

CHAPTER 13 MODEL PLAN



PROPOSED CHANGES 2013

AGENDA



- 1. AGREED SUBSTANTIVE
CHANGES**
- 2. NEEDED TECHNICAL
CHANGES**
- 3. OTHER SUBSTANTIVE ISSUES**
- 4. NEXT STEP**

AGREED SUBSTANTIVE CHANGES



**AS A RESULT OF A MEETING
WITH THE DEBTORS' BAR
REPRESENTATIVES AND
CHAPTER 13 TRUSTEES**

FOOT NOTE iii – page 2 (or 3 depending).



- **The monthly payment amount and** the pre-petition arrearage is an estimate and the Trustee shall pay the **monthly payment amount** and pre-petition arrears based on the claim as filed by the Creditor..

Continuation



- Any claim filed for pre-petition arrears shall be paid through the Plan over a reasonable period of time and pro-rata with other secured creditors **without interest.**
- **The confirmed plan will substitute as the real property initial proof of claim with regard to the Creditor Name and Monthly Payment Amount.**

Summary



- Allows for the change in the monthly payment amount based on the POC
- Provides no interest paid on arrears.
- Allows the plan to act as POC - thus allowing for disbursement if no POC filed by mortgage company.

C 2 b and c page 4



- Secured Claims NOT Subject to 11 U.S.C. Section 506:
- each secured creditor in this class has a lien not subject to 11 U.S.C. Section 506. Claims in this class shall be paid as follows plus an additional pro-rata amount that may be available from funds on hand at an interest rate specified below or the contract rate **specified in the proof of claim** whichever is lower.

Summary



- Allows use of the POC to establish the contract rate of interest.
- Same provision in the “cram down” claims (Secured Claims Subject to 11 U.S.C. Section 506).

Secured Claims of the Internal Revenue Service and the State of Michigan



- Interest will be paid at the rate listed above or on that *amount* listed in the proof of claim, whichever is less.

SUMMARY



- Fixes interest rate on the tax debt.
- Will always be subject to statutorily set rates.
- Not sure what the “amount” refers to in the above.

IV F (new)



- **LIMIT ON NOTICES; EXCLUSION OF CREDITORS WHO HAVE NOT FILED CLAIMS**

ADDITIONAL LIMIT ON NOTICE (NEW)



- **ADDITIONAL LIMIT ON NOTICES; THOSE RECEIVING ELECTRONIC NOTICE; STIPULATED FEE APPLICATIONS**

Claims and amended claims IV H (1)



- With regard to secured claims filed by creditors holding security interests in real property that is surrendered pursuant to this plan, each such secured creditor must file ~~an amended~~ a claim asserting its unsecured deficiency **claim**, if any, on or before the date 90 days after the foreclosure sale.

Continued



- Failure to file the **amended deficiency** claim on a timely basis pursuant to this provision means that such secured creditor shall not be entitled to payment through the Chapter 13 Plan and such secured creditor's claim **and any unsecured portion** will be discharged upon entry of a discharge order in this case.

Claims and amended claims IV H (II)



- With regard to secured claims filed by creditors holding security interests in personal property surrendered in this plan, and executory contract holders or lessors whose contracts or leases are rejected under this plan, each such secured creditor, executory contract holder or lessor must file an **amended-unsecured** claim for its deficiency balance or asserted contractual damages on or before the date 6 months (180 days) after the date of entry of the Confirmation Order.

Continued



- Failure to file the ~~amended~~ **deficiency** claim on a timely basis pursuant to this provision means that such secured creditor, executory contract holder or lessor shall not be entitled to payment through the Chapter 13 Plan, and such secured creditor, executory contract holder or lessor's claim shall be discharged upon entry of a discharge order in this

Post-petition Disbursements



- Creditor payment initial disbursement date: payment designated as equal monthly payments on secured claims, executory contracts, priority unsecured claims, attorney fees, and tax escrow accruals shall be scheduled to commence the first day of the month following the month of the ~~filing date~~ **filing date of the Petition or amended plan** unless otherwise stated in the Plan.

Technical corrections



TC



- 1. Change II.A. Plan payment to read . . . amount of \$_____ () weekly, () bi-weekly . . . (it currently reads \$____ per () week . .) for consistency
- 2. Insert a new III.B.3 as the numbering for the section “Post-petition priority tax claims”
- 3. Renumber III.B.3 to III.B.4 Other Priority Claims
- 4. Amend III.C.1.a to read Residential: Post-petition mortgage payments and pre-petition arrears. The following is the street address and the tax ID parcel # for the Debtor’s primary residence: (and remove property #2).

TC



- 5. In the table of creditors in III.C.1.a, insert “Estimated” into the monthly payment amount box and add a footnote that the claim controls
- 6. In the table of creditors in III.C.1.b, insert “Estimated” into the monthly payment amount box and add a footnote that the claim controls
- 7. In III.F.1, replace “Best Interests of Creditors Test” with 11 U.S.C. s. 1325(a)(4)

TC



- 8. In IV.A, insert “bonuses” into the 3rd sentence after “refunds”
- 9. In IV.A, replace “deductions” with “withholdings” in the 4th sentence.

TC



- 11. Change IV.C to read: **PROHIBITION AGAINST INCURRING POST-PETITION DEBT & DISPOSAL OF PROPERTY** During the term of this Plan, the Debtor(s) must receive Court approval before: (1) incurring debt in excess of \$2,500.00; (2) disposing of any real property; or (3) disposing of any personal property claimed as exempt with a fair market value greater than \$10,000.
- 12. Change IV.E to read: **ALLOWANCE OF LATE FILED CLAIMS**. Pre-petition claims filed by unscheduled creditors or those without notice of the bankruptcy filing may be deemed timely filed. The Trustee is authorized to classify the claim into one of the classes under this Plan and to pay the claim within the class, unless the claim is disallowed.
- 13. Insert “debtor receives” into IV.N after “(ii)”

OTHER POSSIBLE ISSUES



**FOR CONSIDERATION
AND DISCUSSION**

VESTING OF ESTATE



- Change IV.B to have property of the estate vest by default with the debtor, so that it matches 11 U.S.C. s. 1327(b), except property necessary for the execution of the plan.

Special Unsecured section



- Confusing
- Premise: applies to 36 month ACP cases only.
- Allows Debtors to use the plan-keep the stay in place - after 36 month ACP to pay non-dischargeable debts exclusively.
- These debt remain non-dischargeable and any portion not paid (including accrued interest, if applicable) remains non-dischargeable.
- Not applicable for 60 month ACP.

LIEN STRIPPED CREDITORS



- Common objections as to failure to complete the chapter 13 and treatment of the stripped lien.
- Does this occur regularly enough to make a change to the plan?

FRBP 3002.1



- It has been suggested the model plan may be used to avoid issues with the application of 3002.1
- Possible language:
- “the requirements and provisions of FRBP 3002.1 shall not apply to any property that the Plan as confirmed surrenders to the Creditors as provided in 11 USC Section 1325(a)(5)(C); or to any property as to which the Stay is lifted
- Discuss

Plan Amendment Model



See next slide

**Sample from the Eastern District
of Wisconsin**

REQUEST TO MODIFY CHAPTER 13 PLAN

1. The Proponent of this modification is:
 - the Debtor;
 - the Chapter 13 Trustee (post-confirmation modifications only);
 - the holder of an unsecured claim (post-confirmation modifications only)Name: _____

2. This is a request to modify a Chapter 13 Plan (Select A. or B.):
 - A. post-confirmation;
 - B. pre-confirmation (Select i. or ii);
 - i. Debtor(s)/Debtor(s) attorney certifies that the proposed modification does not materially adversely affect creditors (Local Bankruptcy Rule 3015(b)); or
 - ii. Debtor(s)/Debtor(s) attorney certifies that the proposed modification materially adversely affects only the following creditors and a copy of the proposed modification has been served on them (Local Bankruptcy Rule 3015(b)).
The creditors affected are:

3. The Proponent wishes to modify the Chapter 13 Plan to do the following:

4. The reason(s) for the modification is/are:

5. Select A. or B.
 - A. The Chapter 13 Plan confirmed or modified on _____ is modified as follows:

 - B. The unconfirmed Chapter 13 Plan dated _____ is modified as follows:

All remaining terms and provisions of the Plan are unaffected unless specifically addressed herein. In the event of a conflict between the original Plan and the modification set forth above, the latter shall supersede and control.

Next Step



- 30 day review of all proposed provisions.
- Comments if any to Brett or Barb by 8/25/2013
- Dissemination of final modification by 9/1/2013 for implementation beginning 9/1/2013?