

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA**

**INVITATION TO SUBMIT COMMENTS ON PROPOSED REVISIONS TO EASTERN DISTRICT OF
VIRGINIA FORM OF CHAPTER 13 PLAN AND RELATED MOTIONS, EXHIBIT 1 TO LOCAL
BANKRUPTCY RULES; AND ASSOCIATED MATTERS**

By 5:00 P.M. on Monday, February 16, 2004, comment is invited on the matters set forth below. Comment may be submitted either via the court's Internet web site at <http://www.vaeb.uscourts.gov> under "Local Bankruptcy Rules (LBR) Committee" and clicking localrules@vaeb.uscourts.gov or by mail to "Chapter 13 Plan Form c/o William C. Redden, U.S. Bankruptcy Court, 1100 East Main Street, Room 310, Richmond, VA 23219-3515." This invitation for comment also is available at the Alexandria, Norfolk, Richmond and Newport News divisions of the court and can be accessed at the court's Internet web site.

1. Invitation to Comment on Attached Versions of Recommended Form of Chapter 13 Plan

At the direction of the Bankruptcy Judges for the Eastern and Western Districts of Virginia, a joint chapter 13 committee was created to develop a form of chapter 13 plan that would be presented to the bankruptcy judges for the Eastern and Western Districts of Virginia for consideration and adoption. The joint committee is made up of Judge Stephen Mitchell and Judge William Stone and standing trustees Robert Hyman and Rebecca Connelly.¹

The joint committee met in late September 2003, and agreed to a draft form of chapter 13 plan (denominated as "DRAFT" in the first attachment below). This draft form of chapter 13 plan was presented to the Eastern District of Virginia Standing Committee on Local Bankruptcy Rules for review and recommendations to the court. The Standing Committee met via video-teleconference on four occasions from October to December 2003 and agreed upon a number of changes to the Draft plan (denominated as "REVISED DRAFT" in the second attachment below). (In the Revised Draft plan, some underlined text is shown in blue to distinguish it from text that is underlined in the original Draft plan. Suggested new text is underlined and text recommended for deletion is struck through.)

¹ Since February 15, 1998, the local bankruptcy rules for the Eastern District of Virginia required debtors in chapter 13 cases to use a specific form of plan that had been drafted and championed by the standing chapter 13 trustees of the Eastern District. Following two Fourth Circuit decisions, the form plan was expanded to include "related" motions to value collateral and avoid liens. Additionally, a separate "Notice of Chapter 13 Plan and Related Motions (Exhibit 2 to the EDVA LBRs) was adopted for service on creditors along with the completed form plan itself. The form plan, exclusive of the certificate of service, is 10 pages in length. This does not include the debtor's schedule I and J, which must be attached as well. The notice is two pages in length, again exclusive of the certificate of service.

In 2002, a group of chapter 13 practitioner participants who attended a workshop organized by the NACTT drafted a model chapter 13 plan to replace the proliferation of "preferred" or "mandated" plans in the various districts around the country. Legal literature on this subject has noted the disadvantages to national creditors and others who must contend with a wide disparity of form plan provisions. The workshop participants' goals were to create a model plan that: (1) should not exceed two pages in length; (2) must encompass the basic provisions of Bankruptcy Code §§ 1325 and 1322; (3) must include motions to avoid liens and value collateral; (4) must be sufficiently flexible for use by most debtors; and (5) should avoid unnecessary or confusing language.

Recently, the Western District's standing chapter 13 trustees proposed that the Bankruptcy Judges of that district adopt a form plan based largely on the NACTT model plan, which was modified to make certain language set forth in the model plan clearer. At this time, the Western District Bankruptcy Judges do not mandate a particular form of plan. The above referenced joint committee was created to develop a form of plan that could be used by debtors in both federal judicial districts of the Commonwealth of Virginia.

The Eastern District Bankruptcy Judges met in late December 2003 to review both plans. In light of the substantive differences in both draft plans, the Eastern District Bankruptcy Judges directed the undersigned Clerk of Court to prepare a communication for public posting to the bar and public inviting comment on both draft forms of plan. This invitation conforms to the Judges' direction.

2. Invitation to Comment on Associated Matters

In addition, comment is invited on the following three questions:

- a. Should the court continue to have a requirement of court approval of the sale of any real property by the debtor after confirmation of a chapter 13 plan?
- b. Should the court require prior approval by the court of a refinancing of real property by a debtor after confirmation?
- c. If the court elects to impose either one or both of the above two requirements, should either or both requirements be included in the final version of the revised form of chapter 13 plan or instead be set forth in the confirmation order?

This invitation also conforms to the Judges' direction.

Date: January 16, 2004

WILLIAM C. REDDEN
CLERK OF COURT

Attachments

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VIRGINIA
Division

D R A F T

IN RE:

Case No.
Chapter 13

Date:

SSN:

Original Amended

CHAPTER 13 PLAN AND RELATED MOTIONS TO VALUE COLLATERAL, AVOID LIENS,
AND ASSUME OR REJECT UNEXPIRED LEASES AND EXECUTORY CONTRACTS

YOUR RIGHTS WILL BE AFFECTED. You should read these papers carefully and discuss them with your attorney if you have one. Anyone who wishes to oppose any provision of this plan or the included motions to value collateral, avoid liens, or assume or reject unexpired leases or executory contracts **MUST** file a timely written objection. ***This plan may be confirmed and become binding, and the included motions may be granted, without further notice or hearing unless written objection is filed before the deadline in the notice that was mailed by the court or that accompanies this plan.***

CREDITORS MUST FILE A TIMELY PROOF OF CLAIM IN ORDER TO RECEIVE PAYMENTS FROM THE TRUSTEE EVEN IF THE DEBT IS SPECIFICALLY LISTED IN THE PLAN!

1. PAYMENT AND LENGTH OF PLAN. Debtor shall pay \$ _____ per _____ to the Chapter 13 Trustee for _____ months starting _____. The total amount paid to the Trustee shall not be less than \$ _____. Other payments to Trustee are as follows: _____

2. PRIORITY CLAIMS (INCLUDING ADMINISTRATIVE EXPENSES, TAXES, AND SUPPORT). The Trustee shall pay allowed priority claims in full unless the creditor agrees otherwise:

Trustee's commission: percentage fee fixed by 28 USC § 586

Debtor's attorney: \$ _____ of \$ _____ total fee.

<u>Creditor</u>	<u>Type of Priority</u>	<u>Estimated Claim</u>
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3. SECURED CLAIMS AND MOTIONS TO VALUE COLLATERAL.

A. Collateral to be retained. Debtor moves to value collateral as stated below. Trustee shall pay allowed secured claims the value below or the amount of the claim, whichever is less, with interest at the rate stated from date of confirmation. The excess of the creditor's claim over the stated value shall be treated as an unsecured claim, and any lien securing the excess amount shall be voided. ***Unless a written objection to the value stated below is timely filed with the court, the court may determine that the collateral is worth the value stated.*** If a timely objection is filed, the value will be determined by the court at the confirmation hearing.

<u>Creditor</u>	<u>Collateral</u>	<u>Estimated Claim</u>	<u>Value</u>	<u>Interest Rate</u>	<u>Monthly Payment</u>
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B. Collateral to be surrendered. Debtor surrenders his or her interest in the following collateral. Upon confirmation, the automatic stay is lifted as to the surrendered collateral.

<u>Creditor</u>	<u>Collateral to be surrendered</u>
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4. UNSECURED CLAIMS.

A. Not separately classified. Allowed non-priority unsecured claims shall be paid:

Pro rata distribution from any remaining funds. Estimated distribution is _____ %.

Other: _____

B. Separately classified unsecured claims.

<u>Creditor</u>	<u>Basis for Classification</u>	<u>Treatment</u>	<u>Amount</u>
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5. CURING DEFAULT AND MAINTAINING PAYMENTS

A. Trustee shall pay allowed arrearage claims and Debtor shall pay post-petition monthly payments to these creditors. CREDITOR SHALL CONTINUE TO SEND CUSTOMARY PAYMENT COUPONS, STATEMENTS, AND NOTICES TO DEBTOR.

<u>Creditor</u>	<u>Collateral</u>	<u>Estimated Arrearage</u>	<u>Interest</u>	<u>Regular Payment</u>
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B. Trustee shall pay allowed arrearage claims and pay postpetition monthly payments to these creditors. CREDITOR TO SEND CUSTOMARY PAYMENT COUPONS, STATEMENTS, AND NOTICES TO TRUSTEE.

<u>Creditor</u>	<u>Collateral</u>	<u>Estimated Arrearage</u>	<u>Interest</u>	<u>Regular Payment</u>
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6. EXECUTORY CONTRACTS AND UNEXPIRED LEASES.

All executory contracts and unexpired leases are rejected, except the following which are assumed. Unless otherwise stated, the Debtor shall make regular payments and the Trustee shall make payments to cure defaults (if any). CREDITOR TO SEND CUSTOMARY PAYMENT COUPONS, STATEMENTS AND NOTICES TO PARTY WHO WILL BE MAKING LEASE PAYMENTS DURING THE TERM OF THE PLAN.

<u>Creditor</u>	<u>Property Description</u>	<u>Regular Payment</u>	<u>Cure Amount</u>	<u>Cure Period</u>
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7. MOTIONS TO AVOID LIENS.

Debtor moves under 11 U.S.C. § 522(f) to avoid the following judicial liens and nonpossessory, nonpurchase-money security interests that impair exemptions. **Unless a written objection is timely filed with the court, the court may grant the motion and cancel the creditor's lien.** If an objection is filed, the court will hear evidence and rule on the motion at the confirmation hearing.

<u>Creditor</u>	<u>Collateral</u>	<u>Exemption</u>	<u>Value</u>
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8. LIEN RETENTION AND RELEASE. Secured creditors provided for in Section 5 of this plan shall retain their liens until paid in full. Secured creditors provided for in Section 3 shall retain their liens until the following event occurs:

- Liens are released at discharge
- Other: _____

9. VESTING OF PROPERTY OF ESTATE. Property of the estate shall revert in Debtor:

- Upon confirmation.
- Upon discharge
- Other: _____

10. OTHER PROVISIONS OF THIS PLAN:

Signatures:

_____ Debtor's Attorney	_____ Debtor	_____ Joint Debtor
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Address and telephone number of debtor's attorney (or debtor(s) if pro se):

Certificate of Mailing:

I Certify That on _____ I Mailed a True Copy of this Chapter 13 Plan and Related Motions to the Following Creditors and Parties in Interest:

See Attached Service List

Debtor's Attorney (or Debtor(s) If Pro Se)

