

MODIFYING A CHAPTER 13 PLAN

One nice thing about a Chapter 13 Plan is that it can be modified should unforeseen circumstances arise. In some cases, we'll want to "modify" your plan simply to indicate that you've later decided to surrender some form of collateral (usually a house or car) to a lender. At other times, we may be able to modify your plan to lower your payments if you simply can't afford to make the payments that your current plan requires. If that change in circumstances is severe enough that you have missed several of your Chapter 13 Plan payments, we may be able to put together a modified plan that will allow those payments to be forgiven provided that you can start making the new modified payments after your Motion to Modify has been filed with the Court. **DO NOT WAIT FOR A MOTION TO DISMISS** to be filed by the Chapter 13 Trustee before you check on the possibility of a modification. Remember though, a modification requires either that you are giving up some secured collateral or that there has been a substantial or catastrophic change in your life. The fact that your paycheck is now a few dollars less, that the anticipated bonus was less than you expected, or that you forgot to have enough taxes deducted that year, will not suffice.

In general. You may be able to modify your Plan to rearrange your payment schedule or to surrender an asset that you were previously keeping and paying for in the Plan (i.e. surrender some furniture, an auto, or your home). This **may or may not** allow you to reduce your monthly payment depending upon what your "Means Test" indicated at the time the case was filed and your current circumstances. You will need to prepare a new budget that will inform the court if your financial circumstances have changed. Normally, we won't modify your case unless your budget shows that you have the same (or less) left over income each month. If your budget shows that you now have more typical left over income each month (maybe you received a raise or now have substantially reduced expenses), it is possible that the Chapter 13 Trustee will actually want you to increase your monthly plan payments. So, it is important to review your new budget prior to filing a modification. Although there are attorney fees required for filing a modified plan, the fees **are normally** able to be paid from the Chapter 13 Plan payments you make in the future to the trustee. Contact us to discuss any modifications.

When you contact us, Mark will review your file and obtain your current transcript (payment record and list of payments already made to creditors from your plan) from the Chapter 13 Trustee. He will then determine whether or not a modification is feasible or would be helpful in your case. He will then have you prepare a new budget and send in copies of your last 2 months paystubs (for each debtor). If your budget shows that the modification is helpful, he'll send you a copy of a Motion to Modify and a Modified Plan to sign and return. Once the documents are returned, they will be filed with the Court. You'll then immediately start paying the new plan payments as set forth (hopefully lower) on the "proposed" Modified Plan. About a month later, we normally get an Order from the Court approving the Modified Plan.

Note that if your plan is paying back taxes, child support, or arrears for a mortgage or car loan that you will still be keeping, we will not be able to change the amounts being paid to those creditors. The only thing we'll be able to change is the amount that is being paid to all of the remaining "unsecured" creditors. However, if your plan is paying a large amount of arrears (back payments) for an asset that you will be surrendering (typically a house or car), your Modified Plan will have to still account for the funds that those creditors have already been paid by the Chapter 13 Trustee. However, if there is a large amount that those creditors have not yet been paid, the Modified Plan will be able to stop any future arrears payments from going to the lender of that surrendered collateral and we'll be able to lower your future plan payments accordingly. If your plan is currently paying back arrears to a lender whose collateral you wish to surrender, do not wait to get the modification started. If you wait, the Trustee will continue paying more money to that creditor that you'll never get back and diminish the amount that we can lower your plan payments.