

Consumer Track

**Not Just Another Infomercial:
The Pros and Cons of the
Proposed Chapter 13 Plan Form
and Rules Changes**

Richard H. Thomson, Moderator

Clark & Washington, LLC; Atlanta

Hon. Susan D. Barrett

U.S. Bankruptcy Court (S.D. Ga.); Augusta

Beverly M. Burden

Chapter 13 Trustee; Lexington, Ky.

S. Ryan Starks

Phelan Hallinan & Jones, LLC; Atlanta



AMERICAN
BANKRUPTCY
INSTITUTE

DISCOVER



**interactive
code&rules**

law.abi.org

Start Your Research Here






***Your Interactive Tool
Wherever You Go!***

With ABI's Code & Rules:


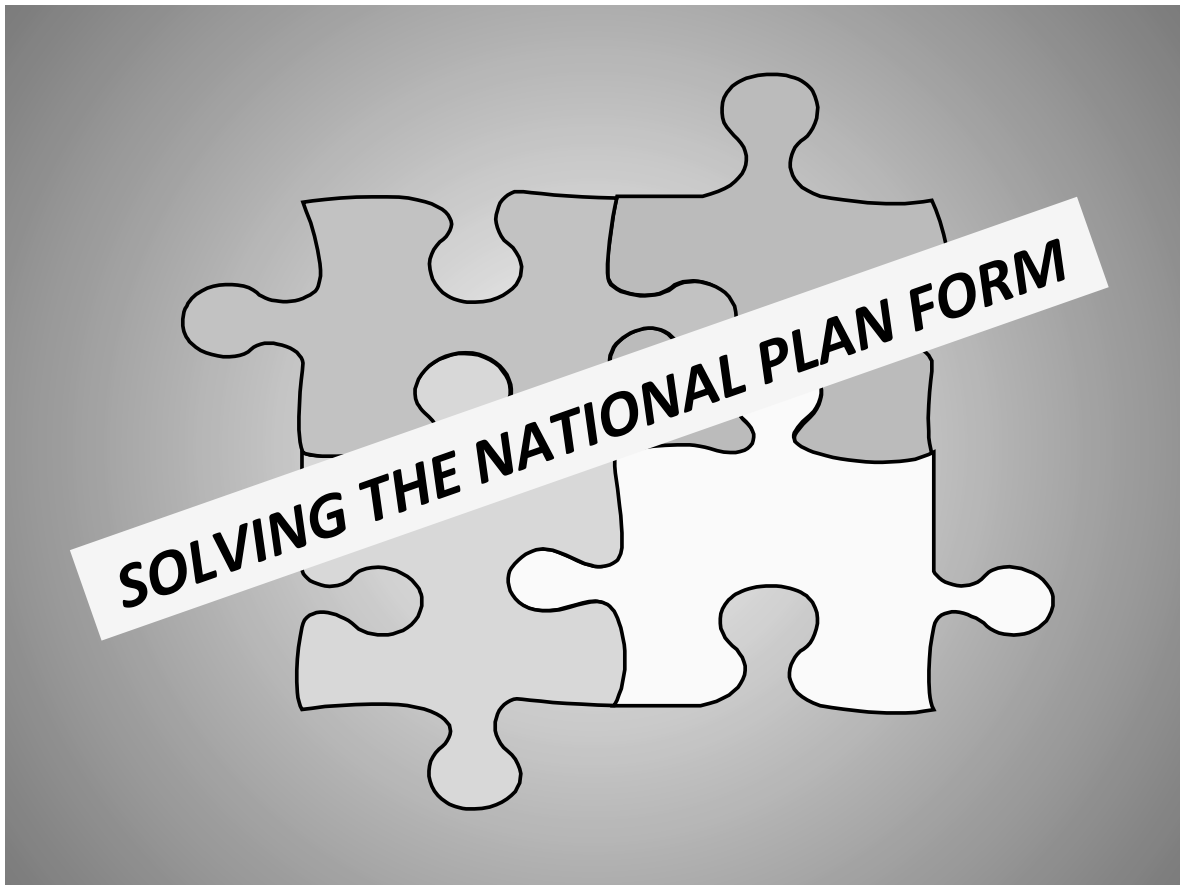
- **Search for a specific provision of the Bankruptcy Code and related Rules**
- **Access links to relevant case law by section (provided by site partner, LexisNexis®)**
- **Retrieve a Code section or case summary – even on your mobile device**
- **Personalize it with bookmarks and notes**
- **Receive it FREE as an ABI member**

Current, Personalized, Portable
law.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.



HYPOTHETICAL #1

Mr. and Ms. Smith jointly own their home worth \$100,000. GMAC Mortgage holds the first-priority mortgage in the amount of \$125,000, with a monthly payment of \$975. First Fidelity Bank, N.A., holds the second-priority mortgage in the amount of \$50,000, with a monthly payment of \$450. Both mortgages are 3 months behind. Based on the value, you advise the clients that they should “cure and maintain” the first mortgage and strip off the second.

You must check the box in Part 1 “The plan seeks to limit the amount of a secured claim, as set out in Part 3, Section 3.2, which may result in a partial payment or no payment at all to the secured creditor.” Failure to check the box renders the plan provision ineffective.

Part 1: Notices

To Debtors: This form sets out options that may be appropriate in some cases, but the presence of an option on the form does not indicate that the option is appropriate in your circumstances or that it is permissible in your judicial district. In the following notice to creditors, you must check each box that applies.

To Creditors: Your rights may be affected by this plan. Your claim may be reduced, modified, or eliminated. You should read this plan carefully and discuss it with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you oppose the plan's treatment of your claim or any provision of this plan, you or your attorney must file an objection to confirmation at least 7 days before the date set for the hearing on confirmation, unless otherwise ordered by the Bankruptcy Court. The Bankruptcy Court may confirm this plan without further notice if no objection to confirmation is filed. See Bankruptcy Rule 3015. In addition, you may need to file a timely proof of claim in order to be paid under any plan.

The following matters may be of particular importance to you. Boxes must be checked by debtor(s) if applicable.

- The plan seeks to limit the amount of a secured claim, as set out in Part 3, section 3.2, which may result in a partial payment or no payment at all to the secured creditor.
- The plan requests the avoidance of a judicial lien or nonpossessory, nonpurchase-money security interest as set out in Part 3, section 3.4.
- The plan sets out nonstandard provisions in Part 9.

Service – Rule 3012(b) requires that the plan be served in accordance with Rule 7004 – therefore, First Fidelity Bank, N.A., must be served pursuant to Rule 7004(h) by certified mail addressed to an officer of the institution (unless an appearance has been made by an attorney).

Although requests for valuation may be done by motion, in a claim objection, or in a chapter 12 or 13 plan, many courts might still require an adversary proceeding or a combination of “motion and plan” or “adversary proceeding and plan.”

HYPOTHETICAL #2

Mr. and Ms. Smith jointly own their home. GMAC Mortgage holds the first-priority mortgage in the amount of \$125,000, with a monthly payment of \$975. First Fidelity Bank, N.A., holds the second-priority mortgage in the amount of \$50,000, with a monthly payment of \$450. Both mortgages are 3 months behind. When they first came in they thought their house was worth \$175,000. Based on that figure, you filed a chapter 13 plan that provided to “cure and maintain” both mortgages. A week after their 341 meeting, however, they returned with an appraisal showing the value is \$125,000. They also want to add additional, unsecured creditors. You now file an amended plan (to strip the second mortgage lien) and amended Schedule F (to add the creditors).



You must check the box in Part 1 “The plan seeks to limit the amount of a secured claim, as set out in Part 3, Section 3.2, which may result in a partial payment or no payment at all to the secured creditor.” Failure to check the box renders the plan provision ineffective.

Part 1: Notices

To Debtors: This form sets out options that may be appropriate in some cases, but the presence of an option on the form does not indicate that the option is appropriate in your circumstances or that it is permissible in your judicial district. In the following notice to creditors, you must check each box that applies.

To Creditors: Your rights may be affected by this plan. Your claim may be reduced, modified, or eliminated. You should read this plan carefully and discuss it with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you oppose the plan's treatment of your claim or any provision of this plan, you or your attorney must file an objection to confirmation at least 7 days before the date set for the hearing on confirmation, unless otherwise ordered by the Bankruptcy Court. The Bankruptcy Court may confirm this plan without further notice if no objection to confirmation is filed. See Bankruptcy Rule 3015. In addition, you may need to file a timely proof of claim in order to be paid under any plan.

The following matters may be of particular importance to you. Boxes must be checked by debtor(s) if applicable.

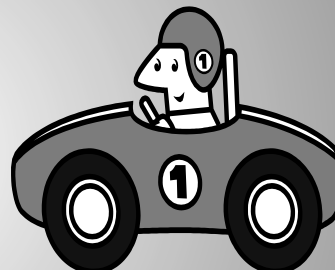
- The plan seeks to limit the amount of a secured claim, as set out in Part 3, section 3.2, which may result in a partial payment or no payment at all to the secured creditor.
- The plan requests the avoidance of a judicial lien or nonpossessory, nonpurchase-money security interest as set out in Part 3, section 3.4.
- The plan sets out nonstandard provisions in Part 9.

Service – Rule 3012(b) requires that the plan be served in accordance with Rule 7004 – therefore, First Fidelity Bank, N.A., must be served pursuant to Rule 7004(h) by certified mail addressed to an officer of the institution (unless an appearance has been made by an attorney).

Service – Rule 3015(d) requires the debtor to serve the plan if it was not included with the notice of the hearing on confirmation. So, debtor’s counsel might be required to serve the amended plan on the trustee and all creditors (along with any other notices required).

HYPOTHETICAL #3

Mr. and Ms. Smith purchased a used sports car for their personal use within 910 days prior to filing chapter 13 and financed it with First National Bank. When you met with them to prepare their plan they remembered that they bought the car for \$34,000 and they knew what their monthly car payment was, but they did not remember that they had rolled the debt from their prior car loan into the current loan. Based on the information you have, you estimate they still owe about \$30,000, and you calculate how much the debtors must pay into the plan based on that estimated claim amount, plus interest at 4.5%. Prior to confirmation, the creditor files a proof of claim for \$46,000 and inserts on the face of the claim in bold letters: “plus interest at 21.9%.”



The claim is listed in section 3.3 of the plan (“Secured claims excluded from 11 U.S.C. § 506”). Even if you are modifying the interest rate and the payment terms, you do not need to check a box in Part 1.

3.3 Secured claims excluded from 11 U.S.C. § 506.

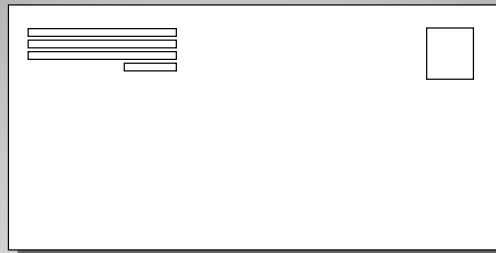
Check one.

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

The claims listed below were either:

- (1) incurred within 910 days before the petition date and secured by a purchase money security interest in a motor vehicle acquired for the personal use of the debtor(s), or
- (2) incurred within 1 year of the petition date and secured by a purchase money security interest in any other thing of value.

These claims will be paid in full under the plan with interest at the rate stated below. Unless otherwise ordered by the court, the claim amount stated on a proof of claim or modification of a proof of claim filed before the filing deadline under Bankruptcy Rule 3002(c) controls over any contrary amount listed below. The final column includes only payments disbursed by the trustee rather than by the debtor.



Service: It does not appear that service pursuant to Rule 7004 is required with respect to creditors dealt with in this section of the plan.

Section 3.3 provides: "These claims will be paid in full under the plan with the interest rate stated below. Unless otherwise ordered by the court, the claim amount stated on a proof of claim or modification of a proof of claim filed before the filing deadline under Bankruptcy Rule 3002(c) controls over any contrary amount listed below." Therefore, the claim amount is determined by the proof of claim, but the interest rate is fixed by the plan.

3.3 Secured claims excluded from 11 U.S.C. § 506.

Check one.

- None.** If *None* is checked, the rest of section 3.3 need not be completed or reproduced.
- The claims listed below were either:
- (1) incurred within 910 days before the petition date and secured by a purchase money security interest in a motor vehicle acquired for the personal use of the debtor(s), or
 - (2) incurred within 1 year of the petition date and secured by a purchase money security interest in any other thing of value.

These claims will be paid in full under the plan with interest at the rate stated below. Unless otherwise ordered by the court, the claim amount stated on a proof of claim or modification of a proof of claim filed before the filing deadline under Bankruptcy Rule 3002(c) controls over any contrary amount listed below. The final column includes only payments disbursed by the trustee rather than by the debtor.

Rule 3002 is being amended: (1) to require secured creditors to file proofs of claims; and (2) to change the deadline for filing claims to 60 days after the petition date. How is the claim to be treated under Section 3.3 of the plan if the creditor does not file a claim by the new bar date?

With a shorter bar date for filing claims and a plan that gives more weight to the amount of the claim in some instances (e.g., Section 3.3 claims not subject to valuation; Section 3.1 arrearage amounts; all secured and priority claims of governmental entities), does it make more sense to delay confirmation until after the claims bar date?

HYPOTHETICAL #4

Mr. and Ms. Smith jointly own their home. It is worth \$150,000. It is subject to GMAC Mortgage's first-priority mortgage in the amount of \$125,000, and a judgment lien perfected by Associated Credit Union in the amount of \$20,000. Mr. and Ms. Smith have a combined homestead exemption in the amount of \$43,000. As part of their chapter 13 plan, they want to avoid the judgment lien against their property.

You must check the box in Part 1 “The plan requests the avoidance of a judicial lien or nonpossessory, nonpurchase-money security interest as set out in Part 3, Section 3.4. Failure to check the box renders the plan provision ineffective.

Part 1: Notices

To Debtors: This form sets out options that may be appropriate in some cases, but the presence of an option on the form does not indicate that the option is appropriate in your circumstances or that it is permissible in your judicial district. In the following notice to creditors, you must check each box that applies.

To Creditors: Your rights may be affected by this plan. Your claim may be reduced, modified, or eliminated. You should read this plan carefully and discuss it with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you oppose the plan’s treatment of your claim or any provision of this plan, you or your attorney must file an objection to confirmation at least 7 days before the date set for the hearing on confirmation, unless otherwise ordered by the Bankruptcy Court. The Bankruptcy Court may confirm this plan without further notice if no objection to confirmation is filed. See Bankruptcy Rule 3015. In addition, you may need to file a timely proof of claim in order to be paid under any plan.

The following matters may be of particular importance to you. Boxes must be checked by debtor(s) if applicable.

The plan seeks to limit the amount of a secured claim, as set out in Part 3, section 3.2, which may result in a partial payment or no payment at all to the secured creditor.

The plan requests the avoidance of a judicial lien or nonpossessory, nonpurchase-money security interest as set out in Part 3, section 3.4.

The plan sets out nonstandard provisions in Part 9.

You must complete Part 3, Section 3.4. (The latest version does not have “Exhibit A.”)

3.4 Lien avoidance.

Check one.

- None. If None is checked, the rest of section 3.4 need not be completed or reproduced. **The remainder of this paragraph will be effective only if the applicable box on Part 1 of this plan is checked.**
- The judicial liens or nonpossessory, nonpurchase money security interests securing the claims listed below impair exemptions to which the debtor(s) would have been entitled under 11 U.S.C. § 522(b). A judicial lien or security interest securing a claim listed below will be avoided to the extent that it impairs such exemptions upon entry of the order confirming the plan. The amount of the judicial lien or security interest that is avoided will be treated as an unsecured claim in Part 5. The amount, if any, of the judicial lien or security interest that is not avoided will be paid in full as a secured claim under the plan. See 11 U.S.C. § 522(f) and Bankruptcy Rule 4003(d). **If more than one lien is to be avoided, provide the information separately for each lien.**

Information regarding judicial lien or security interest	Calculation of lien avoidance	Treatment of remaining secured claim
Name of creditor _____	a. Amount of lien \$ _____	Amount of secured claim after avoidance (line a minus line f) \$ _____
	b. Amount of all other liens \$ _____	
Collateral _____	c. Value of claimed exemptions + \$ _____	Interest rate (if applicable) _____ %
	d. Total of adding lines a, b, and c \$ _____	Monthly plan payment \$ _____
Lien identification (such as judgment date, date of lien recording, book and page number) _____	e. Value of debtor’s interest in property - \$ _____	Estimated total payments on secured claim \$ _____
	f. Subtract line e from line d. \$ _____	
Extent of exemption impairment (Check applicable box):		
<input type="checkbox"/> Line f is equal to or greater than line a. The entire lien is avoided. (Do not complete the next column.)		
<input type="checkbox"/> Line f is less than line a. A portion of the lien is avoided. (Complete the next column.)		

□

Service – Rule 3012(b) requires that the plan be served in accordance with Rule 7004 – therefore, Associated Credit Union must be served pursuant to Rule 7004(h) by certified mail addressed to an officer of the institution (unless an appearance has been made by an attorney).

HYPOTHETICAL #5

Your jurisdiction's current chapter 13 plan has very explicit provisions regarding the timing and amounts of the payments of your attorney fees through the plan. The national plan form appears to lump attorney fees in with administrative and priority claims, without specifying how they are to be paid. How does the debtor's attorney get paid under the new plan form?

Part 4: Treatment of Trustee's Fees and Priority Claims

4.1 General

Trustee's fees and all allowed priority claims other than those treated in section 4.5 will be paid in full without interest.

4.2 Trustee's fees

Trustee's fees are estimated to be _____% of plan payments; and during the plan term, they are estimated to total \$_____.

4.3 Attorney's fees

The balance of the fees owed to the attorney for the debtor(s) is estimated to be \$_____.

4.4 Priority claims other than attorney's fees and those treated in section 4.5.

Check one.

- None.** If *None* is checked, the rest of section 4.4 need not be completed or reproduced.
- The debtor estimates the total amount of other priority claims to be _____.

Part 7: Order of Distribution of Trustee Payments

7.1 The trustee will make the payments required in Parts 3 through 6 in the following order:

- a. Trustee's fees
- b. _____
- c. _____
- d. _____
- e. _____
- f. _____
- g. _____
- h. _____

Chapter 13 Plan Exhibit: Estimated Amounts of Trustee Payments

The trustee will make the following estimated payments on allowed claims in the order set forth in section 7.1:

- a. Maintenance and cure payments on secured claims (Part 3, section 3.1 total): \$ _____
- b. Modified secured claims (Part 3, section 3.2 total): \$ _____
- c. Secured claims excluded from 11 U.S.C. § 506 (Part 3, section 3.3 total): \$ _____
- d. Judicial liens or security interests partially avoided (Part 3, section 3.4 total): \$ _____
- e. Administrative and other priority claims (Part 4 total): \$ _____
- f. Nonpriority unsecured claims (Part 5, section 5.2 total): \$ _____
- g. Interest on allowed unsecured claims (Part 5, section 5.3 total): \$ _____
- h. Maintenance and cure payments on unsecured claims (Part 5, section 5.4 total): \$ _____
- i. Separately classified unsecured claims (Part 5, section 5.5 total): \$ _____
- j. Arrearage payments on executory contracts and unexpired leases (Part 6, section 6.1 total) + \$ _____

Total of lines a through j..... \$ _____

HYPOTHETICAL #6

Your jurisdiction requires special plan language regarding the treatment of claims that were anticipated as unsecured claims but actually are filed, post-confirmation, as secured claims. There does not appear to be any place in the national plan form for dealing with these claims. What can you do?

Part 9: Nonstandard Plan Provisions

Under Bankruptcy Rule 3015(c), nonstandard provisions are required to be set forth below.

These plan provisions will be effective only if the applicable box in Part 1 of this plan is checked.

You must check the box in Part 1 “The plan sets out nonstandard provisions in Part 9.” Failure to check the box renders the plan provision ineffective.

Part 1: Notices

To Debtors: This form sets out options that may be appropriate in some cases, but the presence of an option on the form does not indicate that the option is appropriate in your circumstances or that it is permissible in your judicial district. In the following notice to creditors, you must check each box that applies.

To Creditors: Your rights may be affected by this plan. Your claim may be reduced, modified, or eliminated. You should read this plan carefully and discuss it with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you oppose the plan's treatment of your claim or any provision of this plan, you or your attorney must file an objection to confirmation at least 7 days before the date set for the hearing on confirmation, unless otherwise ordered by the Bankruptcy Court. The Bankruptcy Court may confirm this plan without further notice if no objection to confirmation is filed. See Bankruptcy Rule 3015. In addition, you may need to file a timely proof of claim in order to be paid under any plan.

The following matters may be of particular importance to you. Boxes must be checked by debtor(s) if applicable.

- The plan seeks to limit the amount of a secured claim, as set out in Part 3, section 3.2, which may result in a partial payment or no payment at all to the secured creditor.
- The plan requests the avoidance of a judicial lien or nonpossessory, nonpurchase-money security interest as set out in Part 3, section 3.4.
- The plan sets out nonstandard provisions in Part 9.

**QUERY:
CAN NONSTANDARD
PROVISIONS TRUMP
STANDARD FORM PROVISIONS?**

HYPOTHETICAL #7



You have met with Mr. Brown several times, discussing his financial affairs and his need to seek relief under chapter 13. After several consultations, Mr. Brown has finally agreed that the only feasible plan is for him to surrender his prized possession, a tricked-out Harley Davidson Fat Boy. He has come back in to review the final version of his chapter 13 plan, etc., prior to filing the case. Mr. Brown asks, "What does this mean: '[p]roperty of the estate shall revert in the debtor(s) upon'? Is it important?"

Most jurisdictions will mandate whether property will vest or not.

It implicates the extent the automatic stay applies post-confirmation, particularly as to post-confirmation creditors.

It also implicates the ability of trustees and unsecured creditors to seek plan modifications which try to capture assets acquired by the debtor post-confirmation.

There are various theories of vesting under § 1327(b) –

- a) Estate Preservation Approach – vesting does not terminate the estate*
- b) Estate Transformation Approach – vesting terminates the estate except to the extent necessary to fund the plan*
- c) Estate Termination Approach – estate vests in debtor and terminates altogether, pre-petition creditors are bound by the terms of the plan*
- d) Estate Reconciliation Approach – property of the estate as of confirmation vests in the debtor, property that comes into the estate after confirmation is new property of the estate (the bucket is emptied and re-filled).*

HYPOTHETICAL #8

Mr. Brown also asks, "In part 3.5 it says, '[t]he debtor(s) elect to surrender to the creditors listed below the personal or real property that is collateral for the claim. The debtor(s) consent to termination of the stay under 11 U.S.C. § 362(a) and § 1301 with respect to the collateral upon confirmation of the plan.' What's that all about?"

3.5 Surrender of collateral.

Check one.

- None.** If *None* is checked, the rest of section 3.5 need not be completed or reproduced.
- The debtor(s) elect to surrender to each creditor listed below the collateral that secures the creditor's claim. The debtor(s) consent to termination of the stay under 11 U.S.C. § 362(a) and § 1301 with respect to the collateral upon confirmation of the plan. Any allowed unsecured claim resulting from the disposition of the collateral will be treated in Part 5 below.

Name of creditor

Collateral

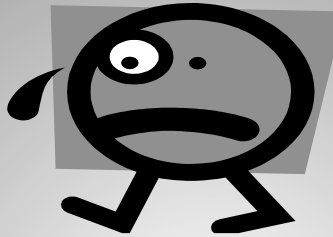
In many jurisdictions, the plan provides that relief from the stay is granted automatically upon confirmation as to collateral that is surrendered under the plan. This has two benefits:

- a) It saves creditors the time and cost of filing a motion for relief from the stay.*
- b) Some feel that it prevents the application of § 109(g)'s prohibition against refiling for 180 days if the debtor later seeks and obtains a voluntary dismissal of their case.*

The national plan form only provides that the debtor consents to relief, thereby requiring the creditor to file a motion for relief from stay that the debtor cannot oppose. This does not appear to serve either of the above goals. The rationale stated for this approach is that it allows the trustee to object to relief from stay.

But the trustee could simply object to confirmation of the plan or move to convert the case to chapter 7.

It is doubtful that a court would require a debtor to retain and pay for an unwanted asset.



HYPOTHETICAL #9

Mr. Brown has a bad case of buyer's remorse. At the confirmation hearing, he tells the court that he didn't know he had to give up his motorcycle, that he thought that he was going to keep it and pay for it in his plan, that he never saw the proposed chapter 13 plan, and that you never reviewed it with him.

The uniform plan does not require the debtor's signature where the debtor is represented by counsel. How can attorneys protect themselves from this situation? (Note: The newest version now makes represented debtors' signatures optional).

Part 10: Signatures

X _____ Date _____
Signature of Attorney for Debtor(s)

Signature(s) of Debtor(s) (required if not represented by an attorney; otherwise optional)

X _____ Date _____
Signature(s) of Debtor(s)

X _____ Date _____
Signature(s) of Debtor(s)

Proposed Rule Changes

Ryan Starks
Phelan Hallinan & Jones, LLC.

Proposed Rules Changes

- ☒ The proposed Rules will have significant impact on servicers.
- ☒ There will be a deadline for filing objections 7 days prior to confirmation.
- ☒ Proofs of Claim will have to be filed within 60 days of petition date.
- ☒ All secured creditors must file claims.

Rule 2002

- ☒ Currently, parties in interest received 28 days notice of the time to file an Objection to Plan
- ☒ The proposed Federal Rules would reduce the period to twenty-one (21) days.
 - ☒ Besides the obvious reduction in advance notice, this change coupled with other proposed rule changes will dramatically decrease the timeframe during which lenders must determine if an Objection to Plan is warranted.

Rule 3002 Filing Proof of Claim

- ☒ Currently, the Federal rules do not require secured creditors to file proof of claims.
- ☒ The proposed Federal Rules will require secured creditors to file a claim in order to be considered secured and to receive distributions from the Trustee. 3002(a).
 - ☒ A lien that secures a claim will not be void due to failure to file the claim.

Rule 3002 Filing Proof of Claim

- ☒ Currently, the Federal rules provide that claims shall be filed within 90 days from the first date set for the Meeting of Creditors
- ☒ Under the proposed Federal Rules, a proof of claim will be considered timely if it filed within 60 days of the petition date and includes the mortgage proof of claim attachment required by Rule 3001(c)(2)(C). (Includes B10A and Escrow Analysis)
- ☒ The documentation required by 3001(c)(1) and (d) (mortgage, note, AOM, loan mod, etc.) may be filed as a supplement not later than 120 days after the petition. This is known as the Bifurcated Claims Process

Rule 3002 Filing Proof of Claim

- ☒ Issues raised by the proposed Rule changes
 - ☒ In a Chapter 7 case, a Proof of Claim is not filed until a Chapter 7 trustee requests a bar date for claims in an asset case. This would usually not occur within 60 days of a petition filing, therefore no POC would be filed timely.
 - ☒ How do lenders account for the bifurcated claims process?
 - What triggers or mechanisms will be in place to ensure either complete claims are filed by the 60 day deadline or claims are supplemented by the 120 day deadline?

3007/3012 Objection to claim

- ☒ Objection to claim does not need to be made if made under rule 3012 and in connection with confirmation of Chapter 13 or 13 plan.
- ☒ Proposed Rule 3012 provides that a request to determine the amount of secured claim can be made by motion, in claim objection, or in a chapter 12 or 13 plan.
- ☒ Request must be served on holder of claim in manner provided for service of summons and complaint by Rule 7004

3015 Filing Plan & Objection to Confirmation.

- ☒ Debtor may file Chapter 13 plan within 14 days of petition being filed – 3015 (b)
- ☒ Plan shall use the Official Form – 3015(c)
- ☒ If the plan not included with the notice of hearing on confirmation than debtor shall serve the plan on all creditors when it is filed – 3015(d)
- ☒ Objections to confirmation must be made at least 7 days before the confirmation hearing – 3015(f)
- ☒ Any determination made under 3012 of the amount of a secured claim is binding, even if the holder files a contrary claim under Rule 3002 and regardless of whether an objection to claim was filed – 3015(g)

Rule 5009 Closing Case; Order Declaring Lien Satisfied

- ❏ Chapter 12/13 Debtor may request entry of order that lien has been satisfied by motion server pursuant to Rule 7004.
- ❏ Order shall be effective as release of the lien. Debtor should then file order in the appropriate real estate records to place all parties on notice.

The New Model Plan

A Journey Toward Uniformity:

A Bankruptcy Future with a Model Plan
or
A Solution without a problem?

S. Ryan Starks, Esq.
Phelan Hallinan & Jones

Is there need for a Uniform Plan?

- ☒ The bankruptcy code allows the Debtor to propose a plan.
- ☒ There are no current prohibitions on the format of the plan. Each jurisdiction can create their own.
- ☒ Bankruptcy Code §1322 lays out the requirements for the plan with the two below being most relevant to mortgage servicers.
 - ∅ The Plan may modify rights of secured claim holders, other than claim secured by security interest in real property. This provision allows for unsecured liens to be stripped, and investments/rental properties to be crammed down to their value in the plan.
 - ∅ The Plan may provide for curing of default in within reasonable time.

Does one size fit all work?



- ☒ Bankruptcy is part of the US Constitution, therefore Districts have had hundreds of years to form own local practice/customs.
- ☒ Local attorneys, judges can be territorial regarding outside agencies implementing change.
- ☒ Change the rules can increase costs, litigation, and you have the headache of relearning what you new.
- ☒ BAPCPA is still being litigated so should that not have been a lesson if “it ain’t broke don’t fix it”.

Cui Bono

(who benefits)

- √ Large National Creditors.
- Debtor attorney’s can no longer play hide and seek with lender’s claims, no more GOTCHA!
- Easier to determine how the secured claim is to be treated.
- Easier to train staff on one plan versus 94.
- Need less staff.

Proposed Plan Format

1) Ten Parts

Mortgage Relevant Parts

Part 1: Notice to Interested Parties

Part 3: Treatment of Secured Boxes

Part 7: Order of Distribution of Trustee Payments

Part 9: Nonstandard Plan Provisions

2) Two Exhibits

A: Lien Avoidance

B: Estimated amounts of trustee payments

Part 1: Notice To Interested Parties

Part 1: Notice to Interested Parties

Check all that apply:

- The plan seeks to limit the amount of a secured claim, as set out in Part 3, Section 3.2, which may result in a partial payment or no payment at all to the secured creditor.
- The plan requests the avoidance of a judicial lien or nonpossessory, nonpurchase-money security interest as set out in Part 3, Section 3.4.
- The plan sets out nonstandard provisions in Part 9.

If box not checked but debtor still tries to enter information into those sections those parts will be void.

- If first box checked then creditor knows there is a potential cramdown of a claim or stripping of a lien.

- If third box creditor should check to see if claim is treated there. Possibly debtor has provision that claim will be paid in full through refinance or inheritance, etc.

Part 3: Secured Claim Treatment

Part 3: Treatment of Secured Claims

3.1 Maintenance of payments and cure of any default

none [if "none" is checked, the rest of § 3.1 need not be completed or reproduced]

The debtor(s) will maintain the contractual installment payments and cure any default in payments on the secured claims listed below. The allowed claim for any arrearage amount will be paid under the plan, with interest, if any, at the rate stated. Unless otherwise ordered by the court, (1) the amounts listed on the proof of claim control over any contrary amounts listed below as to the current installment payment and arrearage, and (2) if relief from the automatic stay is ordered as to any item of collateral listed in this paragraph, all payments under this plan as to that collateral will cease and all claims as to that collateral will no longer be treated by the plan. The final column includes only payments disbursed by trustee rather than by the debtor.

Name of creditor	Collateral	Current installment payment (including escrow payment)	Estimated amount of arrearage	Interest rate on arrearage (if applicable)	Monthly plan payment on arrearage or other payment arrangement	Estimated total payments by trustee
		\$ _____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)				
		\$ _____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)				

3.2 Request for valuation of security and claims modification

3.1 Maintenance of payments and cure of any default

- q Sets up who the secured creditor is and how they are to be paid.
- q *** States that the “amounts listed on the proof of claim control over any contrary amounts listed” by debtor for the arrears.
- q Important because there are jurisdictions that allow “pay by the plan” versus “pay per the claim”. This can eliminate needless objections to plan confirmation in those jurisdictions.
- q Debtor can designate who is to pay the current installment payment. The ability to choose might be dependent on local rules as some trustees are not set up to do conduit payments.

3.2 Request for valuation of security and claim modification “LIEN STRIPPING”

3.2 Request for valuation of security and claim modification

none [If checked, the rest of § 3.2 need not be completed or reproduced]

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

The debtor(s) request that the court determine the value of the secured claims listed below, except for the claims of governmental units. For each non-governmental secured claim as to which a proof of claim has been filed in accordance with Bankruptcy Rule 3001, the debtors state that the value of the secured claim should be as stated below in the column headed "Amount of secured claim." For secured claims of governmental units, unless otherwise ordered by the court, the amounts listed in proofs of claim filed in accordance with Bankruptcy Rule 3001 control over any contrary amounts listed below. For each listed secured claim, the controlling amount of the claim will be paid in full under the plan with interest at the rate stated below.

The portion of any allowed claim that exceeds the amount of the secured claim will be treated as an unsecured claim under Part 5 of this plan. If the amount of a creditor's secured claim is listed below as having no value, the creditor's allowed claim will be treated in its entirety as an unsecured claim under Part 5 of this plan. Unless otherwise ordered by the court, the amount of the creditor's claim listed on the proof of claim controls over any contrary amounts listed under Part 5 as to the unsecured portion, if any, of the claim.

The holder of any secured claim, other than a claim treated in Part 3, Section 3.1, will retain the lien until the earlier of:

- (a) payment of the underlying debt determined under nonbankruptcy law, or
- (b) discharge under 11 U.S.C. § 1328(a), at which time the lien will terminate and be released by the creditor. See Bankruptcy Rule 3015.

Name of creditor	Estimated amount of creditor's claim	Collateral	Value of collateral	Amount of claims senior to creditor's claim	Amount of secured claim	Interest rate	Monthly payment to creditor	Estimated total of monthly payments

Lien Stripping is now Part of the Plan and Confirmation and is no longer a Motion or Adversarial Process

- Debtor must have checked box in Part 1 for this to be effective.
- Debtor estimates amount of creditor's claim and provides a value for the collateral.
- Value of the collateral, as it stands now, can differ from jurisdiction to jurisdiction and even from judges in the same jurisdiction. Courts have accepted Zillow Estimates, Tax Assessments, Real Estate Broker Opinion. With rising home values Creditors should be prepared to challenge these values by using licensed appraisers.
- The portion of the claim that exceeds the amount of the secured claim will be treated as unsecured.
- This Plan Provision effectively eliminates lien stripping as a motion or adversarial practice.
- Debtor still must serve pursuant to Rule 7004 for applicable parties.

3.5 Surrender of collateral

3.5 Surrender of collateral

none [if "none" is checked, the rest of § 3.5 need not be completed or reproduced]

The debtor(s) elect to surrender to the creditors listed below the personal or real property that is collateral for the claim. The debtor(s) consent to termination of the stay under § 362(a) and § 1301 with respect to the collateral upon confirmation of the plan. Any allowed unsecured claim resulting from the disposition of the collateral will be treated in Part 5 below.

Name of creditor	Collateral

- ☒ This provision states that debtor consents to termination of not only the stay under §362(a) but also the §1301 co-debtor stay.
- ☒ The consent to debtor relief will save Lenders the cost of having to file Motions for Relief.
- ☒ The consent to co-debtor stay relief is problematic in that the debtor lacks the legal ability to terminate the co-debtor’s rights, if that is the intent of that provision.

Part 7: Order of Distribution of Trustee Payments

Part 7: Order of Distribution of Trustee Payments		
7.1 The trustee will make payments in the estimated amounts shown on Exhibit B, in the following order:		
Official Form xxx	Chapter 13 Plan	page 5
Page 604 of 969		
a. Trustee's fees		
b. Monthly payments on secured claims		
c.		
d.		
e.		

- ∅ Trustee paid first
- ∅ Secured Creditors paid next
- ∅ Debtors attorneys seemingly paid last, which should be a concern for all. Qualified debtor’s attorneys needed to make cases work or else we will be faced with a bigger avalanche of pro se filers.

Part 9: Nonstandard Plan Provisions

Part 9: Nonstandard Plan Provisions

Under Bankruptcy Rule 3015(c), nonstandard provisions are required to be set forth below. These plan provisions will only be effective if the applicable box in Part 1 of this plan is checked.

- This is a catchall for something not included in the plan.
- Concern is that if provisions that run contrary to the standard parts of the plan, then the idea of having a uniform plan will be swallowed by this provision.
- Probably be used for administrative provisions, such as addressing how post-petition fees assessed under 3002.1 are to be paid.