

# Bankruptcy 101-Chapter 13

---

PRESENTED BY:

LAURIE K. WEATHERFORD, STANDING CHAPTER 13 TRUSTEE

BOB AND TAMMY BRANSON, BRANSONLAW, PLLC

## Chapter 13- to many it's a lucky number

- ▶ A chapter 13 bankruptcy is also called a wage earner's plan. It enables individuals with regular income to develop a plan to repay all or part of their debts. Under this chapter, debtors propose a repayment plan to make installments to creditors over three to five years. If the debtor's current monthly income is less than the applicable state median, the plan will be for three years unless the court approves a longer period "for cause." (1) If the debtor's current monthly income is greater than the applicable state median, the plan generally must be for five years. In no case may a plan provide for payments over a period longer than five years. 11 U.S.C. § 1322(d). During this time the law forbids creditors from starting or continuing collection efforts.

# Plan of Organization

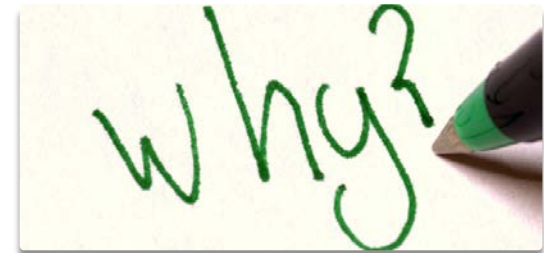
- ▶ Repayment plan
  - ▶ 3-year plan for below state median income
    - ▶ Or up to a 5-year plan if debtor seeks a longer plan
  - ▶ 5-year plan for above state median income

## Who is an eligible Chapter 13 Debtor?

Any individual, even if self-employed or operating an unincorporated business, is eligible for chapter 13 relief as long as the individual's **unsecured debts are less than \$394,725** and **secured debts are less than \$1,184,200**. 11 U.S.C. § 109(e). These amounts are adjusted periodically to reflect changes in the consumer price index. A corporation or partnership may not be a chapter 13 debtor.

## Why file Chapter 13?

- ▶ Debtors over median and unable to pass Chapter 7 Means Test
- ▶ Strip off's (prohibited in Chapter 7) applies when there is no equity after first lien/mortgage
  - ▶ HOA liens
  - ▶ Secondary liens
- ▶ High interest rates



# CRAMDOWNS-SECTION 506

- ▶ Valuation or Cram Downs
  - ▶ Pay what property is worth, not what is owed over the life of the plan or surviving plan if creditor agrees. Claim is bifurcated with Secured Value and Unsecured Claim
  - ▶ Includes inherited or non-borrower non-homestead property
  - ▶ Matured mortgages
  - ▶ Reverse mortgage-heirs (or use 13 to cure taxes and/or insurance)

# Solving issues that could be problematic in Chapter 7



Fraudulent transfers of assets



Moneys paid to family or insiders in the last year



Student Loans-it's a \$1.6 trillion problem  
Adversary –pay fees over time in plan



## Issues to consider pre- filing

- ▶ Prior BKs (financial change-look at prior schedules and orders including Orders Granting Relief from Automatic Stay), Dismissals, Injunctions, Willful failure to comply with orders
  - ▶ Motion to Extend Stay if case in the last year
  - ▶ Motion to Impose Stay if more one case in last year
    - ▶ Explain change in financial circumstances
    - ▶ More income?
    - ▶ Less expenses?
    - ▶ **Wage order** to ensure success of plan?
  - ▶ Motion to Shorten Injunction if grounds
- ▶ Tip: Change plans if Mortgage Modification is impasse-Chapter 13 Admin Order states debtor must amend or modify plan to pay claim as filed within 14 days! This could be willful failure to comply with orders



# Research for lawsuits and assets

- ▶ Pending lawsuits and past lawsuits
- ▶ Property
  - ▶ Pull deeds from property appraiser's office and official records websites.
- ▶ Personal property by using resources like Accurint, Google, Facebook

# Petition Exemption Pointers

- ▶ Exempt Homestead 100% of value
- ▶ If Debtor chooses \$4,000.00 Wildcard but has homestead property, explain the consequence of NOT taking the Homestead Exemption in favor of the Wildcard.
  - ▶ If Debtor sells property during plan proceeds would first pay unsecured creditors
- ▶ TBE exemptions can be helpful
  - ▶ Pull deeds for real property verify ownership
  - ▶ Obtain vehicle registrations

Use Chapter  
13 to Stop  
foreclosure  
proceedings if  
filed before  
sale is  
completed

- ▶ Pay ongoing payment & cure arrearages over up to a 60-month plan.
- ▶ Helpful for forbearances that are due all at once after forbearance ends –  
MARKETING!
- ▶ Note: Federally guaranteed mortgages will place forbearance at maturity
  - ▶ Approve the agreements-Motion & Order
  - ▶ Lenders are filing Notice of Payment Changes.
    - ▶ Debtor may not need it
    - ▶ If Debtor elects forbearance, amend or modify plan. Trustee pays per plan or orders in Orlando Division.
    - ▶ Trustee will not react to forbearance NOPC

# Domestic Support Obligations

- ▶ Unlike Chapter 7, Chapter 13 may discharge equitable distribution
- ▶ May discharge obligation to pay joint debts
- ▶ Allows non-dischargeable claims to be paid over the plan such as delinquent child support or alimony

# CO-DEBTOR STAY

- ▶ Chapter 13 also contains a special automatic stay provision that protects co-debtors. Unless the bankruptcy court authorizes otherwise, a creditor may not seek to collect a "consumer debt" from any individual who is liable along with the debtor. 11 U.S.C. § 1301(a). **Consumer debts** are those incurred by an individual primarily for a personal, family, or household purpose. 11 U.S.C. § 101(8)
  - ▶ **NOT APPLICABLE TO TAXES**
- ▶ Negotiate to release non-filing co-debtor if case is completed successfully



# Chapter 13 procedures

# Fifth Amended Administrative Order Prescribing Procedures for Chapter 13 FLMB 2018-2



Fifth Amended Administrative Order establishes uniform procedures for all Chapter 13 cases filed in this District on or after September 15, 2017



Serve a copy of the Administrative Order within 7 days of filing to Debtor



Basic rule book for Chapter 13

# Chapter 13 Trustee has portal- NDC



BRAT is the Chapter 13 Trustee's portal where documents are uploaded

Redact all personal identifying information such as social security number, minors' names, checking account numbers



BEFORE THE 341



Provide two years most recent filed returns (or provide an affidavit that debtor is not required to file a return)

If Debtor hasn't filed returns file Motion to Extend Time to Provide and ask that the Meeting of Creditors be concluded



Provide paystubs or pay advices for the last six months



Provide bank statements, all accounts for last three months



## Chapter 13 Plan and monthly plan Payments

- ▶ Chapter 13 Plan must be filed within 14 days of petition or date of conversion
  - ▶ If filed with Petition BNC will serve Chapter 13 plan
- ▶ First payment due 30 days after petition is filed or date of conversion
- ▶ TSF Billpay for online payments
  - ▶ Encourage and assist with TFS
  - ▶ Easy access to see if payment is processing, helps when under Motion to Dismiss or up for confirmation
- ▶ Debtor may mail cashier's check, money order, or employee wage deduction to PO Box 1103, Memphis, TN 38101-1103

DATE	3/22/2019		10.0%		MONITORING	Loan Mod.
Zone	Unsecured	Debtor Pmt	Tee Fee	ATTY	FEES	SABRA CRT
60	\$0					
3/22/2019 1	\$0.00	\$928.00	\$92.50	\$0.48		\$832.04
4/22/2019 2	\$0.00	\$1,036.00	\$103.60	\$100.36		\$832.04
5/22/2019 3	\$0.00	\$1,036.00	\$103.60	\$100.36		\$832.04
6/22/2019 4	\$0.00	\$1,036.00	\$103.60	\$100.36		\$832.04
7/22/2019 5	\$0.00	\$1,036.00	\$103.60	\$100.36		\$832.04
8/22/2019 6	\$0.00	\$1,036.00	\$103.60	\$100.36	\$50.00	\$832.04
9/22/2019 7	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
10/22/2019 8	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
11/22/2019 9	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
12/22/2019 10	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
1/22/2020 11	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
2/22/2020 12	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
3/22/2020 13	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
4/22/2020 14	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
5/22/2020 15	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
6/22/2020 16	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
7/22/2020 17	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
8/22/2020 18	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
9/22/2020 19	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
10/22/2020 20	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
11/22/2020 21	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
12/22/2020 22	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
1/22/2021 23	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
2/22/2021 24	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
3/22/2021 25	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
4/22/2021 26	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
5/22/2021 27	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
6/22/2021 28	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
7/22/2021 29	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
8/22/2021 30	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
9/22/2021 31	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
10/22/2021 32	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
11/22/2021 33	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
12/22/2021 34	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
1/22/2022 35	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
2/22/2022 36	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
3/22/2022 37	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
4/22/2022 38	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
5/22/2022 39	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
6/22/2022 40	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
7/22/2022 41	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
8/22/2022 42	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
9/22/2022 43	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
10/22/2022 44	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
11/22/2022 45	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
12/22/2022 46	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
1/22/2023 47	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
2/22/2023 48	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
3/22/2023 49	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
4/22/2023 50	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
5/22/2023 51	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
6/22/2023 52	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
7/22/2023 53	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
8/22/2023 54	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
9/22/2023 55	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
10/22/2023 56	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
11/22/2023 57	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
12/22/2023 58	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
1/22/2024 59	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
2/22/2024 60	\$0.00	\$1,036.00	\$103.60	\$50.36	\$50.00	\$832.04
	\$0.00	\$62,049.00	\$6,204.90	\$3,221.70	\$2,700.00	\$49,922.40
#DIV/0!				\$4,810.00		
				ATTY		2684 *
				ACCEPTING LESS		31% *

# Spreadsheets

IN ORLANDO WE USE SPREADSHEETS TO REFLECT HOW PAYMENTS WILL BE MADE

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

Debtor(s)

Case No.: 6:19-bk-

NOTICES. AMENDED CHAPTER 13 PLAN

or must check one box on each line to state whether or not the Plan includes each of the following items. If an item is checked as "Not Included," if both boxes are checked, or if neither box is checked, the provision will be ineffective if set out later in the Plan.

limit on the amount of a secured claim based on a valuation which may result in a partial payment or no payment at all to the secured creditor. See Sections C.5(d) and (e). A separate motion will be filed.	<input type="checkbox"/> Included	<input checked="" type="checkbox"/> Not included
existence of a judicial lien or nonpossessory, nonpurchase money security interest under 11 U.S.C. § 522(f). A separate motion will be filed. See Section C.5(e).	<input type="checkbox"/> Included	<input checked="" type="checkbox"/> Not included
standard provisions, set out in Section E.	<input type="checkbox"/> Included	<input checked="" type="checkbox"/> Not included

**NOTICE TO DEBTOR: IF YOU ELECT TO MAKE DIRECT PAYMENTS TO A SECURED CREDITOR UNDER SECTION 5(j) OF THIS PLAN, TO SURRENDER THE SECURED CREDITOR'S COLLATERAL UNDER SECTION 5(j), OR TO NOT MAKE PAYMENTS TO THE SECURED CREDITOR UNDER SECTION 5(k), THE AUTOMATIC STAY DOES NOT APPLY AND THE CREDITOR MAY TAKE ACTION TO FORECLOSE OR REPOSSESS THE COLLATERAL.**

**SECURED CREDITORS INCLUDE THE HOLDERS OF MORTGAGE LOANS, CAR LOANS, AND OTHER LOANS FOR WHICH THE SECURED CREDITOR HAS A SECURITY INTEREST IN PERSONAL REAL PROPERTY COLLATERAL.**

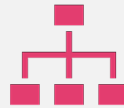
MONTHLY PLAN PAYMENTS

payments include the Trustee's fee of 10% and shall begin 30 days from petition conversion date. Debtor shall make payments to the trustee for the period of 60 months. If the Trustee does not receive the full 10%, any portion not retained will be distributed to allowed claims receiving payments under the plan and may cause an accelerated distribution to the unsecured class of creditors.

(A) \$ 925.00 from Period 1 March 22, 2019 through Period 1 March 22, 2019  
(B) \$ 1,036.00 from Period 2 April 22, 2019 through Period 60 February 22, 2024

# Model Plan

# Model Plan for MDFL



Must use model plan for MDFL, any alterations to the model plan must be placed in "special provisions"



Hot off the press: Soon the plan will read that any creditor added after original plan filed the automatic stay applies. Current Administrative Order states there is no stay if creditor is not in plan. Motion to Impose was/is necessary.



Warning: If surrendering real property consider waiting to file plan within 14 days  
Sales may proceed if plan reads surrender as stay does not apply



## MDFL ORLANDO DIVISION NO- LOOK FEES

- ▶ \$4,500.00 for Chapter 13 Plan
- ▶ \$2,500.00 for Mortgage Modification Mediation (Tampa 1800.00)
- ▶ \$1,500.00 for Student Loan Management Program
- ▶ \$250.00 for SLMP annual recertification
- ▶ \$50.00 monitoring fee after confirmation
  - ▶ (typically \$2700 for five-year and \$1500 for 3-year plan)
- ▶ *In for a penny, in for a pound!*
- ▶ *Not all cases will be successful*
- ▶ *Make excel sheets for Chapter 13's, list important dates*

**1. ADMINISTRATIVE ATTORNEY'S FEES.**

<b>Base Fee</b>	<u>\$4,500.00</u>	<b>Total Paid Prepetition</b>	<u>\$2,190.00</u>	<b>Balance Due</b>	<u>\$2,310.00</u>
<b>MMM Fee</b>	<u>\$2,500.00</u>	<b>Total Paid Prepetition</b>	<u>\$0.00</u>	<b>Balance Due</b>	<u>\$2,500.00</u>
<b>Estimated Monitoring Fee at</b>	<u>\$50.00</u>	<b>per Month.</b>			

**Attorney's Fees Payable Through Plan at** \$4,810.00 **Monthly (subject to adjustment).**  
(accepting less)  
Month 1 - \$0.46  
Month 2-6 - \$100.36  
Month 7-60 - \$50.36

# Adequate Protection

- ▶ Adequate Protection for Secured Creditors and Lessors. Pending confirmation of a Plan and as a condition of Debtor's continued possession or use of real or personal property subject to a security interest, the following, when taken collectively, shall constitute adequate protection to each such secured creditor

Secured or Priority  
Creditors:  
Meet 'em or Beat 'em

---



## Schedule D: Secured Creditors- Mortgage plan treatment options

- ▶ Pay Ongoing Payment & Cure Arrearages
- ▶ Mortgage Modification Mediation
  - ▶ 31% of gross income less HOA
  - ▶ contractual payment
- ▶ Pay Direct (stay is lifted, in rem relief)
  - ▶ Must show deducted by ACH
- ▶ Valuation for non-homestead (unless secured by more than homestead)
  - ▶ Amortize P/I payments at current rate or In re: Till rate plus escrow if escrowed account
- ▶ Strip off if no equity-pro rata distribution
- ▶ Payment in full over plan

# Options for different types of Secured Creditors

- ▶ Vehicles and Personal Property
  - ▶ Pay in full
  - ▶ Pay contractually, sometimes surviving plan-make sure debtor is aware
  - ▶ Value if not 910 vehicle or more than one year for Personal property
- ▶ Property Taxes
  - ▶ Pay with interest
- ▶ Water Softeners/Solar Panels
  - ▶ Usually value
  - ▶ UCC's filed, you want to resolve so clear title issues for any future sale
- ▶ IRS Liens
  - ▶ Pay with interest
  - ▶ Value if claim isn't correct
- ▶ HOA assessments
  - ▶ Strip off
  - ▶ Pay with interest, ask for reduction if at 18%, they say yes more than not

(d) **Claims Secured by Real Property or Personal Property to Which 11 U.S.C. § 506 Valuation APPLIES (Strip Down).** Under 11 U.S.C. § 1322 (b)(2), this provision does not apply to a claim secured solely by Debtor’s principal residence. **A separate motion to determine secured status or to value the collateral must be filed.** Payment on the secured portion of the claim, estimated below, is included in the Plan Payments. Unless otherwise stated in Section E, the Plan Payments do not include payments for escrowed property taxes or insurance.

	Last Four Digits of Acct. No.	Creditor	Collateral Description / Address	Claim Amount	Value	Payment Through Plan	Interest Rate
1.	7174	Carrington	[REDACTED], Kissimmee, FL	\$160,932	\$100,000	\$1337.80 (1-2) \$1228.04 (3-7) \$1318.04 (9-15) \$1559.63 (16) \$1764.18 (17-59) \$21935.15 (60)	6.5%
						Non-escrowed Debtor will pay property taxes and ins. when due	
2.	1339	W.S. Badcock	household goods	\$1933.26	\$1373.65	\$29.87 (7) \$29.87 (9-59) \$59.56 (60)	6.5%

# Valuation 5(d)

# Property Taxes

## ▶ 5(g)

(g) **Claims Secured by Real or Personal Property to be Paid with Interest Through the Plan under 11 U.S.C. § 1322(b)(2).** The following secured claims will be paid in full under the Plan with interest at the rate stated below.

	Last Four Digits of Acct. No.	Creditor	Collateral Description / Address	Claim Amount	Payment Through Plan	Interest Rate
1.	0060	Osceola County Tax Collector	████████ Kissimmee, FL (2019 tax bill)	\$73.19	\$79.40 (10)	18%
2.	n/a	Boyd K. Belnap	████████ Kissimmee, FL (2017 & 2018) & ██████████ St, Kissimmee, FL (2017 & 2018)	\$416.30	\$44.90 (10) \$333.18 (11) \$56.80 (12)	11.75%  (blended rate)
3.	0010	Osceola County Tax Collector	████████████████████ Kissimmee, FL (2019 taxes)	\$1420.80	\$109.76 (3-7) \$189.98 (9) \$366.74 (10) \$446.14 (11) \$11.46 (12)	18%

(i) **Secured Claims Paid Directly by Debtor.** The following secured claims are being made via automatic debit/draft from Debtor's depository account and will continue to be paid directly to the creditor or lessor by Debtor outside the Plan via automatic debit/draft. The automatic stay under 11 U.S.C. §§ 362(a) and 1301(a) is terminated *in rem* as to Debtor and *in rem* and *in personam* as to any codebtor as to these creditors and lessors upon the filing of this Plan. Nothing herein is intended to terminate or abrogate Debtor's state law contract rights. Because these secured claims are not provided for under the Plan, under 11 U.S.C. § 1328(a), Debtor will not receive a discharge of personal liability on these claims.

	Last Four Digits of Acct. No.	Creditor	Property/Collateral
1.	7252	SLS	[REDACTED], Kissimmee, FL
2.	F299	Toyota Lease Trust	2017 Lexus ES350

Pay  
direct 5(i)

# Schedule E Priority Creditors

- ▶ IRS listed in Section 3 of Plan
  - ▶ If estimated taxes, send signed returns to IRS insolvency rep.
  - ▶ Pay with interest
- ▶ Department of Revenue
  - ▶ Pay (note: DOR generally works out deals on sales tax)
- ▶ Child support or Domestic Obligations (Section 2 of Plan)
  - ▶ Pay over life of plan

NONE

**3. PRIORITY CLAIMS (as defined in 11 U.S.C. § 507).**

Last 4 Digits of Acct. No.	Creditor	Total Claim Amount
1618	Department of Treasury-Internal Revenue Service	\$4621.00 at 4% \$94.15 (5-8) \$90.95 (9-60)

---



# Student Loans in Special Provisions of Plan



Unsecured  
Creditors  
must be  
paid  
disposable  
income and  
liquidity



You must pay unsecured creditors what they would have been paid in Chapter 7



BestCase does analysis, review for accuracy



Remember Priority IRS is calculated for liquidity



Getting  
Confirmed (and  
paid)

# BARDATE

- ▶ Admin Order reads:

Preconfirmation Deadline for Filing Amended Plans and Certain Motions. The following shall be filed no later than 28 days after the claims bar date:
- ▶ a. An amended Plan, if necessary to obtain confirmation;
- ▶ b. Motions to determine secured status of claim; and
- ▶ c. Motions to avoid liens, if necessary to obtain confirmation
- ▶ File negative notice motions and objections timely so orders are entered prior to confirmation
- ▶ File motions or objections as claims are filed, no need to wait until bardate
- ▶ Reminder pursuant to local rule, can't file motions until bardate passes or creditor files claim

# Pull Claims Register

- ▶ Make notes dealing with each claim
- ▶ File Claims for Creditors that didn't file but are being paid through plan

6:19-bk- [REDACTED]

**Judge:** Judge KJ                      **Chapter:** 13  
**Office:** Orlando                      **Last Date to file claims:** 11/15/2019  
**Trustee:** Laurie K Weatherford    **Last Date to file (Govt):**

<i>Creditor:</i> (28487942) W.S. Badcock Corporation P.O. BOX 724 Mulberry, FL 33860	<b>Claim No: 1</b> <i>Original Filed</i> Date: 09/10/2019 <i>Original Entered</i> Date: 09/10/2019	<i>Status:</i> <i>Filed by:</i> CR <i>Entered by:</i> W. S. Badcock Corporation (FJ) <i>Modified:</i>
-----------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------

Amount claimed: \$1933.26	Value-purchase beyond one year, bedroom set valued at \$500
Secured claimed: \$1933.26	

*History:*

<a href="#">Details</a>	1-1	09/10/2019	Claim #1 filed by W.S. Badcock Corporation, Amount claimed: \$1933.26 (W. S. Badcock Corporation (FJ))
-------------------------	-----	------------	--------------------------------------------------------------------------------------------------------

*Description:* (1-1) Household Goods  
*Remarks:*

<i>Creditor:</i> (28491257) BOYD K BELNAP 128 GRIZZLE CT TALKING ROCK GA 30175	<b>Claim No: 2</b> <i>Original Filed</i> Date: 09/18/2019 <i>Original Entered</i> Date: 09/18/2019	<i>Status:</i> <i>Filed by:</i> CR <i>Entered by:</i> Auto-Claim Filer <i>Modified:</i>
-----------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------

Amount claimed: \$416.30	Pay at rate of .25% -tax certificate
--------------------------	--------------------------------------

*History:*

<a href="#">Details</a>	2-1	09/18/2019	Claim #2 filed by BOYD K BELNAP, Amount claimed: \$416.30 (Auto-Claim Filer)
-------------------------	-----	------------	------------------------------------------------------------------------------

<b>Creditor:</b> (28563622) Toyota Lease Trust c/o Toyota Motor Credit Corporation PO Box 9013 Addison, Texas 75001		<b>Claim No: 4</b> Original Filed Date: 10/15/2019 Original Entered Date: 10/15/2019		<b>Status:</b> Filed by: CR Entered by: Peter K Knapp Modified:	
<b>Amount</b>	claimed:	\$8973.67			Paid direct by non-filing spouse under ACH
<b>Secured</b>	claimed:	\$8973.67			
<b>History:</b>					
<a href="#">Details</a>		<a href="#">4-1</a>	10/15/2019	Claim #4 filed by Toyota Lease Trust, Amount claimed: \$8973.67 (Knapp, Peter)	
<b>Description:</b>					
<b>Remarks:</b>					

<b>Creditor:</b> (28586337) Wells Fargo Bank N.A., as Trustee for Carrington M c/o Carrington Mortgage Services, LLC 1600 South Douglass Road Anaheim, CA 92806		<b>Claim No: 5</b> Original Filed Date: 10/28/2019 Original Entered Date: 10/28/2019		<b>Status:</b> Filed by: CR Entered by: April Hosford Stone Modified:	
<b>Amount</b>	claimed:	\$160932.98			Valuation: Property valued at \$50,000.00 ---Motion filed-Response by Creditor- their valuation is \$90,000.00-- contact attorney attempt resolution
<b>Secured</b>	claimed:	\$160932.98			

## Common motion practice

- ▶ Motions to Strip Lien (if no equity)
- ▶ Motions to Avoid Lien (§522(f) for exempt property)
- ▶ Motion to Value
  - ▶ Personal Property must have been purchased more than one year prior to filing
  - ▶ Vehicles must have been purchased more than 910 days if consumer use
  - ▶ Vehicle Loans that are non-purchase loans are not restricted
- ▶ Motion for Mediation (90 days from Petition Date or Conversion Date)

## Objection(s) to Claims

- ▶ Interest Rate (Till Objections)  
Generally Prime Rate plus 2% (range is 1%-5%)
- ▶ Duplicate Claims
- ▶ Stale or Time Barred Claims- five years for FL (contract controls)
- ▶ Previously Discharged Claims  
(Chapter 20 can be great!)

# Use the Procedure Manual

- ▶ Court's website at [www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)
- ▶ Review each time you prepare a pleading
- ▶ Keep updated!





# Chapter 13 changes due to Pandemic

CARES ACT- COVID 19

---

# CARES ACT SIGNED INTO LAW ON 3/27/2020



- ▶ Allows up to seven-year plan if affected directly or indirectly by COVID-19
- ▶ Forbearances are being offered on both private & federally guaranteed loans.
- ▶ Practice tip: File verified statement confirming affects of COVID
- ▶ Review Post Fee Notices (Fannie Mae allows \$100 for filing notice)
- ▶ Modifications:
  - ▶ Debtor may skip more than 3 months over the plan
  - ▶ Debtor may make up missed payments over balance of plan instead of 12 month pay back prior restriction
- ▶ Provide for escrow only if unemployed?
- ▶ Cares Act case 3/27/2020 or before– Confirm Nunc Pro Tunc
- ▶ Sunsets one year from 3/27/2020!

## Modification of plan up to 7 years if experiencing or has experienced a material COVID-19 financial hardship

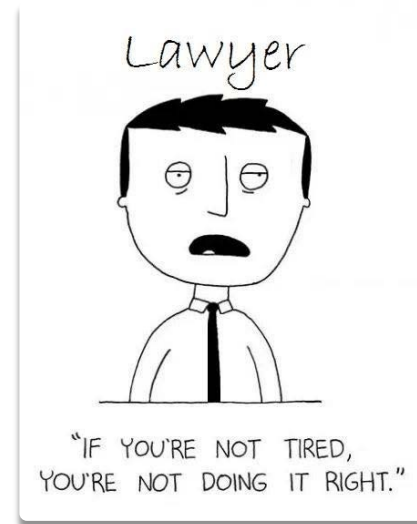
- ▶ **(1)** Subject to paragraph (3), for a plan confirmed prior to the date of enactment of this subsection, the plan may be modified upon the request of the debtor if—**(A)** the debtor is experiencing or has experienced a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID-19) pandemic; and
- ▶ **(B)** the modification is approved after notice and a hearing.
- ▶ *We use 21 days negative notice, if no objections filed, order entered without hearing if Trustee consents*

ADMINISTRATIVE ORDER REGARDING MODIFICATION OF THE  
AUTOMATIC STAY IN CONNECTION WITH FORBEARANCE AGREEMENTS FLMB  
2020-05

- ▶ **Applicability.** This Administrative Order applies to forbearance agreements only and shall not be interpreted by creditors as blanket relief from stay to pursue actions prohibited by 11 U.S.C. § 362(a).
- ▶ **Modification of the Automatic Stay.** To the extent the automatic stay under 11 U.S.C. § 362(a) is in effect with respect to a debtor's pending case, it is modified to permit creditors to communicate with debtors regarding the negotiation of a forbearance agreement, subject to the limitations set forth below
- ▶ **Modification of a Chapter 11, 12, or 13 Plan.** If a debtor in a Chapter 11, 12, or 13 case successfully negotiates a forbearance agreement, the agreement shall be incorporated, if appropriate, in the debtor's Chapter 11, 12, or 13 plan.

# ADMINISTRATIVE ORDER CONT'D

- ▶ Professionalism and Civility. The Court reminds debtors, creditors, and their attorneys that all parties are living and working under extraordinarily stressful circumstances. During this unprecedented time, it is more important than ever that all parties treat each other with dignity and respect.



# Hearings during COVID

- ▶ Meeting of Creditors for cases filed through October 10, 2020 will be held telephonically
- ▶ Chapter 13 Dockets are being held telephonically for attorneys, sign up for CourtCall 24 hours in advance! Court gets list of those attending.
  - ▶ Make sure to tell your clients to stay home!
- ▶ Trials are being conducted by video



# Annual Tax Return to BRAT



Each year provide tax returns to Trustee by April 30, 2020



Either turn over refund to Trustee or properly request to keep refund with estimates



Review income and amend Schedules I and J if Debtor has an had an increase of income



Modify plan if income creates additional disposable income or there could be room for a decrease if income has reduced and moneys were being paid to unsecureds

# Completing Chapter 13

DEBTOR MUST SIGN AND FILE  
CERTIFICATE OF DOMESTIC  
OBLIGATION CONFIRMING THEY  
DON'T OWE DOMESTIC SUPPORT  
OBLIGATIONS OR IF THEY DO,  
THEY ARE CURRENT WITH THE  
OBLIGATIONS

DEBTOR MUST TAKE DEBTOR  
EDUCATION WITH APPROVED  
COUNSELING AGENCY AND FILE  
CERTIFICATE WITH COURT





# File Motions

- ▶ Motion to Deem Current and Reinstated
  - ▶ Mortgages
    - ▶ Mortgage modifications make sure you protect debtor if they received a forgiveness especially if earned over time during the plan
  - ▶ Vehicles that survive plan
  - ▶ Student Loan Repayments
- ▶ Motion to Deem Paid in Full
  - ▶ Mortgages
  - ▶ IRS
  - ▶ Vehicles
  - ▶ Water softeners/solar systems
  - ▶ Personal Property

## Completion of Plan

- ▶ Trustee files Completion of Plan
- ▶ Shortly thereafter Court enters Discharge

# Mortgage Modification Mediation- Fifth Amended Administrative Order

- ▶ Mortgage Modification Mediation Program
  - ▶ Established in 2010 and has been very successful
    - ▶ Replicated in multiple states across the Country
- ▶ Sometimes pay and cure just won't work, arrearages are too high
- ▶ Most mortgage modifications provide an affordable monthly payment by targeting 31%; the waterfall steps are:
  - ▶ Capitalize arrearages
  - ▶ Set at fixed market interest rate
  - ▶ Forgive a portion or forbear up to usually 30% of unpaid balance
  - ▶ Amortize up to 40 years

▶ Section 5 (c) of plan

NONE

**(c) Claims Secured by Real Property - Debtor Intends to Seek Mortgage Modification.** If Debtor obtains a modification of the mortgage, the modified payments shall be paid through the Plan. Pending the resolution of a mortgage modification request, Debtor shall make the following adequate protection payments to the Trustee: (1) for *homestead* property, the lesser of 31% of gross monthly income of Debtor and non-filing spouse, if any (after deducting homeowners association fees), or the normal monthly contractual mortgage payment; or (2) for *non-homestead*, income-producing property, 75% of the gross rental income generated from the property. Debtor will not receive a discharge of personal liability on these claims.

	Last Four Digits of Acct. No.	Creditor	Collateral Address	Adequate Protection Payment
1.	7485	Fay Servicing	██████████ Kissimmee, FL 34744-2784	\$832.04*

AP: Gross Income: 2684 x 31%= 832.04

# Use of Portal and Mediation



No more lost docs!



Communication is key! We've had deals almost lost over less than \$2.00!



Outside program deal with Customer service that often doesn't know the ins and outs of underwriting



Be assured MMM works today!

Two recent approvals where Debtors have been trying for ten years to resolve their mortgage foreclosure. There is hope.

## Student Loan Management Program

---

Administrative Order entered in June of 2019 by Judge Williamson

---

Administrative Order entered by Chief Judge Delano on September 20, 2019 MDL SLMP Program began October 1, 2020

---

SDNY 2<sup>nd</sup> Court started a Pre-Litigation Student Loan Program in February, 2020

---

Many courts are reaching out to learn how to start a program

## How it works

- ▶ First things first
  - ▶ Run an analysis using DMM's StudentLoanify for FEDERAL student loans (\$40.00 fee)
    - ▶ Software asks turbo tax like questions, family size, income, employment type and more
    - ▶ Then upload Client's NSLDS.txt file
    - ▶ StudentLoanify will give all repayment options for Income Based Programs available
  - ▶ If affordable payment go forward
    - ▶ Teacher, sheriff, no brainer: five years towards a ten-year forgiveness!
    - ▶ (High earners or certain loan types might have unaffordable payment)

## Next Step

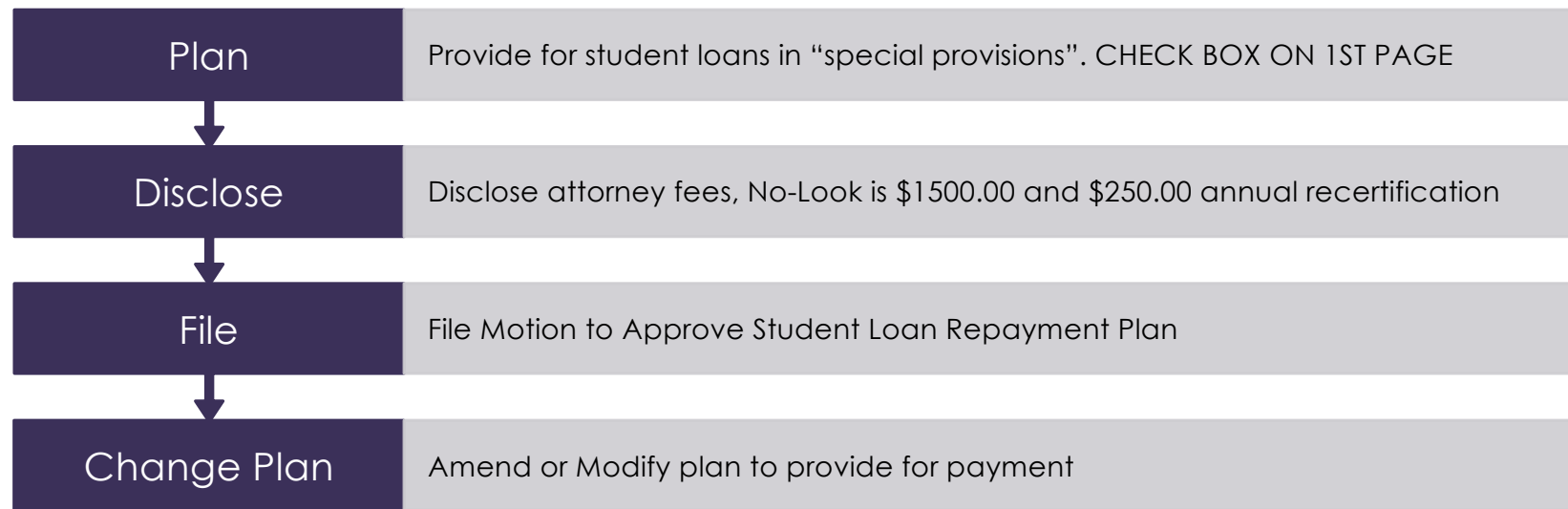
- ▶ Have client sign the applications and verify tax return signed (if using most recent tax return for income)
- ▶ Add additional parties to serve by either adding up front before case is filed or using “Notice of Additional Creditors”. You will go to Creditor Maintenance to add the parties (no filing fee- added parties, not adding creditor)
- ▶ File Notice of Participation



## Open DMM Portal...

- ▶ Open portal by going to [www.dclmwp.com](http://www.dclmwp.com)
- ▶ Use same username and password for MMM
- ▶ Go to Student Loans-"add borrower"
- ▶ Choose Student Loan Servicer.
  - ▶ FedLoan Servicing
  - ▶ Nelnet
  - ▶ Navient
  - ▶ Firstmark
  - ▶ Wells Fargo
- ▶ Information entered for analysis will transfer to Portal
- ▶ Upload signed application
- ▶ Upload Signed most recent filed tax return or pay advices if income has changed since last return filed
- ▶ Pay \$40.00 for portal fee
- ▶ Communicate in Portal until decision is made. Some decisions in less than a day! What!?

# Plan treatment and Approving agreement



**Debtor must check one box on each line to state whether or not the Plan includes each of the following items. If an item is checked as “Not Included,” if both boxes are checked, or if neither box is checked, the provision will be ineffective if set out later in the Plan.**

A limit on the amount of a secured claim based on a valuation which may result in a partial payment or no payment at all to the secured creditor. See Sections C.5(d) and (e). A separate motion will be filed.	<input type="checkbox"/> Included	<input checked="" type="checkbox"/> Not included
Avoidance of a judicial lien or nonpossessory, nonpurchase money security interest under 11 U.S.C. § 522(f). A separate motion will be filed. See Section C.5(e).	<input type="checkbox"/> Included	<input checked="" type="checkbox"/> Not included
Nonstandard provisions, set out in Section E.	<input checked="" type="checkbox"/> Included	<input type="checkbox"/> Not included

---

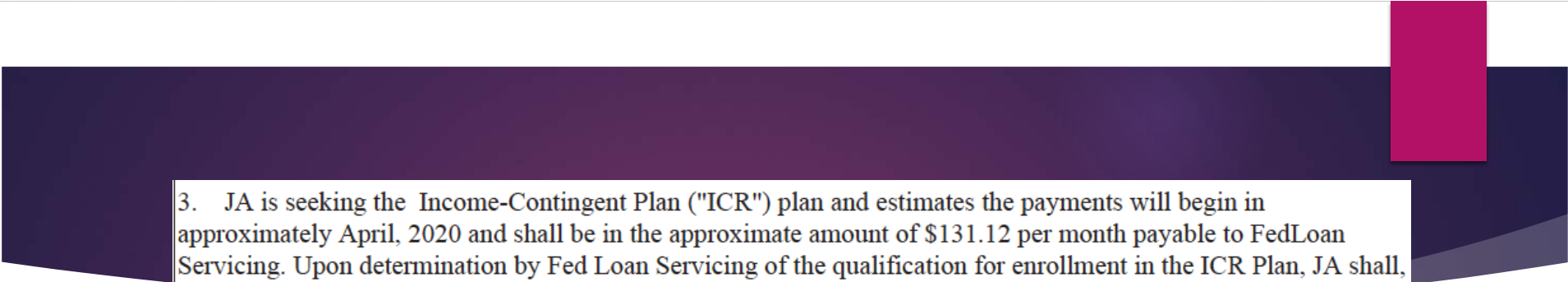
**E. NONSTANDARD PROVISIONS as Defined in Federal Rule of Bankruptcy Procedure 3015(c). Note:**

Any nonstandard provisions of this Plan other than those set out in this Section are deemed void and are stricken.

\*\*\*DEBTOR, JOSEPH [REDACTED]'S STUDENT LOANS\*\*\*

1. The Debtor, JOSEPH [REDACTED] ("JA") is proceeding to participate in the Student Loan Management Program with Ascendium Education Solutions, Inc. ("AES") to procure a consolidation of his student loans to Fed Loan Servicing, Servicer for the Department of Education ("DOE") pursuant to 34 CFR § 685.220-Consolidation and to enter into an Income-contingent repayment plan pursuant to 34 CFR § 685.209-Income-contingent repayment plans.

2. JA's Federal Student loans are being separately classified. The Chapter 13 Trustee shall not make pro rata distributions on the student loans.



3. JA is seeking the Income-Contingent Plan ("ICR") plan and estimates the payments will begin in approximately April, 2020 and shall be in the approximate amount of \$131.12 per month payable to FedLoan Servicing. Upon determination by Fed Loan Servicing of the qualification for enrollment in the ICR Plan, JA shall, within 30 days, file a Notice of the Resolution indicating whether an agreement has been reached between JA and Fed Loan Servicing. If the payment varies from JA's plan, JA shall provide for the ICR payment by amending the Chapter 13 plan or modifying the plan if the plan is already confirmed. If Fed Loan Servicing does not file a claim, JA shall file a claim on behalf of Fed Loan Servicing and will object to AES's claim as it will be paid by DOE and discharged pursuant to 34 CFR § 685.220-Consolidation.

4. Each year the JA shall comply with re-certifying his income with Fed Loan Servicing. If the payment changes, JA shall file a Notice of the ICR Payment. The Chapter 13 Trustee shall treat the Notice of the ICR Payment as she does a Notice of Payment Change for Fed Loan Servicing.

5. The automatic stay under 11 U.S.C. Section 362(a) is modified, as necessary, to facilitate exploration of student loan repayment options and to modify agreements or payment amount, as needed.

6. If JA is approved for a consolidation and an income driven plan, Fed Loan Servicing shall not place the student loans into a deferment or forbearance because of the filing of the Chapter 13 bankruptcy case.



## Disclose attorney fees in Special Provisions

7. Attorney fee of \$1500.00 for services provided in connection with the enrollment and performance under an IDR are requested along with \$250.00 per year for annual recertification.



# Consider Adversary Proceeding

# Student Loan adversary



Most Student Loans are not dischargeable



Review all Student Loan Proofs of Claim



Consider waiting to show historical financial hardship



If adversary doesn't look promising use the New Student Loan Management Program



If Hardship,  
consider  
adversary

- ▶ Debtor nearing retirement?
- ▶ Medical issues
- ▶ If doctor will sign application confirming debtor is not gainfully employable administrative discharge easy process
- ▶ If not, repayment plan?

Use  
Chapter 13  
to help  
folks!

It can be very beneficial for the debtor and your practice!

Let's help each other get through this very difficult time!

Reports say bankruptcy will go up 100% from previous years filings

LET'S DO THIS!

# QUESTIONS?

- ▶ Laurie K. Weatherford, Trustee  
[lauriew@c13orl.com](mailto:lauriew@c13orl.com)
  - ▶ Judge Jennemann's staff attorney:  
Stuart Ferderer [stuartf@c13orl.com](mailto:stuartf@c13orl.com)
  - ▶ Judge Jennemann's assigned  
paralegal: [SydneyM@c13orl.com](mailto:SydneyM@c13orl.com)
  - ▶ Judge Vaughan's staff attorney: Ana  
DeVilliers [anad@c13orl.com](mailto:anad@c13orl.com)
  - ▶ Judge Vaughan's assigned  
paralegal: [janl@c13orl.com](mailto:janl@c13orl.com)
- ▶ Bob Branson [bob@bransonlaw.com](mailto:bob@bransonlaw.com)
- ▶ Tammy Branson  
[tammy@bransonlaw.com](mailto:tammy@bransonlaw.com)