

Post-Confirmation Plan Modifications

Modifications of a confirmed chapter 13 plan are permitted under 11 U.S.C. § 1329, and are allowed under Fourth Circuit precedent when the debtor has experienced a substantial and unanticipated change in circumstances. Incurring a post-petition obligation the debtor cannot afford under the existing plan is not a substantial and unanticipated change in circumstances.

LOCAL PROCEDURES: The District's local procedures for filing a modified plan post-confirmation are provided in SC LBR 3015-2. Per the local form motion, debtors must indicate in the motion the changes made to the plan, the reason(s) for the change, and the specific creditors who are directly affected by the change. The notice of motion must also set a self-scheduled hearing date and time.

AMENDED SCHEDULES I AND J: If the proposed modified plan lowers the plan payment from that provided in the confirmed plan, the debtor must submit to the Trustee's Office amended schedules I and J and recent paystubs (if applicable) reflecting the debtor's change in income and/or expenses to support the need for a lower payment in the plan. The failure to provide amended schedules I and J and/or recent paystubs at the time of the filing of the proposed modified plan will result in the Trustee filing an objection to the Motion to Modify Plan Post-Confirmation.

RETROACTIVE APPLICATION OF MODIFICATION: The Trustee will generally object to a proposed modified plan that seeks to apply a change to the terms of the plan retroactively.

PAYMENT INCREASE STIPULATION: In circumstances where a change in a claim requires an increase in the amount of the plan payment of a confirmed plan (such as when a taxing authority files a claim after confirmation, a notice of mortgage payment change is filed, a notice of post-petition mortgage fees, charges and expenses is filed, or supplemental attorney's fees are approved), the debtor may increase the payment amount under the plan through the filing of a payment increase stipulation under SC LBR 3015-2(c).

Payment increase stipulations may not be used to decrease the amount of a plan payment. In circumstances where the plan payment is to be lowered, a full modified plan must be proposed, filed, and served.

FAILURE TO FILE A MODIFIED PLAN: In circumstances where a change in a claim or payment amount requires an increase in the amount of the plan payment of a confirmed plan or if the Debtor incurs a substantial and unanticipated positive change in circumstances that should be reflected in a modified plan, and the debtor fails to timely file a modified plan to reflect the change, the Trustee may file a Motion to Modify Plan Post-Confirmation, seek dismissal of the debtor's case, or seek conversion of the case depending on the circumstances.