

# THE NEW CHAPTER 13 PLAN: WHAT YOU NEED TO KNOW

**MELISSA DAVEY**, CHAPTER 13 TRUSTEE

**ALEX DOLHANCYK**, THE DOLHANCYK LAW FIRM P.C.

**BRANDI LESESNE**, BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP

# THE NEW CHAPTER 13 PLAN: WHAT YOU NEED TO KNOW

- ▶ **I. Service Issues**
- ▶ **II. Plan Specific Issues**
- ▶ **III. Modified and Amended Plans**
- ▶ **IV. Questions?**

The background is a dark blue gradient with several semi-transparent circles of varying sizes and colors (light blue, teal, and green). A solid green rectangle is positioned in the top right corner.

# I. Service Issues

# Service Issues

- ▶ When you have to serve the plan
- ▶ Certificate of service requirements
- ▶ Rule 7004 service/Certificate of Manner of Service
- ▶ How to reduce service costs

# Service Issues: When to Serve

- ▶ If the debtor files a plan contemporaneously with a chapter 13 petition, the Clerk will mail the plan.
  - ▶ Also: if the debtor files a plan contemporaneously with converting the case to chapter 13.
- ▶ Otherwise, the debtor must serve the plan on all entities listed on the Mailing Matrix.
- ▶ See General Order Section 4.2.

# Service Issues: COS Requirements

- ▶ Debtor must file, promptly after mailing the plan:
  - ▶ (A) A Certificate of Service certifying service of the plan; and
  - ▶ (B) If any creditor must be served under Bankruptcy Rule 7004, a separate Certificate of Manner of Service of Plan Under Bankruptcy Rule 7004
- ▶ Each certificate of service must:
  - ▶ Be signed by the person who served the plan;
  - ▶ State the date and method of service; and
  - ▶ Set forth the name and address of each entity served.

# Service Issues: Rule 7004 Service

- ▶ If the plan includes embedded motions, the debtor must serve the plan on each affected creditor under Rule 7004
  - ▶ 3.2 Determination of the amounts of secured claims
  - ▶ 3.4 Avoidance of liens on exempt property under § 522(f)
- ▶ If any creditor must be served under Bankruptcy Rule 7004, the debtor must file a separate Certificate of Manner of Service of Plan Under Bankruptcy Rule 7004
  - ▶ Must state the method of service
  - ▶ Debtor **MUST** file a separate COMS, even if the Clerk mails the plan

# Service Issues: How to Reduce Costs

- ▶ Use electronic service when possible
  - ▶ See ECF / Utilities / Miscellaneous / Mailings for Case / Mailing Info for a Case
  - ▶ Copy and paste to your COS
  - ▶ Rule 9036 consent by creditor to service via email
- ▶ Proofs of claim many times have a contact email
- ▶ READ notices of appearance and how it directs service
- ▶ Consider double-sided copying and smaller font on service copies



# III. Plan Issues

# Plan Issues: Use the Right Form!

- ▶ Be sure to use the correct form!
- ▶ Do NOT use the old plan, the national form plan, and older drafts of the local plan form
- ▶ The local plan form can be found on the Court's website under "Local Forms"

<http://www.ganb.uscourts.gov/ganb-local-forms>

Chapter 13 Plan Form effective 12-1-17 (updated 12/19/17)

[Form only fully compatible with the most current version of Adobe Acrobat or Reader]

To open in Adobe Acrobat or Reader, "right-click" on link and "Save target as"

12/2017



# Plan Issues: Changing Plan Language

- ▶ Do NOT alter the plan language in any way
  - ▶ The plan provides:

**By filing this document, the debtor(s), if not represented by an attorney, or the attorney for debtor(s) also certify(ies) that the wording and order of the provisions in this Chapter 13 Plan are identical to those contained in the Local Form for Chapter 13 Plans that the Bankruptcy Court for the Northern District of Georgia has prescribed, other than any nonstandard provisions included in Part 8.**

- ▶ Part 8 “Nonstandard Plan Provisions” is the ONLY place where you can add additional language.
  - ▶ Box in Section 1.3 MUST be appropriately checked.

§ 1.3	Nonstandard provisions, set out in Part 8	<input type="checkbox"/> Included	<input type="checkbox"/> Not Included
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# Part 1: Notices

- ▶ The boxes in Part 1 **MUST** be checked to be applicable

- ▶ For example:

*Check if applicable.*

- The plan provides for the payment of a domestic support obligation (as defined in 11 U.S.C. § 101(14A)), set out in § 4.4.**

- ▶ The plan provides:

- ▶ *“If an item is checked as “Not Included,” if both boxes are checked, or if no box is checked, the provision will be ineffective even if set out later in the plan.”*

# Part 2: Plan Payments

- ▶ Step Plans: In the box below, the NEW plan payment amount should be listed
  - ▶ Do not list the amount that the payment will increase.

*Check if applicable.*

- The amount of the Regular Payment will change as follows *(If this box is not checked, the rest of § 2.1 need not be completed or reproduced. Insert additional lines as needed for more changes.):*

+	Beginning on <i>(insert date):</i>	The Regular Payment amount will change to <i>(insert amount):</i>	For the following reason <i>(insert reason for change):</i>
-		per week <input type="text"/>	

# Part 2: Plan Payments

## ▶ 2.3 Income Tax Refunds:

▶ In the below section, the actual tax years (ex. 2018, 2019) must be listed.

- Debtor(s) will (1) supply the trustee with a copy of each income tax return filed during the pendency of the case within 30 days of filing the return and (2) turn over to the trustee, within 30 days of the receipt of any income tax refund during the applicable commitment period for tax years \_\_\_\_\_, the amount by which the total of all of the income tax refunds received for each year exceeds \$2,000 ("Tax Refunds"), unless the Bankruptcy Court orders otherwise. If debtor's spouse is not a debtor in this case, "tax refunds received" means those attributable to the debtor.

## ▶ 2.6(3) Additional Payments Process: 30-day letter.

# Part 3.1: Maintenance

- ▶ Maintenance payments **MUST** be listed even if there is no arrearage to be cured.
- ▶ Interest rate (if applicable):
  - ▶ Section 1322(e) provides that the amount necessary to cure a default is to be determined in accordance with the underlying agreement and applicable non-bankruptcy law.
  - ▶ You need to read the loan documents and determine if the loan document calls for “interest on interest.”
    - ▶ *See Rake v. Wade*, 508 U.S. 464 (1993).
- ▶ What happens when stay is terminated?
  - ▶ Arrears payments to the creditor will cease unless the Court orders otherwise.

# Part 3.2: Request for Valuation

- ▶ Cram down: how to properly schedule when over-secured or more than one lien.
- ▶ **Practice Pointer:** For cram downs, the amount in the 'Value of collateral' and 'Amount of secured claim' should be the same.
- ▶ When is a motion required?
  - ▶ Beware of checking the box.
  - ▶ See General Order No. 21-2017, Sections 3.0-3.4.

+	Check only if motion to be filed	Name of creditor	Estimated amount of total claim	Collateral and date of purchase	Value of collateral	Amount of claims senior to creditor's claim	Amount of secured claim	Interest rate	Monthly pre-confirmation adequate protection payment	Monthly post-confirmation payment
-	<input type="checkbox"/>							%		



## Part 3.4: Lien Avoidance

- ▶ This section is for liens that may be avoided under § 522(f).
- ▶ Do NOT use this section to strip off junior mortgage liens.
  - ▶ Use section 3.2 instead.
- ▶ Note: be sure to use the plan; motions to avoid liens may be denied.

# Part 3: Secured Claims continued

## ▶ **3.5 Surrender of collateral**

- ▶ ALL secured claims for the collateral must be listed including:
  - ▶ HOAs
  - ▶ 2nd mortgage
  - ▶ Property taxes
- ▶ Automatic stay and co-debtor stay terminated upon confirmation
  - ▶ Plan states that secured claims will not be funded.
  - ▶ If the creditor files a secured claim, it is not necessary to object to the claim.

## ▶ **3.6 Other Allowed Secured Claims**

- ▶ Interest rate % must be filled in.

# Part 4: Attorney's Fees

- ▶ See General Order 22-2017
  - ▶ If filing fees are advanced, and case is dismissed or converted before confirmation, may claim up to \$2,810
  - ▶ NO other advances can be claimed
- ▶ Pre-petition expenses, such as required pre-petition credit counseling, cannot be recovered post-petition.
- ▶ However, since Rule 1006 contemplates payment of filing fees post-petition, this is an allowed post-petition recovery.

# Part 4: Attorney's Fees

- ▶ Local Form Plan § 4.3 may be used with “flat fee” and “flat fee plus” cases (a la carte menu for additional services)
  - ▶ Must detailed in your contract with client
  - ▶ Must be stated in 2016(b) disclosure
- ▶ Local Form Plan § 4.3 CANNOT be used for hourly rate fee structure
  - ▶ Hourly rate fee, costs, and expenses must be stated in Part 8 re: Nonstandard Provisions
  - ▶ See General Order 22-2017 § 2.2 for disclosure details

# Part 4: Attorney's Fees

- ▶ Attorney may seek additional compensation by:
  - ▶ Motion (set hearing); or
  - ▶ If fees < \$1,000, use new proposed order and notice.
    - ▶ NO hearing UNLESS response filed.
    - ▶ See Ex. A to General Order 22-2017.
- ▶ Attorney cannot accept fees from debtor after filing unless set forth in plan.
  - ▶ Can attorney accept fees from debtor post-filing if held in trust, subject to court approval, and if stated in Part 8 re: Nonstandard Provisions?

# Part 5: Unsecured Claims

- ▶ General unsecured creditors

- ▶ One box must be checked – ONLY ONE

*Check one.*

- ▶ Base

- A pro rata portion of the funds remaining after disbursements have been made to all other creditors provided for in this plan.

- ▶ Pool

- A pro rata portion of the larger of (1) the sum of \$\_\_\_\_\_ and (2) the funds remaining after disbursements have been made to all other creditors provided for in this plan.

- ▶ Dividend

- The larger of (1) \_\_\_\_\_% of the allowed amount of the claim and (2) a pro rata portion of the funds remaining after disbursements have been made to all other creditors provided for in this plan.

- ▶ 100%

- 100% of the total amount of these claims

- ▶ Direct payment of student loans

- ▶ Should you use section 5.2 or 5.3?

# Part 8: Nonstandard Provisions

- ▶ Bankruptcy Rule 3015(c): nonstandard provisions MUST be in Part 8
  - ▶ A nonstandard provision is a provision not otherwise included in this N.D. Ga. Chapter 13 Plan Form or deviating from it.
  - ▶ Nonstandard provisions set out elsewhere are ineffective.
  - ▶ Part 1.3 must also be checked “included.”
- ▶ Potentially impermissible uses:
  - ▶ Stripping liens (use Part 3.2 instead);
  - ▶ Avoiding liens (use Part 3.4 instead);
  - ▶ Providing for ongoing monthly mortgage payments.



# III. Modified and Amended Plans



# Pre-Confirmation Modification

- ▶ General Order 21-2017 sets forth new pre-confirmation modification procedures:
  - ▶ Modified Local Form Plan
  - ▶ Optional Statement of Modified Plan
  - ▶ Material Adverse Changes
  - ▶ Notices of Reset Confirmation

# Pre-Confirmation Modification

- ▶ A debtor has two options:
  - ▶ **Option 1**: File a new plan with the amended provision(s)
    - ▶ MUST indicate at top of plan that it is an Amended Plan and specify amended sections.
    - ▶ Amendments are otherwise ineffective
  - ▶ **Option 2**: file a Statement of Modified Plan

# Pre-Confirmation Modification



## ► Option 1

Fill in this information to identify your case:

Debtor 1	_____	_____	_____
	First Name	Middle Name	Last Name
Debtor 2	_____	_____	_____
(Spouse, if filing)	First Name	Middle Name	Last Name

United States Bankruptcy Court for the Northern District of Georgia

Case number \_\_\_\_\_  
(if known)

- 
- 
- Check if this is an amended plan, and list below the sections of the plan that have been changed. Amendments to sections not listed below will be ineffective even if set out later in this amended plan.

\_\_\_\_\_  
\_\_\_\_\_

## **Chapter 13 Plan**

**NOTE:** The United States Bankruptcy Court for the Northern District of Georgia adopted this form plan for use in Chapter 13 cases in the District pursuant to Federal Rule of Bankruptcy Procedure 3015.1. See Order Requiring Local Form for Chapter 13 Plans and Establishing Related Procedures, General Order No. 21-2017, available in the Clerk's Office and on the Bankruptcy Court's website, [ganb.uscourts.gov](http://ganb.uscourts.gov). As used in this plan, "Chapter 13 General Order" means General Order No. 21-2017 as it may from time to time be amended or superseded.

# Pre-Confirmation Modification

- ▶ **Option 2**: Statement of Modified Plan
  - ▶ Must state that a Modified Plan has been filed and that the Modified Plan is attached as an exhibit;
  - ▶ Must specify each section that is amended;
  - ▶ State that any amendments not set forth in the Modification Statement are ineffective; and
  - ▶ Must conform to the form in the General Order.

## STATEMENT OF MODIFIED PLAN

Come(s) now *[Name(s) of Debtor(s)]* and state(s) the following:

1. On *[date]*, Debtor(s) filed a Modified Plan. The Modified Plan is attached as an Exhibit to this Statement of Modified Plan filed with the Bankruptcy Court.
2. The Modified Plan amends the specified section(s) of the Plan and changes them as follows: *[State each section that is modified and describe the substance of the amendment. If the Modified Plan changes the treatment of a specific creditor, the description should include the name of that creditor.]*
3. Any amendment contained in the Modified Plan that is not set forth in this Statement of Modified Plan will not be effective.
4. Objections to the confirmation of the Modified Plan must be filed with the Court and served on the Debtor(s), the attorney for the Debtor(s), and the Chapter 13 Trustee at least seven days before the date set for the hearing on confirmation.

Respectfully submitted,

*[Signature of attorney for Debtor(s)]*  
[Name, address, telephone number, and  
Georgia Bar Number of attorney for  
Debtor(s)]

*[Attach certificate of service showing the persons served and the date and manner of service]*

# Pre-Confirmation Modification

## ► Option 2: Statement of Modified Plan

- The Amended Plan MUST be attached as an exhibit
- Be specific and consistent re: changes
- Best practice is to quote the changes
  - Ex: The Plan Payments are increasing from \$500/mo. to \$600/mo.
  - Ex: The treatment of ABC Company in Section 3.3 of the Plan will change to increase interest, monthly AP, and set payments as follows:

	Name of creditor	Collateral	Purchase date	Estimated amount of claim	Interest rate	Monthly pre-confirmation adequate protection payment	Monthly post-confirmation payment to creditor by trustee
+							
-					%		

# Pre-Confirmation Modification

## ▶ WHAT must be served:

- ▶ If the debtor files the SMP, then debtor only has to serve the SMP and NOT the entire plan.
- ▶ If the debtor only files the Modified Plan without an SMP, then the debtor **MUST** serve the Modified Plan.

## ▶ WHO must be served: ALL parties in interest

- ▶ **Use a current copy of the Mailing Matrix!**
- ▶ File a Certificate of Service promptly.
- ▶ **7004 Service:** If the plan materially and adversely affects a creditor who has to be served under Rule 7004, the debtor **MUST** serve the SMP/Modified Plan under 7004.



# Material and Adverse Changes



- ▶ What is a Material and Adverse Change?
  - ▶ Explicit negative change
  - ▶ First time treatment?
- ▶ Who determines whether a change is a MAC?
- ▶ Requires a special Notice of Hearing



# Material and Adverse Changes

## “MAC Notices”

- ▶ Debtor must serve notice on each MAC creditor stating:
  - ▶ The time and place of the confirmation hearing; and
  - ▶ That an objection to confirmation **MUST** be filed at least 7 days before the date of the hearing.
- ▶ Requires **28 days** notice before confirmation hearing.
- ▶ **MUST** use Form Exhibit C attached to General Order.
- ▶ Rule 7004 service required if original plan required it and MAC.
- ▶ **MUST** file a COS.

**NOTICE OF HEARING ON CONFIRMATION OF MODIFIED PLAN AND OF  
DEADLINE FOR OBJECTIONS TO CONFIRMATION OF MODIFIED PLAN**

**PLEASE TAKE NOTICE** that the Debtor(s) has/have filed a preconfirmation modification to the Chapter 13 Plan. The preconfirmation modification may materially and adversely change the treatment or rights of creditors from those set forth in the Chapter 13 Plan previously filed.

**Your rights may be affected.** You should read the preconfirmation modification carefully and discuss it with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you oppose confirmation of the Chapter 13 Plan, as modified, and do not want the court to confirm it, or if you want the Court to consider your views, then not less than seven days before the hearing on confirmation scheduled below, you or your attorney must:

- (1) File with the court a written objection, explaining your positions and views as to why the court should not confirm the Chapter 13 Plan, as modified. The written objection must be filed at the following address:

***[State address of Clerk of Court of appropriate division]***

If you mail your response to the Clerk for filing, you must mail it early enough so that the Clerk will **actually receive** it not less than seven days before the hearing on confirmation scheduled below.

- (2) Mail or deliver a copy of your written objection to the Debtor's attorney at the address stated below and to the Chapter 13 Trustee. You must attach a certificate of service to your written objection, stating when, how, and on whom (including addresses) you served the objection.

# Final Thoughts

- ▶ New Confirmation Order

# IV. Questions?



Thanks to:

**DALE GOODMAN**, GOODMAN & GOODMAN P.C.

**CRAIG RABER**, U.S. BANKRUPTCY COURT

**CC SCHNAPP**, U.S. BANKRUPTCY COURT

**REGINA THOMAS** AND THE CLERK'S OFFICE STAFF