



AMERICAN
BANKRUPTCY
INSTITUTE

2020 Caribbean Insolvency Symposium

Consumer Track

Consumer Bankruptcy Concerns, Both Present and Developing

Hon. Enrique S. Lamotte, Moderator

U.S. Bankruptcy Court (D. P.R.); San Juan

Juan A. Cuyar Cobb

Fernández Cuyar Rovira & Plá LLC; San Juan, Puerto Rico

Edgardo Mangual Gonzalez

EMG Despacho Legal; San Juan, Puerto Rico

Alexander Nader

Federal Bureau of Investigation; Miami

Valuation of Property for Determination of a Secured Claim – A Creditor’s Perspective

In general

An allowed claim is secured to the extent of the value of a creditor’s interest in the estate’s interest in the property that serves as collateral. 11 U.S.C. § 506(a)(1); 11 U.S.C. § 502. The text added in 2005 to section 506¹ specifically provides the basis for determination of such value with respect to personal property – the replacement value as of the date of the filing of the petition without deduction for costs of sale or marketing. 11 U.S.C. § 506(a)(2). Such section further defines replacement value, with respect to property acquired for personal, family, or household purposes, as the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time of determination of value. 11 U.S.C. § 506(a)(2).

The relevance of the determination of the value of property securing a claim under section 506(a) becomes more significant when the value of the creditor’s collateral is less than the amount of its claim. Accordingly, in the event that a creditor holds an “undersecured” claim, section 506(a) provides for the bifurcation of the claim, resulting in a secured claim to the extent of the value of the collateral, and an unsecured, or deficiency, claim for the balance of the claim. 11 U.S.C. § 506(a). Associates Commercial Cop. v. Rash, 520 U.S. 953, 961 (1997); Superior Paint Mfg. Co. v. López-Soto (In re López-Soto), 764 F.2d 23, 26 (1st Cir. 1985). There are certain instances in which the bifurcation of the claim may be undone (as in the context of a chapter 11 in which the creditor makes a section 1111(b) election), or rendered irrelevant (when a debtor provides for full payment of the claim in a chapter 13 plan, or the claim is deemed unimpaired in a chapter 11 plan). See 11 U.S.C. § 1111(b).

¹ Unless otherwise stated, all allusions to sections shall refer to Title 11 of the U.S. Code.

After the creditor's interest in the collateral has been established, the court must determine the valuation standard to be applied. In general, the courts agree fair market value to be the standard; however, the determination of fair market value depends on the particular market and methodology to be utilized by the trial court. 4 Collier on Bankruptcy P 506.03[6] (16th 2019). See United States v. Taffi (In re Taffi), 96 F.3d 1190, 1193 (9th Cir. 1996) (*en banc*), *cert. denied*, 521 U.S. 1103 (1997); see also Winthrop Old Farm Nurseries, Inc. v. New Bedford Inst. for Sav. (In re Winthrop Old Farm Nurseries, Inc.), 50 F.3d 72, 75-76 (1st Cir. 1995).

Pursuant to section 506(a)(1), the value of the collateral shall be determined in consideration of (i) the purpose of the valuation, and (ii) the proposed disposition of the property. 11 U.S.C. § 506(a)(1).

In Rash, the Supreme Court concluded that the determination of the value of a creditor's collateral in a cramdown procedure under section 506(a) will be based on the value of the debtor's proposed use of the property under the plan, and not on the value that may be obtained in a foreclosure process that is **not** the proposed use under the plan. The Rash court recognizes that the replacement-value standard, and not the foreclosure-value standard, governs in cramdown cases, but leaves to the bankruptcy courts, as triers of facts, the determination of what is the best method to ascertain replacement value on the basis of the evidence presented. Associates Commercial Cop. v. Rash, *supra*, 965 n. 6; see also United States v. Taffi (In re Taffi), *supra*, 1193; Winthrop Old Farm Nurseries, Inc. v. New Bedford Inst. for Sav. (In re Winthrop Old Farm Nurseries, Inc.), *supra*, 74-75. Thus, in Rash, the court directs the bankruptcy court, in a chapter 13 cramdown procedure, to focus on (i) the type of debtor, and (ii) the nature of the property, presumably instructing the trial court to focus on the price that the particular debtor would have to

pay for the same collateral in a market available to that debtor. Associates Commercial Cop. v. Rash, *supra*, 960 n. 2. 4 Collier on Bankruptcy P 506.03[6][a] (16th 2019).

Procedure

Prior to General Order 17-08, and Local Bankruptcy Form G – Chapter 13 Plan, chapter 13 debtors would, for the most part, seek the valuation of collateral in order to obtain a bifurcation of a secured claim, by way of an adversary proceeding, in conformance with Rule 7001(2),² notwithstanding the provisions of Rule 3012. The filing of an adversary proceeding required formalities, and terms, that resulted in a significant delay of the case, which could hinder the confirmation of the plan for months. See F.R.Bankr.P. 7004, 7012, 7016.

Accordingly, the defense provided by counsel for creditors would commence with raising objections to the debtors' compliance with procedural requirements, such as the manner and timing of service of process, or the correctness of the person served. Additionally, a creditor would file an objection to the confirmation of a plan that included a provision for the payment of an alleged value of collateral that did not represent the fair market value thereof, citing 11 U.S.C. § 1325(a)(5)(B)(ii). The interest of debtors, and debtors' counsel, in obtaining prompt confirmation of the plan, concomitantly with the curing of procedural objections, would often facilitate a consensual resolution of the issue, with a stipulated value for the collateral.

Since the effectiveness of General Order 17-08, on December 1, 2017, Local Bankruptcy Form G – Chapter 13 Plan specifically provides, in Section 3.2, for a debtor to check a box if the plan contains a “Request for valuation of security, payment of fully secured claims and modification of undersecured claims.” See Section 3.2 of LBF-G. Such plan provision is consistent with Rule 3012(a)(1),(b).

² Unless otherwise stated, all allusions to rules shall refer to the Federal Rules of Bankruptcy Procedure.

In addition to the requirement established in Rule 3012(b) that sets forth that a chapter 12 or chapter 13 plan that includes a request to determine the amount of a secured claim shall be served in the manner provided for service of summons and complaint by Rule 7004, General Order 18-01 adopted LBR 3015-3 (which supersedes LBR 3015-2) expressly encompasses the aforementioned notice requirement for a chapter 13 plan that requests for the valuation of collateral. See LBR 3015-3(c)(2).

Still, a creditor will object to a debtor's failure to comply with applicable notice requirements, but Local Bankruptcy Form G – Chapter 13 Plan has granted the process a sense of urgency that frequently leads to a swifter resolution of the matter.

Other Defenses

Real Property

Section 1322(b)(2) sets forth that a chapter 13 plan may not modify the rights of a holder of a secured claim secured only by a security interest in real property that is the debtor's principal residence. 11 U.S.C. § 1322(b)(2). In Nobelman v. American Sav. Bank, the Supreme Court held that a chapter 13 plan that proposed to pay the fair market value of the debtor's principal residence, which was less than the creditor's claim, could not be confirmed in violation of 11 U.S.C. § 1322(b)(2). Nobelman v. American Sav. Bank, 508 U.S. 324, 328 (1993). Conversely, following the rationale of Nobelman, most courts have resolved that a lien encumbering a chapter 13 debtor's principal residence may be stripped off and treated as an unsecured claim, if the lien is wholly undersecured because more senior liens are equivalent to, or in excess of, the value of the real property.³

³ See Zimmer v. PSB Lending Corp. (In re Zimmer), 313 F.3d 1220, 1227 (9th Cir. 2002); Lane v. Western Interstate Bancorp (In re Lane), 280 F.3d 663, 665 (6th Cir. 2002); Pond v. Farm Specialist Realty (In re Pond), 252 F.3d 122, 126 (2nd Cir. 2001); American Gen. Fin., Inc. v. Dickerson (In re Dickerson), 222 F.3d 924, 926 (11th Cir. 2000); Tanner v. FirstPlus Fin., Inc. (In re Tanner), 217 F.3d 1357, 1360 (11th Cir. 2000); Bartee v. Tara Colony

AMERICAN BANKRUPTCY INSTITUTE

Following the decision of the U.S. Bankruptcy Appellate Panel for the First Circuit in Domestic Bank v. Mann (In re Mann), the Puerto Rico bankruptcy courts have resolved that wholly unsecured junior mortgages encumbering a debtor's principal residence are not entitled to the protection of the antimodification provision of 11 U.S.C. § 1322(b)(2), with respect to a real property that is the debtor's principal residence, and thus a chapter 13 plan may void such a lien. Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000). See Díaz v. Asociación de Empleados del E.L.A. (In re Díaz), 544 B.R. 471, 475 (Bankr. D.P.R. 2016); Rodríguez v. FirstBank P.R. (In re Rodríguez), 517 B.R. 404, 407-409 (Bankr. D.P.R. 2014).⁴

Personal Property

In 2005, a paragraph was added at the end of section 1325(a), to restrict subsection (a)(5), by setting forth that section 506 does not apply to a secured claim in cases as to which a creditor has a purchase money security interest securing the debt, (i) if the collateral consists of a motor vehicle acquired for the personal use of the debtor and the debt was incurred within the 910-day period preceding the date of the filing of the petition, or (ii) if collateral consists of any other thing of value and the debt was incurred during the 1-year period preceding that filing. 11 U.S.C. § 1325(a).

Conclusion

Based on current legal provisions in force, the Puerto Rico bankruptcy court has established rules, and provided a Form, in order to reduce litigation and expedite procedures. As part of the

Homeowners Ass'n (In re Bartee), 212 F.3d 277, 280 (5th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 615 (3rd Cir. 2000).

⁴ Although the court granted the debtors' request for a determination that a second mortgage was wholly unsecured, it denied the debtors' petition for an order requiring the Registrar of the Property to eliminate the mortgage from the Registry until the related chapter 13 plan was completed and the debtors received a discharge. See also In re López, 2015 Bankr. LEXIS 3436 (Bankr. D.P.R. 2015); Roman v. CitiMortgage, Inc. (In re Roman), 2015 Bankr. LEXIS 3437 (Bankr. D.P.R. 2015).

process of adjustment of debts of individuals, when disposable income becomes tighter, debtors are more frequently invoking the right to pay the value of collateral with respect to secured claims. Creditors have to be vigilant of the defense of their rights, especially in consideration of the accelerated procedures of the cases.

AMERICAN BANKRUPTCY INSTITUTE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO**

In Re: _____

XXX-XX-0000
XXX-XX-0000

Case No.: _____

Chapter 13

Check if this is a pre-confirmation amended plan.

Check if this is a post confirmation amended plan
Proposed by:

- Debtor(s)
- Trustee
- Unsecured creditor(s)

If this is an amended plan, list below the sections of the plan that have been changed.

Puerto Rico Local Form G

Chapter 13 Plan dated _____.

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. Plans that do not comply with local rules and judicial rulings may not be confirmable.

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

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

You should read this plan carefully and discuss it with your attorney if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one. The headings contained in this plan are inserted for reference purposes only and shall not affect the meaning or interpretation of this plan.

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 must file a timely proof of claim in order to be paid under this plan, unless ordered otherwise.

If a claim is withdrawn by a creditor or amended to an amount less than the amount already disbursed under the plan on account of such claim: (1) The trustee is authorized to discontinue any further disbursements to related claim; (2) The sum allocated towards the payment of such creditor's claim shall be disbursed by the trustee to Debtor's remaining creditors. (3) If such creditor has received monies from the trustee (Disbursed Payments), the creditor shall return funds received in excess of the related claim to the trustee for distribution to Debtor's remaining creditors. (4) If Debtor has proposed a plan that repays his or her creditors in full, funds received in excess of the related claim shall be returned to the Debtor.

The following matters may be of particular importance. Debtor(s) must check one box on each line to state whether or not the plan includes each of the following items. If an item is checked as "Not included" or if both boxes are checked, the provision will be ineffective if set out later in the plan.

1.1	A limit on the amount of a secured claim, set out in Section 3.2, which may result in a partial payment or no payment at all to the secured creditor	<input type="checkbox"/> Included	<input type="checkbox"/> Not included
1.2	Avoidance of a judicial lien or nonpossessory, nonpurchase-money security interest, set out in Section 3.4	<input type="checkbox"/> Included	<input type="checkbox"/> Not included
1.3	Nonstandard provisions, set out in Part 8	<input type="checkbox"/> Included	<input type="checkbox"/> Not included

PART 2: Plan Payments and Length of Plan

2.1 Debtor(s) will make payments to the trustee as follows:

PMT Amount	Period(s)	Period(s) Totals	Comments
Subtotals			

Insert additional lines if needed

If fewer than 60 months of payments are specified, additional monthly payments will be made to the extent necessary to make the payments to creditors specified in this plan.

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

Check all that apply.

- Debtor(s) will make payments pursuant to a payroll deduction order.
- Debtor(s) will make payments directly to the trustee.
- Other (specify method of payment): _____

2.3 Income tax refunds:

Debtor(s) will supply the trustee with a copy of each income tax return filed during the plan term within 14 days of filing the return and will comply with 11 U.S.C. § 1325(b)(2). If the Debtor(s) need(s) to use all or a portion of such "Tax Refunds," Debtor(s) shall seek court authorization prior to any use thereof.

2.4 Additional payments:

Check one.

- None.** If "None" is checked, the rest of § 2.4 need not be completed or reproduced.
- Debtor(s) will make additional payment(s) to the trustee from other sources, as specified below. Describe the source, estimated amount, and date of each anticipated payment.

PART 3: Treatment of Secured Claims

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

Check one.

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

The Debtor(s) will maintain the current contractual installment payments on the secured claims listed below, with any changes required by the applicable contract and noticed in conformity with any applicable rules. These payments will be disbursed either by the trustee or directly by the Debtor(s), as specified below. Any existing arrearage on a listed claim will be paid in full through disbursements by the trustee, with interest, if any, at the rate stated, pro-rated unless a specific amount is provided below. Unless otherwise ordered by the court, the amounts listed on a proof of claim filed before the filing deadline under Bankruptcy Rule 3002(c) control over any contrary amounts listed below as to the current installment payment and arrearage. In the absence of a contrary timely filed proof of claim, the amounts stated below are controlling. If relief from the automatic stay is ordered as to any item of collateral listed in this paragraph, then, unless otherwise ordered by the court, all payments under this paragraph as to that collateral will cease, and all secured claims based on that collateral will no longer be treated by the plan. The final column includes only payments disbursed by the trustee rather than by the Debtor(s).

Name of creditor	Collateral	Current installments payments (including escrow)	Amount of arrearage (if any)	Interest rate on arrearage (if any)	Monthly plan PMT on arrearage	Estimated total payments by trustee
_____	_____	\$ _____	\$ _____	_____ %	\$ _____	\$ _____
		Disbursed by:		_____ Months	Starting on Plan Month _____	
		<input type="checkbox"/> Trustee				
		<input type="checkbox"/> Debtor(s)				

Insert additional claims as needed.

AMERICAN BANKRUPTCY INSTITUTE

3.2 Request for valuation of security, payment of fully secured claims, and modification of undersecured claims.

Check one.

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

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

The Debtor(s) request that the court determine the value of the secured claims listed below. For each non-governmental secured claim listed below, the Debtor(s) state that the value of the secured claim should be as set out in the column headed *Amount of Secured Claim*. For secured claims of governmental units, unless otherwise ordered by the court, the value of a secured claim listed in a proof of claim filed in accordance with the Bankruptcy Rules controls over any contrary amount listed below. For each listed claim, the value of the secured claim will be paid in full with interest at the rate stated below. If no monthly payment is listed below, distribution will be pro-rated according to section 7.2.

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 total claim listed on the proof of claim controls over any contrary amounts listed in this paragraph.

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

- (a) Payment of the underlying debt determined under nonbankruptcy law, or
- (b) Discharge of the underlying debt under 11 U.S.C. § 1328, 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 Total Claim	Collateral	Value of Collateral	Amount of Claims Senior to Creditor's Claim	Amount of Secured Claim	Interest Rate %	Monthly PMT to Creditor	Estimated Total of Monthly PMTs
_____	\$ _____	_____	\$ _____	\$ _____	\$ _____	_____%	\$ _____	\$ _____
						_____ Months	Starting on Plan Month _____	
_____	\$ _____	_____	\$ _____	\$ _____	\$ _____	_____%	\$ _____	\$ _____
						_____ Months	Starting on Plan Month _____	

Insert additional lines as needed.

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

Check one.

None. If "None" is checked, the rest of § 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. These payments will be disbursed either by the trustee or directly by the Debtor(s), as specified below. Unless otherwise ordered by the court, the claim amount stated on a proof of claim filed before the filing deadline under Bankruptcy Rule 3002(c) controls over any contrary amount listed below. In the absence of a contrary timely filed proof of claim, the amounts stated below are controlling. The final column includes only payments disbursed by the trustee rather than by the Debtor(s). If the Trustee is to disburse and no monthly payment amount is listed below, distribution will be prorated according to plan section 7.2.

Name of creditor	Collateral	Amount of claim	Interest rate	Monthly plan payment	Estimated total payments by trustee
_____	_____	\$ _____	_____%	\$ _____	\$ _____
				_____ Months	Disbursed by:
				Starting on Plan Month _____	<input type="checkbox"/> Trustee
					<input type="checkbox"/> Debtor(s)

Insert additional lines as needed.

2020 CARIBBEAN INSOLVENCY SYMPOSIUM

3.4 Lien Avoidance.

Check one.

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

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

The judicial liens or nonpossessory, nonpurchase money security interests securing the claims listed below impair exemptions to which the Debtor(s) would have been entitled under 11 U.S.C. § 522(b). Unless otherwise ordered by the court, 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 to the extent allowed. 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. If no monthly payment is listed below, distribution will be prorated according to plan section 7.2.

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
Lien identification (such as judgment date, date of lien recording, book and page number)	d. Total of adding lines a, b and c \$	[%] _____ Months Starting on Plan Month _____
	e. Value of Debtor's interest in property \$	Monthly Payment on secured claim
	f. Subtract line e from d. \$	\$
	Extent of exemption impairment (check applicable box)	Estimated total payments on secured claim
	<input type="checkbox"/> Line f is equal to or greater than line a. <i>The entire lien is avoided (Do not complete the next column.)</i>	\$
	<input type="checkbox"/> Line f is less than line a. <i>A portion of the lien is avoided. (Complete the next column.)</i>	

Insert additional lines as needed.

3.5 Surrender of collateral.

Check one.

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

The Debtor(s) elect to surrender to each creditor listed below the collateral that secures the creditor's claim. The Debtor(s) request that upon confirmation of this plan, the stay under 11 U.S.C. § 362(a) be terminated as to the collateral only and that the stay under § 1301 be terminated in all respects. Any allowed unsecured claim resulting from the disposition of the collateral will be treated in Part 5 below.

Name of creditor	Collateral
_____	_____
_____	_____

Insert additional lines as needed.

AMERICAN BANKRUPTCY INSTITUTE

3.6 Pre-confirmation adequate protection monthly payments (“APMP”) to be paid by the trustee.

Payments pursuant to 11 USC §1326(a)(1)(C):

Name of secured creditor	\$ Amount of APMP	Comments
_____	_____	_____
_____	_____	_____

Insert additional lines as needed.

Pre-confirmation adequate protection payments made through the plan by the trustee are subject to the corresponding statutory fee.

3.7 Other secured claims modifications.

Check one.

None. If “None” is checked, the rest of § 3.7 need not be completed or reproduced.

Secured claims listed below shall be modified pursuant to 11 U.S.C. § 1322(b)(2) and/or § 1322(c)(2). Upon confirmation, the trustee shall pay the allowed claim as expressly modified by this section, at the annual interest rate and monthly payments described below. Any listed claim will be paid in full through disbursements by the trustee, with interest, if any, at the rate stated, pro-rated unless a specific amount is provided below. Unless otherwise ordered by the court, the amounts listed on a proof of claim filed before the filing deadline under Bankruptcy Rule 3002(c) control over any contrary amounts listed below. In the absence of a contrary timely filed proof of claim, the amounts stated below are controlling. If no monthly payment amount is listed below, distribution will be prorated according to plan section 7.2.

Name of creditor	Claim ID #	Claim amount	Modified interest rate	Modified term (Months)	Modified P&I	Property taxes (Escrow)	Property insurance (Escrow)	Total monthly payment	Estimated total PMTs by trustee
_____	_____	\$ _____ <input type="checkbox"/> To be paid in full 100%	_____%	_____	\$ _____	\$ _____	\$ _____	\$ _____ Starting on Plan Month _____	\$ _____
_____	_____	\$ _____ <input type="checkbox"/> To be paid in full 100%	_____%	_____	\$ _____	\$ _____	\$ _____	\$ _____ Starting on Plan Month _____	\$ _____

Insert additional lines as needed.

PART 4: Treatment of Fees and Priority Claims

4.1 General

Trustee’s fees and all allowed priority claims, including domestic support obligations other than those treated in § 4.5, will be paid in full without postpetition interest.

4.2 Trustee’s fees

Trustee’s fees are governed by statute and may vary during the term of the plan, nevertheless are estimated for confirmation purposes to be 10 % of all plan payments received by the trustee during the plan term.

4.3 Attorney’s fees

Check one.

Flat Fee: Attorney for Debtor(s) elect to be compensated as a flat fee for their legal services, up to the plan confirmation, according to LBR 2016-1(f).

OR

Fee Application: The attorneys’ fees amount will be determined by the court, upon the approval of a detailed application for fees and expenses, filed not later than 14 days from the entry of the confirmation order.

Attorney’s fees paid pre-petition: \$ _____
 Balance of attorney’s fees to be paid under this plan are estimated to be: \$ _____
 If this is a post-confirmation amended plan, estimated attorney’s fees: \$ _____

2020 CARIBBEAN INSOLVENCY SYMPOSIUM

4.4 Priority claims other than attorney's fees and those treated in §§ 4.5, 4.6.

Check one.

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

The Trustee shall pay in full all allowed claims entitled to priority under §507, §1322(a)(2), estimated in \$_____.

Name of priority creditor	Estimate amount of claim to be paid
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Insert additional lines as needed.

4.5 Domestic support obligations assigned or owed to a governmental unit and paid less than full amount.

Check one.

None. If "None" is checked, the rest of § 4.5 need not be completed or reproduced.

The allowed priority claims listed below are based on a domestic support obligation that has been assigned to or is owed to a governmental unit and will be paid less than the full amount of the claim under 11 U.S.C. § 1322(a)(4). *This plan provision requires that payments in § 2.1 be for a term of 60 months; see 11 U.S.C. § 1322(a)(4).*

Name of creditor	Estimated amount of claim to be paid
_____	\$ _____
_____	\$ _____

Insert additional lines as needed.

4.6 Post confirmation property insurance coverage

Check one.

None. If "None" is checked, the rest of § 4.6 need not be completed or reproduced.

The Debtor(s) propose to provide post confirmation property insurance coverage to the secured creditors listed below:

Name of creditor insured	Insurance Company	Insurance coverage beginning date	Estimated insurance premium to be paid	Estimated total payments by trustee
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____

Disbursed by:
 Trustee
 Debtor(s)

Disbursed by:
 Trustee
 Debtor(s)

Insert additional lines as needed.

PART 5: Treatment of Nonpriority Unsecured Claims

5.1 Nonpriority unsecured claims not separately classified.

Allowed nonpriority unsecured claims that are not separately classified will be paid pro rata. If more than one option is checked, the option providing the largest payment will be effective.

Check all that apply.

- The sum of \$ _____.
- _____% of the total amount of these claims, an estimated payment of \$ _____.
- The funds remaining after disbursements have been made to all other creditors provided for in this plan.
- If the estate of the Debtor(s) were liquidated under chapter 7, nonpriority unsecured claims would be paid approximately \$ _____.

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

Check one.

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

The Debtor(s) will maintain the contractual installment payments and cure any default in payments on the unsecured claims listed below on which the last payment is due after the final plan payment. Contractual installment payments will be disbursed either by the trustee or directly by the Debtor(s), as specified below. The claim for the arrearage amount will be paid in full as specified below and disbursed by the trustee. The final column includes only payments disbursed by the trustee rather than by the Debtor(s).

Name of creditor	Current installment payments	Amount of arrearage to be paid	Estimated total payments by trustee
_____	\$ _____	\$ _____	\$ _____
	Disbursed by:		
	<input type="checkbox"/> Trustee		
	<input type="checkbox"/> Debtor(s)		

Insert additional lines as needed.

5.3 Other separately classified nonpriority unsecured claims.

Check one.

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

The nonpriority unsecured allowed claims listed below are separately classified and will be treated as follows: (If Trustee is to disburse and no monthly payment amount is listed below, distribution will be prorated according with plan section 7.2.)

Name of creditor (Claim No.)	Base for separate classification	Treatment (to be paid pro rata)	Amount to be paid on the claim (if applicable)	Interest rate (If applicable)	Months	Starting on Plan Month	PMT Amount	Estimated total amount of payments
_____	_____	<input type="checkbox"/> In full – 100%	\$ _____	_____ %	_____	_____	\$ _____	\$ _____
		<input type="checkbox"/> Less than 100%						
		<input type="checkbox"/> Paid by co-debtor						
		<input type="checkbox"/> Other (explain)	_____					
_____	_____	<input type="checkbox"/> In full – 100%	\$ _____	_____ %	_____	_____	\$ _____	\$ _____
		<input type="checkbox"/> Less than 100%						
		<input type="checkbox"/> Paid by co-debtor						
		<input type="checkbox"/> Other (explain)	_____					

Insert additional lines as needed

PART 6: Executory Contracts and Unexpired Leases

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

Check one.

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

Assumed items. Current installment payments will be disbursed either by the trustee or directly by the Debtor(s), as specified below, subject to any contrary court order or rule. Arrearage payments will be disbursed by the trustee. The final column includes only payments disbursed by the trustee rather than by the Debtor(s).

Name of creditor	Description of leased property or executory contract	Current installment payment	Amount of arrearage to be paid	Treatment of arrearage (Refer to other plan section if applicable)	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)			

Insert additional lines as needed.

PART 7: Vesting of Property of the Estate & Plan Distribution Order

7.1 **Property of the estate will vest in the Debtor(s) upon**

Check the applicable box:

Plan confirmation.

Entry of discharge.

Other: _____ .

7.2 **Plan distribution by the trustee will be in the following order:**

(The numbers below reflect the order of distribution; the same number means prorated distribution among claims with the same number.)

1. Distribution on Adequate Protection Payments (Part 3, Section 3.6)
1. Distribution on Attorney's Fees (Part 4, Section 4.3)
1. Distribution on Secured Claims (Part 3, Section 3.1) – *Current contractual installment payments*
2. Distribution on Post Confirmation Property Insurance Coverage (Part 4, Section 4.6)
2. Distribution on Secured Claims (Part 3, Section 3.7)
2. Distribution on Secured Claims (Part 3, Section 3.1) – *Arrearage payments*
3. Distribution on Secured Claims (Part 3, Section 3.2)
3. Distribution on Secured Claims (Part 3, Section 3.3)
3. Distribution on Secured Claims (Part 3, Section 3.4)
3. Distribution on Unsecured Claims (Part 6, Section 6.1)
4. Distribution on Priority Claims (Part 4, Section 4.4)
5. Distribution on Priority Claims (Part 4, Section 4.5)
6. Distribution on Unsecured Claims (Part 5, Section 5.2)
6. Distribution on Unsecured Claims (Part 5, Section 5.3)
7. Distribution on General Unsecured claims (Part 5, Section 5.1)

Trustee's fees are disbursed before each of the distributions above described pursuant to 28 U.S.C. § 586(e)(2).

PART 8: Nonstandard Plan Provisions

8.1 Check "None" or list the nonstandard plan provisions

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

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

Each paragraph below must be numbered and labeled in boldface type, and with a heading stating the general subject matter of the paragraph.

The following plan provisions will be effective only if there is a check in the box "Included" in § 1.3.

Insert additional lines as needed.

PART 9: Signature(s)

Signature of attorney of Debtor(s) Date _____

Date _____

Date _____

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

By filing this document, the attorney for Debtor(s) or Debtor(s) themselves, if not represented by an attorney, also certify(ies) that the wording and order of the provisions in this chapter 13 plan are identical to those contained in Local Form G (LBF-G), other than any nonstandard provisions included in Part 8.

Challenges for debtors who want to retain residential real property. Is mediation in the bankruptcy court an effective tool? Valuation of property and the new chapter 13 plan form

Committee Notes to proposed national plan

Official Form 113 is new and is the required plan form in all chapter 13 cases, except to the extent that Rule 3015(c) permits the use of a Local Form. Except as permitted by Rule 9009, alterations to the Official Form are not permitted. As the form explains, spaces for responses may be expanded or collapsed as appropriate, and sections that are inapplicable do not need to be reproduced. Portions of the form provide multiple options for provisions of a debtor's plan, but some of those options may not be appropriate in a given debtor's situation or may not be allowed in the court presiding over the case. Debtors are advised to refer to applicable local rulings. Nothing in the Official Form requires confirmation of a plan containing provisions inconsistent with applicable law.

Part 1. This part sets out warnings to both debtors and creditors. For creditors, if the plan includes one or more of the provisions listed in this part, the appropriate boxes must be checked. For example, if Part 8 of the plan proposes a provision not included in, or contrary to, the Official Form, that nonstandard provision will be ineffective if the appropriate check box in Part 1 is not selected.

Part 2. This part states the proposed periodic plan payments, the estimated total plan payments, and sources of funding for the plan. See Code § 1325(c). If the debtor selects the option of making payments other than by direct payments to the trustee or by a payroll deduction order, the alternative method (*e.g.*, a designated third party electronic funds transfer program) must be specified. Section 2.3 provides for the treatment of any income tax refunds received during the plan term.

Part 3. This part provides for the treatment of secured claims.

Section 3.1 provides for the treatment of claims under Code § 1322(b)(5) (maintaining current payments and curing any arrearage). For the claim of a secured creditor listed in § 3.1, an estimated arrearage amount should be given. A contrary

arrearage or current installment payment amount listed on the creditor's timely filed proof of claim, unless contested by objection or motion, will control over the amount given in the plan.

In § 3.2, the plan may propose to determine under Code § 506(a) the value of a secured claim. For example, the plan could seek to reduce the secured portion of a creditor's claim to the value of the collateral securing it. **For the secured claim of a non-governmental creditor, that determination would be binding upon confirmation of the plan.** For the secured claim of a governmental unit, however, a contrary valuation listed on the creditor's proof of claim, unless contested by objection or motion, would control over the valuation given in the plan. *See* Bankruptcy Rule 3012. Bankruptcy Rule 3002 contemplates that a debtor, the trustee, or another entity may file a proof of claim if the creditor does not do so in a timely manner. *See* Bankruptcy Rules 3004 and 3005. **Section 3.2 will not be effective unless the appropriate check box in Part 1 is selected.**

I. What is required for valuation or “Cramdown”?

1. Determine if limitations to modify secured claims in Chapter 13 apply:
 - a. § 1322(b) prohibits modifications of home mortgages to claims “other than a claim secured only by a security interest in real property that is the debtor's principal residence.
 - b. § 1325(a)(9) excludes from § 506 determination of secured status claims 910 motor vehicles claims and debts incurred within 1 year of the petition, guaranteed with any other thing of value.
 - c. BAPCPA's amendment to § 1325(a)(5) lien retention provision [*vis a vis* the extent of undersecured junior mortgage liens].
 - d. § 1328 (f). imposes temporal limits on discharge in a Chapter 13 when a debtor received a discharge in a prior bankruptcy case.
 - e. Verify if the lien is a judicial lien than could be avoided. *See* § 522(f) and Rule 4003(d).
2. A recent valuation of the property: appraisals of current fair market value; replacement value opinions.

II. Procedure to follow according to the new plan and Bankruptcy Rules

1. Section 3.2 of the Puerto Rico Local Form G (LBF-G) must be checked as to whether the Debtor requests that the court determines the value of a secured claim. If the debtor requests the valuation, the claim should be listed below the appropriate box, and the blank provisions completed, as necessary.

Caveat: Governmental secured claims cannot be modified through Section 3.2 of LCF-G; those can be pursued through adversary proceedings.

2. File an Objection to Claim if the claim's valuation is inconsistent with current value of the property; if does not indicate such value, or the debt claimed is greater than the current value of the property, other cause (i.e. in-full or partial payment of the claimed debt; lack of perfection).
3. Section 3.3 of LBR-G must be checked when cramming down motor vehicles or other claims not excluded by § 506 exclusions.
4. Section 3.4 of LBR-G must be checked when avoiding liens pursuant to § 522(f) and Rule 4003(d).
5. Check the corresponding box in the LBF-G "Part 1: Notices" section of the Chapter 13 Plan.

III. Pointers and tips to file a successful plan with the intent to cramdown a secured debt.

1. Give the affected claim holder adequate notice by serving such entity pursuant to applicable Bankruptcy Rules, with clear and conspicuous language (bold, italic, or underlined) that its right may be affected, a copy of the Chapter 13 Plan filed, and the debtor's appraisal or valuation of the property guaranteeing the claim. See Bankruptcy Rules 3012, 7001, and 9014.

Example: ***YOUR RIGHTS MAY BE AFFECTED. YOU SHOULD READ THE PLAN AND NOTICE CAREFULLY AND DISCUSS THEM WITH YOUR ATTORNEY. IF YOU DO***

NOT HAVE AN ATTORNEY, YOU MAY WISH TO CONSULT ONE.

2. If the affected creditor has filed a claim, serve the affected entity at the address for notices stated in the proof of claim, in addition to additional addresses you may serve the notice, plan and valuation.
3. Although service by first class mail delivery suffices, service by Certified and Return Receipt Requested mail is recommended.
4. File a certificate of service of the Notice and Copy of the Chapter 13 Plan, as well as the Proof of Service with the Court. Likewise, file with the Court the proof of receipt by the affected party when received by you.
5. Observance of Bankruptcy Rule 7004(h) is applicable when serving notice an insured depository institution.

IV. Section 3.2

3.2 Request for valuation of security, payment of fully secured claims, and modification of undersecured claims.
Check one.

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

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

The debtor(s) request that the court determine the value of the secured claims listed below. For each non-governmental secured claim listed below, the debtor(s) state that the value of the secured claim should be as set out in the column headed *Amount of secured claim*. For secured claims of governmental units, unless otherwise ordered by the court, the value of a secured claim listed in a proof of claim filed in accordance with the Bankruptcy Rules controls over any contrary amount listed below. For each listed claim, the value of the secured claim will be paid in full 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 total claim listed on the proof of claim controls over any contrary amounts listed in this paragraph.

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

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

Name of Creditor	Estimated	Collateral	Value of	Amount of	Amount of	Interest	Monthly
PMT	Estimated		Collateral	Claims	Secured	Rate %	to
Creditor	Total of			Senior to	Claim		
Monthly PMTs	Creditor's			Creditor's			
	Total Claim						

				Claim			
_____	\$ _____	_____	\$ _____	\$ _____	\$ _____	_____ %	\$ _____
_____	\$ _____	_____	\$ _____	\$ _____	\$ _____	_____ %	\$ _____

V. Valuation of Property for Determination of a Secured Claim – A

Creditor’s Perspective

In general

An allowed claim is secured to the extent of the value of a creditor’s interest in the estate’s interest in the property that serves as collateral. 11 U.S.C. § 506(a)(1); 11 U.S.C. § 502. The text added in 2005 to section 506¹ specifically provides the basis for determination of such value with respect to personal property – the replacement value as of the date of the filing of the petition without deduction for costs of sale or marketing. 11 U.S.C. § 506(a)(2). Such section further defines replacement value, with respect to property acquired for personal, family, or household purposes, as the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time of determination of value. 11 U.S.C. § 506(a)(2).

The relevance of the determination of the value of property securing a claim under section 506(a) becomes more significant when the value of the creditor’s collateral is less than the amount of its claim. Accordingly, in the event that a creditor holds an “undersecured” claim, section 506(a) provides for the bifurcation of the claim, resulting in a secured claim to the extent of the value of the collateral, and an unsecured, or deficiency, claim for the balance of the claim. 11 U.S.C. § 506(a). Associates Commercial Cop. v. Rash, 520 U.S. 953, 961 (1997); Superior Paint Mfg. Co. v. López-

¹ Unless otherwise stated, all allusions to sections shall refer to Title 11 of the U.S. Code.

Soto (In re López-Soto), 764 F.2d 23, 26 (1st Cir. 1985). There are certain instances in which the bifurcation of the claim may be undone (as in the context of a chapter 11 in which the creditor makes a section 1111(b) election), or rendered irrelevant (when a debtor provides for full payment of the claim in a chapter 13 plan, or the claim is deemed unimpaired in a chapter 11 plan). See 11 U.S.C. § 1111(b).

After the creditor's interest in the collateral has been established, the court must determine the valuation standard to be applied. In general, the courts agree fair market value to be the standard; however, the determination of fair market value depends on the particular market and methodology to be utilized by the trial court. 4 Collier on Bankruptcy P 506.03[6] (16th 2019). See United States v. Taffi (In re Taffi), 96 F.3d 1190, 1193 (9th Cir. 1996) (*en banc*), *cert. denied*, 521 U.S. 1103 (1997); see also Winthrop Old Farm Nurseries, Inc. v. New Bedford Inst. for Sav. (In re Winthrop Old Farm Nurseries, Inc.), 50 F.3d 72, 75-76 (1st Cir. 1995).

Pursuant to section 506(a)(1), the value of the collateral shall be determined in consideration of (i) the purpose of the valuation, and (ii) the proposed disposition of the property. 11 U.S.C. § 506(a)(1).

In Rash, the Supreme Court concluded that the determination of the value of a creditor's collateral in a cramdown procedure under section 506(a) will be based on the value of the debtor's proposed use of the property under the plan, and not on the value that may be obtained in a foreclosure process that is **not** the proposed use under the plan. The Rash court recognizes that the replacement-value standard, and not the foreclosure-value standard, governs in cramdown cases, but leaves to the bankruptcy courts, as triers of facts, the determination of what is the best method to ascertain replacement value on

the basis of the evidence presented. Associates Commercial Cop. v. Rash, *supra*, 965 n. 6; *see also* United States v. Taffi (In re Taffi), *supra*, 1193; Winthrop Old Farm Nurseries, Inc. v. New Bedford Inst. for Sav. (In re Winthrop Old Farm Nurseries, Inc.), *supra*, 74-75. Thus, in Rash, the court directs the bankruptcy court, in a chapter 13 cramdown procedure, to focus on (i) the type of debtor, and (ii) the nature of the property, presumably instructing the trial court to focus on the price that the particular debtor would have to pay for the same collateral in a market available to that debtor. Associates Commercial Cop. v. Rash, *supra*, 960 n. 2. 4 Collier on Bankruptcy P 506.03[6][a] (16th 2019).

Procedure

Prior to General Order 17-08, and Local Bankruptcy Form G – Chapter 13 Plan, chapter 13 debtors would, for the most part, seek the valuation of collateral in order to obtain a bifurcation of a secured claim, by way of an adversary proceeding, in conformance with Rule 7001(2),² notwithstanding the provisions of Rule 3012. The filing of an adversary proceeding required formalities, and terms, that resulted in a significant delay of the case, which could hinder the confirmation of the plan for months. See F.R.Bankr.P. 7004, 7012, 7016.

Accordingly, the defense provided by counsel for creditors would commence with raising objections to the debtors' compliance with procedural requirements, such as the manner and timing of service of process, or the correctness of the person served. Additionally, a creditor would file an objection to the confirmation of a plan that included a provision for the payment of an alleged value of collateral that did not represent the fair

² Unless otherwise stated, all allusions to rules shall refer to the Federal Rules of Bankruptcy Procedure.

market value thereof, citing 11 U.S.C. § 1325(a)(5)(B)(ii). The interest of debtors, and debtors' counsel, in obtaining prompt confirmation of the plan, concomitantly with the curing of procedural objections, would often facilitate a consensual resolution of the issue, with a stipulated value for the collateral.

Since the effectiveness of General Order 17-08, on December 1, 2017, Local Bankruptcy Form G – Chapter 13 Plan specifically provides, in Section 3.2, for a debtor to check a box if the plan contains a “Request for valuation of security, payment of fully secured claims and modification of undersecured claims.” See Section 3.2 of LBF-G. Such plan provision is consistent with Rule 3012(a)(1),(b).

In addition to the requirement established in Rule 3012(b) that sets forth that a chapter 12 or chapter 13 plan that includes a request to determine the amount of a secured claim shall be served in the manner provided for service of summons and complaint by Rule 7004, General Order 18-01 adopted LBR 3015-3 (which supersedes LBR 3015-2) expressly encompasses the aforementioned notice requirement for a chapter 13 plan that requests for the valuation of collateral. See LBR 3015-3(c)(2).

Still, a creditor will object to a debtor's failure to comply with applicable notice requirements, but Local Bankruptcy Form G – Chapter 13 Plan has granted the process a sense of urgency that frequently leads to a swifter resolution of the matter.

Other Defenses

Real Property

Section 1322(b)(2) sets forth that a chapter 13 plan may not modify the rights of a holder of a secured claim secured only by a security interest in real property that is the debtor's principal residence. 11 U.S.C. § 1322(b)(2). In Nobelman v. American Sav.

Bank, the Supreme Court held that a chapter 13 plan that proposed to pay the fair market value of the debtor's principal residence, which was less than the creditor's claim, could not be confirmed in violation of 11 U.S.C. § 1322(b)(2). Nobelman v. American Sav. Bank, 508 U.S. 324, 328 (1993). Conversely, following the rationale of Nobelman, most courts have resolved that a lien encumbering a chapter 13 debtor's principal residence may be stripped off and treated as an unsecured claim, if the lien is wholly undersecured because more senior liens are equivalent to, or in excess of, the value of the real property.³

Following the decision of the U.S. Bankruptcy Appellate Panel for the First Circuit in Domestic Bank v. Mann (In re Mann), the Puerto Rico bankruptcy courts have resolved that wholly unsecured junior mortgages encumbering a debtor's principal residence are not entitled to the protection of the antimodification provision of 11 U.S.C. § 1322(b)(2), with respect to a real property that is the debtor's principal residence, and thus a chapter 13 plan may void such a lien. Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000). See Díaz v. Asociación de Empleados del E.L.A. (In re Díaz), 544 B.R. 471, 475 (Bankr. D.P.R. 2016); Rodríguez v. FirstBank P.R. (In re Rodríguez), 517 B.R. 404, 407-409 (Bankr. D.P.R. 2014).⁴

Personal Property

³ See Zimmer v. PSB Lending Corp. (In re Zimmer), 313 F.3d 1220, 1227 (9th Cir. 2002); Lane v. Western Interstate Bancorp (In re Lane), 280 F.3d 663, 665 (6th Cir. 2002); Pond v. Farm Specialist Realty (In re Pond), 252 F.3d 122, 126 (2nd Cir. 2001); American Gen. Fin., Inc. v. Dickerson (In re Dickerson), 222 F.3d 924, 926 (11th Cir. 2000); Tanner v. FirstPlus Fin., Inc. (In re Tanner), 217 F.3d 1357, 1360 (11th Cir. 2000); Bartee v. Tara Colony Homeowners Ass'n (In re Bartee), 212 F.3d 277, 280 (5th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 615 (3rd Cir. 2000).

⁴ Although the court granted the debtors' request for a determination that a second mortgage was wholly unsecured, it denied the debtors' petition for an order requiring the Registrar of the Property to eliminate the mortgage from the Registry until the related chapter 13 plan was completed and the debtors received a discharge. See also In re López, 2015 Bankr. LEXIS 3436 (Bankr. D.P.R. 2015); Roman v. CitiMortgage, Inc. (In re Roman), 2015 Bankr. LEXIS 3437 (Bankr. D.P.R. 2015).

In 2005, a paragraph was added at the end of section 1325(a), to restrict subsection (a)(5), by setting forth that section 506 does not apply to a secured claim in cases as to which a creditor has a purchase money security interest securing the debt, (i) if the collateral consists of a motor vehicle acquired for the personal use of the debtor and the debt was incurred within the 910-day period preceding the date of the filing of the petition, or (ii) if collateral consists of any other thing of value and the debt was incurred during the 1-year period preceding that filing. 11 U.S.C. § 1325(a).

Conclusion

Based on current legal provisions in force, the Puerto Rico bankruptcy court has established rules, and provided a Form, in order to reduce litigation and expedite procedures. As part of the process of adjustment of debts of individuals, when disposable income becomes tighter, debtors are more frequently invoking the right to pay the value of collateral with respect to secured claims. Creditors have to be vigilant of the defense of their rights, especially in consideration of the accelerated procedures of the cases.

VI. Conclusion

VII. Questions