

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

**INVITATION FOR COMMENTS ON PROPOSED CHANGES TO THE
CHAPTER 13 PLAN AND RELATED MOTIONS FORM**

PUBLIC NOTICE

Comments are invited regarding proposed changes to the Chapter 13 Plan and Related Motions form used in the United States Bankruptcy Court for the Eastern District of Virginia. The United States Bankruptcy Court for the Western District of Virginia has similarly invited comment as the form is in use in both judicial districts.

The plan, as proposed, is available at the Alexandria, Norfolk, Richmond and Newport News divisions of the Court and may be accessed at the Court's Internet web site:

<http://www.vaeb.uscourts.gov/> under the VAEB News heading.

Comments may be submitted, by mail, to:

Chapter 13 Form Plan Changes
c/o William C. Redden
U.S. Bankruptcy Court
701 East Broad Street, Suite 4000
Richmond, VA 23219-1888

or, by e-mail, at:

localrules@vaeb.uscourts.gov

Comments will be received by mail or at the Court's web site until 5:00 p.m. Friday, April 10, 2009.

The following plan form changes have been proposed:

1. A new selection box is added on page 1 to note and distinguish if the plan has been confirmed previously.
2. A clarification is noted at paragraph 2A on page 2 that the trustee's commission is up to 10 percent as fixed under 28 U.S.C. § 586(e).
3. Paragraph 3 on page 2 is now limited to claims of creditors secured by personal property.
4. Paragraph 3A on page 2 (in which the trustee will pay an allowed secured claim in full, intended for Bankruptcy Code § 910 car claims or one-year "other" purchase money claims) now provides for the monthly disbursement amount to be the monthly payment listed in the paragraph "or such other amount as may be necessary to amortize fully the amount of the allowed secured claim with interest at the rate stated."

5. Paragraph 3A on page 2 now provides that the trustee will pay the “allowed secured claim” rather than the estimated claim listed under that paragraph.
6. Paragraph 3B on pages 2 and 3 (intended for cram down claims) now emphasizes in bold print that the trustee will pay the lesser of the values of the collateral or the allowed secured claim.
7. Paragraph 3B on page 3 now provides a column for estimated claim and no longer contains a column for purchase date.
8. The bold text between paragraphs 3B and 3C on page 3 now clarifies that adequate protection payments are only made to creditors with PMSI in personal property and provides a space for the debtor to insert alternate adequate protection provisions if other than the plan monthly payment in Paragraph 3.
9. Paragraph 3C on page 3 now eliminates the option to surrender personal property collateral in full satisfaction.
10. Paragraph 3C on page 3 now eliminates the sentence stating that relief from stay is granted by the confirmation order.
11. Paragraph 4A on page 3 adds a sentence to advise that the dividend percentage may vary based on actual claims.
12. Paragraph 5 on page 4 is now intended for any debts paid directly, or claims secured by any real property, including, but not limited to, primary residence.
13. Paragraph 5A on page 4 adds a sentence intended to clarify if interest will be paid on arrearage claims.
14. Paragraph 5B on page 4 now provides that the trustee will pay the allowed secured claim (secured against real property) in full unless it is a long-term debt and if so, the trustee will pay the on-going regular contract payments during the term of the plan.
15. Paragraph 5C on page 4 is new and addresses the surrender of real property.
16. Paragraph 8 on page 5, Treatment of Claims, now includes a new sentence stating that the trustee may disburse more than the monthly disbursement amounts indicated if needed to pay an allowed secured claim in full.
17. Paragraph 9 on page 5 and Paragraph 10 on page 6, now include the phrase “enter into a loan modification” to the restrictions to vesting of property of the estate and incurrence of indebtedness. The restriction is now qualified by specifying “after notice to the trustee, any creditor who has filed a request for notice and other creditors to the extent required by the Local Rules of this Court.”

William C. Redden
Clerk of Court

Date: March 10, 2009

UNITED STATES BANKRUPTCY COURT
_____ DISTRICT OF VIRGINIA
_____ Division

**CHAPTER 13 PLAN
AND RELATED MOTIONS**

Name of Debtor(s):

Case No:

This plan, dated _____, is:

the *first* Chapter 13 plan filed in this case.

a modified plan that replaces the

confirmed or unconfirmed plan dated _____

Date and Time of Modified Plan Confirmation Hearing:

Place of Modified Plan Confirmation Hearing:

The plan provisions modified by this filing are:

Creditors affected by this modification are:

NOTICE: YOUR RIGHTS WILL BE AFFECTED. You should read these papers carefully. If you oppose any provision of this plan, or if you oppose any included motions to (i) value collateral, (ii) avoid liens, or (iii) assume or reject unexpired leases or executory contracts, you MUST file a timely written objection.

This plan may be confirmed and become binding, and the included motions in paragraphs 3, 6, and 7 to value collateral, avoid liens, and assume or reject unexpired leases or executory contracts may be granted, without further notice or hearing unless a written objection is filed not later than ten (10) days prior to the date set for the confirmation hearing and the objecting party appears at the confirmation hearing.

The debtor(s)' schedules list assets and liabilities as follows:

Total Assets:
 Total Non-Priority Unsecured Debt:
 Total Priority Debt:
 Total Secured Debt:

1. **Funding of Plan.** The debtor(s) propose to pay the trustee the sum of \$_____ per _____ for ____ months. Other payments to the Trustee are as follows: _____ . The total amount to be paid into the plan is \$_____.

2. **Priority Creditors.** The Trustee shall pay allowed priority claims in full unless the creditor agrees otherwise.

A. Administrative Claims under 11 U.S.C. § 1326.

1. The Trustee will be paid the percentage fee fixed under 28 U.S.C. 586(e), not to exceed 10%, of all sums disbursed except for funds returned to the debtor(s).
2. Debtor(s)' attorney will be paid \$_____ balance due of the total fee of \$_____ concurrently with or prior to the payments to remaining creditors.

B. Claims under 11 U.S.C. § 507.

The following priority creditors will be paid by deferred cash payments pro rata with other priority creditors or in monthly installments as below, except that allowed claims pursuant to 11 U.S.C. § 507(a)(1) will be paid prior to other priority creditors but concurrently with administrative claims above:

<u>Creditor</u>	<u>Type of Priority</u>	<u>Estimated Claim</u>	<u>Payment and Term</u>
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3. **Secured Creditors and Motions to Value Collateral.**

This paragraph provides for claims of creditors who hold debts that are secured by personal property of the debtor(s).

A. Claims to Which § 506 Valuation is NOT Applicable. Claims listed in this subsection consist of debts secured by a purchase money security interest in a motor vehicle acquired for the personal use of the debtor for which the debt was incurred within 910 days of the filing of the bankruptcy petition; or if the collateral for the debt is any other thing of value, the debt was incurred within 1 year of filing. See 11 U.S.C. § 1325(a). The Trustee will pay to the holder of each allowed secured claim the monthly payment specified in column (f), or such other amount as may be necessary to amortize fully the amount of the allowed secured claim with interest at the rate stated in column (e). **Upon confirmation of the plan, the interest rate shown below will be binding unless a timely written objection to confirmation is filed and sustained by the Court.** Payments distributed by the Trustee are subject to the availability of funds.

<u>(a) Creditor</u>	<u>(b) Collateral</u>	<u>(c) Purchase Date</u>	<u>(d) Est Claim Amt</u>	<u>(e) Interest Rate</u>	<u>(f) Monthly Paymt & Estimate Term**</u>
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B. Claims to Which Section 506 Valuation is Applicable. Claims listed in this subsection consist of any claims secured by personal property not described in the above paragraph 3.A. After confirmation of the plan, the Trustee will pay to the holder of each allowed secured claim the monthly payment in column (f) based upon the replacement value as stated in column (d) or the amount of the claim in column (c), **whichever is less**, with interest at the rate stated in column (e). The portion of any allowed claim that exceeds the value indicated below will be treated as an unsecured claim. **Upon confirmation of the plan, the valuation and interest rate shown below will be binding unless a timely written objection to confirmation is filed and sustained by the Court.** Payments distributed by the Trustee are subject to the availability of funds.

(a)	(b)	(c)	(d)	(e)	(f)
<u>Creditor</u>	<u>Collateral</u>	<u>Estimated claim</u>	<u>Replacement Value</u>	<u>Interest Rate</u>	<u>Monthly Paymt & Est Term**</u>

****THE MONTHLY PAYMENT STATED HERE SHALL BE THE ADEQUATE PROTECTION PAYMENTS TO CREDITORS SECURED BY PURCHASE MONEY SECURITY INTERESTS IN PERSONAL PROPERTY PURSUANT TO SECTION 1326(a)(1)(C) UNLESS OTHERWISE SET FORTH BELOW:**

C. Personal Property Collateral to be surrendered. Upon confirmation of the plan, or before, the debtor will surrender his or her interest in the collateral securing the claims of the following creditors in satisfaction of the secured portion of such creditors' allowed claims. To the extent that the collateral does not satisfy the claim, any timely filed deficiency claim to which the creditor is entitled may be paid as a non-priority unsecured claim.

<u>Creditor</u>	<u>Collateral Description</u>	<u>Estimated Value</u>	<u>Estimated Total Claim</u>
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4. Unsecured Claims.

A. Not separately classified. Allowed non-priority unsecured claims shall be paid pro rata from any distribution remaining after disbursement to allowed secured and priority claims. Estimated distribution is approximately _____ %. The dividend percentage may vary depending on actual claims filed. If this case were liquidated under Chapter 7, the debtor(s) estimate that unsecured creditors would receive a dividend of approximately _____ %.

B. Separately classified unsecured claims.

<u>Creditor</u>	<u>Basis for Classification</u>	<u>Treatment</u>
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5. Debts to be paid directly, and Claims Secured by Real Property.

A. Debtor(s) to pay debt directly. The creditors listed below will be paid by the debtor(s) pursuant to the contract without modification, except that arrearages, if any, will be paid by the Trustee either pro rata with other secured claims or on a fixed monthly basis as indicated below, without interest unless an interest rate is designated below for interest to be paid on the arrearage claim and such interest is provided for in the mortgage agreement.

<u>Creditor</u>	<u>Collateral</u>	<u>Regular Contract Payment</u>	<u>Estimated Arrearage</u>	<u>Arrearage Interest Rate</u>	<u>Estimated Cure Period</u>	<u>Monthly Arrearage Payment</u>
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B. Trustee to pay the claims secured by debtor(s)' primary residence or other real property. The creditors listed below will be paid by the Trustee the total allowed secured claim either in monthly payments or pro rata with other secured claims, if the claim is for a debt that does not have a term that extends beyond the term of this plan. For debts that have a term exceeding the term of this plan, the Trustee shall pay the regular contract monthly payments that come due during the period of this plan, and pre-petition arrearages on such debts shall be cured by the Trustee either pro rata with other secured claims or with monthly payments as set forth in column (g) below.

(a) <u>Creditor</u>	(b) <u>Collateral</u>	(c) <u>Regular Contract Payment</u>	(d) <u>Estimated Arrearage</u>	(e) <u>Interest Rate</u>	(f) <u>Estimated Claim</u>	(g) <u>Monthly Payment & Term</u>
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C. Real Property Collateral to be surrendered. Upon confirmation of the plan, or before, the debtor will surrender his or her interest in the real property collateral securing the claims of the following creditors in satisfaction of the secured portion of such creditors' allowed claims. To the extent that the collateral does not satisfy the claim, any timely filed deficiency claim to which the creditor is entitled may be paid as a non-priority unsecured claim.

<u>Creditor</u>	<u>Collateral Description</u>	<u>Estimated Value</u>	<u>Estimated Total Claim</u>
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6. Executory Contracts and Unexpired Leases. The debtor(s) move for assumption or rejection of the executory contracts and leases listed below.

A. Executory contracts and unexpired leases to be rejected. The debtor(s) reject the following executory contracts.

<u>Creditor</u>	<u>Type of Contract</u>
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B. Executory contracts and unexpired leases to be assumed. The debtor(s) assume the

following executory contracts. The debtor(s) agree to abide by all terms of the agreement. The Trustee will pay the pre-petition arrearages, if any, through payments made pro rata with other priority claims or on a fixed monthly basis as indicated below.

<u>Creditor</u>	<u>Type of Contract</u>	<u>Arrearage</u>	<u>Monthly Payment for Arrears</u>	<u>Estimated Cure Period</u>
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7. Motions to Avoid Liens.

- A. The debtor(s) move to avoid liens pursuant to 11 U.S.C. § 522(f).** The debtor(s) move to avoid the following judicial liens and non-possessory, non-purchase money liens that impair the debtor(s)' exemptions. **Unless a written objection is timely filed with the Court, the Court may grant the debtor(s)' 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 Basis</u>	<u>Exemption Amount</u>	<u>Value of Collateral</u>
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- B. Avoidance of security interests or liens on grounds other than 11 U.S.C. § 522(f).** The debtor(s) have filed or will file and serve separate pleadings to avoid the following liens or security interests. The creditor should review the notice or summons accompanying such pleadings as to the requirements for opposing such relief. The listing here is for information purposes only.

<u>Creditor</u>	<u>Type of Lien</u>	<u>Description of Collateral</u>	<u>Basis for Avoidance</u>
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8. Treatment of Claims.

- All creditors must timely file a proof of claim to receive payment from the Trustee.
- If a claim is scheduled as unsecured and the creditor files a claim alleging the claim is secured but does not timely object to confirmation of the plan, the creditor may be treated as unsecured for purposes of distribution under the plan. This paragraph does not limit the right of the creditor to enforce its lien, to the extent not avoided or provided for in this case, after the debtor(s) receive a discharge.
- If a claim is listed in the plan as secured and the creditor files a proof of claim alleging the claim is unsecured, the creditor will be treated as unsecured for purposes of distribution under the plan.
- The Trustee may adjust the monthly disbursement amount as needed to pay an allowed secured claim in full.

- 9. Vesting of Property of the Estate.** Property of the estate shall revert in the debtor(s) upon confirmation of the plan. Notwithstanding such vesting, the debtor(s) may not sell, refinance, encumber real property or enter into a mortgage loan modification without approval of the Court after notice to the trustee, any creditor who has filed a request for notice and other creditors to the extent required by the Local Rules of this Court.

- 10. Incurrence of indebtedness.** During the term of the plan, the debtor(s) shall not voluntarily incur

additional indebtedness in an amount exceeding \$5,000 either unsecured or secured against personal property, except upon approval of the Court after notice to the trustee, any creditor who has filed a request for notice, and other creditors to the extent required by the Local Rules of this Court.

11. Other provisions of this plan:

Signatures:

Dated: _____

Debtor

Debtor(s)' Attorney

Joint Debtor

**Exhibits: Copy of Debtor(s)' Budget (Schedules I and J);
 Matrix of Parties Served with plan**

Certificate of Service

I certify that on _____, I mailed a copy of the foregoing to the creditors and parties in interest on the attached Service List.

Signature

Address

Telephone No.