

Chapter 11 Reorganization

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CHAPTER 11 REORGANIZATION

A Chapter 11 proceeding is one in which the debtor generally retains possession of the assets of the estate and tries to reorganize the business. Chapter 11 is sometimes called the “Cadillac” of bankruptcies and is usually more expensive and time-consuming than other types of bankruptcies. The debtor (and after a certain period of time even creditors) proposes a plan through which the debtor plans to pay creditors and return the business to profitability. Before a plan can be accepted, a detailed disclosure statement and the proposed plan must be provided to all creditors. Creditors are then given the opportunity to vote on the acceptability of the plan. There are many requirements a debtor must satisfy before the Court will approve a plan of reorganization, but debtors also have great flexibility in what they can do to modify their debt obligations and in how and how long they take to repay creditors.

Chapter 11 of the bankruptcy code provides an optional “fast track” procedure for a small business seeking reorganization. The debtor must have total debt of no more than \$2,000,000 (excluding debts owed to insiders), and its primary activity must not be the owning or operating of real property. Under the fast track procedure, there are no creditors committees, the exclusive period in which the debtor may file a plan is 180 days, and more lenient disclosure and solicitation rules and expedited procedures apply.

I. APPOINTMENT OF TRUSTEE OR EXAMINER

The court will appoint a trustee in Chapter 11 proceedings if a petition is filed which shows either:

1. Cause, including fraud, dishonesty, incompetence, or gross mismanagement by current management (either before or after the petition); or
2. If the trustee would be in the best interests of creditors, shareholders or other interested parties.

Although the policy of Chapter 11 proceedings favors the concept of leaving the debtor-in-possession in charge of the estate, due to the debtor’s familiarity and expertise with the business, a trustee can protect the rights of creditors.

The court may appoint an examiner in Chapter 11 cases where it feels that replacing the debtor-in-possession with a trustee is not warranted. An examiner may investigate specific matters such as allegations of dishonesty or mismanagement by the debtor or an avoidable preference which the debtor-in-possession is reluctant to pursue.

II. MOTION TO SET DATE TO FILE PLAN OF REORGANIZATION

Creditors may file a motion to set a specific date by which the debtor must file a plan of reorganization in Chapter 11 cases. Such a motion is a useful and inexpensive way to keep the case moving. You should ask the court to require that the plan be filed by a certain date, or that if no plan is filed by that date, to automatically dismiss or convert the case to a Chapter 7 liquidation.

Keep in mind that the debtor has an exclusive 120-day period in which to file a plan of reorganization. This period may be reduced or increased (by up to 18 months from the filing) for cause and on a request made within the period. But there is no statutory deadline for the filing of the plan. The only way to establish a shorter deadline for the filing of a plan by the debtor is to ask the court to set such a deadline. This remedy is very simple, but often overlooked.

III. AFTER 120 DAYS, CREDITORS MAY FILE REORGANIZATION PLANS FOR THE DEBTOR

Creditors' plans are useful in cases where the creditor has a large amount at stake and has a realistic view of the prospects for the debtor to reorganize. Creditors' plans may take many forms. A creditor may propose such a plan anytime after 120 days after the case is filed unless the debtor obtains an order extending the exclusivity period. This time limit is 180 days if the debtor elects the small business fast track procedure.

Sometimes the best plan for creditors to propose is that the debtor be liquidated. Creditors can propose specific guidelines for such a liquidation, including the appointment of a neutral party to conduct the sale and distribution of assets.

IV. PLAN VOTING

If a debtor reaches the stage of proposing a Chapter 11 plan, bankruptcy law provides a debtor with much discretion for terms to propose in a plan. The plan must satisfy the "best interests test" by paying secured creditors as much as they would have received in a Chapter 7 liquidation. A plan must also pay certain types of priority claims in full.

Plan voting is done by classes. Each secured creditor will be placed in its own class. Debtors have discretion to lump together other creditors in classes based on the type of claim. Approval by a class requires a majority by the number of claimants, and two-thirds by the amount of claims. If every class votes to approve a Chapter 11 plan, then the plan is permissible so long as it satisfies the "best interests test" and other requirements. An approved Chapter 11 plan even has the ability to "strip down" secured debt, unless the debt is secured by the debtor's principal residence.

More likely, not every class will approve the debtor's proposed plan of reorganization. The plan can still be confirmed via "cramdown." So long as the plan

is approved by at least one class of outsiders that is impaired (*i.e.* would have altered rights under the plan), then the plan can be forced upon other creditors. Under cramdown, however, the plan must satisfy the “absolute priority rule,” which provides that a dissenting secured creditor must be paid in full before payments to unsecured creditors. Similarly, under the absolute priority rule unsecured creditors typically must be paid in full before the plan can provide for payments to equity holders.

V. CONVERSION TO LIQUIDATION

Creditors can move to dismiss a Chapter 11 bankruptcy or convert it to a Chapter 7 liquidation (whichever the court deems is in the best interest of creditors) for “cause.” The debtor can then only avoid conversion or liquidation by showing a reasonable likelihood that a plan will be confirmed in a reasonable amount of time, and a justification for and curing of the “cause” that preceded the motion.

“Cause” to support a dismissal or conversion under this section includes the following:

- (A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;
- (B) gross mismanagement of the estate;
- (C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;
- (D) unauthorized use of cash collateral substantially harmful to 1 or more creditors;
- (E) failure to comply with an order of the court;
- (F) unexcused failure to satisfy timely any filing or reporting requirement established by [the Bankruptcy Code] or by any applicable rule to a case under . . . chapter [11];
- (G) failure to attend the meeting of creditors convened under section 341(a) or an examination ordered under Rule 2004 of the Federal Rules of Bankruptcy Procedure without good cause;
- (H) failure timely to provide information or attend meetings reasonably requested by the United States Trustee (or the bankruptcy administrator, if any);
- (I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief;

(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by [the Bankruptcy Code] or by order of the court;

(K) failure to pay any fees or charges required under chapter 123 of title 28 [of the United States Code];

(L) revocation of an order of confirmation under section 1144;

(M) inability to effectuate substantial consummation of a confirmed plan;

(N) material default by the debtor with respect to a confirmed plan;

(O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and

(P) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

Creditors cannot convert a farmer or charity to a Chapter 7 liquidation proceeding. A farmer also cannot be placed into an involuntary bankruptcy. The Bankruptcy Code's treatment of "family farmers" is discussed below.

CHAPTER 12 FAMILY FARMER OR FISHERMAN

The family farmer reorganization bankruptcy found in Chapter 12 of the Bankruptcy Code is somewhat similar to the framework found in Chapters 11 and 13 of the Bankruptcy Code. Chapter 12 was added to the Bankruptcy Code in 1986 to provide a simplified means of reorganization for the "family farmer." Revisions to the Bankruptcy Code in 2005 added "family fisherman" to the type of entities eligible for a Chapter 12 bankruptcy. Unless indicated otherwise, all references below to "family farmers" includes family fishermen.

A Chapter 12 plan must commit all of the debtor's projected "disposable income" to payment of creditors. "Disposable income" is all income that the debtor receives that is not "reasonably necessary to be expended" for the support of the family farmer and his or her dependents, or for the "continuation, preservation and operation of the debtor's business." This provision coupled with the requirement that unsecured creditors only receive as much as they would have received in a liquidation allows the "family farmer" to pay very little to creditors in many situations. Consequently, creditors should be cautious in extending credit to entities that might qualify as "family farmers" under Chapter 12 of the Bankruptcy Code. A creditor should always try to obtain adequate security for any major family farmer loans.

I. DEFINITION OF “FAMILY FARMER”

A “family farmer” may be an individual, an individual and spouse, a partnership or a corporation that is engaged in a farming operation whose aggregate debts do not exceed \$3,792,650. A “family fisherman” may be any of the same types of debtors who are engaged in a commercial fishing operation whose aggregate debts do not exceed \$1,757,475.

At least 50% of the “aggregate, non-contingent, liquidated debts” (excluding a principal residence) must arise from the farming operation which is owned or operated by the family farmer. For a family fisherman, at least 80% of the “aggregate, non-contingent, liquidated debts” (excluding a principal residence) must arise from the fishing operation.

If the family farmer or fisherman is an individual or individual and spouse, then the farmer must receive more than 50% of its gross income for the preceding taxable year (or , for family farmers only, each of the second and third preceding taxable years). More than 50% of the outstanding stock or equity must be held by one family for a corporation or partnership to be a family farmer or fisherman. In addition, the family must actually conduct the operation and more than 80% of the value of the assets of the partnership or corporation must be assets related to the farming. If the corporation has publicly traded stock then it is not eligible to be a family farmer or fisherman.

To be eligible for Chapter 12 relief, the debtor must be a family farmer or fisherman with “regular annual income,” which means annual income which is sufficiently stable and regular to enable payments under a valid Chapter 12 plan.

There are no involuntary Chapter 12 bankruptcies. Just as creditors cannot force a farmer into Chapter 7 or Chapter 11 cases, creditors cannot force a farmer to file Chapter 12 proceedings.

II. THE CHAPTER 12 CASE

Once a Chapter 12 bankruptcy petition has been filed, the automatic stay prevents creditors from taking actions against the debtor or the property of the debtor. A new estate is created at the time of the filing of the bankruptcy petition.

Similar to Chapter 11 proceedings, Chapter 12 proceedings presume that the debtor will remain the debtor-in-possession of the estate’s property. Unlike Chapter 7 and Chapter 11 cases, property acquired after the filing of the petition and before the Chapter 12 case is closed is considered property of the bankruptcy estate.

Chapter 12 of the Bankruptcy Code provides for a stay of proceedings against co-debtors in certain situations. The co-debtor stay is limited to consumer debts on which an individual is the co-obligor. If the co-obligor became liable for the debt in the ordinary course of its business, however, then the co-debtor stay of Chapter 12 does not apply and creditors are free to pursue the co-obligor. Additionally, the co-debtor stay does not protect a co-obligor who actually received consideration for the indebtedness. Nor does the co-debtor stay prevent a creditor from presenting a negotiable instrument, such as a check or promissory note, for payment by the co-obligor. The co-debtor stay lasts until the Chapter 12 case is closed, dismissed, or converted to a liquidation.

The co-debtor stay can be lifted if the creditor's interest will be irreparably harmed, if the stay remains effective, or if the family farmer's plan does not propose to pay the creditor's claim in full.

If the debtor's plan does not propose to pay the claim in full, the automatic stay will terminate 20 days after the creditor files a request for relief from the co-debtor stay, unless the debtor or co-obligor files a written objection. If a response is filed, the issues become whether the debt is excluded from the co-debtor stay and whether the creditor's interest would be irreparably harmed by continuing the stay.

III. THE TRUSTEE

A trustee is appointed in all Chapter 12 cases. Usually, the trustee will be limited to appearing at any hearing concerning the value of property subject to a lien, appearing at the hearing to confirm the plan, and ensuring that the debtor makes timely payments required by the confirmed plan.

Upon the request of creditors or other parties in interest, the trustee may be directed to operate and manage the farming or fishing operation.

IV. CREDITORS' RIGHTS IN CHAPTER 12 PROCEEDINGS

The court may dismiss a family farmer or fisherman reorganization for cause, including:

1. Unreasonable delay, or gross mismanagement, by the debtor to the prejudice of creditors;
2. Failure to pay fees and charges required by law;
3. Failure to file a timely plan;

4. Failure to begin making payments on time as required by a confirmed plan;
5. Denial of confirmation of a plan and denial of a request for additional time to file another plan or to modify the plan;
6. Material default by the debtor with respect to compliance with the terms of a confirmed plan;
7. Revocation of the order of confirmation and denial of confirmation of a modified plan;
8. Termination of a confirmed plan due to a condition set forth in the plan;
9. Continuing loss of estate assets and absence of a reasonable likelihood of rehabilitation; or
10. Failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

The court may also dismiss a case under Chapter 12 or convert it to a Chapter 7 liquidation upon a showing that the debtor has committed fraud in connection with the case.

The court may install a trustee in place of the debtor-in-possession if the creditor can prove fraud, dishonesty, incompetence or gross mismanagement by the debtor.

V. THE CHAPTER 12 PLAN

The debtor is required to file a plan within 90 days of the bankruptcy petition, although the Court may extend such period if an extension is “substantially justified.” If the debtor fails to file a timely plan, the case should be dismissed. No other party is permitted to propose a plan for the debtor, however. The debtor may also withdraw the plan prior to confirmation.

The Chapter 12 plan must provide for the following:

1. All or a portion of future earnings or income of the debtor be paid to the trustee for execution of the plan;

2. Payment in full of all priority claims (except claims owed to a governmental unit that arises from the disposition of any farm asset) unless the holder of the priority claim agrees to a different treatment, except as discussed below;

3. The same treatment for each claim or interest within a particular class of claims; and

4. Less than full payment of domestic-support claims only if it provides that all of the debtor's projected disposable income for a five-year period will be applied to making payments under the plan.

In addition, the plan may provide for the following:

1. Designating a class or classes of unsecured claims, and treating claims for consumer debt differently than other unsecured claims;

2. Modifying the rights of holders of secured claims or of holders of unsecured claims;

3. Curing or waiving of defaults;

4. Payments of unsecured claims concurrently with payments of secured claims;

5. Curing of defaults and maintenance of payments;

6. The assumption, rejection or assignment of executory contracts or unexpired leases;

7. Payment of all or part of a claim against the debtor from either property of the estate or property of the debtor;

8. The sale of all or any part of the property of the estate or the distribution of all or any part of the property of the estate among those having an interest in that property;

9. Payment of allowed secured claims over a period exceeding the time permitted for the plan itself;

10. The vesting of property of the estate in the debtor or in some other entity upon confirmation of the plan or at a later time;

11. Payment of interest accruing after the petition on unsecured claims that are nondischargeable under section 1228(a), except that such interest may

be paid only to the extent that the debt has disposable income available to pay such interest after making provision for full payment of all allowed claims; and

12. Any other appropriate provision “not inconsistent” with Chapter 12.

A Chapter 12 plan must provide unsecured claimants with at least as much as the unsecured creditors could have received in a Chapter 7 liquidation as of the effective date of the plan. The plan must also pass a “feasibility” test in that the debtor must demonstrate that the plan has a probability of succeeding. The plan also must be proposed in “good faith.”

CHAPTER 13 INDIVIDUAL WITH REGULAR INCOME

A Chapter 13 bankruptcy is intended to be an alternative to a Chapter 7 liquidation for individual consumers with relatively small debt totals. A debtor is eligible for this Chapter if he has less than \$360,475 of unsecured debt and \$1,081,400 of secured, non-contingent debt. 11 U.S.C. § 109(e). Eligibility requirements are indexed to adjust pursuant to Section 104 of the Bankruptcy Code. If Chapter 13 debtors fail to meet the above criteria, the Chapter 13 case is subject to dismissal upon motion by a creditor, the trustee or the U.S. Trustee’s Office.

Chapter 13 bankruptcies are sometimes called “wage earner” plans and are somewhat like Chapter 11 reorganizations, but for individuals. The debtor agrees to contribute a certain portion of his income over the term of the plan, usually three years but no more than five years. A Chapter 13 plan may allow the debtor to retain more of his property and discharge more types of debts than a Chapter 7 liquidation.

I. CHARACTERISTICS OF CHAPTER 13 BANKRUPTCIES

A Chapter 13 debtor must be an individual with regular income, which ordinarily is wages. Any regular source of income will suffice to qualify a debtor for Chapter 13 relief. An individual operating a business as a sole proprietorship (“doing business as”) is eligible to file a Chapter 13 bankruptcy. Chapter 13 bankruptcies are always voluntary. Involuntary petitions are not permitted under Chapter 13.

Once the petition has been filed, a trustee is appointed and the debtor must propose a plan to make payments over three years. A plan may be extended to as much as five years. The trustee receives the payments from the debtor and distributes them to the creditors as provided for in the Chapter 13 plan.

A Chapter 13 plan need only pay unsecured creditors as much as they would have received in a Chapter 7 liquidation. Thus, unsecured creditors must be paid

what they would receive through a liquidation of all the debtor's non-exempt assets. Secured creditors are to be paid only the value of their collateral. The value of the collateral for this purpose is not its liquidation value, but instead is the price a willing buyer in the debtor's business situation would pay to obtain like property from a willing seller. This is a measure of "replacement value," but it is not necessarily what it would cost the debtor to purchase the property new. The age and condition of the collateral are taken into consideration.

The payments to creditors may be spread over a 3 to 5 year period and the debtor will be able to keep his non-exempt assets. The plan might also return certain collateral to some secured creditors while paying others the value of the collateral through the plan.

Just as creditors are unable to force a Chapter 13 filing, only the debtor is permitted to propose a Chapter 13 plan. Creditors are not permitted to present a plan.

There are still reasons for a debtor to choose Chapter 13 – such as to discharge tax debts and domestic-support obligations, to avoid lien foreclosures, and where assets are worth more than the available exemptions. In particular, debtors often file Chapter 13 petitions to modify secured debt. The debtor is only required to pay the value of the collateral, rather than the amount of the indebtedness, in order to keep the collateral.

But today, due to the "means test," Chapter 13 is largely viewed as a middle ground for debtors whose earnings are too high to justify a Chapter 7 discharge. Moreover, many of the advantages for debtors who file Chapter 13 were taken away in the 2005 bankruptcy revisions. Previously, a debtor could discharge fraud claims in Chapter 13, and could also file multiple petitions, including the so-called "Chapter 20 bankruptcy," by which debtors could file a Chapter 7 bankruptcy for dischargeable debts, and then immediately file a Chapter 13 bankruptcy to pay down remaining debts.

II. WHAT SHOULD A CREDITOR DO IN CHAPTER 13 PROCEEDINGS?

A creditor needs to promptly review the proposed Chapter 13 plan to make sure that its claim is provided for in the plan. Should a creditor fail to object to plan confirmation and the plan is confirmed, the plan will be binding upon all creditors and the debtor, even if no provision was made for a particular creditor's claim. 11 U.S.C. § 1327(a).

The order confirming the plan will ordinarily vest all of the property of the estate back in the debtor free and clear of liens other than those liens specifically excepted. Thus, the debtor may redeem any kind of property from any kind of lien by installment payments over the life of the plan. Therefore, the failure by a creditor to object to an inappropriate plan can be devastating.

For example, assume the creditor has a duly perfected lien for an indebtedness of \$10,000 secured by a forklift with a value of \$11,000. The debtor's plan proposed places a value of \$1,000 on the forklift. The plan would pay only 5 cents on the dollar to unsecured creditors. If the secured creditor does not object and the plan is confirmed it will receive only \$1,000 plus interest over the life of the plan for the collateral plus \$450 for its unsecured claim of \$9,000. The debtor keeps the forklift free and clear of liens! This unhappy result can and does happen to creditors who are not diligent.

Although the debtor may place an unrealistic value on the collateral in order to reduce the amount to be paid to a secured creditor, the Chapter 13 debtor cannot invalidate a proper lien merely by listing the claim as an unsecured claim.

Technically, a creditor is allowed 90 days after the initial meeting of creditors to file a proof of claim. The careful credit manager, however, will make sure that the claim is filed on or before the date set for the confirmation of the plan. Failure to file a proof of claim with the court may result in the claim being disallowed in full.

Very little can be done to protect creditors' rights after confirmation of the Chapter 13 plan. For that reason, objections to plan confirmation are usually the most important device available to creditors. Only bad faith, fraud, or non-payment under the plan will give a creditor the right to attack the plan after it has been confirmed. Nevertheless, a debtor's options of permissible plan provisions are quite broad, and largely mirror the options for Chapter 12 plans as listed above.

A secured creditor may wish to seek relief from the automatic stay of section 362. Note, however, that Chapter 13 provides protection to "co-debtors" who have not filed for bankruptcy. The "co-debtor" stay exists for the benefit of individual co-debtors of consumer debts under 11 U.S.C. § 1301(a). Thus, guarantors and family members or relatives who have co-signed consumer debts may also be protected from creditors even if they do not personally file bankruptcy.

The co-debtor stay automatically terminates within 20 days of a request to lift that stay, unless the debtor files a specific objection. Creditors may obtain relief from the co-debtor stay in these situations:

1. The co-debtor received the benefit from which the creditor's claim arose;
2. The Chapter 13 plan does not propose payment of the joint debt;
or
3. The creditor can demonstrate irreparable harm by continuation of the co-debtor stay.

Generally, stay relief motions should be filed along with objections to plan confirmation in order to have a significant effect upon the debtor and the plan.

In addition to filing objections to the plan and motions for relief from the automatic stay, secured creditors should attempt to persuade the debtor to stipulate to deal with the secured claim outside the bankruptcy plan. Any stipulation to deal with the debt outside the plan must be approved by a separate order of the court. Having the debtor pay the secured claim outside the bankruptcy will reduce attorney fees, expedite payments (trustees are notoriously slow with disbursements), and provide for automatic relief from the stay in the event the debtor defaults under the stipulation.

Creditors need to remain vigilant after plan confirmation, because the debtor has the ability to modify a plan after confirmation. As mentioned previously, a creditor may commence proceedings to revoke a confirmed plan based on fraud by the debtor. Such a proceeding to revoke a plan must be filed within 180 days after the entry of the confirmation order. Creditors also have the right to move to convert Chapter 13 proceedings to Chapter 7 liquidations or to move for the dismissal of the case under appropriate circumstances.

WHO MAY BE A CHAPTER 13 DEBTOR?

1. Only a person residing or domiciled or having a place of business or property in the United States may be a debtor.
2. Must be an individual with regular income.
3. Must owe, on the date of the filing of the petition, “non-contingent, liquidated, unsecured debts of less than \$360,475.” (Eligibility requirements are indexed to adjust pursuant to Section 104 of the Bankruptcy Code.)
4. Secured debts that are non-contingent and liquidated must be less than \$1,081,400.
5. An individual and spouse (except for a stockbroker or commodity broker) owing on the date of the filing of the petition, unsecured debts aggregating less than \$360,475.
6. The aggregate secured debt limit for a married couple is the same total of \$1,081,400 that it would be for an individual.
7. If Chapter 13 debtors fail to meet the above criteria, the Chapter 13 case is subject to dismissal upon motion by a creditor, the trustee or the U.S. Trustee’s Office.

WHAT CAN THE DEBTOR DO AFTER THE FILING OF THE CHAPTER 13 BANKRUPTCY PETITION?

1. Pursuant to Section 1303 of the Bankruptcy Code, the debtor has the rights to sell, lease and otherwise dispose of property the same as a trustee would under Section 363(b), Section 363(d), Section 363(e), Section 363(f), and Section 363(l).
2. If a debtor is engaged in business, Section 1304 allows the individual to operate the business subject to the limitations on a trustee under Sections 363(c) and 364 and, other than the rights given to the Chapter 13 trustee, has the rights and powers of a trustee under those sections.
3. If the Chapter 13 debtor continues the business, then he or she is required to file with the court and the United States Trustee and any tax collection agencies, periodic reports and summaries of the operations of the business including statements of receipts and disbursements and any other information required by the court or the U.S. Trustee under Section 704(8).
4. The property of the Chapter 13 bankruptcy estate includes the usual list of property of the estate from Section 541, but also includes (a) all property of the kind specified in Section 541 that the debtor acquires after the beginning of the Chapter 13 case and before the case is closed, dismissed or converted; and (b) the debtor's earnings from services performed after the commencement of the case and before the closing dismissal or conversion of the case to another chapter of the Bankruptcy Code.
5. Except to the extent changed by a confirmed Chapter 13 plan, the debtor remains in possession of all of the property of the estate.

WHAT CAN A CHAPTER 13 DEBTOR DO IN THE CHAPTER 13 PLAN?

1. The Chapter 13 plan shall:
 - (a) arrange to submit all or some portion of the future earnings or future income of the debtor to the trustee as is necessary to execute the plan;
 - (b) arrange for the full payment through deferred cash payments, of all claims entitled to priority under Section 507 of the Code unless the creditor agrees to a different treatment;
 - (c) provide the same treatment for each claim within a particular class of claims; and

- (d) a plan may provide for less than full payment of amounts owed for certain domestic support obligations under Section 507(a)(1)(B), but only if the Chapter 13 plan provides that all of the debtor's expected disposable income for a five-year period from the date of the first payment under the plan will be applied to make payments under the plan.

2. The Chapter 13 plan may:

- (a) designate a class or classes of unsecured claims so long as the classifications are not discriminatory;
- (b) the plan may, however, treat claims for consumer debt of the debtor differently if some individual is also liable on the consumer debt with the debtor;
- (c) the plan may modify the rights of holders of secured claims (except for a claim secured only by the real property in which the debtor resides);
- (d) the plan may also modify the rights of holders of unsecured claims;
- (e) the plan may also leave unchanged or unaffected the rights of holders of any class of claims;
- (f) the plan may provide for the curing or waiving of any default;
- (g) the plan may provide for payments on any unsecured claim to be made concurrently with payments on other secured or unsecured claims;
- (h) the plan may provide for curing defaults within reasonable times and maintaining payments on unsecured claims or secured claims during the pendency of the action even where the last payment is due after the date on which the final plan payment is due;
- (i) the plan may provide for the payment of post-petition claims incurred by the debtor;
- (j) the plan may provide for the assumption, rejection or assignment of executory contracts or unexpired leases not previously rejected subject to the provisions of Section 365;
- (k) the plan may provide for the payment of all or part of a claim against the debtor from either estate property or the debtor's property;
- (l) the plan may provide for the vesting of property of the estate upon confirmation of a plan in the debtor or some other entity or the vesting can take place after the confirmation of the plan if so provided;

- (m) the plan may provide for the payment of interest accruing after the filing of the Chapter 13 petition on unsecured claims that cannot be discharged, such as certain domestic support obligations under Section 1328(a), except interest can only be paid to the extent the debtor has disposable income for interest payments after providing for full payment of all allowed claims; and
- (n) THE CHAPTER 13 PLAN MAY “INCLUDE ANY OTHER APPROPRIATE PROVISION NOT INCONSISTENT WITH THIS TITLE.”

WHAT ELSE CAN BE DONE IN THE CHAPTER 13 PLAN?

1. The plan may cure defaults that cause liens on the debtor’s principal residence up until the residence is sold at foreclosure pursuant to applicable non-bankruptcy law.
2. If the lien on the debtor’s principal residence has a last payment due before the date of the final payment under the plan, the plan may provide for the payment of the claim as modified subject to the provisions of Section 1325(a) involving plan confirmation.
3. Based upon some income calculations set forth in the Code, a plan may not provide for payments over a period longer than five years in certain circumstances or may not provide for payments over a period longer than three years without court approval.

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