

# Plan Perfect:

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How to Avoid Getting Pitch Slapped

Stephen E. Dunn, Esq.  
Malissa L. Giles, Esq.  
Nisha R. Patel, Esq.  
Andrew Todd Rich, Esq.

# FAST TRACK TO CONFIRMATION

By Malissa L. Giles

Getting a Chapter 13 case confirmed timely helps pay legal fees, limits potential objections to the plan, and gives clients a sense of confidence and assurance in their counsel and in the system.

Every Chapter 13 bankruptcy case begins with a debtor filing a petition, along with required schedules of assets and liabilities, a schedule of current income, a schedule of executory contracts and unexpired leases, and a statement of financial affairs. Fed. R. Bankr. P. 1007(b). Unless the court grants an extension, a debtor must file a repayment plan with the petition no later than 14 days after the filing of the petition. Fed. R. Bankr. P. 3015.

Between 21 and 50 days after the debtor files the Chapter 13 petition, the Chapter 13 trustee will hold a meeting of creditors. Fed. R. Bankr. P. 2003(a). No earlier than 20 days or later than 45 days following the meeting of creditors hearing, the bankruptcy judge must hold a confirmation hearing and decide whether the plan is feasible and meets the standards set forth in the Bankruptcy Code 11 USC §§ 1324, 1325. Prior to the 2005 amendments to 11 USC § 1324, confirmation was typically approximately 60 days following the 341 meeting of creditors, meaning it usually was around 90 days following the filing of the case for the first confirmation hearing.

Getting a Chapter 13 case confirmed at the first confirmation hearing benefits the debtor, creditors, and counsel as it allows the Chapter 13 Trustee to start disbursing funds to creditors “as soon as is practicable.” 11 USC § 1326(a)(2). In reality, that is normally within the next 30 days.

While the author’s opinion is merely that, she believes getting the case confirmed early gives the debtor less time for the case to go “off the rails.” While issues can (and will) arise after confirmation, the author believes that having achieved a confirmed plan once helps prove to the Court the debtor is invested in reaching the goal of a discharge at the end of the case.

## TIPS FOR TIMELY CONFIRMATION

### 1. KNOW THE STATUTORY REQUIREMENTS FOR FILING AND CONFIRMATION, AND ANY LOCAL REQUIREMENTS

#### A. Statutory Plan Requirements and Other Considerations:

Section 1325 of the Bankruptcy Code outlines the statutory requirements of confirmation. But Chapter 13 plans are subject to esoteric provisions such as the “Good Faith Test,” the “Best Interest of the Creditors Test,” and “feasibility.”

Section 1325 of the Bankruptcy Code outlines the various requirements for **confirmation** of a **Chapter 13** plan. Included among those are **requirements** that the

plan be filed in good faith, that the debtor will be able to make all payments under the plan and to comply with the plan, and that the action of the debtor in filing the petition be in good faith. 11 U.S.C. §1325(a)(3),(6), and (7).

In re Colston, 539 B.R. 738, 746, 2015 Bankr. LEXIS 3478, \*17-18 (Bankr. WDVA 2017)

In Colston, Judge Black held that the debtor has the burden of proof at confirmation and that “(e)valuating the good faith requirement for confirmation of a Chapter 13 plan pursuant to Section 1325(a)(3) is a fact-intensive, case-by-case determination made by the Court based on the totality of the circumstances.” Colston, citing Neufeld v. Freeman, 794 F.2d 149,152 (4<sup>th</sup> Cir. 1986); Deans v. O’Donnell, 692 F.2d 968, 792 (4<sup>th</sup> Cir. 1982).

What does this mean? To some extent, you know it when you see it. The debtor that is trying to keep a car with a \$700 monthly payment, but only wants to pay back creditors 2-3% of the unsecured credit card debt may not be filing a plan in good faith. But what if that car payment is for a specially equipped handicapped van? Facts are important and counsel must be familiar with details of the case and convey that information to the Trustee and the Court early in a way that forestalls objections.

## B. Plan Payments

Within 30 days after filing the bankruptcy case, even if the plan has not yet been approved by the court, the debtor must start making plan payments to the trustee. 11 U.S.C. § 1326(a)(1). If any secured loan payments or lease payments come due before the debtor's plan is confirmed (typically home and automobile payments), the debtor or trustee must make adequate protection payments. If the debtor does not timely start his or her plan payments, the trustee cannot make adequate protection payments which will lead to an objection.

*This is critical and simple. Judges do not confirm cases where the plan payments are not current.* If the debtor will have a hard time making the first full payment, consider a nominal payment for the first month to meet this requirement. A nominal payment or gradual bump-up in certain circumstances can help some debtors turn their finances around.

## C. Local Requirements

Prior to a debtor’s confirmation hearing, all debtors shall sign the “Affidavit of Debtor(s) Requesting Confirmation of Plan.” Local Rule 3015-3. It is critical that the debtor understands this affidavit and the statements contained are true and correct to the best of the debtor’s knowledge.

2. KNOW THE JUDGE ASSIGNED TO THE CASE AND THE POLICIES OF THE CHAPTER 13 TRUSTEES

A. If you have not re-read the local rules since you were admitted, review them now.

B. Review the Court's website, and make sure you sign up for Court Notifications. <http://www.vawb.uscourts.gov/>

C. Review the Chapter 13 Trustees' websites and the resources there:

Christopher T. Micale, Trustee. <https://www.ch13wdva.com/>

Herbert L. Beskin, Trustee. <http://www.cvillech13.net/index.html>

Both websites offer invaluable guidance on trustee requirements, court requirements, and additional tools from suggested best practices to language to be included in conduit mortgage plans.

Know your trustee and his or her requirements. While there are not significant differences in the Trustees' administration of cases, there are some.

D. Know how to use BSS, the Chapter 13 Network. This software gives you critical information about your cases.

E. Pay attention in court and 341 hearings and learn from other cases. If the Trustee is asking all debtors for a breakdown of their IRA distribution from two years ago, start asking your client for that information up front as part of your documentation request. If your client owns real estate with equity as Tenants by Entities and you are claiming that exemption, provide the deed to the trustee with the tax returns and paystubs.

If the judge just fussed at an attorney for an error that you have made, fix it or at least apologize immediately and propose a remedy. While all trustees and judges seek to be fair and impartial, they also usually have particular triggers that can influence how a case goes. Most of the attorneys in the area will remember that former Chief Judge Ross Krumm really questioned the good faith of debtors who owned boats (especially nice boats), and before him, Judge Pearson had a low tolerance for debtors who had not filed required tax returns. By paying attention in court, you can often learn about issues that may cause concern in your case and about which issues the judges are sensitive.

3. AVOID EMERGENCY FILINGS AND HAVE ALL DOCUMENTS COLLECTED AND REVIEWED PRIOR TO FILING

There are mandatory documents you have to collect to a) accurately complete schedules, b) satisfy due diligence, and c) provide to the trustee under the Code. Then there are documents you should know the Trustee will request based on knowledge of prior cases and because you pay attention when you attend 341s. These can include, but are not limited to:

- Breakdown of spending of any lump sum income in prior 3 years (inheritance, retirement distribution, lawsuit, etc.)
- Deed for home if Tenants by Entirety
- Unusually high childcare
- Record or proof of tithing
- If no tax returns required to be filed, supply a Tax Affidavit
- Proof of expenses required to be provided by Form 122C as they are in excess of allowance and proof is required
- Proof of other unusual circumstances

Emergency filings leave more room for mistakes and can often lead to surprises for counsel and the debtors. While sometimes necessary, both counsel and client can have a better expectation of the case if all documents are obtained and reviewed prior to filing.

4. MAINTAIN CONSISTENT POLICIES AND PROCEDURES FOR PLAN REVIEW AND POST-FILING

Consistency in how you file cases, formulate plans, review plans and the service thereof can help avoid mistakes and amended plans.

Tasks to be done quickly and early consistently:

- A. Before filing, review the plan to verify you have provided for proper treatment and service to secured creditors.
- B. Be sure you have scheduled creditors in the proper section based on the nature of debt and date of debt.
- C. File wage deduction or direct pay order. Make sure you are serving the right address and if possible, email or fax deduction order to employer.  
*Tip: Have clear communication with the client about when a wage deduction will start and how they must make a payment themselves if the wage deduction is delayed. Protect yourself by having this in writing.*
- D. Help client set up E-pay if necessary.
- E. Transmit all required documents to the Chapter 13 Trustee.
- F. Submit any conduit mortgage or student loan orders as needed.
- G. Make sure the pre-confirmation affidavit is timely signed and filed.

- H. Help the client decipher the multitude of mail and notices he or she will get from the Trustee and the Court.
- I. Educate the client about National Data Center and the resources available there.

## 5. CLIENT COMMUNICATION: THEY MUST KNOW WHAT TO EXPECT

One of the biggest reasons cases do not go well at the 341 or in the time leading to confirmation is because the debtors does not understand what is happening or needs to happen.

Counsel must explain to the debtor the parties involved in the case, the process and what to expect, and the debtor's duties in a Chapter 13 bankruptcy (trustee payments, appearing at 341 hearing, supplying any additional documents). If your plan has an unusual treatment that will raise additional questions at the 341 from the Trustee, advise your client so they can be prepared.

If you have clear and consistent communication with the debtor, he or she will be easier to reach to resolve any unanticipated issues that arise.

Client should be advised:

- Who are the parties in the case? What is the trustee's role vs. the judge's role?
- When and how to make payments.
- When they are expected to be in court, where to park and when they do NOT need to appear.
- What to bring to court. Official photo ID and proof of Social Security number are required for the hearing. This requires multiple reminders.
- What questions is the trustee likely to ask?
- Are there creditors that you expect may object or appear at the 341?
- Many debtors live in fear of this initial hearing, thinking their creditors are going to appear and challenge their case. It is your job to educate them about that very slim likelihood.

Because emotions are riding high, expect that clients only hear about 50% of what you tell them. Follow up in writing and remember that what is a regular event to you can be overwhelming to them.

## 6. REVIEW PROOFS OF CLAIM

An unexpected proof of claim is the often the cause for a plan not being ready for confirmation at the initial hearing. Claims should be reviewed weekly after the case is filed, with a particular emphasis on the week prior to the 341 hearing and the 2 weeks prior to confirmation.

In reviewing proofs of claims you should be checking for:

- A. Claims barred by the statute of limitations. *Tip: Most creditors will withdraw these if you simply ask. If they do not, you should be filing an objection.*
- B. Claims filed as secured which the plan treats as unsecured. *Tip: Review the documentation attached and determine if an objection under Rule 3001 is warranted.*
- C. Claims which show an arrearage on a debt greater than you anticipated.
- D. Claims which don't actually belong to your client (Yes, that happens.)
- E. Claims significantly in excess of the debt scheduled

## 7. WORK DOCKETS EARLY AND CONSISTENTLY:

The first major review of a case should be in the week prior to the 341 and continue on a regular basis up until confirmation.

- A. Check service on the plan and that the plan has been served according to Rule 7004.  
*Tip: If service is not correct, then immediately prepare a special notice giving the impacted creditor clear notice of the terms of the plan and how it treats the creditor's claim. Notice the date and time of confirmation and provide the creditor must object or appear in court or the plan will be binding. File and serve the special notice per Rule 7004.*  
*If you are reviewing prior to the 341 hearing, you can normally provide 21 days notice to the creditor.*
- B. Verify if the wage deduction is working and if not, contact the employer to determine why.  
*Tip: Sometimes it is necessary to serve the registered agent of the employer to make sure they are paying attention to the order. You must follow up to make sure it is effective and the debtor is making direct payments until the deduction starts.*
- C. Verify the pre-confirmation affidavit has been filed.
- D. If the plan contemplates stripping a second mortgage, get the complaint filed.  
*Tip: Some trustees will not recommend confirmation until they see this action undertaken by the required adversarial proceeding.*
- E. Check claims filed to date and see if the plan projects to pay close to the noticed dividend.  
*Tip: If the distribution is off by an amount you suspect may disturb the judge, file and mail a notice to all creditors of the anticipated reduction and set a deadline for objection.*
- F. Has a creditor filed a claim which is not addressed in the plan?

*Tip: Determine how material the claim and collateral is to the plan and debtor. If it is a small secured claim and lender appears unlikely to pursue collateral, the Trustee may agree to confirm with language in the confirmation order that the order is without prejudice to the creditor's rights in the collateral.*

*Tip: Is the claim for secured taxes paid by escrow? Notice the taxing authority that the escrow account will pay per prior course of business and include language in the confirmation order to that effect.*

*Tip: Is an amended plan really required, or can you obtain agreement of creditor to terms and simply include the language in the confirmation order. If counsel for the creditor will sign off, then you can do so with no notice normally if the change does not impact other creditors.*

G. Is there an objection to confirmation timely filed?

*Tip: Don't wait until the confirmation hearing to discuss resolving. Immediately pick up phone or email to see if you can find common ground. The vast majority of the time, the resolution can be incorporated into the confirmation order if it does not impact other creditors.*

## 8. COMMUNICATE TIMELY WITH THE TRUSTEE REGARDING ISSUES AND SOLUTIONS

Establish a good working relationship with the Chapter 13 Trustee's office, the staff attorneys and the case administrators. If a case is unusual, communicate with the attorney or case administrator early and provide documentation of the debtor's unique circumstance.

The Chapter 13 Trustee routinely advises counsel of issues he or his staff attorney sees at the 341 hearing. It is critical that counsel take quick action to respond to any concerns and see if they can resolve the concerns or reach a compromise. The confirmation hearing is not the date to start the discussion! When issues are raised at the 341 hearing, schedule a meeting with the debtor to discuss and review what possible changes may be needed to resolve the objection. Then reach out to the Trustee or staff attorney to propose solutions, or even seek advice.

Know when your major court dates are approaching. Review the Trustee's case notes in BSS or the AIM List for Christopher Micale, or Herbert Beskin's Guidelines on his pre-hearing process. *See Debtor Attorney Information on Beskin's website.* If the notes don't reflect action you have taken, advise the case administrator so everyone is updated. Try to have 90% of your cases resolved by 5-7 days prior to the confirmation hearing, so you can focus on the remaining troublesome cases. (And yes, there will always be a few of those no matter how hard you work.)



## **Delayed/Denied Confirmation? It's all about the follow through:**

Stephen E. Dunn, Esq.

Let's just be honest, we all have several goals when we take on a Chapter 13 client. First, we want to make sure that the client is fully apprised of the requirements and benefits of a Chapter 13 and that the filing of the Chapter 13 results in the client feeling that they have a better handle on their finances. Second, we want to make sure that the client is happy with the process and outcome because from that will come recommendations to friends and family resulting in more clients coming to our office. Third, we want to get paid for our services and if we can't get the case confirmed it is very likely that we have wasted a lot of time, money and effort for very little if any money.

The key to all of these goals is accomplished initially by getting the client confirmed. It is important to remember who we are dealing with and the pattern of how they have dealt with the phone calls, mail, letters etc. Most have been used to avoiding or denying the reality of their finances for years, just because they file a Chapter 13 does not change the reality of how they have been living immediately.

Below are the most common pitfalls that will lead to a delayed/denied confirmation or in the worst case, a dismissal from the Chapter 13 trustee.

### 1. It all starts with the initial consultation and subsequent meetings prior to filing:

Get all needed docs before filing- This is the time that you have the most leverage with the Debtor. If there are excuses before then they will be even worse after you have filed. Don't compromise unless you have a means of obtaining them yourself.

- Paystubs (proof of all income)
- Taxes
- lease agreements
- divorce decree
- food stamps
- charitable contribution
- medical expenses that exceed acceptable limits
- profit and loss for self employed
- prepare and get signed the affidavits for contribution to the household
- 401k loan balance
- Court fines
- Prepare and get signed the preference motions and orders (Beskin only)

Domestic Support Obligations- get all necessary information:

- Get a copy of the Child support agreement
- Verify accuracy of the arrearages by having debtor get a copy of printout of arrearages from Child Support Enforcement
- Get copy of child support order if there are arrearages to determine if arrearages will be paid through wage deduction within the term of the plan

- Provide the Name, address and phone number of DSO
  - Determine how much of the arrearages are being paid under the current wage deduction over the term of the plan and decide if allowed to continue whether arrearages will be paid during the term of the plan or whether you can provide for part of arrearages to be paid through current wage deduction and the rest by the Trustee
  - Communicate with Elizabeth Gunn (either before filing or immediately after filing) to make sure that arrearage order is going to continue, if that is your plan, otherwise they will immediately stop the arrearage deduction and all arrearages will have to be paid by the trustee.
  - KEY: Remember, arrears get paid concurrent with attorney's fees
2. After the filing of the petition, use your calendar for time specific days to follow up on the things that you need, deadlines that you must meet. (payment to trustee w/in 30 days, obj to claims need 30 days prior to confirmation so that you are not delayed, docs to the trustee in timely manner). Make sure your plans are filed correctly- Most errors can be corrected before the filing by having more than 1 person and the Attorney reviewing each case before the case is filed.

Is the Wage Deduction/TFS/EPAY working-

- Fill out wage deduction order within days of filing voluntary petition
- Help set up TFS/EPAY for the client
- fax payroll Debtor's wage deduction order
- prior to 1<sup>st</sup> payment date verify wage deduction and/or TFS/EPAY is working
- get copies of paystubs from Debtor showing proof of deduction to trustee

I received an Objection to confirmation now how to fix so that confirmation is not delayed.

Car/house

1. Talk with Debtor to see if car is worth what the objection states and /or verify with debtor the arrearages claimed to be correct.
2. Determine whether the Debtor can afford a higher payment, do you have a Chapter 7 test or can you reduce payment to unsecured creditors
3. Use pre-confirmation funds to help offset Trustee payments going up
4. Communicate with opposing attorney to negotiate and resolve well before confirmation
5. Propose language to creditor to fix in Confirmation Order, give case administrator Confirmation Order language and have Counsel for the creditor sign off on the confirmation order.

Review all Proofs of Claim weekly, especially tax and secured claims.

- As you review, ask yourself the questions, Is POC is provided for?
- Should the POC be secured or unsecured?
- Is the treatment correct for the POC, if not contact creditor who filed POC or object
- If POC (for a no cramdown claim) is secured and amount owed is higher, fix in CO, give case administrator CO language

- If POC is secured and you treated them as unsecured, determine whether they are properly secured and if not file an objection, if properly secured and not properly treated in the plan contact creditor to resolve treatment, get an agreed letter signed by creditor if not represented by counsel and file with the court, provide language to the trustee to put into confirmation order or amend the plan

#### Taxes

- Ideally: Do not file case until all taxes are filed
- Fax taxes to the IRS and VDOT to amend POC
- Mail taxes to IRS and VDOT
- Prepare a Tax affidavit for years Debtor not required to file, this should be done at the initial signing
- If POC comes back and shows estimated taxes contact client to provide returns.
- DO NOT FILE pre-confirmation affidavit if all taxes have not been filed or if POC shows missing tax returns.

Bottom line- know your trustee, your judge and build relationships with opposing counsel.

When deciding what to fight, ask yourself the question, how does this affect all bankruptcy debtors.

Finally, give your employees the tools and resources to help them be successful at their job, your success is based on good, competent, resourceful people that can make or break your practice. If you are going to invest in your practices success and future, its got to start with the people and the tools that you provide them.

- Updated computer equipment
- 2 large monitors per computer
- Individual file holders to keep files organized
- Custom stamps
- Forms to help assist and keeps mistakes to a minimum
- Vacation time, personal days, mental health days.

# Confirmation Issues from Creditors' Counsel

Nisha R. Patel and Andrew Todd Rich

## Top 5 Plans That Draw Objections from Creditors

Creditors just want to get paid. If a Debtor's Plan is easy to read – with the collateral/subject loan listed in the appropriate section and explanatory notes in Section 8.1 – the creditor will just file a Proof of Claim and wait to receive payment from either the Debtor and/or the Trustee. However, creditors often end up having to file Objections to Confirmation due to the following kinds of Plans:

**1. The Plan fails to include any mention of the collateral/subject loan.**

It doesn't matter if the loan "was supposed to be refinanced by the Debtor's ex-spouse" or if the Debtor "isn't on the Note." Include it in the Plan – and possibly surrender whatever interest the Debtor may have if necessary.

**2. The Plan includes virtually no description of the collateral/subject loan, such as "house" or "mortgage."**

Just listing "house" or "car" is insufficient and leaves the creditor with no way to recognize whether or not the Plan provides for it.

**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
Mortgage	House and lot

Insert additional claims as needed.

*Note:* Bankruptcy software generally carries over the collateral description from Schedule A/B into the Plan. If you just listed "house" in the Schedules, it will read that way in the Plan!

**3. The Plan lists a prepetition arrearage of \$0.00 when the actual prepetition arrearage is extremely high.**

While there is both case law and language in the Plan stating that the Trustee shall make disbursements pursuant to a timely filed Proof of Claim, lenders always panic if the total Plan funding is less than the prepetition arrearage. And Debtors with high prepetition arrearages often file Plans that propose loan modifications, but fail to include sufficient detail. If your client has no choice but to take this route, make sure that Section 8.1

provides an appropriate timeline for the loan modification and an alternative if the modification is not completed by that deadline.

**4. The Plan includes a provision for sale without sufficient detail – and possibly without adequate protection.**

There is virtually no scenario in which a creditor will patiently wait for months without payment, all on the possibility that the borrower is going to sell the property in the future. If you must include a sale in the Plan, then make sure to provide adequate protection, an appropriate timeline for that sale, and an alternative if the sale does not close by that deadline. If the Debtor’s success hinges on that kind of sale, then you should also talk to creditor’s counsel before filing the Plan.

**5. The Plan includes a mortgage loan that matures during the life of the bankruptcy.**

The new form Plan did not replicate the language from Paragraph 5C of the old Plan, and recently, creditors’ counsel has seen these loans listed in Sections 3.1, 3.2, *and* 3.3. The best way to address these loans is to list them in Section 3.2 and to include an explanatory statement in Section 8.1. (Merely listing them in Section 3.2 makes it look like the Debtor intends to cram down the mortgage, which will certainly draw an Objection from the mortgage creditor.)

### Creative Use of Surrender

If the Debtor doesn’t plan to make post-petition payments or cure arrears, and doesn’t object to the stay being lifted from the beginning of the case, list the property and name the mortgage lender/servicer in Section 3.5.

Section 3.5 is also applicable in many “odd” situations. For example:

**(a) The Debtor is on the mortgage, but the ex-spouse lives in the house, and the Debtor will not be making any post-petition payments.**

If there is a prepetition arrearage, and the Plan fails to provide for repayment of that arrearage, the creditor will object. Even if the loan is current, and the Plan fails to provide for post-petition payments, the creditor may object. In both instances, surrendering the Debtor’s interest relieves the Debtor of the obligation to address either the arrears or post-petition payments in the Plan.

*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
Bayview Loan Servicing	1137 Mariners Way Unit 47 Huddleston, VA 24104 Bedford County property is in debtor and ex husband name but loan is in name of ex husband only owns with ex husband but he was awarded in divorce

Surrendering doesn't mean the lender is fast-tracking it to foreclosure. It just terminates the stay and allows the lender to treat the loan outside of bankruptcy.

**(b) The Debtor thinks the house was previously foreclosed, or maybe it was foreclosed.**

If the Debtor isn't certain that the foreclosure occurred, surrendering may stave off an Objection. There's no harm in listing the property as being surrendered if the sale already occurred.

**(c) Mortgage arrears are so high that there is no way to cure in the Plan.**

Many Debtors aren't actually \*surrendering\* their house, but they cannot confirm a Plan that includes repayment of the actual prepetition arrearage. These Plans often reflect a prepetition arrearage of \$0.00 with a statement that the Debtors "intend to seek a loan modification." These provisions will draw an Objection nearly every time.

Consider listing the loan in Section 3.5 and providing detail in Paragraph 8.1 providing that the Debtor will surrender if the loan modification is not completed:

**Part 8: Nonstandard Plan Provisions**

**8.1 Check "None" or List 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.*

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

The mortgage arrears owed to Secured Mortgage Creditor in paragraph 3.1 will be cured by way of a loan modification, which the debtor has already applied for. If the loan modification is not approved by the lender and by the court by October 1, 2019, the debtor will surrender the property, and the provisions of paragraph 3.5 will be deemed to apply effective October 1, 2019, as to the real property located at 18 Bayham Street, Mudfog, VA 22555, in Greenacre County.

Language much like the above is used in confirmation orders after an Objection has been filed. Including this in the non-standard provisions section will go a long way toward keeping the mortgage lender from objecting.

### **Curing and Maintaining**

Many Objections from creditors involve Plan funding – either understated arrears in Paragraph 3.1, or insufficient overall funding to cure the pre-petition default. Here are a few tips for filling out this section of the plan so that the mortgage servicer doesn't object:

- (a) If a foreclosure has been scheduled, the Debtor may have requested a reinstatement figure. This is a good place to start. Round up from that number – there will likely have been additional fees and costs that were not yet billed to the mortgage company.

(b) If you know who will be filing the Proof of Claim for the mortgage, contact that attorney and ask if they have a ballpark arrearage number.

### Gap Payments

Creditors are aware that most conduit Plans include the first two post-petition payments as “gap” payments, but including specific information in Paragraph 8.1 is always helpful.

#### C. ONGOING - FUTURE MORTGAGE PAYMENT

The Trustee will pay all post-petition mortgage payments through the plan. These mortgage payments will be classified and paid as follows:

(1) Class 1: The first two mortgage payments due after filing of the petition will be paid pro-rata by the Trustee as post-petition arrears, including late fees, in the approximate amount of \$2,840.00 and

(2) Class 2: The regular post-petition mortgage payments will be paid by the Trustee beginning with the third mortgage payment due after the filing of the petition [September 2019]; the total number of Class 2 payments to be made by the Trustee will equal the number of monthly plan payments being made by the Debtor(s) to the Trustee [approximately 60 months], unless the plan pays off early.

The total number of monthly mortgage payments to be paid by the Trustee (Class 1 plus Class 2) is 60 months, unless the plan pays off early.

Disbursement of ongoing post-petition mortgage payments from the Chapter 13 Trustee may not begin until an allowed claim on behalf of the mortgagee has been filed.

At the completion of the term of the plan, it is predicted that the Debtor(s) shall resume monthly mortgage payments directly pursuant to the terms of the mortgage contract beginning with the payment due in August 2024.

If the Debtor is making the post-petition payments, but not in the month immediately following the bankruptcy filing, the creditor needs to know that information (both in order to evaluate the Plan and also to file the Proof of Claim). For example, if a Debtor who filed in March does not intend to resume ongoing payments until May, the Plan should state this – either in the applicable Plan section or in Section 8.1, or both!

**Date Debtors to resume regular direct payments to Creditors that are being paid arrearages by the trustee under Paragraphs 5(a) and 6(b).**

**Creditor  
Chase Mt**

**Month Debtor to resume regular direct payments  
August, 2016**

Was the case filed during the first few days of the month? If the loan is current, odds are very good that the lender hasn't received that month's payment yet. The creditor's Proof of Claim will always include this payment as arrears unless the plan clearly states which month the payments will begin. Similar to listing gap payments to be included on the claim, if the debtor wants a payment that was due pre-petition to be treated as a post-petition payment, this should be explained in paragraph 8.1. A statement as simple as “Mortgage payments to Potter's Bank will commence with the 6/1/19 payment.”

### When The Mortgage Creditor Files an Objection – We Can Still Confirm Quickly

Talk to your client ASAP. Find out if the Objection is correct... were the arrears **\*really\*** that high? (In most cases, the arrears really are that high.) The attorney who filed the Objection

is likely preparing the Proof of Claim, and may be able to provide details about the fees, charges, escrow deficiency, or other common factors that comprise the arrearage.

If that Objection is the only thing holding up confirmation, then it can probably be resolved either before the confirmation hearing or with language in the Confirmation Order. Most Objections based on insufficient arrears can be corrected in the Confirmation Order, so you will not need to amend the entire Plan. Objections based on loan modifications or sales of property can also usually be addressed in the Confirmation Order with language providing a date definite by which the loan modification or sale will be completed, and in the event it is not completed, the Debtor will surrender the property.

Lastly, consider going conduit. Many mortgage servicers are pacified about arrearage concerns when it's a conduit plan.

### **Other Considerations**

Does the debtor want statements mailed? Many (all?) mortgage servicers won't send **\*anything\*** to the debtor directly unless it's made clear that they can. Plans that have provisions in Paragraph 8 stating that the lender SHALL continue to mail regular statements – other than a demand for payment – help with this.

**#####ATTENTION ALL SECURED CREDITORS LISTED IN PART 3.1 #####  
PLEASE TAKE NOTICE THAT THE DEBTOR INTENDS TO CONTINUE TO MAKE REGULAR PAYMENTS ON YOUR SECURED DEBT. ACCORDINGLY, YOU, THE SECURED CREDITOR REFERENCED ABOVE IN PART 3.1 , SHALL SEND MONTHLY MORTGAGE/AUTOMOBILE STATEMENTS CONSISTENT WITH YOUR PREPETITION PRACTICE. SENDING SUCH STATEMENTS SHALL NOT BE CONSIDERED BY THE DEBTORS TO BE A VIOLATION OF THE AUTOMATIC STAY.**