

CHAMBERS POLICY OF HON. HOWARD R. TALLMAN
WITH RESPECT TO CHAPTER 13 PLAN PROVISIONS ADDED TO
SECTION V.G. OF THE MODEL CHAPTER 13 PLAN L.B. Form 3015-1.1

The Court strongly recommends that Section V.G. of [L.B. Form 3015-1.1](#) remain blank in the usual case. Provisions may be added in Section V.G. consistent with the following standards and by leave of court upon a showing of good cause at confirmation. Approval of terms to be added to Section V.G. of [L.B. Form 3015-1.1](#) will be granted only upon a showing that the proposed added provision:

- a. is case-specific in that it is necessary to allow the debtor to provide for the collection of assets; pursuit of avoidance actions; or provide for treatment of creditor claims in the particular case pending before the Court in a manner that may not be accomplished by use of standard plan provisions;
- b. is consistent with the standard provisions of [L.B. Form 3015-1.1](#); is consistent with the provisions of Title 11 in compliance with 11 U.S.C. § 1322(b)(11); and is consistent with other applicable substantive law and rules;
- c. is not duplicative of any provision of Title 11 or other applicable substantive law;
- d. is not duplicative of issues raised, or required to be raised, in separate motions or complaints for relief; and
- e. does not include legal analysis or interpretation of statutes, rules or other applicable substantive law.

The Court adopts this policy in light of

- a. the Supreme Court's admonition to bankruptcy courts in *United Student Aid Funds, Inc. v. Espinosa*, 130 S.Ct. 1367 (2010), that 11 U.S.C. § 1325(a) places an independent duty on bankruptcy courts to "address and correct a defect in a debtor's proposed plan even if no creditor raises the issue," *Id.* at 1381 n.14;
- b. changes to Rule 3001 and the addition of Rule 3002.1 to the Federal Rules of Bankruptcy Procedure, effective December 1, 2011, that have rendered obsolete much of the language that is frequently added to Section V.G. addressing issues related to consumer home mortgages;
- c. the Court's experience with voluminous additions of "boilerplate" language to Section V.G. that is not tailored to accomplish any goal specific to the debtor's plan or is contradictory to standard plan terms, *see In re Butcher*, 459 B.R. 115, 135 (Bankr. D. Colo. 2011); and

- d. the undue burden placed upon court staff, in compliance with the Court's duties under 11 U.S.C. § 1325(a), to review voluminous language added to Section V.G. that the Court has found through experience rarely serves a useful purpose.

Section V.G. of the form plan is available to address case-specific issues. It is properly used to recite matters that are necessary for the administration of the particular case before the Court and may not be accomplished within the framework of the standard plan language. Examples of matters that are appropriate for inclusion in Section V.G. include:

- a. provisions addressing the recovery of avoidable transfers such as preferences and fraudulent conveyances;
- b. provisions describing details concerning liquidation of specific assets and dedication of sale proceeds to plan funding;
- c. stipulations with the Chapter 13 Trustee or other objecting parties;
- d. explanations in support of feasibility of payment step-ups such as when the pay-off of an automobile or 401(k) loan allows an increase in plan payments.

This division adopts this policy as an interim measure, until anticipated court-wide changes to the Local Bankruptcy Rules become effective.