

Memo

To: Idaho Bankruptcy Practitioners

From: Chapter 13 Advisory Committee

[Sarah Bratton](#), [Alex Caval](#), [Fred Cooper](#), [Jeff Kaufman](#), [Brian Langford](#), [Kathleen McCallister](#), [Jake Peterson](#), [Barry Zimmerman](#)

Date: 6/13/2012

Re: Proposed Model Chapter 13 Plan

Dear Practitioners:

In an effort to create a model plan that meets the current needs of the bankruptcy bar, an advisory committee made up of debtor's attorneys, creditor's attorneys and trustees was created. The Committee has reviewed the entire plan line by line and has created a proposed model plan for the bar's review. The amended plan is intended to be less cumbersome and address current issues. Some of the provisions in this plan will greatly benefit the needs of the debtors, other provisions will be helpful to the practitioners, and finally some of the provisions will benefit the trustees. The Committee contends that all parties benefit from the approval of the proposed model plan. Consequently we are posting the proposed plan on the ListServe in order for bankruptcy practitioners to decide whether it should be presented to the Rules Committee.

The next Rules Committee Meeting will be held on July 6, 2012. Please post your comments no later than July 3, 2012 or you can email the Committee members directly using the hyperlinks above. It is proposed that this plan will either be accepted in its entirety or rejected in its entirety. If practitioners vote to accept the proposed plan then it will be proposed to the Rules Committee. On the other hand, if practitioners vote to reject the proposed plan then it will not be presented to the Rules Committee and we will continue using the current model plan.

The major changes in the proposed plan are as follows:

1. Paragraph 1.2 of the old plan which is now 2.2 of the proposed plan is amended to allow debtors to retain \$1,800 per calendar year from their net tax refunds to meet the reasonable and necessary needs and expenses of the debtor. However, this paragraph removes the ability of the debtors to request that the trustee allow them to retain additional funds in excess of \$1,800. Any sums the debtors desire to retain in excess of \$1,800 will need to be approved by the bankruptcy court unless such funds were already provided for in the plan and the budget. The Committee expects

that this section will be helpful for debtors who need to catch up on car repairs, medical bills, school clothes, etc. without the need for the debtor and the debtor's attorney to provide documentation to the trustee's office and seek approval and hopefully it will help debtors to succeed in their Chapter 13 plans.

2. The Committee has reworked the provisions for dealing with secured creditors to make it less repetitive. Paragraph 5.1 deals only with 910 claims that are being paid through the plan. This paragraph now allows the allowed claim to control so that debtor's attorneys do not have to amend the plans if the claim comes in higher than expected. It is anticipated that 910 claims will be paid in full per the bankruptcy code unless there is an agreement to the contrary. Paragraph 5.2 was the prior 5.1 which dealt with modification of rights of secured claims and paragraph 5.3 is the old 5.2 that deals with mortgage defaults. Paragraph 5.4 is new and should benefit many of the practitioners. It is for liens being avoided on the debtor's real estate and contains language the Committee believes will put creditors on notice of the intent to strip their liens. Paragraph 5.5 addresses judicial liens and non-purchase money security interests that impair exemptions that are being avoided on secured debt. This was the Committee's attempt to keep all modifications of secured claims in one place. We believe that these changes will make it easier to complete the model plan and will spell out to creditors how they are being treated.
3. Paragraph 6 of the plan deals with secured creditors that are being paid directly as well as property that is being surrendered.
4. Paragraph 10 adds a duty for the debtors to report changes in income pursuant to section 521 of the bankruptcy code and also to report receipt of funds in excess of \$1,800 per year from any source. The Committee believes that this provision will assist the trustees in determining if monthly net income has significantly increased to warrant a plan modification at an earlier date than when the tax returns are finally provided. It will further assist the bankruptcy practitioners by impressing on debtors that it is their responsibility to advise their counsel of these changes rather than the practitioners being caught unaware when the trustee files a Motion to Dismiss.
5. The plan is now reduced to six pages however the Committee expects that when the forms are completed accurately that it will be up to seven pages.

On a personal note I would like to thank and commend all of the members of this Committee who have spent hours on this project. Each member of the Committee had great ideas and contributed to this plan.

If this plan is approved by the Rules Committee, it is our intention to schedule training in three or four locations to meet the needs of the practitioners. This training may be in conjunction with the Commercial Law and Bankruptcy Section and/or the Clerk's Office.

Very Truly Yours,

Kathleen McCallister

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF IDAHO**

In Re:

Case No.

Debtor(s)

CHAPTER 13 PLAN AND RELATED MOTIONS

☐ This Chapter 13 Plan and Related Motions contains language that is different from the standard plan as approved by the U.S. Bankruptcy Court, District of Idaho. An asterisk immediately preceding the section number designates a modified plan section. No asterisk is provided for any fill-in-the-blank sections, designated check boxes, or claim treatment within any table. *Failure to check this box will make any modified provisions of the plan void.*

This plan is proposed by the Debtor(s). It contains provisions that may significantly affect your rights. It contains matters, which if not objected to, may be accepted by the court as true. A creditor who wishes to oppose the plan and related motions may do so by timely filing a written objection. Any objection must be in writing, and must be filed with the court and served upon the Debtor(s), Debtor(s)' attorney, and the Chapter 13 Trustee as follows (check one):

- ☐ This Chapter 13 Plan was filed with the petition. Confirmation may be accelerated pursuant to Local Bankruptcy Rule 2002.5(a). Any objection must be filed and served not later than seven (7) days after the time set for the Section 341(a) meeting of creditors, or as otherwise allowed by law. Absent any such objection, the court may confirm this plan, accept the valuations and allegations herein, and grant the motions without further notice or hearing.
- ☐ This Chapter 13 Plan was not filed with the petition. Any objection must be filed and served within 28 days of the date the plan was served upon the creditor. Absent any such objection, the court may confirm this plan, accept the valuations and allegations herein, and grant the motions without further notice or hearing pursuant to Local Bankruptcy Rule 2002.5(b).
- ☐ This is an amended plan subject to notice, hearing, and objections under Local Bankruptcy Rule 2002.5(c).

If a creditor files a timely written objection, that creditor must also appear at the hearing on confirmation of the plan to assert the objection or the objection may be denied without further notice or hearing. The provisions of the confirmed plan will bind the Debtor(s) and each creditor.

1. DISCHARGE (Check One)

- ☐ Debtor(s) is/are not eligible for a discharge of debts pursuant to 11 U.S.C. §1328(f), OR
- ☐ Debtor(s) is/are seeking a discharge of debts pursuant to 11 U.S.C. §1328(a).

2. PAYMENTS TO THE TRUSTEE

Such portion of the projected future earnings and income of the Debtor(s) as is necessary for the execution of the plan is submitted to the supervision and control of the Chapter 13 Trustee for the duration of this plan, to wit:

2.1 PERIODIC PLAN PAYMENTS

In addition to the payments provided under Sections 6.1, 6.3 and 8, Debtor(s) will pay to the Trustee for a term of _____ months the sum of \$_____ monthly. The Debtor(s) shall commence making payments proposed by the plan to the Trustee no later than thirty (30) days after the date the bankruptcy petition is filed.

2.2 INCOME TAX REFUNDS

During the applicable commitment period of the plan, as defined in 11 U.S.C. §1325(b)(4), Debtor(s) in a single or joint case shall be allowed to retain the first \$1,800 they receive from their state and federal tax refunds regardless of whether the funds are refunds or considered earned income credit. Said amount is inclusive of any amounts listed on schedule I of the Debtor(s) budget. Any net sums received by Debtor(s) over and above \$1,800 shall immediately be turned over to the Trustee for payment to the creditors.

In the event that the Debtor(s) contend that said refunds in excess of \$1,800 are not disposable income, then they must file a motion to modify the plan with the court with notice to all creditors setting forth why the additional funds are not disposable income and provide documentation of any unbudgeted or extraordinary expenses. At any time during the term of the plan,

Debtor(s) shall be entitled to use a tax refund to pay taxes due any other taxing authority; however, the Debtor(s) shall provide proof that they used said amount to pay the tax. Debtor(s) shall remit any net income tax refund balance to the Trustee less the \$1,800 Debtor(s) are allowed to retain.

2.3 **EARLY PAYOFF**

Debtor(s) may not pay off this plan in less than the applicable commitment period without notice to interested parties and an opportunity for hearing before the court unless the plan pays all creditors in full.

2.4 **WAGE DEDUCTION ORDER**

Debtor(s) acknowledge(s) that if the Debtor(s) is/are ever more than thirty (30) days delinquent on any payment due under Section 2.1 of this plan, upon request of the Trustee, a wage deduction order to Debtor(s)' employer may immediately be issued.

2.5 **DEFERRAL OF PAYMENTS FOR CAUSE**

The Trustee, for cause, may defer not more than two monthly payments per calendar year and not more than four payments over the term of the plan, without further notice to parties or a hearing before the court.

3. **POST-CONFIRMATION RECOVERY OF PROPERTY**

Debtor(s) elects as follows: (Check One)

- ☐ The Trustee shall retain the right, post-confirmation, to recover moneys, to recover property and to avoid liens pursuant to 11 U.S.C. §541, *et seq.* Any such recovery or avoidance shall, when liquidated, be disbursed to creditors as additional disposable income, in accordance with 11 U.S.C. §1325 (b); OR
- ☐ The Debtor(s) has/have calculated the right to recover moneys, to recover property and to avoid liens pursuant to 11 U.S.C. §541, *et seq.* in the plan payment. As a result, the Trustee shall not retain such further rights post-confirmation to recover money or property on all transfers and avoidance actions that were timely disclosed to the Trustee and the creditors prior to confirmation.

4. **PROVISIONS FOR ADMINISTRATIVE AND PRIORITY CLAIMS**

From the payments received, the Trustee shall make disbursements to holders of allowed claims entitled to administrative and priority status under 11 U.S.C. §503 and §507 respectively, in deferred cash payments as follows:

4.1 **DOMESTIC SUPPORT OBLIGATIONS (Check All Applicable Boxes)**

- ☐ No Domestic Support Obligations are owed.
- ☐ The Debtor(s) is/are current on domestic support obligation(s) and will continue to make post-petition payments pursuant to the support order.
- ☐ Allowed unsecured claims for Domestic Support Obligations allowed under 11 U.S.C. §507(a)(1)(A) which are estimated to be \$_____ shall be paid in equal monthly installments over the term of the plan.
- ☐ Allowed unsecured claims for Domestic Support Obligations allowed under 11 U.S.C. §507(a)(1)(B) shall be paid in equal monthly installments over the term of the plan. Total of payments if less than 100%: \$_____.

4.2 **TRUSTEE**

Fees to the Trustee as provided by 28 U.S.C. §586.

4.3 **ATTORNEY (Check One)**

- ☐ Debtor(s)'s attorney has elected to charge a fixed fee pursuant to the Model Retention Agreement, Local Rule 2016.1, of \$_____ (not to exceed \$3,000), exclusive of costs. Said attorney has received \$_____ prior to the filing hereof and is to be paid the remaining amount in monthly payments over the initial ____ months of distribution or in such longer period as is required to allow the Trustee to make the set monthly installments as set forth in this plan.
- ☐ Fees and costs to the Debtor(s)' attorney in an amount to be proven and allowed by the court but not to exceed \$_____, payable in equal monthly installments over the initial ____ months of distribution. This is in addition to the fee retainer paid pre-petition (\$_____) and any sums allowed in any previous order(s).

4.4 **TAXES**

Upon confirmation of the plan and the filing of an allowed claim, any allowed unsecured priority claims of governmental units which are estimated to be \$_____ shall be paid: (Check One)

- ☐ In equal monthly installments over the term of the plan.
- ☐ From available funds after set monthly installments pursuant to the plan are made.

5. **PROVISIONS FOR MODIFICATION OF SECURED CLAIMS**

To each of the following named creditors holding an allowed secured claim, the creditor shall retain its lien on the collateral securing that claim until the earlier of 1) the payment of the underlying debt determined under nonbankruptcy law; or 2) discharge under 11 U.S.C. §1328. If the case is dismissed or converted without completion of the plan, such lien shall be retained by the secured creditor to the extent recognized by applicable nonbankruptcy law.

Secured creditors' rights and claims will be modified in accordance with the terms provided herein and payments will be made to the creditor by the Trustee.

Unless otherwise provided, the allowed secured claim shall be amortized at the rate of interest (simple interest, direct reducing) in equal monthly installments over the term of the plan.

The projected total payments constitute the Debtor(s)' best estimate of the total of all payments to be made to the secured creditor on the secured portion of such creditor's claims. At the discretion of the Trustee, allowed secured claims of \$500 or less may have payment accelerated. In the event that the creditor files a proof of claim indicating the secured claim is less than the amount provided for in the plan or that provides for a lower interest rate, then the Trustee shall pay the lower claim amount or lower interest rate per the claim.

If a secured creditor objects to the provision, Debtor(s) will ask the court, at the hearing on confirmation, to confirm the plan over the creditor's objection, pursuant to 11 U.S.C. §1325(a)(5)(B).

5.1 **MODIFICATION OF RIGHTS (OTHER THAN VALUE) OF HOLDERS OF CERTAIN PURCHASE MONEY SECURED CLAIMS ON MOTOR VEHICLES PURCHASED WITHIN 910 DAYS OF THE FILING OF THE CASE FOR THE DEBTOR(S) PERSONAL USE OR ANY OTHER THING OF VALUE PURCHASED WITHIN A YEAR OF FILING.**

To each of the following named creditors holding properly perfected PMSI as described above, the Debtor(s) intend to pay the amount of your secured claim in full. The total estimated amount provided hereinafter represents the Debtor(s)' assertion of the amount of the claim as of the day the bankruptcy was filed. In the event that the creditor's allowed claim provides otherwise, the allowed claim shall control.

The Debtor(s) hereby MOVES the court for an order so fixing the treatment of the secured claim as follows:

CREDITOR	COLLATERAL DESCRIPTION	CONTRACT DATE (REQUIRED)	ESTIMATED AMOUNT OF CLAIM	RATE OF INTEREST PER PLAN	PROJECTED TOTAL PAYMENTS

5.2 **MODIFICATION OF RIGHTS OF HOLDERS OF SECURED CLAIMS (INCLUDING SECURED TAX CLAIMS)**

To each of the following named creditors the Debtor(s) has/have set forth the amount of your secured claim and your rights and claims will be modified in accordance with the terms provided for herein by Debtor(s). Except as provided by 11 U.S.C. §1325(a)(5)(B)(i)(II), an order setting the secured portion of a claim, at less than the total amount of the entire claim, voids the creditor's lien to the extent of the unsecured portion of the claim.

Any portion of the debt owed to a creditor in excess of the allowed secured claim will be treated in this plan as an unsecured claim. Subject to the terms of the order of confirmation of the plan, unless otherwise ordered by the court, payments shall commence from the Trustee upon filing of an allowable claim.

The Debtor(s) hereby MOVES the court for an order so fixing the amount of the allowed secured claim as follows:

CREDITOR	COLLATERAL DESCRIPTION	DATE OF CONTRACT (REQUIRED)	ALLOWED SECURED CLAIM	RATE OF INTEREST PER PLAN	PROJECTED TOTAL PAYMENTS

5.3 CURING OF DEFAULT OF LONG-TERM SECURED CLAIMS

To each of the following named creditors, the Debtor(s) do not propose to pay in full, their allowed secured claim during the term of this plan. Each creditor shall retain its lien on the collateral securing the claim until the allowed secured claim is paid in full.

The Debtor(s) will continue the regular monthly contract payments directly to the creditor pursuant to the contract terms. Each post-petition payment shall be paid by Debtor(s) as it comes due. The initial post-petition payment shall commence on the first full month following the filing of the bankruptcy petition by Debtor(s).

The default payments under this plan shall be applied by creditor to the earliest payment for which a portion of the payment is due. Default payments shall commence upon filing of an allowable claim and subject to the terms of the order of confirmation of the plan. Unless otherwise provided, payments shall be in equal monthly amounts, during the term of the plan. The total in default provided hereinafter represents the Debtor(s)' assertion of the amount of the default as of the day the bankruptcy was filed. In the event that the creditor's allowed claim provides otherwise, the allowed claim shall control. Each creditor shall further be entitled to receive interest on their claim, as allowed by law. Such interest rate shall be the non-default contract rate of interest provided in the contract between each creditor and Debtor(s).

CREDITOR	COLLATERAL DESCRIPTION	PROJECTED DEFAULT	RATE OF INTEREST

5.4 LIENS AVOIDED ON DEBTOR(S)' REAL PROPERTY

TO EACH OF THE FOLLOWING NAMED CREDITORS, THE DEBTOR(S) CONTEND THAT THE BALANCE DUE ON THE NOTE(S) SECURED BY PRIOR PROPERLY RECORDED DEEDS OF TRUST EXCEED THE VALUE OF THE REAL ESTATE SECURING SAID CREDITOR'S LIEN AND THAT YOUR CLAIM IS COMPLETELY UNSECURED. TO EACH OF THESE CREDITORS, YOUR TIMELY FILED CLAIMS WILL BE TREATED IN THIS PLAN AS UNSECURED CLAIMS AND UPON THE SUCCESSFUL COMPLETION OF THIS PLAN YOUR LIEN WILL BE AVOIDED.

For each creditor listed in this section the Debtor(s) will serve notice as required in Bankruptcy Rule 7004 and file a proof of service with the court.

The Debtor(s) hereby MOVE the court for an order so fixing the amount of the allowed secured claim as zero dollars.

CREDITOR	PROPERTY ADDRESS	VALUE OF REAL ESTATE	BALANCE OF RECORDED LIENS WITH HIGHER PRIORITY	RECORDING DATE OF LIEN BEING AVOIDED	INSTRUMENT NUMBER

5.5 AVOIDANCE OF LIENS ON EXEMPT PROPERTY PURSUANT TO LOCAL BANKRUPTCY RULE 4003.2

- ☐ A check in this box indicates that a motion to avoid judicial liens under 11 U.S.C. §522(f)(1)(A), or to avoid non-possessory, non-purchase money security interests under 11 U.S.C. §522(f)(1)(B), is made herein and the allegations and details as required by the Code and Rules are asserted below.

CREDITOR	COLLATERAL DESCRIPTION	TYPE OF LIEN	EXTENT THAT LIEN IS AVOIDED	INSTRUMENT NO. (IF ANY)	STATUTORY EXEMPTION THAT IS IMPAIRED

6. DISBURSEMENTS DIRECTLY BY DEBTOR(S)

Debtor(s) shall make the following disbursements directly to creditors and shall treat the following claims and obligations as indicated:

6.1 SECURED CLAIMS NOT IN DEFAULT

To secured creditors whose rights are not being modified, the secured claim of each shall be paid directly by Debtor(s) according to the terms of the outstanding agreements with each creditor. The Debtor(s) shall pay these creditors directly as follows:

CREDITOR	COLLATERAL DESCRIPTION	DATE OF CONTRACT	RATE OF INTEREST (REQUIRED)	ESTIMATED BALANCE OWING	AMOUNT OF PAYMENT MADE DIRECTLY BY THE DEBTOR(S)

6.2 SURRENDER OF COLLATERAL BY DEBTOR(S)

The Debtor(s) shall surrender their interest in the collateral securing the claims of the following creditor. Unless the automatic stay has already been terminated by court order or applicable law, upon the entry of the order confirming this plan, the automatic stay imposed by 11 U.S.C. §362(a) as against the creditors and collateral set forth below, shall be terminated pursuant to 11 U.S.C. §362(d).

CREDITOR	COLLATERAL TO BE SURRENDERED

6.3 PRE-CONFIRMATION PAYMENTS TO PURCHASE MONEY SECURED CREDITORS OF PERSONAL PROPERTY

No later than thirty (30) days after the date the bankruptcy petition is filed, the Debtor(s) shall commence making payments on allowed claims of purchase money secured creditors of personal property in an amount sufficient to provide adequate protection, directly to the creditor until confirmation. The payments made under this subsection shall reduce the amount owed under the plan. The Debtor(s) shall provide the Trustee evidence of such payments, including the amount and date of the payments.

CREDITOR	COLLATERAL DESCRIPTION	ADEQUATE PROTECTION PAYMENT

6.4 POST-PETITION TAX OBLIGATIONS (Check All That Apply)

- ☐ Real property taxes are being paid through escrow by Debtor(s)' mortgage holder.
- ☐ Real property taxes are being paid by the Debtor(s).
- ☐ Personal property taxes are being paid by Debtor(s).

7. PROVISIONS FOR UNSECURED CLAIMS

7.1 CLASSIFICATION OF UNSECURED CLAIMS

Unless otherwise provided, the following unsecured claims will receive from the Trustee the indicated dollar amounts, in equal monthly installments during the term hereof, on their allowed claim. Payments shall commence upon confirmation of this plan and filing of an allowed claim.

CREDITOR	AMOUNT TO BE PAID
CLASS "A" Co-signed claims owing to:	To be paid in full. (Debtor(s) estimates this claim to be \$ _____.)
CLASS "B" - Other claims owing to:	

7.2 GENERAL UNSECURED CLAIMS

Upon confirmation, and at times consistent with the other provisions of this plan, the Trustee will, from funds available after payment of priority and secured claims, pay pro-rata dividends to all creditors who have filed timely allowed unsecured claims.

8. ASSUMPTION OR REJECTION OF UNEXPIRED LEASES AND/OR EXECUTORY CONTRACTS.

The Debtor(s) hereby MOVE for the approval of the assumption or rejection (as applicable) of the following unexpired leases and/or executory contracts in accordance with 11 U.S.C. §365. For those lease(s) and/or contract(s) assumed below, the total in default provided hereinafter represents the Debtor(s)' assertion of the amount of the default as of the day the bankruptcy petition was filed. In the event that the creditor's allowed claim provides otherwise, the allowed claim shall control.

Payments on any assumed lease(s) and/or contract(s) due after the filing of the bankruptcy petition shall be made directly by the Debtor(s) pursuant to the terms of the contract and not through the Trustee. The Trustee shall pay the default over the term of the plan; however, at the discretion of the Trustee, defaults of \$500 or less may have payment accelerated. At the request of the Trustee the Debtor(s) shall provide evidence of such payments, including the amount and date of the payments. Payments curing defaults on any such assumed lease(s) and/or contract(s) shall be paid through the Trustee.

In regard to any lease(s) and/or contract(s) rejected by the Debtor(s), unless the automatic stay has already been terminated by court order or applicable law, upon the entry of the order confirming this plan, the automatic stay shall be terminated as against the lease(s) and/or contract(s) rejected and the creditors and property involved.

CREDITOR	COLLATERAL DESCRIPTION	REJECT OR ASSUME	LEASE END DATE	MONTHLY PAYMENT MADE DIRECTLY BY DEBTOR(S)	PROJECTED TOTAL IN DEFAULT TO BE PAID BY TRUSTEE

9. VESTING OF PROPERTY OF THE ESTATE

Subject only to the liens provided for in this plan and upon confirmation of this plan, all property of the estate: (Check One)

- ☐ Shall vest in the Debtor(s); OR
☐ Shall not vest in the Debtor(s).

10. DUTY TO REPORT CHANGE IN INCOME

Pursuant to 11 U.S.C. §521(f)(4), during the applicable commitment period, Debtor(s) shall file an amended schedule I and J within 60 days of a change of their household income including but not limited to change in employment, receipt of social security income or disability and any lump sum payments, child support, or marriage that causes a ten percent or more change in their gross income and provide the Trustee with documentation of the same.

During the term of the plan, Debtor(s) shall notify the case Trustee of any receipt of funds in excess of \$1,800 a year from any source including but not limited to inheritances, life insurance proceeds, settlements, gambling winnings or prizes, bonuses, lump sum pension distributions, or the sale of any assets.

DATED this ____ day of _____ 20__

Debtor(s)

Debtor(s)

Attorney for the Debtor(s)