

Bankruptcy Bootcamp

West Virginia Bankruptcy CLE

Charleston, West Virginia

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A Relatively Short History of the Bankruptcy Laws in the United States

Posted by Robert Jacobvitz - on February 27, 2019.

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This article briefly summarizes the history of the bankruptcy laws in the United States.

Article I of the United States Constitution, sec. 8, cl. 4, gives Congress the power to “establish . . . uniform laws on the subject of bankruptcies throughout the United States.”

Bankruptcy Act of 1800

The first bankruptcy law in the United States was enacted in 1800, eleven years after ratification of the U.S. Constitution, but was repealed three years later. It was passed in response to financial crises in 1792 and 1797. The Bankruptcy Act of 1800 was very similar to English bankruptcy law. It was very pro creditor oriented. Only involuntary bankruptcy cases were allowed, and only merchants could be debtors. To obtain a discharge from debts, two thirds of creditors by number and value of claims had to consent to the discharge.

Bankruptcy Act of 1841

The next bankruptcy law in the United States, in 1841, was even shorter lived. It was repealed in early 1843. Under the 1841 Act, debtors for the first time could initiate their own bankruptcy case, and any individual was eligible to be a debtor in bankruptcy. Bankruptcy jurisdiction was vested in the United States District Court “in the nature of summary proceedings in equity.” The debtor could claim newly created federal law exemptions but could not claim state law exemptions. Creditors could veto a debtor receiving a discharge by a majority in number and in value of claims. A preferential transfer by the debtor prior to bankruptcy was a ground to deny the discharge.

Bankruptcy Act of 1867

Next came the Bankruptcy Act of 1867 passed following a financial crisis in 1857. The 1867 Act provided for both voluntary and involuntary bankruptcy cases. Individuals and corporations were eligible to be debtors in bankruptcy. Bankruptcy jurisdiction was vested in the United States District Court. The district court appointed “registers in bankruptcy” to assist the district court. The “register” was the predecessor of the bankruptcy referee, which in turn was the predecessor to the bankruptcy judge. An “assignee,” the predecessor to the bankruptcy trustee, superintended the liquidation of assets for the benefit of creditors.

The 1867 Act introduced the concept of the composition agreement in American bankruptcy law. The composition agreement was the predecessor to the plan of reorganization under current bankruptcy law. For the composition agreement to bind creditors it required creditor consent by a majority in number and three fourths in value of claims.

In addition, for the first time under the 1867 Act the debtor could claim state law exemptions.

The 1867 Act was criticized for small dividends to creditors, high expenses for administering the bankruptcy case, delays, and only about one-third of debtors being granted a discharge due to the many exceptions to discharge. The 1867 Act lasted about eleven years until it was repealed in 1878.

Bankruptcy Act of 1898

Twenty years after the repeal of the 1867 Act, Congress passed the Bankruptcy Act of 1898. It was a watershed in American bankruptcy law.

The 1898 Act included many provisions aimed at making the administration of the bankruptcy estate more efficient and the distribution of the debtor's property to creditors more equitable.

Under the 1898 Act, federal district courts sat as "courts of bankruptcy." District courts appointed "referees in bankruptcy" who performed much of the judicial and administrative work. Referees were compensated on a fee basis until 1946 when that changed to a salary basis. Creditors had the power to elect trustees and creditor committees. The trustee could avoid preferential and fraudulent transfers. Confirmation of a composition agreement in lieu of liquidation required creditor consent by a majority in number and a majority in value of claims, and approval of the court as being in the best interest of creditors. The Act of 1898 contained more generous discharge provisions for the debtor than under prior bankruptcy law, but permitted a debtor to claim exemptions only under State law, and provided for both voluntary and involuntary bankruptcy cases.

Chandler Act Amendments to the Bankruptcy Act of 1898

The Chandler Act was passed in 1938 during the Great Depression. It substantially revised the Act of 1898. Under the Chandler Act amendments, Chapters X and XI governed corporate plans arrangement, Chapter XII governed real property plans of arrangement, and Chapter XIII provided for individual wage earner plans. Chapters X and XII were the precursors to modern day Chapter 11. Chapter XIII was the precursor to modern day Chapter 13.

Among other things, the Act of 1898 as amended by the Chandler Act included the concepts of classification of claims under plans of arrangements, cram down, voluntary and involuntary bankruptcy cases, the appointment of trustees, modification of both secured and unsecured claims.

The Bankruptcy Reform Act of 1978

In 1970 Congress created the Commission on the Bankruptcy Laws of the United States to study the then existing bankruptcy law and report on recommended changes. The Commission's report ultimately led to passages of the Bankruptcy Reform Act of 1978.

Under the 1978 Act, bankruptcy judges instead of referees in bankruptcy preside over bankruptcy cases. Bankruptcy judges no longer are involved in the administration of the estate. Bankruptcy courts are granted expanded jurisdiction. Features of Chapters X and XI are combined into a single Chapter 11. The principle of "the economy of the estate" is eliminated, which had limited the amount of compensation paid to bankruptcy attorneys and other bankruptcy professionals. Chapter XIII become Chapter 13, which for the first time includes a super discharge.

The 1978 Act, with some later amendments, is the bankruptcy law in effect to today in the United States. Eligible debtors may commence bankruptcy cases under Chapters 7, 11, 12, 13, or 15.

Certain creditors may commence involuntary bankruptcy cases under some of the chapters. A trustee is always appointed in Chapter 7, 12 and 13 cases and may be appointed in Chapter 11 cases. Debtors may obtain a discharge of debts to attain a “fresh start” upon meeting certain requirements, with exceptions. Individual debtors can claim federal law exemptions, or alternatively State law exemptions if permitted by State law. Each class of creditors must accept a chapter 11 plan by a majority in number and at least two-thirds in amount of claims, subject to cramdown provisions that allow confirmation of a plan over a dissenting class of creditors.

Bankruptcy Amendments and Federal Judgeship Act of 1984 (BAFJA)

In 1982 the United States Supreme Court curtailed bankruptcy court jurisdiction in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.* by ruling that the 1978 Act unconstitutionally gave powers reserved to Article III judges to non-Article III judges. The *Marathon* decision led to the enactment of BAFJA. BAFJA made bankruptcy judges in each judicial district a unit of the United States district court for that judicial district, vested bankruptcy jurisdiction in the district court, created the concept of “core,” “noncore” and “related to” matters, and authorized district courts to refer the exercise of bankruptcy jurisdiction to bankruptcy courts. In all judicial districts, district courts have referred the exercise of bankruptcy jurisdiction to bankruptcy courts to the fullest extent permitted by law.

BAFJA also added a new section to the Bankruptcy Code relating to rejection of collective bargaining agreements.

Bankruptcy Judges, United States Trustees and Farmer Act of 1986.

In 1986 Congress enacted the Bankruptcy Judges, United States Trustees and Farmer Act of 1986. It created a new chapter 12 for “family farmers” and made the United States Trustee System permanent (except in Alabama and North Carolina).

Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”) made substantial amendments to the 1978 Act, particularly for consumer and international (cross border) bankruptcy cases. For individual debtors, it makes credit counseling a condition for relief; requires financial management training for Chapter 7 and 13 debtors to obtain discharge; creates the role of consumer privacy ombudsman; establishes a means test; introduces automatic dismissal of a bankruptcy case if required documents are not filed timely; curtails the Chapter 13 “super discharge,” prevent bifurcation of car loans in Chapter 13 for vehicles purchased within 910 days prior to commencement of the bankruptcy case; contains limitations a debtor filing multiple bankruptcy cases; and adds provisions on reaffirming debts.

BAPCPA amendments also allow direct appeals to the court of appeals in certain circumstances; add family fisherman to chapter 12, make Chapter 12 permanent, and create a new Chapter 15 for cross border insolvencies.

Judge Thomas Small aptly described consumer provisions of BAPCPA by comparing them to a Rubik’s Cube: “The amendments are confusing, overlapping, and sometimes self-contradictory. They introduce new and undefined terms that resemble, but are different from, established terms that are well understood. Furthermore, the new provisions address some situations that are unlikely to arise. Deciphering this puzzle is like trying to solve a Rubik’s Cube that arrived with a

manufacturer's defect. Fortunately, after many twists and turns, a few patches of solid color emerge." *In re Donald*, 343 B.R. 524, 529 (Bankr. E.D.N.C. 2006).

BAPCPA has resulted in a tremendous amount of litigation to interpret its meaning.

Pre-filing considerations:

- Generally, benefits and differences of each Chapter (7, 11, and 13) relative to consumer DRs (Supple, Kotur);
 - Chapter 7 generally designed to submit your non-exempt assets to control of a trustee for liquidation and percentage payout to creditors; secured creditors will have opportunity to exercise their rights in collateral
 - Offers a relatively quick resolution and financial fresh start
 - Chapter 13 designed to reorganize financial household; pay creditors pursuant to a plan implemented over the course of 3-5 years
 - Gives debtors the ability to pay significant liabilities (i.e. mortgage arrears, delinquent income taxes, domestic support arrears) over the life of the repayment plan
- Cost of filing, including filing fees, credit counseling, attorney fees, etc . . . (Hinkle);
 - Filing fees: 28 U.S.C. § 1930 Bankruptcy Fees
 - Chapter 7 case - \$338
 - Chapter 13 case - \$313
 - Attorney fees:
 - Chapter 7 case – anywhere from several hundred to a couple thousand dollars depending on the complexity of the case and anticipated legal work necessary
 - Chapter 13 case – generally, about \$4,000.
- **Eligibility** – credit counseling, need for regular income in Ch 13, etc . . . (Kotur), and § 707(b)(2) and (3) (UST);
 - Notwithstanding some limited exceptions, individuals must complete a course in credit counseling before filing for bankruptcy relief. “An individual may not be a debtor . . . unless such individual has, during the 180-day period ending on the date of the filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency . . . an individual or group briefing . . .” 11 U.S.C. § 109(h)(1).

- **Chapter 7 eligibility** – A **person**, including a corporation, may be a debtor under Chapter 7 only if they are not a railroad or a bank. 11 U.S.C. § 109(b).

- **Chapter 13 eligibility** – Only an **individual** with regular income may be a debtor in Chapter 13. Additionally, prospective debtors may not seek relief under Chapter 13 if their secured and unsecured debts exceed certain thresholds. 11 U.S.C. §109(e).

- **Abusive filings** - § 707(b)(2) and (3) provide a mechanism for an interested party, often the U.S. Trustee, to seek dismissal of a Chapter 7 for abuse. Specifically, § 707(b)(2) provides for dismissal of abusive cases based upon the Means Test Calculation (Official Form 122A-2). Section 707(b)(3) looks to the “totality of the circumstances” in determining whether a case is abusive. Among the factors considered in that regard, a debtor’s ability to repay creditors may weigh significantly in the court’s disposition. *See In re Sonntag*, Case No. 10-bk-1749, 2012 WL 1065482, at *4 (Bankr. N.D.W. Va. Mar. 28, 2012) (“While declining to abrogate the *Green* decision by holding that ability to pay alone is sufficient to find abuse, this court concludes that ability to pay may weigh significantly in the court's determination of abuse under § 707(b)(3)(B)”).

Fill in this information to identify your case:Debtor 1 _____
First Name Middle Name Last NameDebtor 2 _____
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: _____ District of _____

Case number _____
(If known)Check the appropriate box as directed in
lines 40 or 42:According to the calculations required by
this Statement:

- ☐ 1. There is no presumption of abuse.
- ☐ 2. There is a presumption of abuse.

☐ Check if this is an amended filing

Official Form 122A-2

Chapter 7 Means Test Calculation

04/22

To fill out this form, you will need your completed copy of *Chapter 7 Statement of Your Current Monthly Income* (Official Form 122A-1).

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for being accurate. If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).

Part 1: Determine Your Adjusted Income1. **Copy your total current monthly income**..... Copy line 11 from Official Form 122A-1 here ➔ \$ _____2. **Did you fill out Column B in Part 1 of Form 122A-1?**

- ☐ No. Fill in \$0 for the total on line 3.
- ☐ Yes. Is your spouse filing with you?
- ☐ No. Go to line 3.
- ☐ Yes. Fill in \$0 for the total on line 3.

3. **Adjust your current monthly income by subtracting any part of your spouse's income not used to pay for the household expenses of you or your dependents.** Follow these steps:

On line 11, Column B of Form 122A-1, was any amount of the income you reported for your spouse NOT regularly used for the household expenses of you or your dependents?

- ☐ No. Fill in 0 for the total on line 3.
- ☐ Yes. Fill in the information below:

State each purpose for which the income was used

For example, the income is used to pay your spouse's tax debt or to support people other than you or your dependents

**Fill in the amount you
are subtracting from
your spouse's income**

_____ \$ _____

_____ \$ _____

_____ + \$ _____

Total. \$ _____

Copy total here ➔ — \$ _____

4. **Adjust your current monthly income.** Subtract the total on line 3 from line 1.

\$ _____

Part 2: Calculate Your Deductions from Your Income

The Internal Revenue Service (IRS) issues National and Local Standards for certain expense amounts. Use these amounts to answer the questions in lines 6-15. To find the IRS standards, go online using the link specified in the separate instructions for this form. This information may also be available at the bankruptcy clerk's office.

Deduct the expense amounts set out in lines 6-15 regardless of your actual expense. In later parts of the form, you will use some of your actual expenses if they are higher than the standards. Do not deduct any amounts that you subtracted from your spouse's income in line 3 and do not deduct any operating expenses that you subtracted from income in lines 5 and 6 of Form 122A-1.

If your expenses differ from month to month, enter the average expense.

Whenever this part of the form refers to *you*, it means both you and your spouse if Column B of Form 122A-1 is filled in.

5. The number of people used in determining your deductions from income

Fill in the number of people who could be claimed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support. This number may be different from the number of people in your household.

National Standards

You must use the IRS National Standards to answer the questions in lines 6-7.

6. Food, clothing, and other items: Using the number of people you entered in line 5 and the IRS National Standards, fill in the dollar amount for food, clothing, and other items. \$ _____

7. Out-of-pocket health care allowance: Using the number of people you entered in line 5 and the IRS National Standards, fill in the dollar amount for out-of-pocket health care. The number of people is split into two categories—people who are under 65 and people who are 65 or older—because older people have a higher IRS allowance for health care costs. If your actual expenses are higher than this IRS amount, you may deduct the additional amount on line 22.

People who are under 65 years of age

7a. Out-of-pocket health care allowance per person \$ _____

7b. Number of people who are under 65 X _____

7c. **Subtotal.** Multiply line 7a by line 7b. \$ _____ Copy here ➔ \$ _____

People who are 65 years of age or older

7d. Out-of-pocket health care allowance per person \$ _____

7e. Number of people who are 65 or older X _____

7f. **Subtotal.** Multiply line 7d by line 7e. \$ _____ Copy here ➔ + \$ _____

7g. **Total.** Add lines 7c and 7f.....

Copy total here ➔

Local Standards

You must use the IRS Local Standards to answer the questions in lines 8-15.

Based on information from the IRS, the U.S. Trustee Program has divided the IRS Local Standard for housing for bankruptcy purposes into two parts:

- Housing and utilities – Insurance and operating expenses
- Housing and utilities – Mortgage or rent expenses

To answer the questions in lines 8-9, use the U.S. Trustee Program chart.

To find the chart, go online using the link specified in the separate instructions for this form.
This chart may also be available at the bankruptcy clerk's office.

8. **Housing and utilities – Insurance and operating expenses:** Using the number of people you entered in line 5, fill in the dollar amount listed for your county for insurance and operating expenses. \$ _____

9. **Housing and utilities – Mortgage or rent expenses:**

9a. Using the number of people you entered in line 5, fill in the dollar amount listed for your county for mortgage or rent expenses. \$ _____

9b. Total average monthly payment for all mortgages and other debts secured by your home.

To calculate the total average monthly payment, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Then divide by 60.

Name of the creditor	Average monthly payment
_____	\$ _____
_____	\$ _____
_____	+ \$ _____

Total average monthly payment

\$ _____

Copy
here →

— \$ _____

Repeat this
amount on
line 33a.

- 9c. Net mortgage or rent expense.

Subtract line 9b (*total average monthly payment*) from line 9a (*mortgage or rent expense*). If this amount is less than \$0, enter \$0.

\$ _____

Copy
here →

\$ _____

10. **If you claim that the U.S. Trustee Program's division of the IRS Local Standard for housing is incorrect and affects the calculation of your monthly expenses, fill in any additional amount you claim.** \$ _____

Explain
why: _____

11. **Local transportation expenses:** Check the number of vehicles for which you claim an ownership or operating expense.

- ☐ 0. Go to line 14.
☐ 1. Go to line 12.
☐ 2 or more. Go to line 12.

12. **Vehicle operation expense:** Using the IRS Local Standards and the number of vehicles for which you claim the operating expenses, fill in the *Operating Costs* that apply for your Census region or metropolitan statistical area.

\$ _____

13. **Vehicle ownership or lease expense:** Using the IRS Local Standards, calculate the net ownership or lease expense for each vehicle below. You may not claim the expense if you do not make any loan or lease payments on the vehicle. In addition, you may not claim the expense for more than two vehicles.

Vehicle 1 Describe Vehicle 1: _____

13a. Ownership or leasing costs using IRS Local Standard. \$ _____

13b. Average monthly payment for all debts secured by Vehicle 1.

Do not include costs for leased vehicles.

To calculate the average monthly payment here and on line 13e, add all amounts that are contractually due to each secured creditor in the 60 months after you filed for bankruptcy. Then divide by 60.

Name of each creditor for Vehicle 1	Average monthly payment
-------------------------------------	-------------------------

_____ \$ _____

_____ + \$ _____

Total average monthly payment

\$ _____

Copy
here →

— \$ _____

Repeat this
amount on
line 33b.

13c. Net Vehicle 1 ownership or lease expense

Subtract line 13b from line 13a. If this amount is less than \$0, enter \$0.

\$ _____

Copy net
Vehicle 1
expense
here ... →

\$ _____

Vehicle 2 Describe Vehicle 2: _____

13d. Ownership or leasing costs using IRS Local Standard. \$ _____

13e. Average monthly payment for all debts secured by Vehicle 2.

Do not include costs for leased vehicles.

Name of each creditor for Vehicle 2	Average monthly payment
-------------------------------------	-------------------------

_____ \$ _____

_____ + \$ _____

Total average monthly payment

\$ _____

Copy
here →

— \$ _____

Repeat this
amount on
line 33c.

13f. Net Vehicle 2 ownership or lease expense

Subtract line 13e from 13d. If this amount is less than \$0, enter \$0.

\$ _____

Copy net
Vehicle 2
expense
here ... →

\$ _____

14. **Public transportation expense:** If you claimed 0 vehicles in line 11, using the IRS Local Standards, fill in the *Public Transportation* expense allowance regardless of whether you use public transportation.

\$ _____

15. **Additional public transportation expense:** If you claimed 1 or more vehicles in line 11 and if you claim that you may also deduct a public transportation expense, you may fill in what you believe is the appropriate expense, but you may not claim more than the IRS Local Standard for *Public Transportation*.

\$ _____

Other Necessary Expenses

In addition to the expense deductions listed above, you are allowed your monthly expenses for the following IRS categories.

16. **Taxes:** The total monthly amount that you will actually owe for federal, state and local taxes, such as income taxes, self-employment taxes, Social Security taxes, and Medicare taxes. You may include the monthly amount withheld from your pay for these taxes. However, if you expect to receive a tax refund, you must divide the expected refund by 12 and subtract that number from the total monthly amount that is withheld to pay for taxes.
Do not include real estate, sales, or use taxes. \$ _____
17. **Involuntary deductions:** The total monthly payroll deductions that your job requires, such as retirement contributions, union dues, and uniform costs.
Do not include amounts that are not required by your job, such as voluntary 401(k) contributions or payroll savings. \$ _____
18. **Life insurance:** The total monthly premiums that you pay for your own term life insurance. If two married people are filing together, include payments that you make for your spouse's term life insurance. Do not include premiums for life insurance on your dependents, for a non-filing spouse's life insurance, or for any form of life insurance other than term. \$ _____
19. **Court-ordered payments:** The total monthly amount that you pay as required by the order of a court or administrative agency, such as spousal or child support payments.
Do not include payments on past due obligations for spousal or child support. You will list these obligations in line 35. \$ _____
20. **Education:** The total monthly amount that you pay for education that is either required:
☐ as a condition for your job, or
☐ for your physically or mentally challenged dependent child if no public education is available for similar services. \$ _____
21. **Childcare:** The total monthly amount that you pay for childcare, such as babysitting, daycare, nursery, and preschool.
Do not include payments for any elementary or secondary school education. \$ _____
22. **Additional health care expenses, excluding insurance costs:** The monthly amount that you pay for health care that is required for the health and welfare of you or your dependents and that is not reimbursed by insurance or paid by a health savings account. Include only the amount that is more than the total entered in line 7.
Payments for health insurance or health savings accounts should be listed only in line 25. \$ _____
23. **Optional telephones and telephone services:** The total monthly amount that you pay for telecommunication services for you and your dependents, such as pagers, call waiting, caller identification, special long distance, or business cell phone service, to the extent necessary for your health and welfare or that of your dependents or for the production of income, if it is not reimbursed by your employer. + \$ _____
Do not include payments for basic home telephone, internet and cell phone service. Do not include self-employment expenses, such as those reported on line 5 of Official Form 122A-1, or any amount you previously deducted.
24. **Add all of the expenses allowed under the IRS expense allowances.** \$ _____
Add lines 6 through 23.

Additional Expense Deductions

These are additional deductions allowed by the Means Test.

Note: Do not include any expense allowances listed in lines 6-24.

25. **Health insurance, disability insurance, and health savings account expenses.** The monthly expenses for health insurance, disability insurance, and health savings accounts that are reasonably necessary for yourself, your spouse, or your dependents.

Health insurance \$ _____

Disability insurance \$ _____

Health savings account + \$ _____

Total \$ _____

Copy total here → \$ _____

Do you actually spend this total amount?

☐ No. How much do you actually spend? \$ _____☐ Yes

26. **Continuing contributions to the care of household or family members.** The actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses. These expenses may include contributions to an account of a qualified ABLE program. 26 U.S.C. § 529A(b).

\$ _____

27. **Protection against family violence.** The reasonably necessary monthly expenses that you incur to maintain the safety of you and your family under the Family Violence Prevention and Services Act or other federal laws that apply. By law, the court must keep the nature of these expenses confidential.

\$ _____

28. **Additional home energy costs.** Your home energy costs are included in your insurance and operating expenses on line 8. If you believe that you have home energy costs that are more than the home energy costs included in expenses on line 8, then fill in the excess amount of home energy costs. You must give your case trustee documentation of your actual expenses, and you must show that the additional amount claimed is reasonable and necessary.

\$ _____

29. **Education expenses for dependent children who are younger than 18.** The monthly expenses (not more than \$189.58* per child) that you pay for your dependent children who are younger than 18 years old to attend a private or public elementary or secondary school. You must give your case trustee documentation of your actual expenses, and you must explain why the amount claimed is reasonable and necessary and not already accounted for in lines 6-23.

\$ _____

* Subject to adjustment on 4/01/25, and every 3 years after that for cases begun on or after the date of adjustment.

30. **Additional food and clothing expense.** The monthly amount by which your actual food and clothing expenses are higher than the combined food and clothing allowances in the IRS National Standards. That amount cannot be more than 5% of the food and clothing allowances in the IRS National Standards. To find a chart showing the maximum additional allowance, go online using the link specified in the separate instructions for this form. This chart may also be available at the bankruptcy clerk's office. You must show that the additional amount claimed is reasonable and necessary.

\$ _____

31. **Continuing charitable contributions.** The amount that you will continue to contribute in the form of cash or financial instruments to a religious or charitable organization. 26 U.S.C. § 170(c)(1)-(2).

+ \$ _____

32. **Add all of the additional expense deductions.**

Add lines 25 through 31.

\$ _____

Deductions for Debt Payment**33. For debts that are secured by an interest in property that you own, including home mortgages, vehicle loans, and other secured debt, fill in lines 33a through 33e.**

To calculate the total average monthly payment, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Then divide by 60.

Mortgages on your home:**Average monthly payment**

33a. Copy line 9b here ➔ \$ _____

Loans on your first two vehicles:

33b. Copy line 13b here. ➔ \$ _____

33c. Copy line 13e here. ➔ \$ _____

33d. List other secured debts:

Name of each creditor for other secured debt**Identify property that secures the debt****Does payment include taxes or insurance?**
☐ No
☐ Yes

\$ _____

☐ No
☐ Yes

\$ _____

☐ No
☐ Yes

+ \$ _____

33e. Total average monthly payment. Add lines 33a through 33d. ➔ \$ _____ **Copy total here ➔** \$ _____**34. Are any debts that you listed in line 33 secured by your primary residence, a vehicle, or other property necessary for your support or the support of your dependents?**☐ No. Go to line 35.

☐ Yes. State any amount that you must pay to a creditor, in addition to the payments listed in line 33, to keep possession of your property (called the *cure amount*). Next, divide by 60 and fill in the information below.

Name of the creditor**Identify property that secures the debt****Total cure amount****Monthly cure amount**

_____ \$ _____ ÷ 60 = \$ _____

_____ \$ _____ ÷ 60 = \$ _____

_____ \$ _____ ÷ 60 = + \$ _____

Total

\$ _____**Copy total here ➔**

\$ _____

35. Do you owe any priority claims such as a priority tax, child support, or alimony — that are past due as of the filing date of your bankruptcy case? 11 U.S.C. § 507.☐ No. Go to line 36.

☐ Yes. Fill in the total amount of all of these priority claims. Do not include current or ongoing priority claims, such as those you listed in line 19.

Total amount of all past-due priority claims \$ _____ ÷ 60 = \$ _____

36. Are you eligible to file a case under Chapter 13? 11 U.S.C. § 109(e).

For more information, go online using the link for *Bankruptcy Basics* specified in the separate instructions for this form. *Bankruptcy Basics* may also be available at the bankruptcy clerk's office.

- ☐ No. Go to line 37.
- ☐ Yes. Fill in the following information.

Projected monthly plan payment if you were filing under Chapter 13

\$ _____

Current multiplier for your district as stated on the list issued by the Administrative Office of the United States Courts (for districts in Alabama and North Carolina) or by the Executive Office for United States Trustees (for all other districts).

X _____

To find a list of district multipliers that includes your district, go online using the link specified in the separate instructions for this form. This list may also be available at the bankruptcy clerk's office.

Average monthly administrative expense if you were filing under Chapter 13

\$ _____

Copy total
here →

\$ _____

37. Add all of the deductions for debt payment.

Add lines 33e through 36.

\$ _____

Total Deductions from Income**38. Add all of the allowed deductions.**

Copy line 24, *All of the expenses allowed under IRS expense allowances*..... \$ _____

Copy line 32, *All of the additional expense deductions*..... \$ _____

Copy line 37, *All of the deductions for debt payment*..... + \$ _____

Total deductions

\$ _____

Copy total here →

\$ _____

Part 3: Determine Whether There Is a Presumption of Abuse**39. Calculate monthly disposable income for 60 months**

39a. Copy line 4, *adjusted current monthly income* \$ _____

39b. Copy line 38, *Total deductions*..... - \$ _____

39c. Monthly disposable income. 11 U.S.C. § 707(b)(2).
Subtract line 39b from line 39a.

\$ _____

Copy
here →

\$ _____

For the next 60 months (5 years).....

x 60

39d. **Total.** Multiply line 39c by 60.

\$ _____

Copy
here →

\$ _____

40. Find out whether there is a presumption of abuse. Check the box that applies:

- ☐ **The line 39d is less than \$9,075*.** On the top of page 1 of this form, check box 1, *There is no presumption of abuse*. Go to Part 5.
- ☐ **The line 39d is more than \$15,150*.** On the top of page 1 of this form, check box 2, *There is a presumption of abuse*. You may fill out Part 4 if you claim special circumstances. Then go to Part 5.
- ☐ **The line 39d is at least \$9,075*, but not more than \$15,150*.** Go to line 41.

* Subject to adjustment on 4/01/25, and every 3 years after that for cases filed on or after the date of adjustment.

41. 41a. **Fill in the amount of your total nonpriority unsecured debt.** If you filled out A Summary of Your Assets and Liabilities and Certain Statistical Information Schedules (Official Form 106Sum), you may refer to line 3b on that form.....

\$

x .25

- 41b. **25% of your total nonpriority unsecured debt.** 11 U.S.C. § 707(b)(2)(A)(i)(I).

Multiply line 41a by 0.25.

\$

Copy
here →

\$

42. **Determine whether the income you have left over after subtracting all allowed deductions is enough to pay 25% of your unsecured, nonpriority debt.**

Check the box that applies:

- ☐ **Line 39d is less than line 41b.** On the top of page 1 of this form, check box 1, *There is no presumption of abuse.* Go to Part 5.
- ☐ **Line 39d is equal to or more than line 41b.** On the top of page 1 of this form, check box 2, *There is a presumption of abuse.* You may fill out Part 4 if you claim special circumstances. Then go to Part 5.

Part 4: Give Details About Special Circumstances

43. **Do you have any special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative?** 11 U.S.C. § 707(b)(2)(B).

- ☐ No. Go to Part 5.
- ☐ Yes. Fill in the following information. All figures should reflect your average monthly expense or income adjustment for each item. You may include expenses you listed in line 25.

You must give a detailed explanation of the special circumstances that make the expenses or income adjustments necessary and reasonable. You must also give your case trustee documentation of your actual expenses or income adjustments.

Give a detailed explanation of the special circumstances	Average monthly expense or income adjustment
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Part 5: Sign Below

By signing here, I declare under penalty of perjury that the information on this statement and in any attachments is true and correct.

X

Signature of Debtor 1

Date _____
MM / DD / YYYY

X

Signature of Debtor 2

Date _____
MM / DD / YYYY

- **Exemption planning** – Assets and available exemptions; briefly on respective state schemes (Supple)
 - The Bankruptcy Code permits debtors to exempt certain interests in property to aid in their financial fresh start. Section 522(a)(2) and (d) set forth what is commonly known as the federal exemption scheme, and § 522(a)(3) identifies what is called the state exemption scheme.
 - Before 2021, debtors in West Virginia could only claim exemptions under the state scheme, found at W. Va. Code § 38-10-4. Last summer, the legislature amended the statute to permit prospective debtors to elect the federal scheme. Notably, the legislature also increased the value of several exemptions, including for an interest in the debtor's residence (an increase from \$25,000 to \$35,000) and for one motor vehicle (an increase from \$2,400 to \$7,500)

Chapter 7:

- **Role of Ch 7 TE** – examining DRs schedules, books and records, etc . . . ; conduct meeting of CRs; review exemptions and liquidate unexempt property, etc . . . (Holbrook);
 - The trustee shall--
 - (1) collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest;
 - (2) be accountable for all property received;
 - (3) ensure that the debtor shall perform his intention as specified in section 521(a)(2)(B) of this title;
 - (4) investigate the financial affairs of the debtor;
 - (5) if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper;
 - (6) if advisable, oppose the discharge of the debtor;
 - (7) unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest;
 - (8) if the business of the debtor is authorized to be operated, file with the court, with the United States trustee, and with any governmental unit charged with responsibility for collection or determination of any tax arising out of such operation, periodic reports and summaries of the operation of such business, including a statement of receipts and disbursements, and such other information as the United States trustee or the court requires;
 - (9) make a final report and file a final account of the administration of the estate with the court and with the United States trustee;
 - (10) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c);

(11) if, at the time of the commencement of the case, the debtor (or any entity designated by the debtor) served as the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974) of an employee benefit plan, continue to perform the obligations required of the administrator; and

(12) use all reasonable and best efforts to transfer patients from a health care business that is in the process of being closed to an appropriate health care business that--

(A) is in the vicinity of the health care business that is closing;

(B) provides the patient with services that are substantially similar to those provided by the health care business that is in the process of being closed; and

(C) maintains a reasonable quality of care.

11 U.S.C. § 704(a).

- In each case, the United States Trustee convenes a meeting of creditors within 21 and 40 days after the order for relief. 11 U.S.C. § 341(a); Fed. R. Bankr. P. 2003(a). “The debtor shall appear and submit to examination under oath at the meeting” 11 U.S.C. § 343.
- **Judicial Lien Avoidance, Reaffirmation, and Redemption** – “tools” available to debtors (Kotur; Hinkle);
 - **Judicial Lien Avoidance – 11 U.S.C. § 522(f)**: permits the debtor to avoid a judicial lien to the extent it impairs an exemption in the subject property. For example, consider a debtor with a home worth \$100,000 securing repayment of a mortgage for \$50,000. The debtor has a judgment lien creditor with a lien of \$20,000, and the debtor would be able to exempt \$35,800 of the equity in bankruptcy in the absence of that judicial lien.

“For purposes of [judicial lien avoidance], a lien shall be considered to impair an exemption to the extent that the sum of—

(i) the lien;

(ii) all other liens on the property; and

(iii) the amount of the exemption that the debtor could claim if there were no liens on the property;

exceeds the value that the debtor’s interest in the property would have in the absence of any liens.” 11 U.S.C. § 522(f)(2)(A). Using § 522(f), the debtor above can avoid \$5,800 of the judicial lien.

United States Bankruptcy Court District Of

In re:

Debtor

Case No.

Chapter

Motion to Avoid Judicial Lien

The above-captioned Debtor requests entry of an order pursuant to 11 U.S.C. § 522(f) and Federal Rule of Bankruptcy Procedure 4003(d) that avoids the judicial lien held by the Respondent,

In support of this Motion, the Debtor states:

1. The Debtor filed a voluntary bankruptcy petition ("Petition Date") on:
2. A copy of the Respondent's judgment is attached hereto as Exhibit A (the "Judgment Lien"). The Judgment Lien is in the amount of and was obtained on:
3. The Debtor asserts that Respondent's Judgment Lien may constitute a lien on the following property, commonly described as (the "Property"):

Debtor's valuation of the Property as of the Petition Date:

4. As of the Petition Date, the Property was subject to the following liens. The amount of any non-judicial lien (e.g., any deed of trust, mortgage or statutory lien) is determined as of the Petition Date:

Creditor's Name	Type of lien (e.g., deed of trust, mortgage, statutory, or judicial)	Amount Owed
	<i>Judicial Lien to be Avoided</i>	
		Total:

5. The Debtor states that the Respondent's Judgment Lien impairs the Debtor's exemption following the formula set forth in 11 U.S.C. § 522(f)(2):

- A. The total of all liens as stated in ¶ 4:
- B. The amount of the exemption that could be claimed in the absence of any liens on the property:
Statutory basis for exemption:
- C. Sum of ¶¶ A and B:
- D. Debtor's valuation of the Property subject to the Respondent's Judicial Lien as of the Petition Date:
- E. Extent of the Impairment. Subtract ¶ D from ¶ C.
If the result is \$0 or less, the Judgment Lien cannot be avoided under § 522(f).

THEREFORE, the Debtor requests entry of an Order that avoids the Respondent's judicial lien to the extent provide in ¶ 5(E), and if the court determines that the amount listed in ¶ 5(E) is equal to or greater than the amount of the Respondent's judicial lien as of the Petition Date, then the Debtor requests entry of an Order that wholly avoids the Respondent's judicial lien.

DATE:

Signed:

Name, Address, Telephone Number, and Bar No. (if applicable)

CERTIFICATE OF SERVICE

I, _____, certify that on this day, _____, I served a true and accurate copy of this Motion to Avoid Judicial Lien on the Respondent pursuant to Fed. R. Bankr. P. 7004, 9013 and 9014(b) as follows:

Address for Service:

United States Bankruptcy Court District Of

In re:

Case No.

Debtor

Chapter

Order to Avoiding Judicial Lien

The above-captioned Debtor filed a motion pursuant to 11 U.S.C. § 522(f) and Fed. R. Bankr. P. 4003(d) to avoid a judicial lien held by the Respondent,

Having considered the motion the court finds and concludes:

1. The Debtor filed a bankruptcy petition (the "Petition Date") on:
2. As of the Petition Date, the Respondent held a judgment that may constitute a judicial lien on the Debtor's property, commonly described as:
3. The Respondent's lien is evidenced by a judgment, and if recorded, the judgment is in Judgment Book , page , in the County Records in the State of
4. The Debtor served the Debtor's motion to avoid the Respondent's judicial lien pursuant to Fed. R. Bankr. P. 7004, 9013, and 9014(b). The Respondent was afforded notice and an opportunity for a hearing. No timely response was received by the Bankruptcy Clerk's Office.
5. Respondent's judicial lien impairs the Debtor's exemption under the formula set forth in 11 U.S.C. § 522(f)(2)(A).

Therefore, it is

ORDERED that the Respondent's judicial lien be and hereby is avoided as follows:

A. The total of all liens on the Debtor's property and the amount of the exemption that the Debtor could claim in the property in the absence of any liens is . The value of the Debtor's property is . Because the total of all liens against the Debtor's property and the amount of the exemption that the Debtor could claim in the absence of any liens exceeds the value of the Debtor's property by , (the "Extent of the Impairment") the Respondent's judicial lien of may be avoided to the up to the dollar amount of the Extent of the Impairment. When the Extent of the Impairment exceeds the value of the Respondent's judicial lien, the judicial lien is wholly avoided.

B. The avoidance of the Respondent's judicial lien is effective on entry of discharge. When recording this Order Avoiding Judicial Lien, it shall be accompanied by the Debtor's order of discharge.

- **Reaffirmation – 11 U.S.C. § 524(c):** permits a Chapter 7 debtor to enter into an agreement whereby the debtor foregoes the benefit of the discharge regarding a particular debt, often secured by personal property like an automobile, in exchange for retaining and using such property post-discharge. Section 524(c) sets forth the requirements for an enforceable agreement. Specifically, the agreement is enforceable only if--
 - (1) such agreement was made **before the granting of the discharge**
 - (2) the debtor received the disclosures described in subsection (k) at or before the time at which the debtor signed the agreement;
 - (3) such agreement has been filed with the court and, if applicable, accompanied by a declaration or an affidavit of the attorney that represented the debtor during the course of negotiating an agreement under this subsection, which states that--
 - (A) such agreement represents a fully informed and voluntary agreement by the debtor;
 - (B) such agreement does not impose an undue hardship on the debtor or a dependent of the debtor; and
 - (C) the attorney fully advised the debtor of the legal effect and consequences of--
 - (i) an agreement of the kind specified in this subsection; and
 - (ii) any default under such an agreement;
 - (4) **the debtor has not rescinded such agreement at any time prior to discharge or within sixty days after such agreement is filed with the court**, whichever occurs later, by giving notice of rescission to the holder of such claim;
 - (5) the provisions of subsection (d) of this section have been complied with; and
 - (6)(A) in a case concerning an individual who was not represented by an attorney during the course of negotiating an agreement under this subsection, **the court approves such agreement as--**
 - (i) **not imposing an undue hardship on the debtor or a dependent of the debtor; and**
 - (ii) **in the best interest of the debtor.**
 - (B) Subparagraph (A) shall not apply to the extent that such debt is a consumer debt secured by real property.

11 U.S.C. § 524(c).

Notably, irrespective of a debtor's intent to enter into such an agreement, the court can disapprove the reaffirmation agreement if the debtor does not adequately rebut a presumption of undue hardship that arises if the debtor's

monthly income and expenses result in a negative net monthly income. *See* 11 U.S.C. § 524(m)(1).

- **Redemption – 11 U.S.C. § 722:** permits a Chapter 7 debtor to “redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt, if such property is exempted under [§] 522 . . . or has been abandoned under [§] 554 of [the Bankruptcy Code], by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien in full at the time of redemption.”
- **Automatic stay and relief therefrom** – examining perspective in various chapters, including what is the stay, how long does it last by operation of law, CR relief considerations, etc . . . (Supple; Holbrook)
 - A principal benefit of filing for bankruptcy relief is the automatic stay. It is “automatic” because it generally arises upon the filing of a petition for relief. Specifically, it stops
 - (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
 - (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
 - (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
 - (4) any act to create, perfect, or enforce any lien against property of the estate;
 - (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;
 - (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;
 - (7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and
 - (8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

11 U.S.C. § 362(a).

- There are certain exceptions to the automatic stay, including criminal actions, certain acts related to domestic relations proceedings, and an audit by a governmental taxing entity determining tax liability. *See* 11 U.S.C. § 362(b).
 - Beyond the exceptions to the automatic stay, parties may obtain relief therefrom under §362(d). Often, movants seek relief either “for cause, including lack of adequate protection,” or with respect to property in which the debtor does not have equity and that is not necessary for the debtor’s anticipated reorganization. *See* 11 U.S.C. § 362(d)(1) and (2).
 - Absent stay relief, the automatic stay protects the debtor during the duration of the case. Specifically, “the stay of any other act under [§ 362(a)] continues until the earliest of—
 (A) the time the case is closed;
 (B) the time the case is dismissed; or
 (C) if the case is a case under chapter 7 . . . concerning an individual . . . the time a discharge is granted or denied.” 11 U.S.C. § 362(c)(2).
 - A creditor that willfully violates the automatic stay may be liable to an individual debtor for damages, including attorney fees. 11 U.S.C. § 362(k).
- **Discharge and Exceptions thereto - §§ 523(a), 524, and 727 (Nalley; UST)**
 - A primary goal of filing a Chapter 7 bankruptcy is the anticipated discharge provided by § 727(a) and (b). The discharge voids any judgment as to the debtor’s personal liability with respect to any debt discharged and enjoins collection against the debtor personally. 11 U.S.C. § 524(a). Notably, however, many exceptions to discharge exist. *See* 11 U.S.C. §727(a)(1) – (12). Additionally, creditors may seek a determination that their specific claim is nondischargeable. *See* 11 U.S.C. § 523(a). Creditors objecting to the debtor’s discharge under either § 523 or § 727 generally must act within sixty days of the first date set for the meeting of creditors. Fed. R. Bankr. P. 4004(a) and 4007(c).
- **Compensation in Ch 7 – Getting paid (Kotur)**
 - Historically, attorney fees were due prepetition so as to avoid issues surrounding the post-discharge collection of fees related to a pre-petition contract. *See Lamie v. U.S. Trustee*, 540 U.S. 526, 537 (2004) (holding that only attorneys employed by the Chapter 7 trustee may be paid from the estate for post-petition services). Based largely upon the Court’s decision in *Lamie* and issues surrounding a debtor’s discharge of prepetition debts, court’s generally required Chapter 7 attorney’s fees to be paid before filing the petition for relief. *But see Matthews & Assocs. v. Fitzgerald (In re*

Prophet), No. 21-cv-1080, 2022 WL 766350 (reversing bankruptcy court's holding disallowing bifurcated fee agreement based upon local rule).

- As of April 29, 2022, debtors filed 183 Chapter 7 cases in the Northern District of West Virginia. A survey of twenty cases closed so far this year revealed an average attorney fee of \$1,451.00.

Chapter 13:

- **Role of the Chapter 13 TE and principal concerns** – meeting of creditors, plan review/worksheet, disposable income, best interests of CRs test, etc (Preece)
 - Like the trustee in Chapter 7, the Chapter 13 trustee presides at the meeting of creditors, examines the debtor's schedules and proposed plan of repayment, and often acts generally as a voice for unsecured creditors.
 - Two of the most significant issues monitored by the Chapter 13 trustee are whether the debtor proposes to pay unsecured creditors at least as much as they would receive in a Chapter 7 liquidation and whether the debtor proposes to devote all disposable income to the plan of repayment. *See* 11 U.S.C. § 1325(a)(4) and (b).

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: _____ District of _____

Case number _____
(If known)

☐ Check if this is an amended filing

Official Form 122C-2

Chapter 13 Calculation of Your Disposable Income

04/22

To fill out this form, you will need your completed copy of *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period* (Official Form 122C-1).

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for being accurate. If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).

Part 1: Calculate Your Deductions from Your Income

The Internal Revenue Service (IRS) issues National and Local Standards for certain expense amounts. Use these amounts to answer the questions in lines 6-15. To find the IRS standards, go online using the link specified in the separate instructions for this form. This information may also be available at the bankruptcy clerk's office.

Deduct the expense amounts set out in lines 6-15 regardless of your actual expense. In later parts of the form, you will use some of your actual expenses if they are higher than the standards. Do not include any operating expenses that you subtracted from income in lines 5 and 6 of Form 122C-1, and do not deduct any amounts that you subtracted from your spouse's income in line 13 of Form 122C-1.

If your expenses differ from month to month, enter the average expense.

Note: Line numbers 1-4 are not used in this form. These numbers apply to information required by a similar form used in chapter 7 cases.

5. The number of people used in determining your deductions from income

Fill in the number of people who could be claimed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support. This number may be different from the number of people in your household.

National Standards

You must use the IRS National Standards to answer the questions in lines 6-7.

- 6. Food, clothing, and other items:** Using the number of people you entered in line 5 and the IRS National Standards, fill in the dollar amount for food, clothing, and other items.

\$ _____

- 7. Out-of-pocket health care allowance:** Using the number of people you entered in line 5 and the IRS National Standards, fill in the dollar amount for out-of-pocket health care. The number of people is split into two categories—people who are under 65 and people who are 65 or older—because older people have a higher IRS allowance for health care costs. If your actual expenses are higher than this IRS amount, you may deduct the additional amount on line 22.

People who are under 65 years of age

7a. Out-of-pocket health care allowance per person \$ _____

7b. Number of people who are under 65 X _____

7c. Subtotal. Multiply line 7a by line 7b.

\$ _____

Copy
here →

\$ _____

People who are 65 years of age or older

7d. Out-of-pocket health care allowance per person \$ _____

7e. Number of people who are 65 or older X _____

7f. Subtotal. Multiply line 7d by line 7e.

\$ _____

Copy
here →

+ \$ _____

7g. **Total.** Add lines 7c and 7f.

\$ _____

Copy here →

\$ _____

**Local
Standards**

You must use the IRS Local Standards to answer the questions in lines 8-15.

Based on information from the IRS, the U.S. Trustee Program has divided the IRS Local Standard for housing for bankruptcy purposes into two parts:

- Housing and utilities – Insurance and operating expenses
- Housing and utilities – Mortgage or rent expenses

To answer the questions in lines 8-9, use the U.S. Trustee Program chart. To find the chart, go online using the link specified in the separate instructions for this form. This chart may also be available at the bankruptcy clerk's office.

8. **Housing and utilities – Insurance and operating expenses:** Using the number of people you entered in line 5, fill in the dollar amount listed for your county for insurance and operating expenses.

\$ _____

9. **Housing and utilities – Mortgage or rent expenses:**

9a. Using the number of people you entered in line 5, fill in the dollar amount listed for your county for mortgage or rent expenses.

\$ _____

9b. Total average monthly payment for all mortgages and other debts secured by your home.

To calculate the total average monthly payment, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Next divide by 60.

Name of the creditor	Average monthly payment
_____	\$ _____
_____	\$ _____
_____	+ \$ _____

9b. Total average monthly payment

\$ _____

Copy
here →– \$ _____ Repeat this amount
on line 33a.

9c. Net mortgage or rent expense.

Subtract line 9b (*total average monthly payment*) from line 9a (*mortgage or rent expense*). If this number is less than \$0, enter \$0.

\$ _____

Copy here →

\$ _____

10. **If you claim that the U.S. Trustee Program's division of the IRS Local Standard for housing is incorrect and affects the calculation of your monthly expenses, fill in any additional amount you claim.**

\$ _____

Explain
why:

11. **Local transportation expenses:** Check the number of vehicles for which you claim an ownership or operating expense.

- ☐ 0. Go to line 14.
☐ 1. Go to line 12.
☐ 2 or more. Go to line 12.

12. **Vehicle operation expense:** Using the IRS Local Standards and the number of vehicles for which you claim the operating expenses, fill in the *Operating Costs* that apply for your Census region or metropolitan statistical area.

\$ _____

13. **Vehicle ownership or lease expense:** Using the IRS Local Standards, calculate the net ownership or lease expense for each vehicle below. You may not claim the expense if you do not make any loan or lease payments on the vehicle. In addition, you may not claim the expense for more than two vehicles.

Vehicle 1

Describe Vehicle 1: _____

13a. Ownership or leasing costs using IRS Local Standard \$ _____

13b. Average monthly payment for all debts secured by Vehicle 1.

Do not include costs for leased vehicles.

To calculate the average monthly payment here and on line 13e, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Then divide by 60.

Name of each creditor for Vehicle 1	Average monthly payment
_____	\$ _____
_____	+ \$ _____
Total average monthly payment	<div style="border: 1px solid black; padding: 2px;">\$ _____</div>

Copy here →

— \$ _____ Repeat this amount on line 33b.

13c. Net Vehicle 1 ownership or lease expense

Subtract line 13b from line 13a. If this number is less than \$0, enter \$0.

\$ _____

Copy net Vehicle 1 expense here →

\$ _____

Vehicle 2

Describe Vehicle 2: _____

13d. Ownership or leasing costs using IRS Local Standard \$ _____

13e. Average monthly payment for all debts secured by Vehicle 2.

Do not include costs for leased vehicles.

Name of each creditor for Vehicle 2	Average monthly payment
_____	\$ _____
_____	+ \$ _____
Total average monthly payment	<div style="border: 1px solid black; padding: 2px;">\$ _____</div>

Copy here →

— \$ _____ Repeat this amount on line 33c.

13f. Net Vehicle 2 ownership or lease expense

Subtract line 13e from 13d. If this number is less than \$0, enter \$0.

\$ _____

Copy net Vehicle 2 expense here →

\$ _____

14. **Public transportation expense:** If you claimed 0 vehicles in line 11, using the IRS Local Standards, fill in the *Public Transportation expense allowance regardless of whether you use public transportation.*

\$ _____

15. **Additional public transportation expense:** If you claimed 1 or more vehicles in line 11 and if you claim that you may also deduct a public transportation expense, you may fill in what you believe is the appropriate expense, but you may not claim more than the IRS Local Standard for *Public Transportation.*

\$ _____

Other Necessary Expenses

In addition to the expense deductions listed above, you are allowed your monthly expenses for the following IRS categories.

16. **Taxes:** The total monthly amount that you actually pay for federal, state and local taxes, such as income taxes, self-employment taxes, social security taxes, and Medicare taxes. You may include the monthly amount withheld from your pay for these taxes. However, if you expect to receive a tax refund, you must divide the expected refund by 12 and subtract that number from the total monthly amount that is withheld to pay for taxes.
Do not include real estate, sales, or use taxes. \$ _____
17. **Involuntary deductions:** The total monthly payroll deductions that your job requires, such as retirement contributions, union dues, and uniform costs.
Do not include amounts that are not required by your job, such as voluntary 401(k) contributions or payroll savings. \$ _____
18. **Life insurance:** The total monthly premiums that you pay for your own term life insurance. If two married people are filing together, include payments that you make for your spouse's term life insurance.
Do not include premiums for life insurance on your dependents, for a non-filing spouse's life insurance, or for any form of life insurance other than term. \$ _____
19. **Court-ordered payments:** The total monthly amount that you pay as required by the order of a court or administrative agency, such as spousal or child support payments.
Do not include payments on past due obligations for spousal or child support. You will list these obligations in line 35. \$ _____
20. **Education:** The total monthly amount that you pay for education that is either required:
☐ as a condition for your job, or
☐ for your physically or mentally challenged dependent child if no public education is available for similar services. \$ _____
21. **Childcare:** The total monthly amount that you pay for childcare, such as babysitting, daycare, nursery, and preschool.
Do not include payments for any elementary or secondary school education. \$ _____
22. **Additional health care expenses, excluding insurance costs:** The monthly amount that you pay for health care that is required for the health and welfare of you or your dependents and that is not reimbursed by insurance or paid by a health savings account. Include only the amount that is more than the total entered in line 7.
Payments for health insurance or health savings accounts should be listed only in line 25. \$ _____
23. **Optional telephones and telephone services:** The total monthly amount that you pay for telecommunication services for you and your dependents, such as pagers, call waiting, caller identification, special long distance, or business cell phone service, to the extent necessary for your health and welfare or that of your dependents or for the production of income, if it is not reimbursed by your employer.
Do not include payments for basic home telephone, internet or cell phone service. Do not include self-employment expenses, such as those reported on line 5 of Form 122C-1, or any amount you previously deducted. + \$ _____
24. **Add all of the expenses allowed under the IRS expense allowances.**
Add lines 6 through 23. \$ _____

Additional Expense Deductions

These are additional deductions allowed by the Means Test.

Note: Do not include any expense allowances listed in lines 6-24.

25. **Health insurance, disability insurance, and health savings account expenses.** The monthly expenses for health insurance, disability insurance, and health savings accounts that are reasonably necessary for yourself, your spouse, or your dependents.
- Health insurance \$ _____
- Disability insurance \$ _____
- Health savings account + \$ _____
- Total \$ _____ Copy total here → \$ _____
- Do you actually spend this total amount?
- ☐ No. How much do you actually spend? \$ _____
- ☐ Yes
26. **Continuing contributions to the care of household or family members.** The actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses. These expenses may include contributions to an account of a qualified ABLE program. 26 U.S.C. § 529A(b). \$ _____
27. **Protection against family violence.** The reasonably necessary monthly expenses that you incur to maintain the safety of you and your family under the Family Violence Prevention and Services Act or other federal laws that apply.
By law, the court must keep the nature of these expenses confidential. \$ _____

28. **Additional home energy costs.** Your home energy costs are included in your insurance and operating expenses on line 8. If you believe that you have home energy costs that are more than the home energy costs included in expenses on line 8, then fill in the excess amount of home energy costs.

\$ _____

You must give your case trustee documentation of your actual expenses, and you must show that the additional amount claimed is reasonable and necessary.

29. **Education expenses for dependent children who are younger than 18.** The monthly expenses (not more than \$189.58* per child) that you pay for your dependent children who are younger than 18 years old to attend a private or public elementary or secondary school.
- You must give your case trustee documentation of your actual expenses, and you must explain why the amount claimed is reasonable and necessary and not already accounted for in lines 6-23.

\$ _____

* Subject to adjustment on 4/01/25, and every 3 years after that for cases begun on or after the date of adjustment.

30. **Additional food and clothing expense.** The monthly amount by which your actual food and clothing expenses are higher than the combined food and clothing allowances in the IRS National Standards. That amount cannot be more than 5% of the food and clothing allowances in the IRS National Standards.

\$ _____

To find a chart showing the maximum additional allowance, go online using the link specified in the separate instructions for this form. This chart may also be available at the bankruptcy clerk's office.

You must show that the additional amount claimed is reasonable and necessary.

31. **Continuing charitable contributions.** The amount that you will continue to contribute in the form of cash or financial instruments to a religious or charitable organization. 11 U.S.C. § 548(d)(3) and (4).

+ \$ _____

Do not include any amount more than 15% of your gross monthly income.

32. **Add all of the additional expense deductions.**

Add lines 25 through 31.

\$ _____

Deductions for Debt Payment

33. **For debts that are secured by an interest in property that you own, including home mortgages, vehicle loans, and other secured debt, fill in lines 33a through 33e.**

To calculate the total average monthly payment, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Then divide by 60.

Average monthly
payment

Mortgages on your home

33a. Copy line 9b here ➔ \$ _____

Loans on your first two vehicles

33b. Copy line 13b here. ➔ \$ _____

33c. Copy line 13e here. ➔ \$ _____

33d. List other secured debts:

Name of each creditor for other secured debt	Identify property that secures the debt	Does payment include taxes or insurance?	
_____	_____	<input type="checkbox"/> No	\$ _____
_____	_____	<input type="checkbox"/> Yes	\$ _____
_____	_____	<input type="checkbox"/> No	\$ _____
_____	_____	<input type="checkbox"/> Yes	\$ _____
_____	_____	<input type="checkbox"/> No	+ \$ _____
_____	_____	<input type="checkbox"/> Yes	+ \$ _____

33e. Total average monthly payment. Add lines 33a through 33d. ➔ \$ _____

Copy total
here ➔

\$ _____

34. Are any debts that you listed in line 33 secured by your primary residence, a vehicle, or other property necessary for your support or the support of your dependents?

- ☐ No. Go to line 35.
- ☐ Yes. State any amount that you must pay to a creditor, in addition to the payments listed in line 33, to keep possession of your property (called the *cure amount*). Next, divide by 60 and fill in the information below.

Name of the creditor	Identify property that secures the debt	Total cure amount	Monthly cure amount
_____	_____	\$ _____ ÷ 60 =	\$ _____
_____	_____	\$ _____ ÷ 60 =	\$ _____
_____	_____	\$ _____ ÷ 60 = + \$ _____	
		Total	<div style="border: 1px solid black; padding: 2px;">\$ _____</div> <div style="display: inline-block; vertical-align: middle;">Copy total here →</div> <div style="border: 1px solid black; padding: 2px; margin-left: 10px;">\$ _____</div>

35. Do you owe any priority claims—such as a priority tax, child support, or alimony—that are past due as of the filing date of your bankruptcy case? 11 U.S.C. § 507.

- ☐ No. Go to line 36.
- ☐ Yes. Fill in the total amount of all of these priority claims. Do not include current or ongoing priority claims, such as those you listed in line 19.

Total amount of all past-due priority claims. _____ \$ _____ ÷ 60 \$ _____

36. Projected monthly Chapter 13 plan payment

\$ _____

Current multiplier for your district as stated on the list issued by the Administrative Office of the United States Courts (for districts in Alabama and North Carolina) or by the Executive Office for United States Trustees (for all other districts).

To find a list of district multipliers that includes your district, go online using the link specified in the separate instructions for this form. This list may also be available at the bankruptcy clerk's office.

X _____

Average monthly administrative expense

\$ _____

Copy total here →

\$ _____

37. Add all of the deductions for debt payment. Add lines 33e through 36.

\$ _____

Total Deductions from Income

38. Add all of the allowed deductions.

Copy line 24, All of the expenses allowed under IRS expense allowances \$ _____

Copy line 32, All of the additional expense deductions \$ _____

Copy line 37, All of the deductions for debt payment + \$ _____

Total deductions

\$ _____

Copy total here →

\$ _____

Part 2: Determine Your Disposable Income Under 11 U.S.C. § 1325(b)(2)

39. **Copy your total current monthly income from line 14 of Form 122C-1, Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period.** \$ _____

40. **Fill in any reasonably necessary income you receive for support for dependent children.** The monthly average of any child support payments, foster care payments, or disability payments for a dependent child, reported in Part I of Form 122C-1, that you received in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child. \$ _____

41. **Fill in all qualified retirement deductions.** The monthly total of all amounts that your employer withheld from wages as contributions for qualified retirement plans, as specified in 11 U.S.C. § 541(b)(7) plus all required repayments of loans from retirement plans, as specified in 11 U.S.C. § 362(b)(19). \$ _____

42. **Total of all deductions allowed under 11 U.S.C. § 707(b)(2)(A).** Copy line 38 here ➔ \$ _____

43. **Deduction for special circumstances.** If special circumstances justify additional expenses and you have no reasonable alternative, describe the special circumstances and their expenses. You must give your case trustee a detailed explanation of the special circumstances and documentation for the expenses.

Describe the special circumstances

Amount of expense

_____ \$ _____

_____ \$ _____

_____ + \$ _____

Total

\$ _____

Copy here ➔

+ \$ _____

44. **Total adjustments.** Add lines 40 through 43. \$ _____ Copy here ➔ - \$ _____

45. **Calculate your monthly disposable income under § 1325(b)(2).** Subtract line 44 from line 39.

\$ _____

Part 3: Change in Income or Expenses

46. **Change in income or expenses.** If the income in Form 122C-1 or the expenses you reported in this form have changed or are virtually certain to change after the date you filed your bankruptcy petition and during the time your case will be open, fill in the information below. For example, if the wages reported increased after you filed your petition, check 122C-1 in the first column, enter line 2 in the second column, explain why the wages increased, fill in when the increase occurred, and fill in the amount of the increase.

Form	Line	Reason for change	Date of change	Increase or decrease?	Amount of change
<input type="checkbox"/> 122C-1				<input type="checkbox"/> Increase	\$ _____
<input type="checkbox"/> 122C-2	_____	_____	_____	<input type="checkbox"/> Decrease	
<input type="checkbox"/> 122C-1				<input type="checkbox"/> Increase	\$ _____
<input type="checkbox"/> 122C-2	_____	_____	_____	<input type="checkbox"/> Decrease	
<input type="checkbox"/> 122C-1				<input type="checkbox"/> Increase	\$ _____
<input type="checkbox"/> 122C-2	_____	_____	_____	<input type="checkbox"/> Decrease	
<input type="checkbox"/> 122C-1				<input type="checkbox"/> Increase	\$ _____
<input type="checkbox"/> 122C-2	_____	_____	_____	<input type="checkbox"/> Decrease	

Debtor 1 _____
First Name Middle Name Last Name

Case number (if known) _____

Part 4: Sign Below

By signing here, under penalty of perjury you declare that the information on this statement and in any attachments is true and correct.

x _____

Signature of Debtor 1

x _____

Signature of Debtor 2

Date _____
MM / DD / YYYY

Date _____
MM / DD / YYYY

- **The Ch 13 plan process**

- DR perspective on what is achievable – Disposable income/feasibility; potential cramdown; cure and maintain long-term debt; separate classification of student loans; treatment of priority debt, etc . . . (Hinkle; Kotur; Supple)
- Chapter 13 offers powerful tools to debtors with the ability to repay their creditors. Among other things, a debtor may
 - pay priority claims (e.g., domestic support arrears and certain unpaid taxes) over the life of the plan, 11 U.S.C. § 1322(a)(2);
 - cram down the amount of secured claims, other than a claim secured only by real property that is the debtor's principal residence, 11 U.S.C. §§ 506 and 1322(b)(2);
 - cure mortgage arrears over the life of the plan while maintaining payments, 11 U.S.C. § 1322(b)(5);
 - at least in the Northern District of West Virginia, separately classify student loans, a nondischargeable debt, to avoid accrual of postpetition interest. *See In re Mason*, 456 B.R. 245 (Bankr. N.D.W. Va. 2011).

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF WEST VIRGINIA**

Debtor 1:

Case No.:

Debtor 2:

N.D.W. Va. Model Plan (2/22)

Chapter 13 Plan

Part 1: Notices

To Creditors: Your rights may be affected by this plan. You should read this plan carefully and discuss it with your attorney if you have one. If you oppose the plan's treatment of your claim or any provision of this plan, you or your attorney must timely file an objection to confirmation. Objections by any party other than the Chapter 13 Trustee must be in writing and filed with the court **no later than fourteen days after the date first set for the section 341(a) meeting of creditors**, unless otherwise permitted by the court. If this proposed plan was not filed at least nine days before the date first set for the meeting of creditors, objections must be filed within twenty-three days from the issuance of the Clerk's notice of the confirmation hearing that accompanies this proposed plan, or amended plan, unless otherwise permitted by the court. The plan may be confirmed without further notice if no objection is timely filed.

This plan does not allow claims. The fact that your claim is classified herein does not mean that you will receive payment. You must file a timely proof of claim to be paid.

Non-standard provisions, if any, are specifically set forth in Paragraphs 3.4, 5.3 and 8.1. Limitation of a secured claim or its stripoff based on valuation under 11 U.S.C. 506 and the avoidance of a security interests under 11 U.S.C. 522(f) require a separate motion or adversary proceeding.

Amended Plan: Only complete this section if this is an amended plan before confirmation

Sections of the Plan that have been amended:

--

Creditors affected by the amendment (list creditor name and proof of claim number (if known))

--

Does the Debtor have "current monthly income" above the applicable median income for the State?

Is the Debtor eligible for a discharge?

--

Is the Joint Debtor eligible for a discharge?

--

Part 2: Plan Payments and Length of Plan

If you have not paid the Chapter 13 filing fee, do you desire to have the Chapter 13 Trustee pay the filing fee from your first plan payment(s)?

--

Monthly income of the Debtor as stated on Schedule I, Line 12

--

Less reasonably necessary monthly living expenses of the Debtor and all monthly payments for which the Debtor will remain the disbursing agent

--

Income available to feasibly make monthly Chapter 13 plan payments

--

The Debtor shall make plan payments as follows:

Total Length of Plan in Months:

--

weekly for

--

months, totaling:

--

bi-weekly for

--

months, totaling:

--

semi-monthly for

--

months, totaling:

--

monthly for

--

months, totaling:

--

Other plan payment terms
(e.g., "step" payments)

--

Total Paid In ("Plan Base"):

--

Payroll Deduction Order. The Debtor shall make Plan payments to the Trustee through a wage withholding order unless otherwise exempted. The Debtor may file a motion with the court to directly make plan payments to the Trustee and explain why there is to be no wage withholding order in the case.

Debtor 1 (for payroll deduction)

Employer:
 Address:
 Address:
 Tele:
 Deduction:

Debtor 2 (for payroll deduction)

Employer:
 Address:
 Address:
 Tele:
 Deduction:

Other Property. In addition to the monthly plan payments proposed by the Debtor, the following additional property is dedicated to pay claims against the Debtor:

Income Tax Refunds - Check one. The Debtor will provide the Trustee with a copy of each income tax return filed during the term of the plan within 14 days of filing the return and will turn over to the Trustee all income tax refunds that are dedicated to the Plan within 30 days of receipt. The Debtor will:

- ☐ Dedicate all amounts over \$1,500 from all tax refunds to increase the gross base of the Chapter 13 plan
- ☐ Dedicate the entire amount of all tax refunds to increase the gross base of the Chapter 13 plan
- ☐ Other - Please explain

EFFECTIVE DATE FOR PLAN LENGTH. Plan payments shall commence not later than 30 days after the filing of the petition or the date of conversion from another chapter to Chapter 13. The amount of the monthly plan payment may be increased without notice at or before the confirmation hearing. The proposed plan length runs from:

- ☐ The date that the first plan payment is made pursuant to 11 U.S.C. 1326(a)(1)
- ☐ The effective date of confirmation with all pre-confirmation payments being dedicated to the plan

Total Payments Provided for in the Plan by Class

Analysis does not include any amounts not paid through the Trustee in the Plan

Class:	
3.2	Cure & Maintain Secured Debts
3.3 to 3.4	Modification of Secured Debts
3.5	Valuation of Secured Debts
3.6	Certain Unavoidable Liens
4.2	Trustee's Fees
4.3	Attorney's Fees
4.4 to 4.5	DSOs and Priority Debts
5.2 to 5.3	Cure & Maintain Unsecured Debts
5.4	General Unsecured Debts
8.1	Non-Standard Treatments
	Total Paid Out of Plan Base

Part 3: Treatment of Secured Claims

Secured Claims. Each holder of an allowed secured claim, which is paid in full during the life of the plan and for which the collateral is not surrendered, shall retain the lien securing the claim until the earlier of: (1) payment of the underlying debt as determined under non-bankruptcy law; or (2) discharge. Should this case be dismissed or converted before the plan is completed, the lien securing an allowed secured claim shall be retained by the holder to the extent recognized by non-bankruptcy law.

Adequate Protection Payments. Unless otherwise ordered, if a secured creditor is being paid through the Trustee, then all Section 1326(a)(1) adequate protection payments shall be made through the Trustee in the amount set forth in this Proposed Plan. The Trustee is not obligated to make any pre-confirmation adequate protection payments to a secured creditor until that creditor files a proof of claim.

Stay Relief. If relief from the automatic stay is ordered as to any item of collateral listed in Part 3, then the Trustee is authorized to cease all payments to the secured creditor.

3.1 Direct Payments Made by the Debtor on Secured Debts. The Debtor is not in arrears on the secured debts listed below and will directly maintain the current contractual installment payments, with any change required by the applicable contract that is noticed in conformity with any applicable rule.

Claim No. (if known)	Secured Creditor	Collateral	Current Installment Payment	Number of Payments Remaining

3.2 Cure of Arrearage and Maintenance of Payments. Any existing arrearage will be paid in full by the Trustee at 0% interest unless otherwise indicated. The Trustee will maintain the contractual installment payments, with any change required by the applicable contract that is noticed in conformity with any applicable rule. The amount of the arrearage and on-going payment listed in a creditor's timely filed and allowed claim controls over the amount listed below and such a creditor need not object to confirmation on the basis that this proposed plan does not accurately reflect the creditor's proof of claim.

Claim No. (if known)	Secured Creditor	Collateral	Pre-Petition Arrearage

Treatment of Contractual Installment Payments (these payments must be made by the Trustee)

Secured Creditor	Collateral	Current Monthly Payment	Lesser of Payments Remaining or Plan Length	Total Paid in Plan

3.3 Secured Claims Excluded from 11 U.S.C. 506. The claims listed below were either: (1) incurred within 910 days before the petition date and secured by a purchase money security interest in a motor vehicle acquired for the personal use of the debtor(s), or (2) incurred within 1 year of the petition date and secured by a purchase money security interest in any other thing of value. Claims that are modified in a Chapter 13 plan must be paid through the Chapter 13 Trustee. The Trustee may pay the interest, secured principal and arrearage amount on an amortized basis over the life of the plan, and, thus, the total amount of interest may vary from the amount calculated. If relief from the automatic stay is ordered as to any item of collateral listed below, then the Trustee is authorized to cease all payments to the secured creditor. The amount listed in a creditor's timely filed and allowed claim controls over the amount listed below and the creditor need not object to confirmation on the basis that this proposed plan does not accurately reflect the creditor's proof of claim. Payment of a claim described in the final paragraph of section 1325(a) of the Bankruptcy Code may be listed here.

Claim No. (if known)	Secured Creditor	Collateral	Total Owed Including Arrearage	Interest Rate	90 Days Unpaid Interest + Principal	Total Paid In Plan

3.4 Other Treatment of Secured Claims. The Debtor proposes the following treatment:

Total paid in the plan by the Trustee in Section 3.4

3.5 Secured Claims that are Subject to a Separate Motion or Adversary Proceeding Based on Valuation. This Plan does not value claims. To value a claim pursuant 11 U.S.C. 506, the Debtor must file and serve a separate motion pursuant to Fed. R. Bankr. P. 3012, 7004, 9014(b), or, as applicable, file an adversary proceeding under Fed. R. Bankr. P. 7001, or submit an agreed order to the court resolving value. The information provided below is for information purposes only, and the Debtor's valuation stated herein is subject to change, without the need to modify the plan, based on the resolution of any motion, adversary proceeding, or pursuant to the terms of an agreed order regarding valuation. The amount of the creditor's claim in excess of the Debtor's valuation for the collateral shall be treated with other general unsecured claims and paid pro rata provided that the creditor timely files a proof of claim. If an order is entered treating the claim as wholly unsecured then the creditor's lien will be avoided pursuant to 11 U.S.C. 506.

Claim No. (if known)	Creditor	Collateral	Amount Owed	Debtor's Valuation	Interest Rate	90 Days Interest + Principal	Total Paid in Plan

3.6 Lien Avoidance. This plan does not avoid judicial liens or nonpossessory, nonpurchase money security interests under 11 U.S.C. 522(f). To avoid such liens, the Debtor must file and serve a separate motion on the affected creditor(s) pursuant to Fed. R. Bankr. P. 7004 and 9014(b). The Debtor may at a later date seek to avoid a judicial lien held by a creditor not listed below. The information provided below is for information purposes only, and the information provided is subject to change, without the need to modify the plan, based on the resolution of the Debtor's motion to avoid lien. The monthly payment amount and the duration of payments is subject to the Trustee's discretion. The amount of the creditor's avoided lien, if any, shall be treated with other general unsecured claims and paid pro rata provided that the creditor timely files a proof of claim. The Debtor discloses the intention to avoid liens held by the following creditors:

Claim No. (if known)	Creditor	Collateral / Face Value of Lien	Estimated Remaining Lien Value	Interest Rate	90 Days Interest + Principal	Total Paid in Plan

3.7 Surrender or Sale of Collateral. For property the Debtor proposes to sell, a separate motion and proposed order must be filed which provide the details of the sale. Court approval must be obtained for the hire and use of a professional to sell property. After the payment of secured debts and the costs of sale, all net proceeds shall be paid to the Trustee for distribution. Property to be sold by the Debtor that is not sold in the applicable time period listed below will be surrendered to the creditor unless the Trustee or Debtor requests additional time, or unless the Debtor modifies the plan to retain the collateral and cure existing defaults. A secured creditor entitled to a deficiency claim must file that claim within 90 days of the date that the real or personal property is surrendered, or within 30 days of a sale that is conducted by the Debtor, unless otherwise ordered by the Court. Any allowed unsecured claim resulting from the disposition of the collateral will be paid pro rata with all other general unsecured claims. The Debtor requests that upon confirmation of this plan the stay under 11 USC 362(a) and 1301 be terminated with respect to surrendered collateral. This request is not a motion, is not governed by 11 USC 362(d) or (e), and no fee is owed.

Claim No. (if known)	Creditor	Collateral	Amount Owed	Debtor's Valuation / Amount Secured	Indicate if Surrender or Sale	Time to Complete Sale, if applicable

Part 4: Treatment of Fees and Priority Claims

4.1 General. Unless the holder of a priority claim agrees to different treatment, Trustee's fees and all allowed priority claims, including domestic support obligations other than those treated in Section 4.4.1, will be paid in full without post-petition interest. Any agreement for different treatment should be formalized in a joint stipulation between the priority creditor and the Debtor and be filed with the Court.

4.2 Trustee's Fees. The Trustee's fee is governed by statute and may change during the course of the case. The Trustee's fee is estimated to be 10% of the Total Plan Base

Total Plan Base as stated in Part 2

Total estimated Trustee's Fee

4.3 Attorney's Fees. After a debtor's Chapter 13 plan is confirmed, the Chapter 13 Trustee shall pay all outstanding attorney's fees concurrently with any secured debt payments and any domestic support obligation that is to be paid by the Trustee; provided, however, that funds are to be applied first to long term mortgage debts paid through the Trustee, second to equal monthly payments to other secured creditors, third to domestic support creditors, and only then to attorney's fees. Attorney's fees are to be paid, in full, before any plan payment is applied to an arrearage claim or before payment is applied to any other priority or unsecured debt.

		Total attorney's fee
		Amount received pre-petition
		Amount to be paid in the plan by the Trustee

4.4 Domestic Support Obligations. If the Debtor has domestic support obligations, use only the initials of minor children and do not list confidential information.

Proof of Claim # (if known)	
Name & Address of Claimant or Agency:	

		Estimated DSO arrearage to be paid in the Plan
		Payment amount for on-going monthly DSO obligations if paid by the Trustee
		Lesser of Plan length or remaining monthly payments
		Total amount paid in the Plan by the Trustee as a Class 4.4 Claim

4.4.1 Domestic Support Obligations Assigned or Owed to A Governmental Unit and Paid Less than the Full Amount. The allowed priority claims listed below are based on a domestic support obligation that has been assigned or is owed to a governmental unit and will be paid less than the full amount of the claim under 11 U.S.C. 1322(a)(4). This plan provision requires that payments in Part 2 be for a term of 60 months.

Claim No. (if known)	Creditor	Amount Owed	Amount Paid in Plan

4.5 Other Priority Claims as Defined by 11 U.S.C. 507.

Claim No. (if known)	Creditor	Type of Priority	Amount Paid in Plan

4.6 Direct Payments on Priority Debts. The Debtor will maintain current installment payments on the priority unsecured debts listed below.

Claim No. (if known)	Creditor	Type of Priority	Monthly Payment	Total Payments Remaining

Part 5: Treatment of Non-Priority Unsecured Claims

5.1 Direct Payments Made by the Debtor on Unsecured Debts. The Debtor is not in arrears on the unsecured debts listed below and will directly maintain the current contractual installment payments, with any change required by the applicable contract that is noticed in conformity with any applicable rules.

Claim No. (if known)	Unsecured Creditor	Type of Debt (e.g., student loan, co-debtor claims, executory contracts, unexpired leases, etc)	Monthly Payment	Number of Payments Remaining

--	--	--	--	--

5.2 Maintenance of Payments and Cure of any Defaults on Unsecured Claims. Any existing arrearages will be paid in full by the Trustee at 0% interest unless otherwise indicated. The Trustee will maintain the contractual installment payments, with any change required by the applicable contract that is noticed in conformity with any applicable rule. Unless otherwise ordered by the court, the amount listed on a timely filed proof of claim controls over any amounts listed below as to the current installment payment and arrearage and such a creditor need not object to confirmation on the basis that this proposed plan does not accurately reflect the creditor's proof of claim. In the absence of a contrary timely proof of claim, the amount stated below is controlling. If relief from the automatic stay is ordered as to any of the debts listed below, then the Trustee is authorized to cease all payments to the unsecured creditor.

Claim No. (if known)	Unsecured Creditor	Type of Debt (e.g., student loan, co-debtor claims, executory contracts, unexpired leases, etc)	Pre-Petition Arrearage

Treatment of Contractual Installment Payments (these payments must be made by the Trustee)

Unsecured Creditor	Type of Debt	Regular Monthly Payment	Lesser of payments remaining or plan length	Total Paid in Plan

5.3 Other Separately Classified Non-Priority Unsecured Claims. The Debtor proposes the following treatment:

Total payments, if any, made by the Trustee in Section 5.3:

5.4 Non-Priority Unsecured Claims Not Separately Classified. Allowed non-priority claims that are not separately classified will be paid pro rata. Payment of any dividend will depend on the amount of secured and priority claims allowed, payments to separately designated classes, and the total amount of all allowed unsecured claims. No payment will be made until unsecured priority claims are paid in full, and no payment will be made on scheduled claims unless a proof of claim is filed. The value as of the effective date of the plan of property to be distributed in the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the Debtor was liquidated in Chapter 7 of the Bankruptcy Code on that date.

Estimated distribution to unsecured creditors

The distribution to unsecured creditors will be **pro rata**. It will depend on the amount of the allowed claims and the amount actually paid by the Debtor.

5.5 Special Provisions Governing Student Loans. This Plan does not provide for discharge of a debtor's student loan obligation. Discharge of a student loan requires a separate adversary proceeding. The debtor shall be allowed to seek enrollment in any applicable income-driven repayment plan with the U.S. Department of Education and/or other student loan servicers, guarantors, etc., without disqualification due to the debtor's bankruptcy provided that the debtor otherwise qualifies for an income-driven repayment plan. If the debtor qualifies and enrolls in an income-driven repayment plan, the debtor shall notify the Chapter 13 Trustee within 30 days of the amount of such payment and of any subsequent change in that payment. It shall not be a violation of the automatic stay or confirmation order for an educational lender, servicer, or guarantor to send the debtor normal monthly statements regarding payments due and other communications including, without limitation, notices of late payment or delinquency.

Part 6: Executory Contracts and Unexpired Leases

6.1 Assumption and Rejection. The executory contracts and unexpired leases listed below are assumed and will be treated as specified in Section 5.1, 5.2, and/or 5.3. Any executory contract or unexpired lease not listed below, or not specifically listed in Part 5, is rejected.

Name of Executory Contract or Lease Holder	Description of Leased Property or Executory Contract	Disbursing Agent: Trustee, Debtor, Third Party. MUST BE CONSISTENT WITH § 5.1, 5.2 and/or 5.3

Part 7: Vesting of Property of the Estate

7.1 Property of the estate will vest in the Debtor upon entry of discharge.

Part 8: Non-Standard Provisions

8.1 Non-Standard Provisions. A non-standard provision is a provision not otherwise included above. Non-standard provisions are listed here and/or in Paragraphs 3.4 and 5.3. No creditor may act in any manner whatsoever to collect, offset, or setoff all or any part of a debt that is to be paid in this Plan, or that is otherwise treated in the Confirmed Plan, unless expressly permitted by the Bankruptcy Code or by further Order of the Court. By filing a proof of claim, a creditor accepts the treatment of the claim in the Confirmed Plan. In the event that a creditor receives funds on a claim treated in this Plan from sources other than provided by this Plan, the creditor must file an amended proof of claim within 30 days.

Total, if any, to be paid by the Trustee in Section 8.1

By signing below, I certify that the plan does not contain any non-standard provision other than as set forth in Sections 3.5, 5.3 and/or 8.1

Part 9: Signatures

The Debtor, by signing below further states that the Debtor will be able to make all payments and comply with all provisions of this Plan, based on the availability to the Debtor of the income and property the Debtor proposes to use to complete the Plan. This Plan complies with all applicable provisions of the Bankruptcy Code. Any fee, charge, or amount required to be paid prior to confirmation has been paid or will be paid prior to confirmation. The Plan has been proposed in good faith and not by any means forbidden by law.

Signature of Attorney for the Debtor

Signature of Debtor 1

Signature of Debtor 2 (if applicable)

Date

Date

Date

EXHIBIT A: LIQUIDATION ANALYSIS, COMPARISON, AND ESTIMATED DIVIDEND

Real Property

Value on Schedule A/B			
Less First Mortgage			
Less Other Lien(s)			
Less Claimed Exemption(s)			
Less 10% Costs of Sale			
Net Equity			

Motor Vehicles

Value on Schedule A/B				
Less Lien(s)				
Less Claimed Exemption(s)				
Less 10% Costs of Sale				
Net Equity				

Other Assets

				Everything Else
Property Value				
Less Lien(s)				
Less Claimed Exemption(s)				
Less 10% Costs of Sale				
Net Equity				

Unsecured Liabilities & Liquidation Comparison

Total Unsecured Claims on Schedules D, E/F		Outcome in Chapter 7	
Priority Claims on Schedule E/F		Total Net Equity	
Non-Priority Portions of Priority Claims on E/F		Less Chapter 7 Commission	
General Unsecured Claims on Schedule E/F		Less Chapter 7 Attorney's Fees	
Undersecured portions, if any, on Schedule D		Less Payment to Priority Claims	
Total Unsecured Claims		Amount Payable to Gen. Unsecured	
		Total General Unsecured Claims	
		Percentage Distribution in Ch. 7	

Outcome in Proposed Plan

Total Plan Payments	
Less Secured Claims in Part 3 paid by the Trustee	
Less Priority Claims in Part 4 paid by the Trustee	
Less Classified Unsecured Claims in Part 5 paid by the TE	
Less Non-Standard Claims in Part 8.1 paid by the Trustee	
Amount Payable to General Unsecured Claims	
Undersecured portions in Sections 3.4,3.5,3.6, 3.7, if any	
Total General, Non-Priority Unsecured Claims on Sch. E/F	
Total Unsecured and Undersecured, Non-Priority Claims	
Percentage Distribution in Chapter 13	

- CR perspective – Determining when to object and enforce rights like anti-modification, 910-day PMSI protection, etc (Nalley)
 - Although a debtor can modify the rights of holders of secured claims, an exception exists protecting creditors secured by an interest in real property that is the debtor’s residence. 11 U.S.C. § 1322(b)(2).
 - Additionally, protection exists for those claimants holding a PMSI in a motor vehicle for which the debt was incurred within 910 days before the petition date.
- Confirmation hearing (Hinkle; Supple)
 - Every proposed plan of repayment is set for a confirmation hearing at which interested parties may object. 11 U.S.C. § 1324(a). Generally, the court holds a confirmation hearing between twenty and forty-five days after the meeting of creditors. 11 U.S.C. § 1324(b).
 - In the northern district, the confirmation hearing is often continued at least once to ensure the debtor has a clear picture of the claims to be repaid. For instance, proofs of claim are generally due within seventy days after the order for relief.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

IN RE:

CASE NO.
CHAPTER 13

Debtor

TRUSTEE'S RECOMMENDATION REGARDING CONFIRMATION

This day comes the Trustee and recommends to the Court as follows:

1. Debtor is current on plan payments.
2. The following are issues that need to be resolved prior to confirmation:
 - There is an objection to confirmation by Quicken Loans based on the pre-petition arrearage on the mortgage claim. The trustee's review of the mortgage proof of claim shows that the pre-petition arrearage is wholly an escrow shortage, which will be paid in the ordinary course of the debtor's direct payments. The trustee will not pay the pre-petition arrears.
3. The following claims are not provided for in the Chapter 13 Plan.

Claim No. Creditor	Collateral	Claim Amount
--------------------	------------	--------------

NONE

4. The plan does not provide for treatment of any claim in Part 3.5 which would require the Court to provide a value.

Claim No. Creditor	Collateral	Amt Secured
--------------------	------------	----------------

NONE

5. The Trustee is making adequate protection payments to the following creditors:

Claim No.	Creditor	Collateral	Amt Secured	Paid to Date
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NONE

6. The debtor's plan provided that the debtor would make direct payments to the following creditors:

Claim No.	Creditor	Collateral	Monthly Amount
2	ROCKET MORTGAGE, LLC FKA QUICKEN LOANS, LLC	DOT	\$1,068.61
3	PAYMENT PROCESSING CENTER	2016 Honda CR-V	\$368.48

The trustee is without information and belief as to whether the debtor is current on on-going direct-paid secured and personal property lease claims. 11 U.S.C. §1326(a)(1) requires that if the debtor makes these payments directly, adequate protection payments must be made to said creditors within 30 days of the filing of the case and be current as of confirmation. 11 U.S.C. §1326(a)(1)(C) further requires the debtor to provide the trustee with evidence of such payments, including the amount and dates of such payments.

7. The debtor's plan provided that the debtor would surrender the following collateral to creditors:

Claim No.	Creditor	Collateral
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NONE

8. The debtor's plan provided for the following domestic support obligations to be paid by the Trustee:

Domestic Support Obligations Paid by Trustee

Claim No.	Creditor	Claim Amount	Monthly Amount
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NONE

9. The debtor's plan provided for the following domestic support obligations to be paid directly by the debtor:

Domestic Support Obligations Paid Directly

Claim No.	Creditor	Claim Amount	Monthly Amount
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NONE

11 U.S.C. §1325(a)(8) requires that all domestic support obligations be current in order for the Court to confirm a plan. The trustee cannot recommend confirmation without certification and verification that the domestic support obligations are current. The trustee is without information and belief as to whether the obligation is current.

10. The debtor has submitted to the trustee the tax returns required by 11 U.S.C. § 521 and 1308.

WHEREFORE, for the reasons indicated above, the trustee

- does not recommend confirmation.

/s/ Helen M. Morris

Helen M. Morris, Trustee
State Bar No. 2637
Meagan McClure, Staff Attorney
State Bar No. 13249
Chapter 13 Trustee
P O Box 8535
South Charleston, WV 25303
(304)744-6730

Chapter 13 Workup Basic Case Information

Section I: Debtor Information & Hearing Dates

Debtor Information				Dates	
Debtor Name				Petition Date	
Joint Debtor Name				Bar Date	
Attorney Name	DAVID J. HINKLE			Date Plan Filed	
Case Number				Date(s) Amended Plan(s) Filed	
District	Northern District			Meeting of Creditors	Thursday, September 2, 2021
Court/341 Location	Martinsburg			Confirmation Hearing Date	Tuesday, October 12, 2021
Judge:	David L. Bissett			Date Prepared	October 4, 2021
Case Administrator	Meagan Preece			Prepared by	BKB

Section II: Disposable Income

Schedules I & J				Means Test	
D1 Average Monthly Income from Schedule I:		3,112.47	Family Size		3
D2 Average Monthly Income from Schedule I:		0.00	Disposable income per B122C line 45		0.00
Combined Average Monthly Income from Schedule I:		3,112.47	Annual disposable income using amount from B122C line 45		0.00
Average Monthly Expenses from Schedule J:		3,111.48	Debtor is above/below median income		#N/A
Monthly Net Income from Schedule J:		0.99	Applicable commitment period		#N/A

Section III: Values, Exemptions, Equity & Best Interest of Creditors

Valuations, Exemptions & Equity					Best Interest of Creditors	
Real Property Value	190,000.00	- Liabilities	147,899.00	42,101.00	Liquidation analysis from plan:	52,623.70
Personal Property Value	46,206.07	- Liabilities	16,274.00	29,932.07	Trustee BIC number:	0.00
Exemptions	50,499.07	+ Priority	0.00	50,499.07	Does the plan meet the best interest of creditors?	
			Total equity	21,534.00		

Section IV: Payments, Base Amount, Fees & Delinquency

Length & Payments							Gross Base & Fees	
Proposed length of plan:					36		Proposed base amount:	6,984.00
Full months since petition:					1		Calculated base amount:	6,984.00
Total receipts less debtor refunds paid in through:			08/31/21		194.00		Pre-petition attorney fee:	0.00
Number of months remaining beginning:			10/01/21		35		Attorney fee (4% or flat fee):	3,600.00
Monthly payment	194.00	X	35	months	=	6,790.00	Additional attorney fee:	0.00
Monthly payment		X		months	=	0.00	Total attorney fees paid through the plan:	3,600.00
Monthly payment		X		months	=	0.00	Total after attorney fees:	3,384.00
Monthly payment		X		months	=	0.00	Trustee fee and expenses at 10%:	698.40
Monthly payment		X		months	=	0.00	Total available to creditors after fees:	2,685.60
Alternate Payment Calculation							Delinquency	
Weekly Amt	44.77	X	152	periods	=	6,790.00	Current delinquency amount:	0.00
Bi-weekly Amt	89.54	X	76	periods	=	6,790.00	Total abatement amount:	0.00
Semi-monthly Amt	97.00	X	70	periods	=	6,790.00	Total unpaid amount:	0.00

Section V: Claims Summary & Payout Calculation

Secured & Priority Debt				Unsecured Debt & Calculated Payout	
Total secured claims:		0.00	Unsecured percentage per the plan:		5%
Total secured debt paid to date:		0.00	Total scheduled unsecured debt:		52,623.70
Total secured debt remaining:		0.00	Total filed unsecured debt:		23,830.74
Total priority claims:		0.00	Total available to unsecured creditors:		2,685.60
Total of all secured and priority debt remaining:		0.00	Calculated percentage to unsecured creditors:		11.27%

Section VI: Objections

-Objection to Confirmation by Quicken Loans

Section VII: Notes

Chapter 13 Workup Secured & Special Class Claims

Claim No.	Creditor	Description of Collateral or Special Class										
2	ROCKET MORTGAGE, LLC FKA QUICKEN LOANS, LLC	DOT										
Scheduled Amount	Claimed Amount	Asserted Amount Per		Prin Owed	No Check Flag	Proposed Treatment Through Trustee					Paid to Date	
		Debtor	Creditor			Pmt	Mo	Int	Total	Arrears	Total	No Pmts
190,000.00	146,080.94	147,899.00	146,080.94	0.00	Paid Direct				0.00		0.00	
Notes:												
Claim No.	Creditor	Description of Collateral or Special Class										
2A	ROCKET MORTGAGE, LLC FKA QUICKEN LOANS, LLC	DIRECT PAY ARREARS-WHOLLY ESCROW										
Scheduled Amount	Claimed Amount	Asserted Amount Per		Prin Owed	No Check Flag	Proposed Treatment Through Trustee					Paid to Date	
		Debtor	Creditor			Pmt	Mo	Int	Total	Arrears	Total	No Pmts
0.00	800.14	0.00	800.14	0.00				0.00%		0.00	0.00	
Notes:	not to be paid by the trustee											
Claim No.	Creditor	Description of Collateral or Special Class										
3	PAYMENT PROCESSING CENTER	2016 Honda CR-V										
Scheduled Amount	Claimed Amount	Asserted Amount Per		Prin Owed	No Check Flag	Proposed Treatment Through Trustee					Paid to Date	
		Debtor	Creditor			Pmt	Mo	Int	Total	Arrears	Total	No Pmts
19,200.00	15,634.18	16,274.00	15,634.18	0.00	Paid Direct				0.00		0.00	
Notes:												
Claim No.	Creditor	Description of Collateral or Special Class										
Scheduled Amount	Claimed Amount	Asserted Amount Per		Prin Owed	No Check Flag	Proposed Treatment Through Trustee					Paid to Date	
		Debtor	Creditor			Pmt	Mo	Int	Total	Arrears	Total	No Pmts
0.00	0.00	0.00	0.00	0.00					0.00		0.00	
Notes:												
Claim No.	Creditor	Description of Collateral or Special Class										
Scheduled Amount	Claimed Amount	Asserted Amount Per		Prin Owed	No Check Flag	Proposed Treatment Through Trustee					Paid to Date	
		Debtor	Creditor			Pmt	Mo	Int	Total	Arrears	Total	No Pmts
0.00	0.00	0.00	0.00	0.00					0.00		0.00	
Notes:												
Claim No.	Creditor	Description of Collateral or Special Class										
Scheduled Amount	Claimed Amount	Asserted Amount Per		Prin Owed	No Check Flag	Proposed Treatment Through Trustee					Paid to Date	
		Debtor	Creditor			Pmt	Mo	Int	Total	Arrears	Total	No Pmts
0.00	0.00	0.00	0.00	0.00					0.00		0.00	
Notes:												

Chapter 13 Workup
Priority & Unsecured Claims

[illegible][illegible]

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the attached document was served upon the following parties in interest on the date this document was filed with the Court by the method shown below. Service by mailing a true copy via U.S. first class mail with postage pre-paid.

SYNCHRONY BANK
C/O PRA RECEIVABLES
MANAGEMENT, LLC
PO BOX 41021
NORFOLK, VA 23541

ATTN: ALLY BANK DEPARTMENT AIS
PORTFOLIO SERVICES, LP
ACCOUNT: 1324
4515 N SANTA FE AVE. DEPT. APS
OKLAHOMA CITY, OK 73118

Those parties who requested electronic service by filing notice with the clerk's office were served by electronic transmission.

/s/ Helen M. Morris

Helen M. Morris, Trustee
State Bar No. 2637
Meagan McClure, Staff Attorney
State Bar No. 13249
Chapter 13 Trustee
P O Box 8535
South Charleston, WV 25303
(304)744-6730

- **Modification of a confirmed plan** – generally (Preece; Kotur; Nalley)
 - Debtor generally files – motion to amend 11 U.S.C. § 1329. Plan can be modified any time up until completion of payments for a variety of reasons. Generally, for unexpected increases in payments to secured creditors that require court approval (mortgage payment increases are most frequent in NDWV) or to increase payment amount and/or plan length to cure deficiencies. Cannot extend the plan beyond five years. 11 U.S.C. § 1329(c).
 - Trustee and holder of an unsecured claim may also petition the court for modification. 11 U.S.C. § 1329(a).
 - CARES Act provisions significantly altered §1329 provisions for leniency if the debtor was financially affected by COVID-19, but the provisions expired on March 27, 2022.
- **Discharge in Ch 13 – § 1328(a) and (b)** (Supple)
 - Discharge obtained as soon as plan payments are completed and DR ensures financial course completion. Debts are discharged except those listed in 11 U.S.C. § 1328(a)(1)-(4) – specifically non-dischargeable debts for fraud and willful and malicious acts criminal fines, student loans, child support.
 - If debtor has secured debts that are not yet paid in full, they must continue to make payments.
 - In rare circumstances, DR may receive discharge without completing the plan. Hardship discharge may be granted if, under no fault of their own, DR will be unable to complete repayment and creditors have received at least as much as they would have in Chapter 7. 11 U.S.C. § 1328(b).
 - Long-term injury or illness that render it impracticable to amend the plan payments.
- **Compensation in Ch 13 – How you get paid** (Hinkle; Preece)
 - Fees must be reasonable and are subject to court review. They can be paid in advance or through the terms of the plan. Either way, disclosure of the fees is necessary consistent with Fed. R. Bankr. P. 2016. In the northern district, formal application is not required, but the court, Chapter 13 trustee, and debtors' counsel have an informal understanding that fees in the range around \$4,000 are presumptively reasonable.
 - Any fees beyond that must be sought by application and separately approved by the court.

Chapter 11:

- Use of Ch. 11 for individuals? Perhaps disqualified from Ch 13; Tools for DRs in Ch 11 and SBRA? (Supple; UST)
 - Certain individuals may not qualify for relief under Chapter 13. *See* 11 U.S.C. § 109(e) (limiting eligibility based upon the amount of “noncontingent, liquidated,” secured, unsecured debts). For those so disqualified, Chapter 11 offers relief.
 - Moreover, for those engaged in business, the SBRA, 11 U.S.C. § 1181 et seq., offers debtors certain flexibility in reorganizing financially. *See* 11 U.S.C. § 1182 (defining “debtor” as “a person engaged in commercial or business activities . . . that has aggregate noncontingent liquidated secured and unsecured debts . . . in an amount not more than \$7,500,000”)
- Traps for the unwary (Supple)