

MODIFYING A CHAPTER 13 PLAN ON THE FIRST TRY

Because a chapter 13 plan last anywhere from 36 month to 60 months, the odds are good that you will need to modify a debtor's plan at some point during that period of time. Below are the five most common issues that arise when the Chapter 13 trustee's office reviews a debtor's motion to modify. Follow the suggestions and you'll likely get an agreed order from the trustee on the first try rather than an objection.

- **A good motion to modify tells creditors why the debtor is modifying the plan.** Motions usually tell creditors *how* a plan is being modified (i.e. plan are dropping for \$X per month to \$Y dollars per month beginning in Z month) but most of the time it doesn't tell creditors *why* it's being modified. If a debtor has had a decrease in income or job loss then state it. It helps the trustee review your case quicker and cuts down on the guesswork.
- **Always file updated schedules I and J with your motion to modify and provide the trustee with current paystubs.** The chapter 13 trustee frequently objects to motions to modify because a debtor hasn't filed updated schedules I and J along with his or her motion. Schedules I and J not only show the court and the trustee how your new plan payment is feasible (a requirement under 11 USC 1329) but it allows the trustee to verify the alleged decrease in income or change in expenses.
- **Tell the creditors about changes you made to the plan in the confirmation order or in a post-confirmation agreed order that negatively impacts them.** Frequently a confirmation order will increase payments to fund a higher mortgage arrearage for example or to pay for an unexpected secured claim that got filed. When a debtor modifies his or her plan to reduce payments they want the trustee to continue paying those claims that were provided for in the confirmation order. A good motion to modify tells all the creditors what changes were made in the confirmation or post-confirmation because those changes affect the distribution to all the remaining creditors when you reduce the plan payments.
- **The modification should be effective going forward.** Debtors occasionally file motions to make changes to the plan retroactively. The chapter 13 trustee will always object to retroactive changes; modifications to the plan should be from the month you file the motion going forward.
- **Lastly, deal with any defaults in plan payments that exist when you file your motion.** Before you file your motion, check to see if your debtor is current on plan payments as of the month that you file your motion. If there's a default, tell the trustee and the creditors how the debtor intends to cure it. For cases that are less than 60 months, the most common way to deal with the default is to simply extend the term of the plan by enough months to cover the arrearage. For cases that are at 60 months, debtors usually amortize the arrearage over the remainder of the plan and make an additional monthly payment to the trustee.