor intends to surrender two properties, the first property should be assigned class "1A" and the second property should be assigned class "1B". Debtor should not classify both properties as class "1A".

3. Use Current Information. Debtor should use the most current information available about each claim when preparing the Plan. If Debtor is required to file a modified Plan, Debtor should look at each filed proof of claim to verify that the most current information is included in the Plan.

SECTION 4: TREATMENT OF GENERAL UNSECURED CLAIMS

Class 2A. Small Claims. Debtor may create a separate class for unsecured creditors holding small claims, who will receive a single payment on the Effective Date of the Plan. Creation of a separate class for small claims is optional. Debtor should delete the text and table for this class if the Plan does not create a convenience class. If Debtor does not create a convenience class, Debtor should retitle Class 2B as "**Class 2. General Unsecured Claims**". This class includes alternate payment terms. Debtor should select the appropriate payment term and delete those that are not applicable.

Class 2B. Other General Unsecured Claims. General unsecured claims include allowed claims of creditors whose executory contracts or unexpired leases are being rejected under the Plan and deficiency claims of secured creditors. This is a mandatory class: Debtor should not delete this class. If Debtor does not have any general unsecured claims, Debtor should write "none" in the first row under the column Name of Creditor.

The standard-form language contains two options for specifying the amount creditors are to receive. Debtor should select and complete one of the following options and should delete the other:

Percent Plan. Use when Debtor intends to pay each creditor a certain percentage of its allowed claim.

AMERICAN BANKRUPTCY INSTITUTE

CSD 1152A [7/19/14]

Pot Plan. Use when Debtor intends to pay a sum certain amount to the class collectively and each creditor is paid a pro-rata share of its allowed claim.

Other Arrangements. Use when Debtor intends to pay creditors pursuant to some other arrangement.

SECTION 5: EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Executory Contracts/Unexpired Leases Assumed. Include all executory contracts and unexpired leases that Debtor intends to assume and perform fully. Debtor will continue with all obligations to counterparties in this category as they come due under the contract. This is a mandatory category that Debtor should not delete. If Debtor does not have any executory contracts or unexpired leases to assume, Debtor should write “none” in the first row under the column Name of Counter-Party. This category has alternate payment terms for pre-petition arrears. Debtor should select the appropriate payment term and delete those that are not applicable.

B. Executory Contracts/Unexpired Leases Rejected. Debtor will not continue with obligations to creditors in this category as they come due under the contract. Any claim arising from rejection of an executory contract or unexpired lease is included in Class (2). This is a mandatory category that Debtor should not delete.

SECTION 8: GENERAL PROVISIONS

B. Disputed Claims. Debtor must list in Section 8 of the Plan all disputed creditors. This plan provision is mandatory. Debtor should not delete this provision or table from the Plan. If Debtor does not have any disputed creditors, Debtor should write “None” in the first row under the column for Name of Creditor.

C. Cramdown. The Debtor’s ability to “cramdown” the Plan over the objections of creditors may be affected, in part, by how the Bankruptcy Court rules on the applicability of the “Absolute Priority Rule” in the case. The Absolute Priority Rule provides, in essence, that junior claimants, including the Debtor, are barred from taking anything under the Plan unless senior claimants are paid in full. Currently, the law as to whether the Absolute Priority Rule applies to individual Chapter 11 debtors is unsettled. The disclosure statement must discuss the potential application of the Absolute Priority Rule in individual Chapter 11 cases.

F. Lawsuits and Other Claims for Relief. Include all pending or potential lawsuits regarding fraudulent conveyances, voidable preferences, or other claims for relief that Debtor believe exist against a party. This plan provision is mandatory, Debtor should not delete this provision or table from the Plan. If Debtor does not have any potential lawsuits, Debtor should write “none” in the first row under the column Name of Party.

Payments by Third Parties. Debtor should include a new paragraph in Section 8 to specify the name, relationship to Debtor, and the payment amount that any third party will make to assist Debtor in funding the Plan. These payments should also be reflected on Exhibit 4 as an additional source of income.

CSD 1152A [7/19/14]

EXHIBITS TO THE PLAN

Exhibit 1 - Events that Led to Bankruptcy, Significant Events that Have Occurred During the Bankruptcy and Summary of Plan. This exhibit is mandatory. Debtor should use this exhibit to explain the circumstances that led to the filing, the extent to which those circumstances have changed, major events in the case, and how the plan addresses the financial problem that led to the filing. The statement should be informative rather than argumentative.

Exhibit 2 - Liquidation Analysis: What Creditors Would Receive if the Case Were Converted to a Chapter 7. This exhibit is mandatory and is intended to help creditors determine whether they will receive as much under the Plan as they would in a Chapter 7 liquidation. Debtor should expand and complete the tables to address each property, as necessary.

Exhibit 3 – Summary of Monthly Operating Reports. This exhibit is mandatory and is intended to help creditors determine whether Debtor's Plan is feasible.

Exhibit 4 – Projected Post-Confirmation Monthly Income & Expenses. This exhibit is mandatory and is intended to help creditors determine whether Debtors are contributing all of their disposable income to the Plan and whether the Plan is feasible. The Debtor must provide projected income & expenses for each year of their proposed Plan. If Debtor owns a business, Debtor should attach a statement showing the projected net business income.

Exhibit 5 - Effective Date Feasibility. This exhibit is mandatory and is intended to help creditors determine whether Debtor will be able to make the effective date payments called for in the Plan.

Exhibit 6 - Investment Property Analysis. This exhibit is mandatory if Debtor owns investment property. Debtor should separate investment property according to positive and negative monthly cash flow. All properties generating positive monthly cash flow should be included under the heading **Properties with Positive Monthly Cash Flow** and the subtotal of these properties should be calculated on Line A (insert this amount on Exhibit 3, Income, Line 8). All properties generating negative monthly cash flow should be included under the heading **Properties with Negative Monthly Cash Flow** and the subtotal of these properties should be calculated on Line B (add this amount on Exhibit 3, Expenses, Line 16). Debtor should add additional tables as necessary for each additional investment property, and renumber the tables as appropriate.

Additional Exhibits. If necessary, Debtor may attach additional exhibits to the Plan.

Numbering Exhibits. If Debtor includes additional exhibits following Exhibit 6, then Debtor should sequentially number each additional exhibit and also include a brief description of the exhibit in the fourth paragraph of the Introduction to the Plan.