

REPRESENTING LOW INCOME CLIENTS IN CHAPTER 13 CASES

**Continuing Legal Education Sponsored by the Pro Bono Committee of the
Bankruptcy Section of the
Minnesota State Bar Association**

Robert J. Kalenda
Kalenda & Associates
919 W. St. Germain St. #2000
St. Cloud, Minnesota 56301

Gary Van Winkle Jr.
Mid-Minnesota Legal Assistance
430 First Ave. N. #300
Minneapolis, Minnesota 55401

Stephen J. Creasey
Law Clerk to
Judge Nancy C. Dreher
United States Bankruptcy Court
Minneapolis, Minnesota 55415

I. WHO MAY FILE A CHAPTER 13 CASE

A. WHO MAY BE A DEBTOR - 11 U.S.C. § 109(a)

Notwithstanding any other provision of this section, only a person that resides or has a domicile, a place of business, or property in the United States, . . . may be a debtor under this title.

1. Incompetent person - FED. R. BANKR. P. 1004.1

If an infant or incompetent person has a representative, including a general guardian, committee, conservator, or similar fiduciary, the representative may file a voluntary petition on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may file a voluntary petition by next friend or guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person who is a debtor and is not otherwise represented or shall make any other order to protect the infant or incompetent debtor.

2. Dueling Fiduciaries

In Kjellsen, the Eighth Circuit considered whether a person who has durable power of attorney for the person of an incompetent debtor may file a Chapter 13 bankruptcy petition on debtor's behalf when a guardian of the debtor's estate has been previously appointed. The court held that the Guardian was appointed by the state court to control and handle the debtor's property and the Guardian had legal control and possession over debtor's property so the Guardian was the only fiduciary entitled to file the bankruptcy petition. In re Kjellsen, 53 F.3d 944 (8th Cir. 1995). *See also In re Vitagliano*, 303 B.R. 292, 293 (Bankr. W.D.N.Y. 2003)("a voluntary case is not commenced when the petition is filed by someone other than the debtor, except as allowed by Rule 1004.1 regarding an infant or incompetent person.")

B. DEBT LIMITATION - 11 U.S.C. § 109(e).

(e) Only an individual with regular income that owes, on the date of the filing of the petition, non-contingent, liquidated, unsecured debts of less than \$290,525 and non-contingent, liquidated, secured debts of less than \$871,550, or an individual with regular income and such individual's spouse, ... may be a debtor under chapter 13 of this title.

1. Regular income - "The test for regular income is not the type or source of income, but rather its regularity and stability." See In re Sigfrid, 161 B.R. 220, 221 (Bankr. D. Minn.1993)
2. Burden of Proof - The burden of establishing eligibility in bankruptcy lies with the party filing the bankruptcy petition. In re Tim Wargo & Sons, Inc., 869 F.2d 1128, 1130 (8th Cir.1989).
3. Not a Question of Jurisdiction - Eighth Circuit has stated that the question of eligibility under Chapter 13 is not a question of jurisdiction. Rudd v. Laughlin, 866 F.2d 1040, 1042 (8th Cir.1989) (holding a bankruptcy court did not lack jurisdiction to convert a Chapter 13 proceeding to Chapter 7 where debts exceed Chapter 13 eligibility limits).
4. Disputed - "As an initial matter, consistent with the majority of courts, we hold that disputed, non-contingent and liquidated debts must count toward the debt limitations for Chapter 13 eligibility. In other words, a court should not exclude from the computation of debts for Chapter 13 eligibility an obligation that the debtor merely disputes." United States v. Verdunn, 89 F.3d 799, 801 n.9 (11th Cir.1996).
5. Contingent - "[I]f all events giving rise to liability occurred prior to the filing of the bankruptcy petition, the claim is not contingent." In re Keenan, 201 B.R. 263, 264- 65 (Bankr.S.D.Cal.1996)(*quoting In re Nicholes*, 184 B.R. 82, 88 (9th Cir. BAP 1995). See also In re All Media Properties, 5 B.R. 126, 133 (Bankr.S.D.Tex.1980) *aff'd per curiam*, 646 F.2d 193 (5th Cir.1981).
6. Liquidated - The key factor in distinguishing liquidated from unliquidated claims is not the extent of the dispute nor the amount of evidence required to establish the claim, but whether the process for determining the claim is fixed, certain, or otherwise determined by a specific standard. Barcal v. Laughlin (In re Barcal), 213 B.R. 1008, 1012-1016 (B.A.P. 8th Cir. 1997).
7. No Need to Determine Liability Prior to Denial of Confirmation. "At a hearing on eligibility, the court should . . . review the

debtor's schedules and proofs of claim, as well as other evidence offered by a debtor or the creditor to decide only whether the good faith, facial amount of the debtor's liquidated and non-contingent debts exceed statutory limits.” Barcal v. Laughlin (In re Barcal), 213 B.R. 1008, 1016 (B.A.P. 8th Cir. 1997).

8. Beyond the Schedules - “To limit the eligibility determination to the debtor's schedules would allow a debtor to avail himself of the protections of Chapter 13 based on his own subjective decisions regarding contingent and liquidated claims.” Gould v. Gregg, Hart, Farris & Rutledge, 137 B.R. 761, 765 (W.D. Ark. 1992)

B. WILLFUL VIOLATION OF AN ORDER OF THE COURT - 11 U.S.C. § 109(g)(1)

(g) Notwithstanding any other provision of this section, no individual or family farmer may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if--
(1) the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case; . . .

1. Failure to attend meeting of creditors -

Bankruptcy Court's finding that Chapter 13 debtor's second case should be dismissed, pursuant to 11 USCA § 109(g) based on previous dismissal of debtor's first petition for failure to attend 11 USCA § 341 meeting, is not clearly erroneous, where burden was on debtor to explain his failure to attend creditors' meeting and he has offered no evidence on point; where 11 USCA § 109(g) issue is properly raised, filing party must establish that failure to obey court order was not willful, and, therefore, burden is not on creditor even when issue is raised in creditor's motion to dismiss case.

Montgomery v. Ryan (In re Montgomery), 37 F.3d 413, 415 (8th Cir. 1994).

2. Failure to file plan or schedules -

The time limits imposed by Federal Rules of Bankruptcy Procedure 1007 and 3015 are mandatory. Rule 1007 provides that if the schedules and statements are not filed

with the bankruptcy petition in a voluntary case, the schedules and statements must be filed within 15 days thereafter. The rule also provides that any extension of time for filing may be granted only for cause and after notice. Fed. R. Bankr.P. 1007; *In re Welling*, 102 B.R. 720, 722 (Bankr.S.D.Iowa 1989). Rule 3015 provides that the chapter 13 plan may be filed with the petition. If the plan is not filed with the petition, it shall be filed within 15 days thereafter. Again, any extension of time for filing the plan may be granted only for cause and after notice. Fed. R. Bankr.P. 3015. Failure to file as required by these rules was deemed by the court in Campbell to be a wilfull violation of an order of the court. In re Campbell, 266 B.R. 709 (Bankr. W.D. Ark. 2001)

C. VOLUNTARY DISMISSAL - 11 U.S.C. § 109(g)(2)

Debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title.

Two lines of cases. Judge O'Brien followed the "causal" line of cases in Wigdahl.

1. "Causal" requirement - These cases conclude that the word "following" requires a causal connection between the dismissal of the case and the relief from stay motion. The burden is on the debtor to show that no such connection exists. case authority that requires a showing of a causal relationship between the voluntary dismissal and a creditor's motion for stay relief. The rationale for this approach is that "following," when interpreted in light of legislative purpose, means "because of" or "as a result of." See In re Wigdahl, BKY No. 97-30804(Bankr. D. Minn. July 1, 1997)(O'Brien, J.); In re Munkwitz, 235 B.R. 766 (E.D. Pa. 1999); In re Sole, 233 B.R. 347, (Bankr.E.D.Va.1998); In re Duncan, 182 B.R. 156, 159-60 (Bankr.W.D.Va.1995); In re Copman, 161 B.R. 821, 823-24 (Bankr.E.D.Mo.1993); see also 2 COLLIER ON BANKRUPTCY § 109.08 at 109-50.

2. Plain and unambiguous meaning - A court must dismiss a bankruptcy petition if the debtor was a debtor in another bankruptcy case within the preceding 180 days and the debtor "requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay." These cases interpret "following" to mean "after" and holds that the statute must be applied without regard to the

circumstances or the equities of a particular bankruptcy. Consequently, whenever a debtor obtains a voluntary dismissal after a creditor has filed a motion to be relieved from a stay, § 109(g)(2) is triggered. This occurs irrespective of the time interval between the two events or the disposition of the creditor's motion. *See, e.g., Andersson v. Security Fed. Savings & Loan (In re Andersson)*, 209 B.R. 76, 78 (B.A.P. 6th Cir.1997); *Chrysler Fin. Corp. v. Dickerson (In re Dickerson)*, 209 B.R. 703, 706 (W.D.Tenn.1997); *Kuo v. Walton*, 167 B.R. 677, 679 (Bankr.M.D.Fla.1994).

D. REGULAR INCOME

1. Stable and Regular - In most cases where courts have found nontraditional sources of debtor support to fail the Chapter 13 regular income test, it was because the nature of the income was found to be gratuitous, unreliable or lacking evidence of the requisite stability and regularity. *See, e.g., In re Crowder*, 179 B.R. 571, 574 (Bankr. E.D. Ark.1995)

2. Gratuitous payments by third party - gratuitous payments to a debtor from family members or third parties do not constitute regular income unless joint liability for debts exists, there is a legal obligation to contribute to the support of the debtor, or there is direct evidence of the assent of the third party to assume responsibility for payments to the debtor. *In re Jordan*, 226 B.R. 117, 119 (Bankr.D.Mont.1998); *see also In re Hanlin*, 211 B.R. 147, 148 (Bankr.W.D.N.Y.1997) (able-bodied unmarried debtor whose only source of sustenance is what he can borrow and how much his parents will gift to him is not a person with regular income).

3. Monthly Social Security Payments and Food Stamps - In *In re Regales*, 290 B.R. 401, 403 (Bankr. D.N.M 2003), the court held that the debtor's sole source of income, monthly social security payments and food stamps, qualify as regular income within the meaning of § 109(e)(citing *Bibb County Dept. of Family & Children Services v. Hope (In re Hammonds)*, 729 F.2d 1391, 1395 (11th Cir.1984)(AFDC payments are regular income for Chapter 13 purposes); and *In re Murphy*, 226 B.R. 601, 605 (Bankr.M.D.Tenn.1998)(non-traditional sources of money, including social security benefits, can generate income for purposes of Chapter 13 eligibility)).

II. PROPERTY OF THE ESTATE

A. 11 U.S.C. § 541 - Property of the estate - The commencement of a case . . .

creates an estate. Such estate is comprised of all of the following property, wherever located and by whomever held . . .

B. 11 U.S.C. § 1306 - Property of the estate -

(a) Property of the estate includes, in addition to the property specified in section 541 of this title—

(1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first; and

(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first.

(b) Except as provided in a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.

In re Clelland, 268 B.R. 539, 540-541 (Bankr. E.D. Ark. 2001) Upon the filing of a Chapter 13 petition, if the secured creditor holds only possession of the vehicle, but the debtor yet held title to the vehicle, that vehicle was property of the estate and, the debtor was entitled to turnover of that vehicle. *See also* Knaus v. Concordia Lumber Co. (In re Knaus), 889 F.2d 773, 776 (8th Cir. 1989)

C. 11 U.S.C.A. § 1327(b) & (c) - Effect of confirmation -

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) Except as otherwise provided in the plan or in the order confirming the plan, the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan.

1. Tension between § 1306 and § 1327.

Security Bank of Marshalltown v. Neiman, 1 F.3d 687, 689 to 691 (8th Cir. 1993). Section 1306 provides that property of the estate includes all property the debtor acquires after commencement of the case but before the case is closed, dismissed, or converted. Section 1327(b) provides that upon confirmation of a plan under Chapter 13, all property of the estate is vested in the debtor. Courts differ based on their interpretation of 11 U.S.C.

§ 1306 and 11 U.S.C. § 1327. One line of cases holds that the Chapter 13 estate exists after confirmation and includes the debtor's property and earnings dedicated to the fulfillment of the Chapter 13 plan. E.g., In re Price, 130 B.R. 259, 269 (N.D.Ill.1991); In re Root, 61 B.R. 984, 985 (Bankr.D.Colo.1986). A second line of cases, however, holds that unless the Chapter 13 plan provides otherwise, confirmation of the Chapter 13 plan vests all property of the Chapter 13 estate in the debtor, ending the estate at that time. E.g., In re Petruccelli, 113 B.R. 5, 16 (Bankr. S.D. Cal.1990); In re Mason, 45 B.R. 498, 500 (Bankr.D.Or.1984), *aff'd*, 51 B.R. 548, 550 (D.Or.1985). . . . “We join the line of cases holding the estate continues to exist after confirmation of the Chapter 13 plan.”

2. 11 U.S.C. § 1322(a)(9) - Delay or Not Delay Vesting

Section 1322(b)(9) provides that "the plan may ... provide for the vesting of property of the estate, on confirmation of the plan or at a later time, in the debtor." In re Lee, 162 B.R. 217, 225 (D. Minn. 1993) - a secured creditor, may not block confirmation of the plan if "the value, as of the effective date of the plan, of property to be distributed under the plan on account of [the secured] claim is not less than the allowed amount of such claim." 11 U.S.C. § 1325(a)(5)(B)(ii). The plan was approved despite the fact that the collateral vested with debtors prior to completion of the plan. In re Habtemichael, 190 B.R. 871, 873 (Bankr. W.D. Mo. 1996) Here, the property of the Chapter 13 estate reverted in the debtor upon confirmation. This Court agrees with the position that when estate property has reverted in the debtor and if the vehicle which is the subject of a bifurcated claim is destroyed, the creditor/lienholder is entitled to be paid the insurance proceeds to the extent of its secured claim; the debtor is entitled to receive the remaining balance of the proceeds; and the creditor/lienholder is entitled to be paid on its unsecured claim in accordance with the terms of the confirmed plan.

a. No Automatic Stay as to Post-petition Debt - In re Henline, 242 B.R. 459, 467 (Bankr. D. Minn. 1999). Movant's postpetition state court collection efforts, including wage garnishments, did not violate the automatic stay. 11 U.S.C. § 362(a) does not prohibit a creditor from collecting a postpetition debt from a debtor, or from property of a debtor. All estate property vested back in Debtors upon confirmation of their plan.

b. 11 U.S.C. § 363(b) & (f) - Sale of Property Free and Clear of Liens

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business,

property of the estate. . . .

(f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, . . .

Note that once property is claimed as exempt, it is no longer “property of the estate,” and, therefore, court approval of a sale of the asset by the debtor is not required. In re Penniston, 206 B.R. 948 (Bankr. D. Minn. 1997). What about non-exempt property? If property of the estate “vests” in the debtor upon confirmation under 11 U.S.C. § 1327(b), does this mean that the debtor need not obtain court approval for the sale of such property, since § 363(b) only applies to “property of the estate”? See, e.g., In re Rangel, 233 B.R. 191 (Bankr. D. Mass. 1999) (although property of the estate vested in the debtor upon confirmation, bankruptcy court could still exercise oversight over proposed sale of such property). By vesting property in the Debtor upon confirmation you may lose the ability to sell the property free and clear of liens.

D. 11 U.S.C. § 348(f) - Effect of conversion

(f)(1) Except as provided in paragraph (2), when a case under chapter 13 of this title is converted to a case under another chapter under this title--

(A) property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion; and

(B) valuations of property and of allowed secured claims in the chapter 13 case shall apply in the converted case, with allowed secured claims reduced to the extent that they have been paid in accordance with the chapter 13 plan.

(2) If the debtor converts a case under chapter 13 of this title to a case under another chapter under this title in bad faith, the property in the converted case shall consist of the property of the estate as of the date of conversion.

1. Property of Estate in Converted Case Determined as of Date of Filing

In re Alexander, 236 F.3d 431, 433 (8th Cir. 2001)- “The legislative history to section 348(f)(1) indicates that Congress intended this language to overrule the holding of cases such as Lybrook in favor of those cases holding that the property of the estate in a converted case is the property

the debtor had when he filed his original Chapter 13 petition. See 140 Cong. Rec. H10770 (Oct. 4, 1994). Debtor's homestead exemption determined as of the date of the filing chapter 13, not the date of conversion.”

2. In re Wegner, 243 B.R. 731 (Bankr. D. Neb. 2000). When Debtor converts from chapter 13 to chapter 7 in good faith, the appreciation in the property from date of filing to date of conversion if property of the Debtor. The increased equity resulting from payments made pursuant to the chapter 13 plan is property of the estate and the debtor could amend her exemptions at the time of conversion to claim the asset as exempt.

III. CONFIRMATION

11 U.S.C. § 1327(a) - The provisions of a confirmed plan bind the debtor and each creditor . . .

"Once a bankruptcy plan is confirmed, it is binding on all parties and all questions that could have been raised pertaining to the plan are entitled to res judicata effect." Trulis v. Barton, 107 F.3d 685, 691 (9th Cir. 1995). The principles of res judicata should be applied except in cases where the notice to the creditor of the plan treatment of the lien is so insufficient that it violates due process of law. In re Ramey, 301 B.R. 534, 545 (Bankr. E.D. Ark. 2003)(contains a very good discussion on res judicata in Chapter 13 cases). If a creditor fails to timely object to a plan or appeal a confirmation order, "it cannot later complain about a certain provision contained in a confirmed plan, even if such a provision is inconsistent with the Code." Great Lakes Higher Educ. Corp. v. Pardee (In re Pardee), 193 F.3d 1083, 1086 (9th Cir. 1999) (*quoting Andersen v. UNIPACNEBHELP (In re Anderson)*, 179 F.3d 1253, 1258 (10th Cir. 1999)); see also In re Bateman, 331 F.3d 821 (11th Cir. 2003)

A.. BEST EFFORTS

“In Chapter 13, the Code requires a meaningful and realistic budget, accompanied by the devotion of most of the debtor's surplus income to repay creditors.” In re Bottelberghe, 253 B.R. 256, 263 (Bankr. D. Minn. 2000) .

11 U.S.C. § 1325(b) provides that:

(b)(1) [i]f the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan--

...

(B) the plan provides that all of the debtor's projected disposable income to be received in the three-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

(2) For purposes of this subsection, "disposable income" means income which is received by the debtor and which is not reasonably necessary to be expended--

(A) for the maintenance or support of the debtor or a dependent of the debtor....

B. DISPOSABLE INCOME

1. Business Expenses - If a debtor is engaged in business, § 1325(b)(2)(B) also deletes from "disposable income" any income which must be expended "for the payment of expenditures necessary for the continuation, preservation, and operation of such business."

2. Non-Debtor spouse -

a. "Although section 1325(b) does not explicitly require the inclusion of a non-debtor spouse's income in the disposable income computation, case law addressing the question holds that such income must be considered in computing the debtor's disposable income." *In re Ehret*, 238 B.R. 85, 88 (Bankr. D.N.J. 1999)(*citing* 2 Keith Lundin, CHAPTER 13 BANKRUPTCY, 2nd ed., § 5.35 p. 5-96 (1997)).

b. *In re Bottelberghe*, 253 B.R. 256 (Bankr. D. Minn. 2000) - nondebtor spouse's income and expenses must be calculated to determine disposable income. *See also In re Bottorff*, 232 B.R. 171 (Bankr. W.D. Mo. 1999).

3. Exempt Income

a. *In re Koch*, 109 F.3d 1285, 1287-90 (8th Cir.1997)- A debtor's disability payments are disposable income even though the payments were classified as exempt from creditors under South Dakota state law and, therefore, exempt from creditors under Chapter 7 of the United States Bankruptcy Code. The Court concluded that the relevant inquiry is not whether the payments are exempt from creditors in a Chapter 7 proceeding but whether the challenged payments would constitute income in a hypothetical proceeding under Chapter 13 of the United States Bankruptcy Code. *See id.* at 1288-89.

b. Income from ERISA-qualified pension is disposable income. Taylor v. United States (In re Taylor), 212 F.3d 395, 397 (8th Cir. 2000) *cert. denied* Taylor v. U.S., 531 U.S. 1010 (U.S. 2000).

c. “Employer- provided deferred compensation plan, may be exempt property or may not be property of the estate at all. Once revenue is received from the plan administrator by the debtor, the case law is clear that such revenue should be included in the calculation of disposable income.” In re Talley, 240 B.R. 22, 23 (Bankr. D. Neb. 1999).

4. Pension Loans

The majority of cases hold that the repayment of loans taken out against a retirement account constitute “disposable income” within the meaning of 11 U.S.C. § 1325(b)(2). *See, e.g., In re Harshbarger*, 66 F.3d 775 (6th Cir. 1995) (401(k) loan repayment must be added back in order to determine debtor’s disposable income); In re Anes, 216 B.R. 514 (Bky. M.D. Pa. 1998), *aff’d*. 195 F.3d 177, 179-182 (3rd Cir. 1999); In re Nation, 236 B.R. 150, 152-55 (Bky. S.D. N.Y. 1999) (even mandatory payroll deductions for pension contributions and repayment of pension loans are projected disposable income); In re Jaiyesimi, 236 B.R. 145 (Bky. S.D. N.Y. 1999), vacated and remanded sub nom In re Taylor, 243 F.3d 124 (2nd Cir. 2001) (Bky. judge has discretion to determine whether pension contributions are reasonably necessary expenses, on a case by case basis); *contra*, In re Guild, 269 B.R. 470, 473 (Bky. D. Mass. 2001) (evidentiary hearing on reasonable necessity of 401k loan repayment required); In re Davis, 241 B.R. 704 (Bky. D. Mont. 1999) (pension deductions required by state law are a condition of employment and therefore reasonably necessary for the support of the debtor and dependents); In re Buchferer, 216 B.R. 332 (Bky. E.D. N.Y. 1997).

C. REASONABLE AND NECESSARY

1. Whether income is "reasonably necessary" for the debtors' maintenance and support is open to interpretation. *See In re Gleason*, 267 B.R. 630, 633 (Bankr. N.D. Iowa 2001)

2. School Tuition:

a. Special Needs Child - Debtors demonstrated that private school tuition for the special needs of his child was reasonably necessary although the same services may have been available in the public school system. In re Webb, 262 B.R. 685, 691 (Bankr.

E.D. Tex. 2001).

b. Inexpensive Parochial Tuition - Nothing extraordinary or unreasonable about a relatively small payment of \$246 a month for parochial school tuition. In re Bottelberghe, 253 B.R. 256, 263 (Bankr. D. Minn. 2000)

3. Best Efforts Does Not Mean Every Last Penny

a. The Debtor "should have some reasonable latitude in determining the manner in which they will maintain and support themselves and their dependents." In re Sitarz, 150 B.R. 710, 718 (Bankr. D. Minn.1993).

b. No absolute right to maintain past lifestyles "particularly where they were characterized by luxury, excessive consumption of nonessentials, or inordinately high expenditures for purchases of necessities." Sitarz, 150 B.R. at 718. See In re Webb, 262 B.R. 685, 692 (Bankr. E.D. Tex. 2001).

4. Expenses

a. Discretionary expenses - include payments for boats, campers and other luxuries, health club and country club dues, and newspapers and magazines, cable TV services, veterinary expenses, cell phones, unspecified home repairs, and deductions for voluntary retirement funds. In re Butler, 277 B.R. 917, 920-921 (Bankr. N.D. Iowa 2002)(citing 2 Keith M. Lundin, CHAPTER 13 BANKRUPTCY § 165.1 (3d ed.2000); In re Attanasio, 218 B.R. 180, 201-10 (Bankr. N.D. Ala.1998) (extensively collecting cases considering excessive or unreasonable expenses in the context of § 707(b) substantial abuse determination)).

b. Nondiscretionary expenses - Excessive amounts for nondiscretionary items, such as food, utilities, housing, and health expenses, must also be added to the discretionary spending category. In re Elliott 2002 WL 970410, *2 to *3 (Bankr. N.D. Iowa 2002).

5. Pension "reasonably necessary."

New York City Employees' Retirement System v. Sapir (In re Taylor), 243 F.3d 124, 128 (2d Cir. 2001), the Second Circuit refused to adopt a bright-line rule that pension contributions are or are not "reasonably necessary"

expenses for a chapter 13 debtor. Rather, the Second Circuit ruled that the issue must be determined on a case-by-case basis, based on the circumstances confronting the particular debtor before the court. The following non-exclusive factors were listed as a guide for making this determination:

- 1) the age of the debtor and the amount of time until expected retirement,
- 2) the amount of the monthly contributions and the total amount of pension contributions debtor will have to buy back if payments are discontinued
- 3) the likelihood that buy-back payments will jeopardize the debtor's fresh start,
- 4) the number and nature of the debtor's dependents,
- 5) evidence that the debtor will suffer adverse employment conditions if the contributions are ceased,
- 6) the debtor's yearly income,
- 7) the debtor's overall budget
- 8) any other constraints on the debtor that make it likely that the pension contributions are reasonably necessary expenses for that debtor.

D. GOOD FAITH -

1. Failure to propose 60 month plan - Banks v. Vandiver (In re Banks), 267 F.3d 875 (8th Cir. 2001). Debtor admitted he filed bankruptcy only after the state court entered judgment in favor of his ex-spouse, his only creditor. Debtor proposed to pay only fifteen percent of her claim, and did not attempt to spread his plan payments over sixty months or otherwise amend his plan to pay more money.

2. Dismissal for bad faith filing - In re Molitor, 76 F.3d 218, 220-21 (8th Cir.1996).[A] Chapter 13 petition filed in bad faith may be dismissed or converted "for cause" under 11 U.S.C. § 1307(c). Such cause includes filing a bankruptcy petition in bad faith. *See also* Ladika v. Internal Revenue Service (In re Ladika), 215 B.R. 720, 724 to 725 (B.A.P. 8th Cir. 1998).

3. Good faith filing v. Good faith plan.- In re Mattson, 241 B.R. 629 (Bankr. D. Minn. 1999). Nominal difference. The only distinction between the two may be in the burden of proof. Under § 1307(c), the objecting creditor bears the burden of proof, while under § 1325(a)(3), the debtor bears the burden.

4. Two cases in the Eighth Circuit summarized the factors to consider in the good faith analysis:

- (1) the debtor's accuracy in stating his debts and expenses;
- (2) the debtor's honesty in the bankruptcy process, including whether he

has attempted to mislead the court and whether he has made any fraudulent misrepresentations in the matter of his bankruptcy;
(3) whether the Code is being unfairly manipulated;
(4) the type of debt sought to be discharged;
(5) whether the debt would be nondischargeable under Chapter 7; and
(6) the debtor's motivation and sincerity in seeking Chapter 13 relief.

“The bottom line for most courts, even those outside of this Circuit, is whether the debtor is attempting to thwart his creditors or is making an honest attempt to repay them.” In re Mattson, 241 B.R. at 637 discussing In re Buchanan, 225 B.R. 672, 674 (Bankr.D.Minn.1998); In re Sitarz, 150 B.R. 710, 721 (Bankr.D.Minn.1993). *But see* In re Lancaster, 280 B.R. 468 (Bankr. W.D. Mo. 2002)(criticizing the expansion of the good faith definition).

IV. POTENTIAL USES OF CHAPTER 13

A. CURING DEFAULTS

1. Rent - In Stoltz, the debtor filed her Chapter 13 petition before the writ of possession was issued and before the time to appeal the judgment of possession had expired. Therefore, the judgment of possession against her had not become final as of the date her bankruptcy petition was filed. At that time, she had the right, under Vermont law, to vacate the judgment of possession by curing the default on rent and paying interest and costs see also Robinson v. Chicago Hous. Auth., 54 F.3d 316, 321 (7th Cir.1995) (noting that a lease is not considered to be expired for purposes of the Code by a judgment of possession where tenant has power to revive lease under applicable state law). In re Stoltz, 197 F.3d 625 (2nd Cir. 1999). In her bankruptcy plan, she proposed, among other things, to cure the default on her Lease by paying all back rent over a 36- month period and to assume the Lease. Subject to court approval and with some exceptions, a Chapter 13 debtor may assume an unexpired lease of residential real property at any time before the confirmation of a reorganization plan. See 11 U.S.C. § 365(d)(2). Only an "unexpired" lease may be assumed. The term "unexpired" is not defined in the Bankruptcy Code itself or in its legislative history. Instead, because property interests are created and defined by state law, federal courts have looked to state law to determine a debtor's interests, including leasehold interests, in the bankruptcy estate. *See, e.g.*, Nobelman v. American Sav. Bank, 508 U.S. 324, 329 (1993) (looking to Texas law); In re Williams, 144 F.3d 544, 546 (7th Cir.1998) (looking to Illinois law); City of Valdez v. Waterkist Corp. (In re Waterkist Corp.), 775 F.2d 1089, 1091 (9th Cir.1985) (looking to Alaska law); Gallatin Hous. Auth. v. Talley (In re Talley), 69 B.R. 219, 222-23

(Bankr.M.D.Tenn.1986) (collecting cases relying on state law). *See also* In re P.J. Clarke's Restaurant Corp., 265 B.R. 392 (Bankr. S.D.N.Y. 2001).

2. Mortgages -

Reasonable time to cure - 11 U.S.C. § 1325(b)(5) -

notwithstanding paragraph (2) of this subsection, provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due;

If the plan provides to cure the default in less than 12 month, the objecting creditor has the burden of proving why the cure is not in a reasonable time. If the cure is greater than 12 months, the burden shifts to the debtor. *See* In re Newton, 161 B.R. 207, 217-218 (Bankr.D.Minn.1993).

Beware the accumulation of attorney fees and late charges on mortgages post petition. Same theory probably applies to the application of mortgage payments as it does in student loans. If the loan is not subject to discharge, the lender may be able to apply payments as they see fit under the terms of the contract. yet. In Bateman, the First Circuit, held that although the parties are bound to the terms of the Plan as confirmed, the mortgage company's unpaid arrears, not provided to be fully paid by the plan, survives the Plan and the mortgage company retained its rights under the mortgage until the claim is satisfied in full. Bateman, 331 F.3d at 834. This is not an issue that has been raised in the Eighth Circuit

3. Interest on arrears - 11 U.S.C. § 1322 (e)-

Notwithstanding subsection (b)(2) of this section and sections 506(b) and 1325(a)(5) of this title, if it is proposed in a plan to cure a default, the amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.

That section was added in response to the Rake case which held that § 1322(b)(5) authorizes a debtor to cure a default on a home mortgage by making payments on arrearages under a Chapter 13 plan, and that where the mortgagee's claim is oversecured, § 506(b) entitles the mortgagee to preconfirmation interest on such arrearages. Rake v. Wade, 508 U.S. 464, 469(1993).

4. Post-petition mortgage defaults - in some circuits a debtor's plan may be modified to include postpetition arrearages arising from a secured loan, such as a mortgage. See e.g. Matter of Mendoza, 111 F.3d 1264 (5th Cir. 1997); In re Hogle, 12 F.3d 1008 (11th Cir. 1994). The Eighth Circuit has not addressed the issue.

5. Unlawful detainer - In re Crawley, 117 B.R. 457, 460- 61 (Bankr. D. Minn.1990) (holding that unlawful detainer action by a mortgagee whose mortgage was foreclosed without redemption does not violate the automatic stay because the property of which possession is being sought is not property of the estate).

6. 11 U.S.C. § 108 - Extensions of Time

(a) If applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor may commence an action, and such period has not expired before the date of the filing of the petition, the trustee may commence such action only before the later of--

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case;

or

(2) two years after the order for relief.

(b) Except as provided in subsection (a) of this section, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor or an individual protected under section 1201 or 1301 of this title may file any pleading, demand, notice, or proof of claim or loss, cure a default, or perform any other similar act, and such period has not expired before the date of the filing of the petition, the trustee may only file, cure, or perform, as the case may be, before the later of--

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case;

or

(2) 60 days after the order for relief.

(c) Except as provided in section 524 of this title, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and

such period has not expired before the date of the filing of the petition, then such period does not expire until the later of--

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

Contract for Deed Cancellation - If a contract for deed cancellation is served prior to the filing of the bankruptcy petition, but the bankruptcy petition is filed prior to the expiration of the debtor's period to cure, the debtor has 60 days from the date of the bankruptcy filing under 11 U.S.C. § 108(b) to cure the default under the contract. The creditor, however, does not need to obtain relief from the automatic stay to complete the cancellation once the 60 days has lapsed. See In re Crawley, 53 B.R. 40 (Bankr. D. Minn. 1985)

B. MODIFICATION AFTER CONFIRMATION TO SURRENDER COLLATERAL

Chrysler Financial Corp. v. Nolan (In re Nolan), 232 F.3d 528, (6th Cir. 2000). A debtor cannot modify a chapter 13 plan after confirmation by surrendering collateral and reclassifying any deficiency as an unsecured claim. In re Wright, 256 B.R. 858 (W.D.N.C. 2001). The debtors filed a motion to modify their chapter 13 plan by surrendering a leased trailer to a creditor. The debtors had previously assumed the unexpired lease in their original chapter 13 plan. Debtors motion to modify was allowed, but the creditor was granted a period of time to file an administrative priority claim for any damages occasioned by the debtor's breach of the lease under 11 U.S.C. §§365(g)(2)(A) and 507(a)(1).

C. STUDENT LOAN ISSUES

1. Application of payments received from Trustee - Kielisch vs. E.C.M.C., 258 F.3d 315 (4th Cir. 2001) - Student loan servicer was not precluded from applying funds received from chapter 13 trustee to post-petition interest. Deciding otherwise would permit the debtors to partially discharge the interest on their non-dischargeable student loan debts without a showing of undue hardship as required by §523(a)(8).

2. In re Banks, 299 F.3d 296 (4th Cir. 2002) - Debtors also must bring an adversary proceeding to discharge post-petition interest on student loan debt.

3. A chapter 13 plan may not separately classify co-signed student loan - In re Beauchamp, 283 B.R. 287, 288-89 (Bankr. D. Minn. 2002) - The court held that there was no legitimate purpose in allowing the debtors to pay obligations of children who were the beneficiaries on the loan at the expense of their other unsecured creditors.

D. SECURED CLAIMS; DISCOUNT RATE

The boilerplate language in the local form Chapter 13 plan employs a discount rate, rather than an interest rate for purposes of compliance with 11 U.S.C. § 1325(a)(5) (“the value, as of the effective date of the plan, of property to be distributed under the plan on account of [each allowed secured claim] is not less than the allowed amount of such claim”).

Courts throughout the country had developed four different methods to determine the appropriate interest rate which would provide a creditor the “value, as of the effective date of the plan” of its allowed secured claim: the formula rate, the coerced loan rate, the presumptive contract rate, or the cost of funds rate. In Till v. SCS Credit Corp., ___ U.S. ___, 124 S.Ct. 1951 (2004), the Supreme Court, in a plurality opinion, reversed the opinion of the Seventh Circuit which applied the coerced loan rate, and instead applied the formula rate. The coerced loan rate is the interest rate a creditor would obtain in making a new loan in the same industry to a debtor who is similarly situated, although not in bankruptcy. The "prime-plus" or "formula rate" uses the national prime rate plus an additional percentage to account for the risk of nonpayment posed by borrowers in their financial position. The interest rate proposed by the debtors was 9.5%, the 8% prime rate plus a 1.5% risk factor. Justice Thomas, in a concurring opinion, concluded that the 9.5% rate was sufficient to compensate the secured creditor and agreed with the majority that in this particular case the plan should be confirmed. Justice Thomas was not convinced, however, that anything other than paying interest at the prime rate was necessary under the Bankruptcy Code. He believed that the both the plurality and the dissent ignored the clear text of the statute in an attempt to ensure that secured creditors were not under compensated in bankruptcy proceedings. The dissent would have applied the contract rate approach.

E. PAYMENT OF FINES AND RESTITUTION

In re Gallipo, 282 B.R. 917, 923 (Bankr. E.D. Wash. 2002) - plan could provide to separately classify and pay in full traffic fines to reinstate the debtor's driving privileges, but could not separately classify shop lifting criminal fines were no evidence that partial payment of fine would lead to

incarceration. The court reasoned that the debtor needed to drive in order to maintain employment.

V. OTHER ISSUES

A. PROTECTION AGAINST DISCRIMINATORY TREATMENT

11 U.S.C.A. § 525

(a) Except as provided in the Perishable Agricultural Commodities Act, 1930, the Packers and Stockyards Act, 1921, and section 1 of the Act entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1944, and for other purposes," approved July 12, 1943, a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act, or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

(b) No private employer may terminate the employment of, or discriminate with respect to employment against, an individual who is or has been a debtor under this title, a debtor or bankrupt under the Bankruptcy Act, or an individual associated with such debtor or bankrupt, solely because such debtor or bankrupt--

(1) is or has been a debtor under this title or a debtor or bankrupt under the Bankruptcy Act;

(2) has been insolvent before the commencement of a case under this title or during the case but before the grant or denial of a discharge; or

(3) has not paid a debt that is dischargeable in a case under this title or that was discharged under the Bankruptcy Act.

(c)(1) A governmental unit that operates a student grant or loan program and a person engaged in a business that includes the making of loans guaranteed or insured under a student loan program may not deny a grant, loan, loan guarantee, or loan insurance to a person that is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, or another person with whom the debtor or bankrupt has been associated, because the

debtor or bankrupt is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of a case under this title or during the pendency of the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

(2) In this section, "student loan program" means the program operated under part B, D, or E of title IV of the Higher Education Act of 1965 or a similar program operated under State or local law.

1. Driver License - Section 525(a) is not intended to shield a debtor from responsibilities under the traffic laws or other government obligations. At least one court in the Eighth Circuit has held that § 525 does not operate to cure a debtor's traffic violations, including the failure to comply with the criminal sentence imposed upon him, and does not require the a governmental unit to reinstate a privilege afforded by the state to drive a motorized vehicle. *In re Kimsey*, 263 B.R. 244, 248 (Bankr. E.D. Ark. 2001).

2. Public Housing Assistance Funds -

Most courts have concluded or assumed that public housing is a protected grant under section 525(a). *In re Valentin*, 309 B.R. 715, 722 (Bankr. E.D. Pa. 2004)(collecting cases - see Appendix). Courts have differed, however, in their interpretation of exactly which aspects of public housing constitute an "other similar grant" under section 525(a). How the public housing grant is ultimately defined will affect the scope of section 525(a)'s protection. Some courts have held that the term "other similar grant" encompasses public housing leases. *See e.g., Stoltz v. Brattleboro Housing Auth.* (*In re Stoltz*), 315 F.3d 80, 90-91(2nd Cir. 2002); *The Housing Auth. of the City of Erie v. Szymecki* (*In re Szymecki*), 87 B.R. 14, 16 (Bankr.W.D.Pa.1988). Another court has held that the government rent subsidy was the protected grant. *See e.g., Curry v. Metropolitan Dade County* (*In re Curry*), 148 B.R. 966, 972 (S.D.Fla.1992). And another held that both the lease and the rent subsidy were protected grants. *See e.g., In re Day*, 208 B.R. 358, 365 (Bankr.E.D.Pa.1997); *see also Johnson v. Chester Housing Auth.* (*In re Johnson*), 250 B.R. 521, 530 (Bankr.E.D.Pa.2000). In those instances in which the courts define the protected grant as the lease and/or the rent subsidy, section 525(a) will generally shield a debtor from eviction, assuming that the eviction was "solely because" of one of the

enumerated items in said provision. *See* Stoltz, 315 F.3d at 90-91; Johnson, 250 B.R. at 530; Curry, 148 B.R. at 972; Day, 208 B.R. at 367; Szymecki, 87 B.R. at 16; but see Collins, 199 B.R. at 566-67 (while appearing to recognize that a rent subsidy, apart from the lease, is a protected grant, section 525[a] was still inapplicable to protect the debtor from being evicted because the housing authority was not seeking to evict the debtor solely because the debtor failed to pay a pre-petition default); James, 198 B.R. at 888-889 (while implicitly recognizing the rent subsidy was a protected grant, section 525[a] was still inapplicable to protect the debtor from being evicted because the housing authority was not seeking to evict the debtor solely because the debtor failed to pay a dischargeable debt).

The Supreme Court in Federal Communications Comm'n. v. NextWave Personal Communications, Inc., 537 U.S. 293, 123 S.Ct. 832, 154 L.Ed.2d 863 (2003), may have improved a debtor's position by clarifying the term "solely because" as used in section 525(a), although the case involved the revocation of a license and not a lease. In NextWave, the Supreme Court found that the debtor's failure to pay its debt (which was dischargeable) to the FCC was the proximate cause of the cancellation the debtor's licenses for broadband personal communications services. *Id.* at 301-302. The Court held that the FCC was prohibited from revoking the licenses pursuant to section 525(a) explaining that:

[w]hen a statute refers to the failure to pay a debt as the sole cause of cancellation ("solely because"), it cannot reasonably be understood to include, among the other causes whose presence can preclude the application of the prohibition, the governmental unit's motive in effecting the cancellation.

Id. at 301. In order for a governmental unit's action to be "solely because" of the failure to pay a dischargeable debt, the failure to pay must alone be the proximate cause of the cancellation, irrespective of motive. *Id.* at 302, 123 S.Ct. 832. In an Eighth Circuit BAP opinion, In re Smith, 259 B.R. 901 (B.A.P. 8th Cir. 2001) the court held that termination of the lease was due to fraud by the debtor in reporting income, not because of the discharge of the debt. Smith is also found in the Appendix. For an additional discussion on the issues see

Robert Hornstein, *Of Paupers and Princes: Discrimination Against Public Housing Tenants under 11 U.S.C. S 525(A)*, 46 How. L.J. 307, 326+ (2003).

B. FAMILY LAW ISSUES

1. Child support, alimony and maintenance

Child support payable directly to a spouse, or to the child of the debtor, is a priority claim and must be paid in full by the plan unless the creditor agrees to a different treatment. See 11 U.S.C. § 507(a)(7). In the case of an AFDC or MFIP recipient, child support payments are usually assigned to the county and are not priority claims in bankruptcy. See 11 U.S.C. § 507(a)(7)(A). The debt, however, remains a nondischargeable debt. 11 U.S.C. §§ 523(a)(5) and (18). In the Eighth Circuit, a chapter 13 debtor's plan may place unsecured nonpriority child support claims in separate classes "as long as the classification 1) complies with section 1122 of the Code and 2) does not result in unfair discrimination between the claims grouped separately." *In re Leser*, 939 F.2d 669, 671 (8th Cir.1991). *Leser* is not followed in the Seventh Circuit. See *In re Crawford*, 324 F.3d 539, 542 (7th Cir. 2003). It is still important to understand what type of claim you are dealing with, although many debtors provide in their plan that if the claim is not a priority child support claim that it will be paid in a separate class prior to payment to general unsecured creditors.

2. Discharge of property settlements and avoiding 523(a)(15) litigation.

Obligations for property settlements are dischargeable in chapter 13 even though the debt might otherwise be nondischargeable under 11 U.S.C. § 523(a)(15) in a chapter 7. A creditor must object to confirmation of the plan if the creditor believes that the debtor's plan is filed in bad faith to avoid payment of the otherwise non-dischargeable debt. See the discussion of "good faith" above.

Form 2016-1(d) - Chapter 13 Attorney Fee Application

(Caption as in Local Form 1007-1)

APPLICATION FOR COMPENSATION OR
EXPENSES BY ATTORNEY FOR DEBTOR(S)

The undersigned applicant, pursuant to Local Rule 2016-1(d), states that:

1. The plan of the debtor(s) has been confirmed by the court, and the applicant is the attorney for the debtor(s), has filed a statement under Bankruptcy Rule Federal Rule of Bankruptcy Procedure 2016(b), and has completed all necessary appropriate legal services to date in this case.

2. The reasonable value of such services is \$_____. The applicant has paid \$_____ for the filing fee in this case and \$_____ for other expenses itemized on the reverse side of this application. The debtor(s) has agreed to pay the applicant for such services and reimburse the applicant for such expenses. The debtor(s) has paid \$_____ to the applicant to date for such services or expenses. The debtor(s) owes the applicant \$_____ for the unpaid balance.

3. The applicant has not shared or agreed to share with any other person, other than with members of the applicant's law firm, any compensation paid or to be paid in this case.

WHEREFORE, the applicant requests the court to award \$_____, the unpaid balance stated above, for compensation or reimbursement, and to order the trustee to pay such amount to the applicant under 11 U.S.C. § 330 and Local Rule 2016-1.

Dated: _____

Attorney for Debtor(s)
Name, Address, Telephone and
Attorney License Number

ORDER: Based on the foregoing application, it is ordered under Local Rule 2016-1(d) that \$_____ is awarded to the applicant for compensation or reimbursement and that the trustee pay such amount to the applicant as provided in the plan.

Dated: _____

U.S. Bankruptcy Judge

Form 3015-1 - Chapter 13 Plan

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

CHAPTER 13 PLAN

In re:

Dated:

DEBTOR

Case No.

*In a joint case,
debtor means debtors in this plan.*

1. PAYMENTS BY DEBTOR—

- a. As of the date of this plan, the debtor has paid the trustee \$ _____.
- b. After the date of this plan, the debtor will pay the trustee \$ _____ per _____ for _____ months, beginning within 30 days after the filing of this plan for a total of \$ _____.
- c. The debtor will also pay the trustee _____.

d. The debtor will pay the trustee a total of \$ _____ [line 1(a) + line 1(b) + line 1(c)].

2. PAYMENTS BY TRUSTEE — The trustee will make payments only to creditors for which proofs of claim have been filed, make payments monthly as available, and collect the trustee's percentage fee of 10% for a total of \$ _____ [line 1(d) x .10] or such lesser percentage as may be fixed by the Attorney General. For purposes of this plan, month one (1) is the month following the month in which the debtor makes the debtor's first payment. Unless ordered otherwise, the trustee will not make any payments until the plan is confirmed. Payments will accumulate and be paid following confirmation.

3. PRIORITY CLAIMS — The trustee shall pay in full all claims entitled to priority under § 507, including the following. The amounts listed are estimates only. The trustee will pay the amounts actually allowed.

<i>Creditor</i>	<i>Estimated Claim</i>	<i>Monthly Payment</i>	<i>Beginning in Month #</i>	<i>Number of Payments</i>	<i>TOTAL PAYMENTS</i>
a. Attorney Fees	\$ _____	\$ _____	_____	_____	\$ _____
b. Internal Revenue Serv.	\$ _____	\$ _____	_____	_____	\$ _____
c. Minn. Dept of Revenue	\$ _____	\$ _____	_____	_____	\$ _____
d. _____	\$ _____	\$ _____	_____	_____	\$ _____
e. TOTAL					\$ _____

4. LONG-TERM SECURED CLAIMS NOT IN DEFAULT — The following creditors have secured claims. Payments are current and the debtor will continue to make all payments which come due after the date the petition was filed directly to the creditors. The creditors will retain their liens.

a.

b.

5. HOME MORTGAGES IN DEFAULT [§ 1322(b)(5)] — The trustee will cure defaults (plus interest at the rate of 8 per cent per annum) on claims secured only by a security interest in real property that is the debtor's principal residence as follows. The debtor will maintain the regular payments which come due after the date the petition was filed. The creditors will retain their liens. The amounts of default are estimates only. The trustee will pay the actual amounts of default.

<i>Creditor</i>	<i>Amount of Default</i>	<i>Monthly Payment</i>	<i>Beginning in Month #</i>	<i>Number of Payments</i>	<i>TOTAL PAYMENTS</i>
a. _____	\$ _____	\$ _____	_____	_____	\$ _____
b. _____	\$ _____	\$ _____	_____	_____	\$ _____
c. _____	\$ _____	\$ _____	_____	_____	\$ _____
d. TOTAL					\$ _____

6. **OTHER LONG-TERM SECURED CLAIMS IN DEFAULT [§ 1322 (b)(5)]** — The trustee will cure defaults (plus interest at the rate of 8 per cent per annum) on other claims as follows and the debtor will maintain the regular payments which come due after the date the petition was filed. The creditors will retain their liens. The amounts of default are estimates only. The trustee will pay the actual amounts of default.

<i>Creditor</i>	<i>Amount of Default</i>	<i>Monthly Payment</i>	<i>Beginning in Month #</i>	<i>Number of Payments</i>	<i>TOTAL PAYMENTS</i>
a. _____	\$ _____	\$ _____	_____	_____	
b. _____	\$ _____	\$ _____	_____	_____	
c. _____	\$ _____	\$ _____	_____	_____	
d. TOTAL					\$ _____

7. **OTHER SECURED CLAIMS [§ 1325(a)(5)]** — The trustee will make payments to the following secured creditors having a value as of confirmation equal to the allowed amount of the creditor's secured claim using a discount rate of 8 percent. The creditor's allowed secured claim shall be the creditor's allowed claim or the value of the creditor's interest in the debtor's property, whichever is less. The creditors shall retain their liens. NOTE: NOTWITHSTANDING A CREDITOR'S PROOF OF CLAIM FILED BEFORE OR AFTER CONFIRMATION, THE AMOUNT LISTED IN THIS PARAGRAPH AS A CREDITOR'S SECURED CLAIM BINDS THE CREDITOR PURSUANT TO 11 U.S.C. § 1327 AND CONFIRMATION OF THE PLAN WILL BE CONSIDERED A DETERMINATION OF THE CREDITOR'S ALLOWED SECURED CLAIM UNDER 11 U.S.C. § 506(a).

<i>Creditor</i>	<i>Claim Amount</i>	<i>Secured Claim</i>	<i>Monthly Payment</i>	<i>Beginning in Month #</i>	<i>Number of Payments</i>	<i>TOTAL PAYMENTS</i>
a. _____	\$ _____	\$ _____	\$ _____	_____	_____	\$ _____
b. _____	\$ _____	\$ _____	\$ _____	_____	_____	\$ _____
c. _____	\$ _____	\$ _____	\$ _____	_____	_____	\$ _____
d. TOTAL						\$ _____

8. **SEPARATE CLASS OF UNSECURED CREDITORS** — In addition to the class of unsecured creditors specified in ¶ 9, there shall be a separate class of nonpriority unsecured creditors described as follows: _____

- a. The debtor estimates that the total claims in this class are \$ _____.
- b. The trustee will pay this class \$ _____.

9. **TIMELY FILED UNSECURED CREDITORS** — The trustee will pay holders of nonpriority unsecured claims for which proofs of claim were timely filed the balance of all payments received by the trustee and not paid under ¶ 2, 3, 5, 6, 7 and 8 their pro rata share of approximately \$ _____ [line 1(d) minus lines 2, 3(e), 5(d), 6(d), 7(d) and 8(b)].

- a. The debtor estimates that the total unsecured claims held by creditors listed in ¶ 7 are \$ _____.
- b. The debtor estimates that the debtor's total unsecured claims (excluding those in ¶ 7 and ¶ 8) are \$ _____.
- c. Total estimated unsecured claims are \$ _____ [line 9(a) + line 9(b)].

10. **TARDILY-FILED UNSECURED CREDITORS** — All money paid by the debtor to the trustee under ¶ 1, but not distributed by the trustee under ¶ 2, 3, 5, 6, 7, 8 or 9 shall be paid to holders of nonpriority unsecured claims for which proofs of claim were tardily filed.

11. **OTHER PROVISIONS** —

12. **SUMMARY OF PAYMENTS** —

Trustee's Fee [Line 2]	\$ _____
Priority Claims [Line 3(e)]	\$ _____
Home Mortgage Defaults [Line 5(d)]	\$ _____
Long-Term Debt Defaults [Line 6(d)]	\$ _____
Other Secured Claims [Line 7(d)]	\$ _____
Separate Class [Line 8(b)]	\$ _____
Unsecured Creditors [Line 9(c)]	\$ _____
TOTAL [must equal Line 1(d)]	\$ _____

Insert Name, Address, Telephone and License Number of Debtor's Attorney:

DEBTOR _____
Signed _____

Signed _____
DEBTOR (if joint case)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

CHAPTER 13 PLAN

In Re:

DEBTOR'S NAME

Dated: JANUARY 26, 2004

DEBTOR
*In a joint case,
debtor means debtors in this plan.*

Case No. 04-4XXX1

1. PAYMENTS BY DEBTOR —

- a. As of the date of this plan, the debtor has paid the trustee \$-0-.
- b. **The debtor will pay the trustee \$1,300 per month, beginning within 30 days after the filing of this plan, for a period not to exceed 36 months** in order to pay the amounts indicated in ¶ 3, 4, 5, 6, 7, 8, and 9.
- c. The debtor will also pay the trustee \$N/A.
- d. The debtor will pay the trustee a total of \$46,800 [line 1(a) + line 1(b)]

2. PAYMENTS BY TRUSTEE — The trustee will make payments only to creditors for which proofs of claim have been timely filed, make payments monthly as available, and collect the trustee's percentage fee of a maximum of 10% for an estimated \$4,680 or such lesser percentage as may be fixed by the Attorney General.

3. PRIORITY CLAIMS — The trustee shall pay in full all timely filed claims entitled to priority under §507, including the following. The amounts listed are estimates only. The trustee will pay the amounts actually allowed.

<i>Creditor</i>	<i>Estimated Claim</i>	<i>Monthly Payment</i>	<i>Beginning in Month #</i>	<i>Number of Payments</i>	<i>TOTAL PAYMENTS</i>
a. ATTORNEY FEES	\$1,250	\$1,130	1	2	\$1,250
b. INTERNAL REVENUE SVC					
c. MN DEPT OF REVENUE					
d.					
e. TOTAL					\$1,250

4. LONG-TERM SECURED CLAIMS NOT IN DEFAULT — The following creditors have secured claims. Payments are current and the debtor will continue to make all payments which come due after the date the petition was filed directly to the creditors. The creditors will retain their liens.

- a. N/A
- b.

5. HOME MORTGAGES IN DEFAULT [§ 1322(b)(5)] — The trustee will cure defaults **AT NO INTEREST** on claims secured only by a security interest in real property that is the debtor's principal residence as filed. The debtor will maintain the regular payments which come due after the date the petition was filed. The creditors will retain their liens. The amounts of default and payment schedule are estimates only. If no default is stated, the trustee will pay the actual amounts of default in an amount sufficient to cure arrears within 24 months.

<i>Creditor</i>	<i>Amount of Default</i>	<i>Monthly Payment</i>	<i>Beginning in Month #</i>	<i>Number of Payments</i>	<i>TOTAL PAYMENTS</i>
a.XYZ MORTGAGE	\$21,000	\$810	2	1	\$810
b.		\$910	3	22	\$20,190
c.					
d. TOTAL:					\$21,000

Chapter 13 Plan

6. **OTHER LONG-TERM SECURED CLAIMS IN DEFAULT [§ 1322 (b)(5)]** — The trustee will cure defaults (plus interest at the rate of 8 per cent per annum) on other claims as follows and the debtor will maintain the regular payments which come due after the date the petition was filed. The creditors will retain their liens. The amounts of default and payment schedule are estimates only. The trustee will pay the actual amounts of default.

<i>Creditor</i>	<i>Amount of Default</i>	<i>Monthly Payment</i>	<i>Beginning in Month #</i>	<i>Number of Payments</i>	<i>TOTAL PAYMENTS</i>
a. N/A					
b.					
c. TOTAL					

7. **OTHER SECURED CLAIMS [§ 1325(a)(5)]** — The trustee will make payments to the following secured creditors having a value as of confirmation not to exceed the allowed amount of the creditor's secured claim with interest as shown. The creditor's allowed secured claim shall be the creditor's allowed claim or the value of the creditor's interest in the debtor's property, whichever is less. The creditors shall retain their liens. Each secured claim is designated a separate class for treatment pursuant to 11 U.S.C. §1322(b) and §1329(a). NOTE: NOTWITHSTANDING A CREDITOR'S PROOF OF CLAIM FILED BEFORE OR AFTER CONFIRMATION, THE AMOUNT LISTED IN THIS PARAGRAPH AS A CREDITOR'S SECURED CLAIM BINDS THE CREDITOR PURSUANT TO 11 U.S.C. § 1327 AND CONFIRMATION OF THE PLAN WILL BE CONSIDERED A DETERMINATION OF THE CREDITOR'S ALLOWED SECURED CLAIM UNDER 11 U.S.C. § 506(a). Payment schedule shown is an estimate only and may be modified by payments under paragraph 5 of this plan.

<i>Creditor</i>	<i>Claim Amount</i>	<i>Secured Claim</i>	<i>Monthly Payment</i>	<i>Beginning in Month #</i>	<i>Number of Payments</i>	<i>TOTAL PAYMENTS</i>
a. ABC FINANCE @ 8%	\$8,518	\$6,875	\$200	2	1	\$200
b.			\$220	3	22	\$4,840
c.			\$1,130	25	3	\$2,733
d.						
e.						
f. TOTAL						\$7,773

8. **SEPARATE CLASS OF UNSECURED CREDITORS** — In addition to the class of unsecured creditors specified in ¶ 9, there shall be a separate class of nonpriority unsecured creditors described as follows: **CHILD SUPPORT ARREARS: SHERBURNE COUNTY.**
- a. The debtor estimates that the total claims in this class are \$4,947.
- b. The trustee will pay this class in full prior to all other non-priority, unsecured claims..
9. **TIMELY FILED UNSECURED CREDITORS** — The trustee will pay holders of nonpriority unsecured claims for which proofs of claim were timely filed the balance of all payments received by the trustee and not paid under ¶ 2, 3, 5, 6, 7, and 8 their estimated pro rata share \$7,150.
- a. The debtor estimates that the total unsecured claims held by creditors listed in ¶ 7 are \$1,543.
- b. The debtor estimates that the debtor's total unsecured claims (excluding those in ¶ 7 and ¶ 8) are \$9,110.
- c. Total estimated unsecured claims are \$10,653 [line 9(a) + line 9(b)].
10. **OTHER PROVISIONS** — Debtor submits all future earnings or other income to such supervision or control of the trustee as is necessary for the execution of the plan. Property of the estate shall vest in the debtor upon dismissal, conversion, or discharge. Funds withheld under ¶ 2 and not applied to trustee's fee to be disbursed at trustee's discretion.

11. SUMMARY OF PAYMENTS

Trustee's Fee [Line 2)	\$4,680
Priority Claims [Line 3(e)]	\$1,250
Home Mortgage Defaults [Line 5(d)]	\$21,000
Long-Term Debt Defaults [Line 6(c)]	-0-
Other Secured Claims [Line 7(f)]	\$7,773
Separate Class [Line 8(b)]	\$4,947
Unsecured Creditors [Line 9]	\$7,150
TOTAL:	\$46,800

Insert Name, Address, Telephone and License Number of Debtor's Attorney:
ATTORNEY NAME AND ADDRESS

Signed _____ /e/ DEBTOR'S NAME
Debtor

Signed _____
Debtor (if joint case)

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:
DEBTOR'S NAME

CHAPTER 13 PLAN

Dated: March 23, 2004

Debtor(s)

Case No.: _____

1. PAYMENTS BY DEBTOR -

- a. As of the date of this plan, the debbr has paid the trustee \$ 0
- b. After the date of this plan, the debtor will pay the trustee \$1205.00 per month for 60 months, beginning within 30 days after the filing of this plan for a total of \$72,300.0.
- c. The debtor will also pay the trustee - N/A
- d. The debtor will pay the trustee a total of \$72,300.0 [line 1(a) + line 1(b) + line 1(c)].

2. PAYMENTS BY TRUSTEE- The trustee will make payments only to creditors for which proofs of claim have been filed, make payments monthly as available, and collect the trustee's percentage fee of 10% for a total of \$7230.00 [line 1(d) /1.1 x .10] or such lesser percentage as may be fixed by the Attorney General. For purposes of this plan, month one (1) is the month following the month in which the debtor makes the debtor's first payment. Unless ordered otherwise, the trustee will not make any payments until the plan is confirmed. Payments will accumulate and be paid following confirmation.

3. PRIORITY CLAIMS - The trustee shall pay in full all claims entitled to priority under §507, including the following. The amounts listed are estimates only. The trustee will pay the amounts actually allowed.

Creditor	Estimated Claim	Monthly Payment	Beginning In Month #	Number Of Payments	TOTAL PAYMENTS
a. Attorney Fees	<u>\$1250.00</u>	<u>\$1175.00</u>	<u>1</u>	<u>2</u>	<u>\$1250.00</u>
b. Internal Revenue Serv.	\$ _____	<u>pro rata</u>	_____	_____	\$ _____
c. Minn. Dept. of Revenue	\$ _____	<u>pro rata</u>	_____	_____	\$ _____
d. _____	\$ _____	\$ _____	_____	_____	\$ _____
e. TOTAL					<u>\$1250.00</u>

4. LONG-TERM SECURED CLAIMS NOT IN DEFAULT - The following creditors have long term secured claims. Payments are current and the debtor will continue to make all payments which come due after the date the petition was filed directly to the creditors.

- a. Mortgage
- b. Credit Acceptance Corp

5. HOME MORTGAGES IN DEFAULT (§1322(b)(5)) - The trustee will cure defaults on claims secured only by a security interest in real property that is the debtor's principal residence as follows. The debtor will maintain the regular payments which come due after the date the petition was filed. The creditors will retain their liens. The amounts of default are estimates only. The trustee will pay the actual amounts of default.

Creditor	Amount Of Default	Monthly Payment	Beginning In Month #	Number Of Payments	TOTAL PAYMENTS
a. _____	\$ _____	_____	_____	_____	\$ _____
b. _____	\$ _____	_____	_____	_____	\$ _____
c. _____	\$ _____	_____	_____	_____	\$ _____
d. TOTAL					\$ _____

6. OTHER LONG-TERM SECURED CLAIMS IN DEFAULT [1322(B)(5)] - The trustee will cure defaults (plus interest at the rate of 8 percent per annum) on other claims as follows and the debtor will maintain the regular payments which come due after the date the petition was filed. The creditors will retain their liens. The amounts of default are estimates only. The trustee will pay the actual amounts of default.

Creditor	Amount Of Default	Monthly Payment	Beginning In Month #	Number Of Payments	TOTAL PAYMENTS
a. _____	\$ _____	_____	_____	_____	\$ _____

7. **OTHER SECURED CLAIMS [§1325(a)(5)]** - The trustee will make payments to the following secured creditors having a value as of confirmation equal to the allowed amount of the creditor's secured claim using interest rate of 8.75%. The creditor's allowed secured claim shall be the creditor's allowed claim or the value of the creditor's interest in the debtor's property, whichever is less. The creditors shall retain their liens. NOTE: NOTWITHSTANDING A CREDITOR'S PROOF OF CLAIM FILED BEFORE OR AFTER CONFIRMATION, THE AMOUNT LISTED IN THIS PARAGRAPH AS A CREDITOR'S COLLATERAL VALUE BINDS THE CREDITOR PURSUANT TO 11 U.S.C. §1327 AND CONFIRMATION OF THE PLAN WILL BE CONSIDERED A DETERMINATION OF THE VALUE OF THE CREDITOR'S INTEREST IN THE DEBTOR'S PROPERTY UNDER 11 U.S.C. §506(a). Payment schedule is an estimate only.

Creditor	Claim Amount	Secured Claim	Monthly Payment	Beginning In Month #	Number of Payments	TOTAL PAYMENTS
a State Bank	\$51,000.00	\$51,000.00	\$1175.00	2	53	\$61,950.00
b.	\$	\$	\$			\$
c.	\$	\$	\$			\$
d. TOTAL						\$61,950.00

8. **SEPARATE CLASS OF UNSECURED CREDITORS** - In addition to the class of unsecured creditors specified in paragraph 9, there shall be a separate class of nonpriority unsecured creditors described as follows: _____

- a. The debtor estimates that the total claims in this class are \$ _____.
- b. The trustee will pay this class \$ _____.

9. **TIMELY FILED UNSECURED CREDITORS** - The trustee will pay holders of nonpriority unsecured claims for which proofs of claim were timely filed the balance of all payments received by the trustee and not paid under paragraphs 2, 3, 5, 6, 7 and 8 their pro rata share of approximately \$ _____ [line 1(d) minus lines 2, 3(e), 5(d), 6(d), 7(d) and 8(b)].

- a. The debtor estimates that the total unsecured claims held by creditors listed in paragraph 7 are \$ _____.
- b. The debtor estimates that the debtor's total unsecured claims (excluding those in paragraph 7 and paragraph 8) are \$ 12,707.49.
- c. Total estimated unsecured claims are \$ 12,707.49 [line 9(a) + line 9(b)].

10. **TARDILY-FILED UNSECURED CREDITORS** - All money paid by the debtor to the trustee under paragraph 1, but not distributed by the trustee under paragraphs 2, 3, 5, 6, 7, 8 or 9 shall be paid to holders of nonpriority unsecured claims for which proofs of claim were tardily filed.

11. OTHER PROVISIONS - The Trustee may distribute funds not allocated above at his discretion.

- a. Upon completion of payment of the secured portion of any claim, the property securing said claim shall vest in the debtor free and clear of any lien, claim or interest of the secured creditor.
- b. In the event a creditor is inadvertently omitted from the schedules and Debtor sends them notice of the case after the time period for timely filing claims has expired, and if said creditor files a late claim, trustee shall pay said creditor in the same manner as timely filed claims.
- c. The stay pursuant to 11 U.S.C. Sec 362 (a) shall not prevent deduction of current child support payments from debtor's wages.
- d. Executory contracts and unexpired leases are assumed unless otherwise specified herein.

12. SUMMARY OF PAYMENTS -

Trustee's Fee [Line 2].....	\$	<u>7230.00</u>
Priority Claims [Line 3(e)].....	\$	<u>1250.00</u>
Home Mortgage Defaults [Line 5(d)].....	\$	_____
Long-Term Debt Defaults [Line 6(d)].....	\$	_____
Other Secured Claims [Line 7(d)]	\$	<u>61,950.00</u>
Separate Class [Line 8(b)].....	\$	_____
Unsecured Creditors [Line 9].....	\$	<u>1,870.00</u>
TOTAL [must equal Line 1(d)].....	\$	<u>72,300.00</u>

ATTORNEY NAME AND ADDRESS

Signed _____
DEBTOR

Signed _____
DEBTOR (if joint case)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 13 Plan

Dated 02/12/04

DEBTOR(S)
In a joint case, debtor
means debtors in this plan

Case No. _____

1. PAYMENTS BY THE DEBTOR-

- a. As of the date of the plan, the debtor has paid the Trustee \$ _____.
- b. After the date of this plan, the debtor will pay the trustee \$ 375 per month for 60 months, beginning within 30 days after filing this plan for a total of \$ 22500
- c. The debtor will also pay the trustee _____.
- d. The debtor will pay the trustee a total of \$ 22500 [line 1a) + line 1(b) + line 1(c)].

2. PAYMENTS BY TRUSTEE - The trustee will make payments only to creditors for which proofs of claim have been filed, make payments monthly as available, and collect the trustee's percentage fee of 10% for a total of \$ 2,250.00 or such lesser percentage as may be fixed by the Attorney General. For purposes of this plan, month one (1) is the month following the month in which the debtor makes the debtor's first payment. Unless ordered otherwise, the trustee will not make any payments until the plan is confirmed. Payments will be accumulate & be paid following confirmation.

3. PRIORITY CLAIMS - The trustee shall pay in full all claims entitled to priority under sec. 507, including the following. The amounts listed are estimates only. The trustee will pay the amounts actually allowed.

Creditor	Estimated Claim	Monthly Payment	Beginning in Month #	Number of Payments	TOTAL PAYMENTS
a. Attorney Fees	\$ 1250	\$ 337.50/	1/3	12	\$ 1250
b. Internal Revenue Service	\$	\$			\$
c. Minn. Dept. of Revenue	\$	\$			\$
d.	\$	\$			\$
e.	\$	\$			\$
f. TOTAL					\$ 1250

4. SECURED CLAIMS NOT IN DEFAULT - The following creditors have secured claims. Payments are current & the debtor will continue to make all payments which come due after the date the petition was filed directly to the creditors. The creditors will retain their liens.

- a.
- b.

5. HOME MORTGAGES IN DEFAULT - The trustee will cure defaults on claims secured only by a security interest in in real property that is the debtor's principal residence as follows. The debtor will maintain the regular payments which come due after the date the petition was filed. The creditors will retain their liens. The amounts of default are estimates only. The trustee will pay the actual amounts of default.

CREDITOR	AMOUNT OF DEFAULT	MONTHLY PAYMENT	BEGINNING IN MONTH #	NUMBER OF PAYMENTS	TOTAL PAYMENTS
a.	\$	\$			\$
b.	\$	\$			\$
c.	\$	\$			\$
d. TOTAL					\$

6. OTHER LONG-TERM SECURED CLAIMS IN DEFAULT - The trustee will cure defaults on other claims as follows & the debtor the debtor will maintain the regular payments which come due after the date the petition was filed. The creditors will retain their liens. The amounts of default are estimates only. The trustee will pay the actual amounts of default.

CREDITOR	AMOUNT OF DEFAULT	MONTHLY PAYMENT	BEGINNING IN MONTH #	NUMBER OF PAYMENTS	TOTAL PAYMENTS
a.	\$	\$			\$
b.	\$	\$			\$
c.	\$	\$			\$
d. TOTAL					\$

7. OTHER SECURED CLAIMS- The trustee will make payments to the following secured creditors having a value as of confirmation equal to the allowed amount of the creditor's secured claim. The creditor's allowed claim shall be the creditor's claim or the value of the creditor's interest in the debtor's property, whichever is less. Except for the IRS creditors shall retain their liens until their secured claim is paid in full, at which time property securing said claim shall vest in the debtor free and clear of any lien, claim or interest of the secured creditor. NOTE: NOTWITHSTANDING A CREDITOR'S PROOF OF CLAIM FILED BEFORE OR AFTER CONFIRMATION, THE AMOUNT LISTED IN THIS PARAGRAPH AS A CREDITOR'S SECURED CLAIM BINDS THE CREDITOR PURSUANT TO 11 U.S.C. SEC. 1327 AND CONFIRMATION OF THE PLAN WILL BE CONSIDERED A DETERMINATION OF THE CREDITOR'S ALLOWED SECURED CLAIM UNDER 11 U.S.C. SEC. 506(A).

CREDITOR	% INT RATE	CLAIM AMOUNT	SECURED CLAIM	ESTIMATED MONTHLY PAYMENT	ESTIMATED BEGINNING IN MONTH #	ESTIMATED NUMBER OF PAYMENTS	TOTAL
a. Wells Fargo Financial	16.00	\$ 18784	\$ 12625	\$ 280/337.50	3/13	58	\$ 18,843
b.		\$	\$	\$			
c.		\$	\$	\$			
d.		\$	\$	\$			
e.		\$	\$	\$			
f.		\$	\$	\$			
g. TOTAL							\$ 18,843

8. SEPARATE CLASS OF UNSECURED CREDITORS-In addition to the class of unsecured creditors specified in paragraph, there shall be a separate class of nonpriority unsecured creditors described as follows:

- a. The debtor estimates that the total claims in this class are \$ _____.
- b. The trustee will pay this class \$ _____.

9. TIMELY FILED UNSECURED CREDITORS-The trustee will pay holders of nonpriority unsecured claims for which proofs of claim were timely filed the balance of all payments received by the trustee and not paid under paragraphs 2, 3, 5, 6, 7 and 8 their pro rata share of approximately \$ 157.00 [line1(d) minus lines 2, 3(c), 5(d) and 8(b)].

- a. The debtor estimates that the total unsecured claims held by creditors listed in paragraph 7 are \$ 6,159
- b. The debtor estimates that the total unsecured claims (excluding those in paragraphs 7 & 8 are \$ 7,079
- c. Total estimated unsecured claims are \$ 13,238 [line 9(a) plus line 9(b)].

10. TARDILY-FILED UNSECURED CREDITORS-All money paid by the debtor to the trustee under paragraph 1, but not distributed by the trustee under paragraphs 2,3,5,6,7,8 or9 shall be paid to holders of nonpriority unsecured claims for which proofs of claim were tardily filed.

11. OTHER PROVISIONS - The trustee may distribute any funds that are not allocated above at his\her discretion. To the extent that Child Support is an unsecured claim for AFDC reimbursement, it shall be designated a separate class and paid in full before all other general unsecured claims.

In the event property tax debts are filed as secured claims, they shall be paid as secured claims, but they shall be paid as set forth in Paragraph 3 or as set forth in Paragraph 6 above.
 Please note: Child Support Collections is authorized to continue automatic wage withholding for ongoing, post-petition child support. Child Support Collections may obtain, modify & enforce the debtor's current ongoing support obligation, including medical support & child care, including wage withholding. All of the debtor's projected disposable income in the 3 year period beginning on the date that the first plan payment is due will be applied to make payments under the plan.
 Any non-exempt proceeds from a personal injury claim shall be turned over to the trustee.

12. SUMMARY OF PAYMENTS - ESTIMATED

Trustee's fee [Line2]	\$ 2,045.45
Priority Claims [Line 3(f)]	\$ 1,250.00
Home Mortgage Defaults [Line 5(d)]	
Long-Term Debt Defaults [Line 6(d)]	
Other Secured Claims [Line 7(g)]	\$ 18,843.00
Separate Class [Line 8(b)]	
Unsecured Creditors [Line 9]	\$ 157.00
TOTAL [Must equal Line 1(d)]	\$ 22,500.00

Attorney for Debtor



Signed _____
 Debtor

Signed _____
 Debtor(joint case)

Name of Debtor(s):

Case No. BKY

SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

Debtors Marital Status Single Married Widowed Divorced

Dependants of Debtor and Spouse (name, age, relationship)

Employment Debtor: (age) 39 Spouse: (age) 33
Occupation: Driver Claims Adjuster
Employer Address: Courier Health Organization
Vadnais Heights Bloomington
Length of Employment: 3 yrs 8 yrs
Other Employment:

Table with columns for Income, Subtotal, Total Net Monthly Take Home Pay, Other Income, Total Monthly Income, and Change in Circumstances. Rows include Average monthly gross wages, payroll taxes, and various deductions.

SCHEDULE J - CURRENT EXPENSES OF INDIVIDUAL DEBTOR(S)

Table with columns for Home, Utilities, Food, Medical, Clothing, Laundry, Transportation, Insurance, Daycare, Business Expenses, Student Loans, Student Expenses, Taxes, Charitable contributions, Periodicals, Postage, Personal Care, Pets, Recreation/Clubs, Maintenance Support, Nonfiling Debt of Installment Loan, and Chapter 13 Debtors. Rows list various expenses with dollar amounts.

Unsworn Declaration under Penalty of Perjury (Total 10 sheet)

I declare under penalty of perjury that I have read the foregoing summary and schedules and that they are true and correct to the best of my knowledge, information and belief.

Date March 18, 2004 Signature of Debtor /e/
Date March 18, 2004 Signature of Joint Debtor (if any) /e/

Housing Authority would no longer pay this subsidy, and the landlord, not receiving the rent obligation, would have the right to seek her eviction from the premises.¹

Under the applicable regulations, the debtor, like all recipients of the public housing benefits, is required to pay one third of her income as rent. When she obtained the housing benefits, Ms. Smith signed statements that she had no income and promised to advise of any change in that status. The documents she signed specifically advised her that if she failed to report income, her housing benefits could be terminated. Since Smith reportedly had no income, she was required to pay no amount for rent.²

At some time in 1999, the Housing Authority discovered that Ms. Smith had income for 1996,³ but had failed to report that income. Accordingly, on October 6, 1999, the Housing Authority sent a letter to Ms. Smith advising her that it had discovered the unreported income and requested payment of the thirty percent rent payment. The letter advised that if she failed to pay the amount due, her benefits would be

¹Smith's landlord is also the Housing Authority, and, as a landlord, acts in a separate capacity from the administrator who determines and pays her benefits under the program. As landlord, however, the Housing Authority may have additional rights against those who have defaulted on rent payments, i.e., to seek eviction. See generally In re Bacon, 212 B.R. 66, 75 (Bankr. E.D. Pa. 1997).

²The statements signed by Ms. Smith each year twice promise to report any change in income:

If, at any time during the year, I or any member of my family have a change of income, I will report it immediately to the Section 8 office in writing.***

Statement of Section 8 Participation Responsibilities ¶ 2 (emphasis in original); and

OUTLINE OF ONGOING RESPONSIBILITIES AS A
PARTICIPANT ON SECTION – 8

a. Report all changes in family size and income.***

Id. The obligations and grounds for termination established by the federal regulations were given to Ms. Smith in a three page document which she signed. See St. Louis Housing Authority Housing Assistance Programs statement; see also 24 C.F.R. §§ 982.551, 982.552.

³It was later discovered that Ms. Smith also had unreported income for the 1997 taxable year.

terminated on November 30, 1999. Ms. Smith requested and was granted a hearing on the action. The hearing officer upheld the termination because Ms. Smith admitted that she failed to report the income. The letter extended the time by which she was required to make payment to December 22, 1999, and again advised that her benefits would be terminated effective December 31, 1999, if payment was not timely made.

Despite these strictures, Ms. Smith was given a further opportunity to pay her rent, to the extent permitted under the federal regulations. Ms. Smith paid nothing on the obligation, and on March 15, 2000, the Housing Authority sent a letter to Ms. Smith's attorney indicating that due to her failure to report income for two years, Ms. Smith's participation in the subsidy program would be terminated, effective April 30, 2000. The letter also advised that if she made full payment on the obligation, her benefits would not be terminated. Two days before the termination date, on April 28, 2000, Ms. Smith filed a chapter 7 petition. On May 2, 2000, after receiving notice of the chapter 7 case, the Housing Authority sent another letter to Ms. Smith's attorney asserting that the benefits had been terminated due to the debtor's failure to report income.

The Housing Authority thereafter filed a motion for relief from stay pursuant to section 362, which was granted after hearing. The order memorializing the ruling was specific and narrow, provided that the Housing Authority could terminate the debtor from the housing program and discontinue making any payments to the landlord for the rent due, and did not address Ms. Smith's rights to apply for future benefits. Ms. Smith timely appealed that order, asserting, as she did below, that the termination of her present benefits constituted a violation of section 525 because that section precluded the Housing Authority from terminating her benefits on the grounds of nonpayment. Because we believe that the bankruptcy court⁴ correctly applied section 525 to this situation, we affirm.

I I. The Standard of Review

The court reviews the bankruptcy court's findings of fact under the clearly erroneous standard and conclusions of law de novo. Fed. R. Bankr. P. 8013. Thus, we review the specific findings of fact utilized to determine whether section 525 prohibits action by the Housing Authority under the clearly erroneous standard. See Gibbs v. Housing Authority of New Haven, 86 B.R. 257, 263 (D. Conn. 1983).

⁴The Honorable David P. McDonald, United States Bankruptcy Judge for the Eastern District of Missouri.

Specifically, the bankruptcy court's implicit determination that the termination was not “solely” due to Smith's failure to pay the obligation to the Housing Authority is reviewed under the clearly erroneous standard.⁵ See Atlantic Gulf Communities Corp. v. Tax Collectors of St. Lucie County (In re General Development Corp.), 163 B.R. 216 (S.D. Fla. 1994). However, in determining whether the bankruptcy court properly interpreted the case authority and correctly applied the facts under section 525, our review is de novo.

III. Application of Section 525(a)

The Bankruptcy Code provides in pertinent part:

[A] governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act, or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

11 U.S.C. § 525(a). This provision protects debtors from acts of discrimination by governmental units when the discrimination is due *solely* to the fact that the debtor filed a bankruptcy petition, was insolvent, or failed to pay a discharged obligation. It is not reasonably subject to dispute that this statute applies to the Housing Authority in this case. See In re Bacon, 212 B.R. 66, 75 (Bankr. E.D. Pa. 1997) (“[Indeed none of the cases denying section 525(a) protection to a public housing tenant has held or suggested that it cannot be invoked upon a Housing Authority's refusal to grant public housing benefits to a debtor with unpaid, but discharged, debt to the landlord.]”).

⁵The bankruptcy court did not make an express ruling that the termination was not solely due to nonpayment. However, since that issue was argued to the court and the issue was necessary to the determination that section 525(a) was inapplicable and that relief from stay was warranted, the bankruptcy court necessarily and implicitly determined that the termination was not due solely to nonpayment of the debt.

The ultimate issue in this case is whether the Housing Authority may terminate the debtor's benefits, *i.e.*, the subsidy to provide her rent, because she failed to pay thirty percent of her income toward her rent as required by the regulations governing the program. We conclude that section 525(a) does not prohibit this action.⁶

We must first resolve the issue of whether the Housing Authority sought to terminate Ms. Smith's benefits “solely” because she was a debtor under title 11 or insolvent before the commencement of the case. The Housing Authority asserts that her benefits are subject to termination because of her fraud – her failure to report income as required by the regulations and the documents she signed. The Housing Authority set forth its reason for her termination from the program in various correspondence:

Please make payment to the St. Louis Housing Authority for UNREPORTED INCOME. ***

The balance must be paid in full within (30) days of the above date. The following action will be taken for failure to repay the St. Louis Housing Authority: ***

B) Termination from the Section 8 Program effective 11/30/99.

Housing Authority letter to Ms. Smith, dated October 6, 1999 (emphasis in original).

Per our meeting on November 10, 1999, regarding the termination of your Section 8 Assistance for unreported income, please be advised that the full balance of \$3,628.00 must be paid no later than December 22, 1999.

In our meeting, you admitted that you did not report the income because the jobs were short term and you didn't think it would matter. Therefore, if the full balance is not paid by December 22, 1999, your Section 8 Assistance will be terminated at the end of your contract, effective December 31, 1999.

Housing Authority letter to Ms. Smith, dated November 11, 1999 (emphasis added).

⁶During the pendency of the chapter 7 case, the Housing Authority filed a complaint objecting to the dischargeability of the rent obligation under section 523(a)(2). In that proceeding, the Housing Authority asserted that the obligation was nondischargeable due to the debtor's fraudulent conduct in failing to report income. The debtor consented to a judgment of nondischargeability with regard to the 1996 taxable year.

Ms. Smith failed to report income for two consecutive years. We will not enter a repayment agreement with Ms. Smith based upon our repayment policy. Ms. Smith's participation in the Section 8 program will end effective April 30, 2000, if full payment is not received.

Housing Authority letter to Ms. Smith's attorney, dated March 15, 2000 (emphasis added). These letters indicate that the reason for her termination from the program was her failure to report income. Indeed, the requirement that she report income was an express condition to being in the program in the first instance. The fact that the Housing Authority offered redemption does not obviate the fact that the basis for her termination was the failure to report income. The Housing Authority's delay in terminating her benefits, based upon Ms. Smith's unfulfilled promises, does not necessarily diminish or destroy the existing rationale for the termination of her benefits. The letters indicate that the underlying reason for her termination was her fraud and, thus, there is no error in a determination that the failure to pay the debt was not the sole basis for termination of her benefits.

Even if the Housing Authority's decision to terminate her benefits arose solely from Smith's failure to pay a debt, section 525 does not prohibit termination of those benefits. Section 525 provides that a governmental unit may not suspend or refuse to renew a grant to a person that is or has been a debtor under this title solely because the individual filed a bankruptcy petition or was insolvent before the commencement of the case. In this instance, the debtor, prepetition, breached her contract with the Housing Authority, thereby giving the Housing Authority, pursuant to the express terms of that contract and the federal regulations, cause to terminate the relationship. Section 525 does not operate to cure Smith's contractual defaults and does not require the Housing Authority to continue its contractual relationship with her.⁷ While the Housing Authority may be required to consider future applications for benefits, it is not required to reinstate or permit cure of a default of a contractual relationship.⁸ Thus, the termination of the lease is not a violation of section 525. See In re Bacon, 212 B.R. 66 (Bankr. E.D. Pa. 1997). In this instance, the Housing Authority is not refusing to deal with the debtor because of her bankruptcy filing, but,

⁷The Housing Authority concedes, however, that the debtor may reapply for public housing and may not be denied future benefits because of her bankruptcy filing or insolvency. See In re Lutz, 82 B.R. 699 (Bankr. M.D. Pa. 1988).

⁸Had Congress intended section 525 to have that reach, it could have included provisions similar to those in section 1325(b) providing for cure and reinstatement of contractual relationships with mortgagees.

rather, seeks to enforce its contractual rights which permit termination of benefits based upon fraudulent conduct. Section 525(a) protects Smith's right to participate in a public housing program free from discriminatory action based upon her bankruptcy filing; it does not bar the Housing Authority from enforcing the terms of the regulations and contracts under which it operates in an effort to deter fraud. Cf. In re Hobbs, 221 B.R. 892 (Bankr. M.D. Fla. 1997). Section 525(a) is not intended to shield a debtor from responsibilities under leases or other government obligations. The policy of ensuring a “fresh start” does not require a governmental entity to insulate the debtor from all adverse consequences of filing a bankruptcy petition or, indeed, her own fraud.

I V. Conclusion

In permitting the Housing Authority to terminate her future benefits for her failure to report income and pay an obligation, the bankruptcy court did not err in concluding that section 525(a) did not apply to the debtor's situation. The debtor does not argue with the conclusion that, if section 525(a) is inapplicable, relief from stay is appropriate. Accordingly, we affirm the order granting the Housing Authority's motion for relief from stay.

A true copy.

Attest:

CLERK, U.S. BANKRUPTCY APPELLATE PANEL FOR THE EIGHTH
CIRCUIT

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re:

OLGA VALENTIN, : Case No. 03-25290T
Debtor :
 :
 :

MEMORANDUM OPINION¹

By THOMAS M. TWARDOWSKI, Bankruptcy Judge.

Reading Housing Authority (“RHA”) filed a motion for relief from the automatic stay (“the Motion”) seeking to enforce its rights and remedies under a lease with the debtor, Olga Valentin (“Debtor”), for a public housing unit in Reading, Pennsylvania. While RHA alleged both pre and post-petition payment defaults as the basis for seeking relief from the stay, it was admittedly only the pre-petition default for which RHA seeks relief to allow it to continue with its eviction of Debtor. In response, Debtor contends, inter alia, that 11 U.S.C. §525(a), which protects a debtor against discrimination by a governmental unit, prohibits RHA from obtaining the relief it seeks. The parties have submitted their post-hearing briefs and the matter is ready for decision.

FACTS

The facts are relatively straightforward and uncontested. RHA is a public housing agency

1. This Memorandum Opinion constitutes this Court’s findings of fact and conclusions of law mandated by Fed. R. Bankr. P. 7052 and 9014(c).

that owns and operates a public housing complex in Reading, Pennsylvania. Debtor heretofore entered into a written lease with RHA (“the Lease”) for an apartment within the housing complex (“the Premises”), wherein Debtor agreed to pay a certain portion of the monthly rent. The remaining amount of the rent is subsidized.²

Following Debtor’s default on rent payments, RHA commenced an action in June of 2003 to recover the unpaid rent and possession of the Premises. Judgment was entered in favor of RHA in the amount of \$723.89 after a hearing held on July 1, 2003. RHA was also awarded possession of the Premises in the event that Debtor failed to satisfy the judgment by the time of the scheduled eviction.

Thereafter, on July 7, 2003, Debtor entered into a payment arrangement with RHA, wherein Debtor agreed to make installment payments to payoff the judgment. However, Debtor failed to make some or all of the installment payments. Consequently, on or about September 23, 2003, RHA obtained an Order for Possession for the Premises. Before Debtor’s eviction could be accomplished, Debtor filed a Chapter 7 petition on October 2, 2003.

Debtor continued to make her rent payments to RHA after she filed her bankruptcy petition. Only the judgment that RHA obtained pre-petition remains unpaid. RHA filed the instant Motion after the Chapter 7 Trustee failed to assume or reject the Lease within sixty days of Debtor’s bankruptcy filing. Debtor filed a timely response in opposition to the Motion.

DISCUSSION

2. Prior to July 1, 2003, Debtor was required to pay \$97 per month for her portion of the rent. Following July 1, 2003, Debtor was responsible to pay \$144 per month. Debtor’s portion of the rent was further adjusted on October 1, 2003, to \$25 per month. In addition to the rent, Debtor was required to pay \$18.50 per month for air conditioning and the washer/dryer unit.

The issue before this Court is whether 11 U.S.C. § 525(a) prohibits a public housing landlord from obtaining relief from the automatic stay to evict a tenant whose sole default is the non-payment of pre-petition rent.³

I. Lease Rejection

Traditionally, landlords file “motions for stay relief” after a lease has been deemed rejected since, upon rejection, a lease is abandoned to the debtor and no longer constitutes property of the bankruptcy estate. See Stoltz v. Brattleboro Housing Auth. (In re Stoltz), 315 F.3d 80, 86 (2nd Cir. 2002); In re Bacon, 212 B.R. 66, 68 (Bankr. E.D. Pa. 1997); In re Day, 208 B.R. 358, 365 (Bankr. E.D. Pa. 1997); In re Rosemond, 105 B.R. 8, 9-10 (Bankr. W.D. Pa. 1989).

3. Before determining the applicability of section 525(a), a determination must be made regarding whether the lease was terminated prior to Debtor’s bankruptcy filing. See In re Bacon, 212 B.R. 66, 69 (Bankr. E.D. Pa. 1997). If the lease was terminated prior to the debtor’s bankruptcy filing, then the lease does not become part of the bankruptcy estate and, therefore, does not receive protections afforded in bankruptcy. “Bankruptcy cannot breathe life into a terminated lease.” Bacon, 212 B.R. at 70. Consequently, section 525(a) will not apply in such an instance.

“Termination” is a state law concept, see Butner v. United States, 440 U.S. 48, 55 (1979); Robinson v. Chicago Housing Auth., 54 F.3d 316, 320 n.1 (7th Cir. 1995); Bacon, 212 B.R. at 69, and under Pennsylvania law, a lease is not terminated until the eviction of the lessee is completed. See Bacon, 212 B.R. at 70; Sudler v. Chester Housing Auth. (In re Sudler), 71 B.R. 780, 785 (Bankr. E.D. Pa. 1987). Despite obtaining the Order of Possession, RHA was unable to complete the eviction prior to Debtor’s bankruptcy filing. Accordingly, the Lease was not terminated prior to Debtor’s bankruptcy filing and section 525(a) may be applicable. See e.g., Bacon, 212 B.R. at 70.

It is important to note that “rejection” of a lease is not synonymous with “termination” or a lease. See Stoltz, 315 F.3d at 86 n.1; Bacon, 212 B.R. at 69. “Rejection” is a bankruptcy concept that determines whether the estate will administer a lease as an asset. See Bacon, 212 B.R. at 69. Rejection has no impact on a contract’s existence and, as a result, a contract is not deemed to be terminated by virtue of a rejection. Id. at 69. “Termination” is a concept that determines the viability of a contract and is a matter of applicable state law. Id. at 69. Thus, when a lease is rejected, it is still a viable contract. See Day, 208 B.R. at 365. Rejection, whether by motion or operation of law, simply permits a landlord to seek relief from the stay in order to be able to pursue state law remedies to terminate a lease for any breach thereof. See In re Sheard, No. 98-19627DWS, 1999 Bankr. LEXIS 811, at *10 (Bankr. E.D. Pa. 1999).

Here, we conclude as a matter of law that the Lease was rejected because the Trustee did not elect to assume or reject it within sixty days following the bankruptcy filing. See 11 U.S.C. §365(d)(1). This is not surprising, for as one court noted, “[i]n virtually every Chapter 7 no-asset case the trustee realizes no benefit from assuming the debtor’s residential lease, and thus in virtually every Chapter 7 no-asset case, the residential lease is deemed rejected” In re Sheard, No. 98-19627DWS, 1999 Bankr. LEXIS 811, at *10 (Bankr. E.D. Pa. 1999); see also Day, 208 B.R. at 365 (noting that the vast majority of public housing tenant bankruptcies are no asset cases in which the trustee will have no financial or other interest in a debtor’s residential lease and, thus, the lease is subject to rejection). By virtue of the rejection, RHA sought to terminate the Lease and recover possession of the Premises based upon Debtor’s default in the payment of pre-petition rent.⁴

Debtor, like many similar public housing tenants seeking to avoid eviction, alleges that section 525(a) of the Code bars RHA from prevailing on their “stay relief” motion. This Court must determine the extent, if any, to which the Debtor is entitled to protection under section 525(a) of the Code. We thus join the list of other Courts who have pondered this weighty issue. Indeed, as the Second Circuit Court of Appeals commented, “[d]espite more than twenty years of judicial consideration . . . the scope of[s]ection 525(a)’s protection in the context of public housing is still unsettled.” Stoltz, 315 F.3d at 88.

II. Applicability of the Anti-discrimination Provision

4. Prior to the hearing, RHA withdrew the Motion to the extent that it was based on any alleged post-petition breach of the Lease. Thus, RHA solely relies upon Debtor’s pre-petition breach of the Lease in failing to pay the pre-petition rent. Further, RHA acknowledged that, assuming the pre-petition rent is ultimately discharged, it will of course cease all collection efforts.

Section 525(a), otherwise known as the anti-discrimination provision, provides, in relevant

part, that:

[A] governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such grant against . . . a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act, or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

This provision protects debtors against discrimination regarding the receipt of public benefits. That is, section 525(a) helps to ensure the “fresh start” policy of the Code by prohibiting governmental entities from refusing to deal with or denying a certain property interest to a debtor due to his or her bankruptcy filing.

See Bacon, 212 B.R. at 74-75.

We begin by noting that the Debtor must establish three requirements in order for section 525(a) to apply. First, the prohibitive conduct must have been performed by a “governmental unit”.⁵ Second, the governmental unit must have denied, revoked, suspended or refused to renew a license, permit, charter, franchise or other similar grant to the debtor. Third, the action must have been taken solely because the debtor filed for bankruptcy, was insolvent or failed to pay a debt that is subject to discharge

5. A governmental unit is defined to include the following: “[the] United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government.” 11 U.S.C. §101(27).

in bankruptcy.⁶

A. Governmental Unit:

We find that, for purposes of section 525(a), RHA is a governmental unit which owns and operates the complex in which the Premises is located. See Stoltz, 315 F.3d at 88.⁷ However, the second and third requirements of section 525(a) present a little more difficulty in their application to this case. Indeed, much of the controversy surrounding section 525(a) in the context of public housing has centered on the interpretation of the terms “other similar grant” (requirement 2) and “solely because” (requirement 3). See Stoltz, 315 F.3d at 88.

B. Requirement that Eviction is Being Sought “Solely Because” of Debtor’s Failure to Pay Dischargeable Debt:

Courts have struggled with the question of whether eviction is being sought by a public housing authority “solely because” a debtor failed to pay a dischargeable debt (i.e., pre-petition rent).⁸

6. Pre-petition rent is dischargeable in bankruptcy. See Bacon, 212 B.R. at 71; The Housing Auth. of the City of Erie v. Szymecski (In re Szymecski), 87 B.R. 14, 15 (Bankr. W.D. Pa. 1988).

7. This matter does not involve Section 8 housing in which the government subsidizes leases for privately owned housing units. In such a case, the entity providing housing would not be considered a governmental unit and section 525(a) would not be applicable. See e.g., Spruce Ltd. Partnership v. Lutz (In re Lutz), 82 B.R. 699, 703 (Bankr. M.D. Pa. 1988).

8. Historically, it appears that much of the dispute over the applicability of section 525(a) to public housing related to whether the debtor was being evicted “solely because” of the failure to pay a dischargeable debt. Some courts have broadly interpreted the term “solely because”, requiring that the failure to pay a debt play a significant role in the government’s action. See e.g., Curry v. Metropolitan Dade County (In re Curry), 148 B.R. 966, 971-972 (S.D. Fl. 1992); Szymecski, 87 B.R. at 15; Sudler, 71 B.R. at 786-87; see also Pennsylvania Pub. Util. Comm’n. v. Metro Transp. Co. (In re Metro Transp. Co.), 64 B.R. 968, 975 (Bankr. E.D. Pa. 1986). In other words, if the failure to pay had any part to do with the government’s decision to evict, it was deemed to be the sole cause. Courts following this approach find that section 525(a) protects the debtor from eviction. Other courts have applied a more narrow interpretation finding that section 525(a) is not implicated where the government had reasons other than those enumerated therein to support its

Assuming that the only basis of default is the non payment of pre-petition rent (such as is the case here), some courts have held that an eviction would not be “solely because” a debtor failed to pay a pre-petition debt because the public housing authority sought to recover the premises rather than collect the pre-petition rent. See e.g., Robinson v. Chicago Housing Auth. (In re Robinson), 169 B.R. 171, 176 (N.D. Ill. 1994), aff’d, 54 F.3d 316 (7th Cir. 1995) Housing Auth. of the City of Pittsburgh v. Collins (In re Collins), 199 B.R. 561, 566 (Bankr. W.D. Pa. 1996); Housing Auth. of the City of Pittsburgh v. James (In re James), 198 B.R. 885, 889 (Bankr. W.D. Pa. 1996). However, other courts have found such a distinction to be illusory and have held that a debtor was being evicted “solely because” of the failure to pay pre-petition rent since such action would not have occurred but for the failure to pay rent. See e.g., Stoltz, 315 F.3d at 91; Bacon, 212 B.R. at 75; Day, 208 B.R. at 364.

The Supreme Court in Federal Communications Comm’n. v. NextWave Personal Communications, Inc., 537 U.S. 293 (2003), recently shed some light on the meaning of the term “solely because” as used in section 525(a), albeit outside of the context of public housing, which will hopefully provide a basis for achieving some consistency in future court decisions. In NextWave, the Supreme Court

decision to seek eviction. See e.g., Robinson v. Chicago Housing Auth. (In re Robinson), 169 B.R. 171, 176 (N.D. Ill. 1994), aff’d 54 F.3d 316 (7th Cir. 1995); Housing Auth. of the City of Pittsburgh v. Collins, (In re Collins), 199 B.R. 561, 566-567 (Bankr. W.D. Pa. 1996); Housing Auth. of the City of Pittsburgh v. James (In re James), 198 B.R. 885, 889 (Bankr. W.D. Pa. 1996); cf., Exquisito Servs., Inc. v. United States of America (In re Exquisito Servs., Inc.), 823 F.2d 151, 153-155 (5th Cir. 1987). That is, if the government had reasons to evict other than a debtor’s failure to pay a dischargeable debt, then its action would not be “solely because” of the failure to pay the debt. This line of reasoning is now certainly called into question by the Supreme Court’s decision in Federal Communications Comm’n. v. NextWave Personal Communications, Inc., 537 U.S. 293 (2003). See discussion, infra.

However, some courts, realizing the difficulties of interpreting the term “solely because” and the fractured decisions which have resulted, began to focus their attention on determining the nature of the grant instead. See e.g., Stoltz, 315 F.3d at 89-90; Bacon, 212 B.R. at 75. Indeed, such focus may take on added importance in light of the NextWave decision. See discussion, infra.

found that the debtor's failure to pay its debt (which was dischargeable) to the FCC was the proximate cause of the cancellation the debtor's licenses for broadband personal communications services. Id. at 301-302. As a result, the Supreme Court held that the FCC was prohibited from revoking the licenses pursuant to section 525(a). Id. The Supreme Court explained that:

[w]hen a statute refers to the failure to pay a debt as the sole cause of cancellation ("solely because"), it cannot reasonably be understood to include, among the other causes whose presence can preclude the application of the prohibition, the governmental unit's motive in effecting the cancellation.

Id. at 301. Thus, in order for a governmental unit's action to be "solely because" of the failure to pay a dischargeable debt, the failure to pay must alone be the proximate cause of the cancellation, irrespective of motive. Id. at 302.⁹

In light of the guidance provided by NextWave, we conclude that Debtor's failure to pay the pre-petition rent was the proximate cause of RHA's decision to evict,¹⁰ since we find as a fact that RHA would not have sought to evict Debtor had Debtor not failed to pay the pre-petition rent. Indeed,

9. To put this in the context of public housing, if the housing authority proffered several compelling reasons to evict a debtor, in addition to the failure to pay pre-petition rent, these reasons would be of no import so long as it is established that the event that caused the housing authority to evict the debtor was the failure to pay the pre-petition rent. In other words, if the housing authority would not have sought to evict but for the failure to pay pre-petition rent, then the action taken by the housing authority is "solely because" of the failure to pay a dischargeable debt.

10. Notably, had Debtor's pre-petition breach of the Lease been the result of a failure to comply with a duty other than the duty to pay rent, RHA may of had a permissible basis to seek eviction. See e.g., Smith v. St. Louis Housing Auth.(In re Smith), 259 B.R. 901, 906 (B.A.P. 8th Cir. 2001) (decision to terminate the debtor's rent subsidy was based on the debtor's fraud). However, such a factual scenario is not before this Court.

RHA readily admits that it seeks to evict Debtor based upon her failure to pay pre-petition rent.¹¹ Thus, RHA is seeking to evict Debtor “solely because” Debtor has not paid a dischargeable debt. Consequently, the crux of this matter centers on whether public housing is a protected grant within the meaning of section 525(a).

C. “Other Similar Grant”:

Courts have unanimously concluded or assumed that public housing is a protected grant under section 525(a). See Bacon, 212 B.R. at 70. Courts have differed, however, in their interpretation of exactly which aspects of public housing constitute an “other similar grant” under section 525(a). How the public housing grant is ultimately defined will affect the scope of section 525(a)’s protection.

Some courts have held that the term “other similar grant” encompasses public housing leases. See e.g., Stoltz, 315 F.3d at 90-91; The Housing Auth. of the City of Erie v. Szymecki (In re Szymecki), 87 B.R. 14, 16 (Bankr. W.D. Pa. 1988). Another court has held that the government rent subsidy was the protected grant. See e.g., Curry v. Metropolitan Dade County (In re Curry), 148 B.R. 966, 972 (S.D. Fla. 1992). A former bankruptcy judge of this District has held that both the lease and the rent subsidy were protected grants. See e.g., Day, 208 B.R. at 367; see also Johnson v. Chester Housing Auth. (In re Johnson), 250 B.R. 521, 530 (Bankr. E.D. Pa. 2000). In those instances in which the courts define the protected grant as the lease and/or the rent subsidy, section 525(a) will generally shield a debtor from eviction, assuming that the eviction was “solely because” of one of the enumerated items in said

11. Other than the failure to pay the judgment, RHA does not offer any other reason or grounds for evicting Debtor. Yet, even if RHA asserted that it was only seeking to terminate its contractual relationship with Debtor based upon the Trustee’s rejection, the inescapable conclusion is that the failure to pay pre-petition rent is the reason for the termination. See e.g., Stoltz, 315 F.3d at 92; Bacon, 212 B.R. at 76 n.18; Day, 208 B.R. at 364.

provision. See Stoltz, 315 F.3d at 90-91; Johnson, 250 B.R. at 530; Curry, 148 B.R. at 972; Day, 208 B.R. at 367; Szymecki, 87 B.R. at 16; but see Collins, 199 B.R. at 566-67 (while appearing to recognize that a rent subsidy, apart from the lease, is a protected grant, section 525[a] was still inapplicable to protect the debtor from being evicted because the housing authority was not seeking to evict the debtor solely because the debtor failed to pay a pre-petition default); James, 198 B.R. at 888-889 (while implicitly recognizing the rent subsidy was a protected grant, section 525[a] was still inapplicable to protect the debtor from being evicted because the housing authority was not seeking to evict the debtor solely because the debtor failed to pay a dischargeable debt).

However, other courts have limited the section 525(a) protected grant in the public housing context to the future right to participate in public housing. See Bacon, 212 B.R. at 75; see also In re Hobbs, 221 B.R. 892, 896 (Bankr. M.D. Fla. 1997). Thus, those courts have held that the protected grant does not include the lease or the rent subsidy. See Bacon, 212 B.R. at 75 n.17. For instance, Judge Diane Weiss Sigmund¹², of this District, distinguished the public housing authority's role as a creditor from its role as a grantor of public housing benefits in determining the applicability of section 525(a).¹³ Id. at 75. Specifically, Judge Sigmund held that the public housing authority was unconstrained in its role as a creditor to evict a debtor so long as the debtor is not being deprived of his or her right to any future participation in the public housing program (i.e., the protected grant).¹⁴ Id. As stated by Judge Sigmund:

12. Now Chief Judge of this Court.

13. The reason for such analysis is that a public housing landlord, as a creditor, should be treated no differently than any other creditor under the Code. See Bacon, 212 B.R. at 75.

14. The housing authority's role as a grantor is to provide the right to participate in public housing and within this duty, the housing authority will be constrained by section 525(a). See Bacon, 212 B.R. at 75. However,

...the issue in §525(a) is not collection of discharged debt, ably dealt with in other sections, but refusal to deal with the debtor because of his bankruptcy and its consequences. While there is no proscription on a private party's refusal to deal, there is such a prohibition when the party is a governmental entity and the dealings are in the nature of licenses, permits, charters, franchises or similar grants for due to the exclusivity of those benefits, their absence will impair the debtor's fresh start.

Id. at 74. Under this approach, section 525(a) protects a debtor only if the debtor is denied the right to participate in public housing upon re-application. Likewise, the bankruptcy court in Hobbs stated:

...the protections offered by Section 525(a) are not implicated as long as the eviction process does not deprive the debtor of the right to participate in the public housing program in the future. If the public housing authority sought to preclude the debtor from participating in the public housing program because the debtor had filed a bankruptcy petition, then Section 525(a) would be implicated. However, if the public housing authority is merely enforcing its lease as it would against any other tenant, Section 525(a) does not require the public housing authority to forestall eviction proceedings merely because a bankruptcy action is filed by the tenant, assuming the authority obtains permission to modify the automatic stay.

In permitting the public housing authority to modify the automatic stay to continue an eviction action, the debtor will be removed from the leased premises while she awaits assignment of a new unit. The amount of time the debtor goes without public housing will depend on the demand for such public housing and the availability of these units. In some locales, the wait may be long, and the result of this ruling harsh. However, if Section 525(a) prevented a public housing authority from evicting a debtor whom failed to pay prepetition rent then the 'fresh start' which Section 525(a) was designed to provide debtors would be turned into an impermissible 'head start.'

Hobbs, 221 B.R. at 895-96 (citations omitted). See also Housing Auth. of the City of Decatur v. Caldwell

(In re Caldwell), 174 B.R. 650, 654 (Bankr. N.D. Ga.1994)(public housing tenants do not lose their

so long as the housing authority proceeded in rem against a premises and did not seek to collect dischargeable debt, its activities would not be proscribed by section 525(a) since such activity would not be impeding upon its grantor role. Id.

apartments because they filed bankruptcy, which is what section 525(a) was intended to prevent, but rather, they lose their apartments because federal regulations and the public housing leases demand that rent be paid to maintain possession of the premises).

Having reviewed the authorities cited above in conjunction with the briefs filed by the parties and the record before us, we agree with the reasoning expressed by our colleague, Chief Judge Diane Weiss Sigmund in Bacon, 212 B.R. at 74-6, that the grant protected by section 525(a) in the public housing context is the future right to participate in the public housing program. As Judge Sigmund recognized, section 525(a) does not impact the public housing authority's right to enforce its in rem rights to the premises.¹⁵ Hence, section 525(a) does not prevent RHA from obtaining relief from the automatic stay to continue prosecution of an eviction action against Debtor based upon Debtor's failure to pay pre-petition rent, so long as RHA does not attempt to preclude Debtor from future participation in public housing programs for which she is otherwise eligible. Bacon, 212 B.R. at 74.¹⁶ Accordingly, we shall grant the motion filed by RHA seeking relief from the automatic stay to enable RHA to continue with its state court eviction proceeding.¹⁷

15. We find Judge Sigmund's analysis consistent with the Third Circuit Court of Appeals' narrow construction of section 525(a), see Watts v. Pennsylvania Housing Finance Co. (In re Watts), 876 F.2d 1090 (3rd Cir. 1989); Brown v. Pennsylvania State Employees Credit Union, 851 F.2d 81 (3rd Cir. 1988). We will not presume that the Third Circuit Court of Appeals would adopt the reasoning of the majority in Stoltz, 315 F.3d at 87-95, particularly in light of the compelling dissent therein of Chief Judge John M. Walker, Jr., who reaches a result consistent with Bacon, 212 B.R. at 74-6.

16. We agree with Judge Sigmund that , "...as the Court noted in Watts, 'the fresh start policy does not require the State to insulate a debtor from any and all adverse consequences of a bankruptcy filing.' Bacon, 212 B.R. at 76 (quoting Watts, 876 F.2d at 1094).

17. We note that we agree with the view expressed by Judge Sigmund that

[i]n holding that §525(a) protects a debtor's right to public housing,

An appropriate Order follows.

presumably were there no waiting list for a unit, there would be no reason to evict the debtor. However, to the extent that there are equally eligible financially disadvantaged persons waiting for housing, debtor's fresh start is not intended to be a head start and she will have to take her place in line to gain access to a unit.

Bacon, 212 B.R. at 76 n.19. Therefore, if no waiting list exists for the subject premises, RHA shall not proceed with the state court eviction, but instead, shall permit Debtor and her family to continue residing in the premises while her new application for housing is processed.