# IMPROVING PLAN FEASIBILITY FOR DEBTORS OF MODEST MEANS (Below Median Income)

# I. Non-Exempt Assets

Best Interests Test 1325(a)(4)

The amount to be distributed to unsecured creditors may not be less than the amount that would be paid on such claims if the estate of the debtor were liquidated under Chapter 7.

Proper valuation is critical

Homestead

Property tax bill

Estimates fair market value, but does not take into account cost of repairs

Deduct cost of repairs

Have client procure repair estimates

Recent appraisal or Real Estate Broker's estimate

Takes into account the condition of the property

Less:

Costs of sale

6% broker's commission

Transfer tax fee (\$3 per \$1,000)

Title Insurance

Real estate tax, water & sewer proration

Hypothetical Ch, 7 Trustee's fee §326.

The basis for compensation is the amount that would be distributed to creditors, including secureds.

Sliding scale of compensation:

25% of first \$5,000

10% on amount between \$5,000 and \$50,000 5% on amount between \$50,000 and \$1,000,000

Non-homestead Real Estate

Additional deduction of capital gains tax

Automobile

NADA value (not retail value as in Till or under §506)

Less costs of sale

10%

Less fee of hypothetical Chapter 7 trustee

Business

Value of stock

Assets, less liabilities

Value assets as above, using liquidation value and deducting cost of sale and trustee fee.

# II. Non-exempt Real Estate Equity, Insufficient Disposable Income

Provide to refinance during plan, proceeds to cover portion of equity not covered by plan payments

Better prospect for refinancing later

Requires two years minimum in the plan with timely payments on mortgage, utilities, plan

Increased equity from appreciation and reduction in mortgage

Improved credit score

Reverse Mortgage Sell homestead Buys time

#### III. Secured Claims

§1322(b)(5)

How many months left on the financing contract? What is the contractual interest rate?

If the remaining term of the contract exceeds the term of the plan, and contractual interest is less than the sum of the Till rate, plus 5% trustee administrative fee, then contractual payments would be less than payment through the plan and plan may provide for debtor-direct payments

Provide for debtor to submit to trustee periodic proof of payments

Claims are paid according to confirmed plan.

<u>In Re Smith</u>,06-20127 PP;

In re Brad and Leanna Westenberg,03-21749

506 claims where value of collateral is less than payoff amount.

Claim is bifurcated into secured and unsecured

Secured portion is based on the replacement value as of date of filing without deduction for cost of sale or marketing

If acquired for personal, family or household purposes, the value is the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined

Describe condition of collateral in petition and advise creditor Reference used car valuation guide

Secured portion of claim bears interest
Provide for less than Till rate?
Ask and you might receive

910 claims

Claim is for the payoff balance as of date of filing, plus interest Provide for an interest rate lower that Till?

## IV. Marshal Plan Payments

Provide for payoff of interest bearing secured claims first, rather than pro-rata Auto loans and property taxes vs. Homestead arrears Reduces amount of interest

Provide for payoff of claims bearing higher interest rate (property taxes), but still Providing adequate protection to the lesser interest rate claims

Adequate protection: offset against depreciation

NADA Guide: pay the difference in value from one month to the next, until the higher interest rate claim is paid off, then boost payments

Pay secured claims before priority claims

#### V. Tax Refunds

Is debtor over-withholding?

On purpose? What for: property taxes? forced savings?

Educate client otherwise

Have client adjust withholding allowances and incorporate new withholding amounts in Schedule I

Debtor cannot avoid refund (EIC)

Amortize previous year's refund, enter in Schedule I (line item) and consume in Schedule J,

But see In Re Walls 06-21228

Apply to trustee/court for debtor to keep refund for a given year tuition, medical expenses, house repair, automobile repair/replacement, etc.

36+ month plans:

Provide for payment of refund for only the first 36 months.

Provide that any refunds shall serve first to reduce term of plan to not less than 36 months, then to pay increased dividend to allowed unsecured claims.

#### VI. Schedule J

Reign in unnecessarily high expenses

Encourage debtor to take debt management course early on

## Transportation

Old car that debtor will most likely need to replace?

Budget high cost of repair

Provide for additional monthly allotment over set period to cover either a down payment or outright purchase of replacement

Provide for funds to be deposited in verifiable dedicated account

If financed, the savings allotment plus most of the amount budgeted for repairs become available for the monthly payments

If outright purchase, keep the cost of repair in budget, but savings allotment becomes additional plan payment

### Home maintenance

Budget for essential repairs: code violations, furnace, roof, etc.

Provide cost estimates

## VII. The Debtor is Broke Right Now, but the Future Looks Bright

Provide for scheduled increases in plan payments for debtor with realistic expectation of improved circumstances

completing degree= end of school related expenses, better pay emancipation of dependents job promotion 401(l) loans paid off second job