

# Requirements for Confirmation of a Chapter 13 Plan

10<sup>th</sup> Annual Consumer Bankruptcy Practice

July 24-25, 2014

Moody Gardens Hotel • Galveston, Texas

Diane S. Carter,  
Barron and Barron, LLP,  
Plano, TX

David G. Peake,  
Chapter 13 Trustee,  
Houston, TX

Joshua P. Searcy,  
Searcy & Searcy Attorneys,  
Longview, TX

## I. Introduction

Debtor's objective in filing a Chapter 13:

- (1) Plan confirmation
- (2) Discharge

Creditor's objective – getting paid

Trustee's objective

Overview of the basics of confirmation focusing on § 1325

## **II. Contents of the plan – 11 U.S.C. § 1322**

- a. 1322(a)(1-4) – mandatory provisions
- b. 1322(b)(1-11) – permissive provisions  
(depends on facts and circumstances)

## **III. Section 1325. Confirmation of Plan**

**(a) Except as provided in subsection (b), the court shall confirm a plan if –**

**(1) The plan complies with the provisions of this chapter and with the other applicable provisions of this title;**

- 11 U.S.C. § 109 (debt limits)
- 11 U.S.C. § 1322 (plan contents)
- 11 U.S.C. § 1308 (filing prepetition tax returns)
- 11 U.S.C. § 1326 (being current on plan payments)
- 11 U.S.C. § 363 (obtaining authorization for use of cash collateral if applicable)

**(2) Any fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid;**

### **III. Section 1325. Confirmation of Plan**

**(a) Except as provided in subsection (b), the court shall confirm a plan if –**

**(3) The plan has been proposed in good faith and not by any means forbidden by law;**

**In re Aprea**, 368 B.R. 558 (Eastern District of Tex. 2007) For a great analysis of the 5<sup>th</sup> Circuit cases regarding “good faith” and history of “good faith”

“Totality of Circumstances” - Factors to consider:

- Nature of the debt
- Whether the debt would be nondischargeable in Chapter 7
- The timing of the bankruptcy petition
- The debtors’ motive in filing the petition
- How the debtors’ actions affected creditors
- The debtors’ treatment of creditors before and after the petition
- Whether the debtor has been forthcoming with creditors and court

### **III. Section 1325. Confirmation of Plan cont.**

**(a) Except as provided in subsection (b), the court shall confirm a plan if –**

**(4) The value, as of the effective date of the plan, of property to be distributed under 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 were liquidated under chapter 7 of this title on such date**

(known as the Best Interests or Liquidation Test)

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

## Title search: Requirements for Confirmation of a Chapter 13 Plan

Also available as part of the eCourse

[Chapters 7 and 13: Practical Tips and Considerations](#)

First appeared as part of the conference materials for the  
10<sup>th</sup> Annual Consumer Bankruptcy Practice session  
"Requirements for Confirmation of a Chapter 13 Plan"