

# Buying cars while in Chapter 13

“If it has tires, it’s trouble.”

Office of Chapter 13 Trustee

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# Setting the Stage for Purchasing

- Why is Debtor purchasing a car?
  - Was Debtor's car totaled in accident?
    - Are there insurance proceeds?
  - Has Debtor's car become unreliable?
    - Can car be repaired?
  - Is Debtor buying an additional household car?
    - Is an additional car really a necessity?

# Setting the Stage for Purchasing

- What is the status of Debtor's plan?
  - Is Debtor current in plan funding?
  - Is Debtor's plan running long?
  - How long has Debtor been in the plan?
  - Does Debtor have enough room in his/her budget to pay new debt without lowering dividend?
  - Has Debtor incurred other post-petition debt?
    - If so, why?

# Setting the Stage for Purchasing

- Reliable vehicle at reasonable terms
  - Not the time for best car Debtor has ever owned.
  - Safe, reliable vehicle to get through the plan
  - Check sources for estimated prices

# Setting the Stage for Purchasing

- Does Debtor need a \$16,000 car?
- Facts to consider
  - Age of the average car on American roads = 11.4 years (Forbes.com - June 30, 2014)
  - Average driver puts 15,000 miles/year (business.time.com – March 20, 2012)

REMEMBER: Safe, reliable car to get through plan

# Setting the Stage for Purchasing

- \$16,000 loan at 15.99% over 60 months
  - Payment is \$389.00
- \$10,000 loan at 15.99% over 60 months
  - Payment is \$243.13
  - Payment is \$283.35 over 48 months
  - Payment is \$351.52 over 36 months

(All calculations using Bankrate.com)

# Setting the Stage for Purchase

- A listing of cars on cars.com for \$10,000:
  - 2008 Mercury Grand Marquis (59,806 miles)
  - 2009 Kia Sportage (85,835 miles)
  - 2007 Cadillac DTS (62,829 miles)
  - 2009 Jeep Patriot (84,080 miles)
  - 2009 Mercury Grand Marquis (83,204 miles)
  - 2013 Ford Fiesta (36,267 miles)
  - 2010 Toyota Yaris (30,134 miles)

# Setting the Stage for Purchasing

- Reliable vehicle at reasonable terms
  - Trustee Pees will not approve an interest rate above 15.99%.
  - Watch out for upsells to “newer” cars with higher mileage
  - Beware of the payment plan game



# Shopping for the Car

- Does dealer have experience with Ch. 13?
- Has Debtor seen and driven the desired car?
- Will the dealer allow Debtor to have car independently inspected?
- No three-day right to cancel

# Shopping for the Car

- Will dealership provide a CarFax Report?
  - Most dealers provide free of charge
  - Alternatives to CarFax are available at [www.vehiclehistory.gov](http://www.vehiclehistory.gov)

# Shopping for the Car

- Watch out for the dealership's games:
  - Do not make the decision solely on monthly payment
  - Watch for the upsell into a “newer” car

# Shopping for the Car

- Does payment amount fit into Debtor's budget?
- Is interest rate at or below 15.99%?

# Analyzing the Deal

- Review terms of the deal
  - Make and Model
  - Price, interest, rate, term and payments
- Is vehicle suitable for needs of the Debtor?
- Has budget been analyzed to ensure purchase is feasible?

# Analyzing the Deal

- Is there a trade-in?
- Does the Debtor have a clear title on the trade-in?
- If no clear title, will trade-in be paid in full under non-bankruptcy law?

# Analyzing the Deal

- If the trade-in has a lien and will not be paid in full under non-bankruptcy law...
- You need to file a Motion to Sell Free and Clear of Liens!
- Without an order on the Motion to Sell, the Trustee will not approve an Application to Incur Debt

# Analyzing the Deal

- Payment on the lien on the traded-in vehicle must be made through the Trustee's Office



# Completing the Application

- Are you using the Trustee's most recent Application to Incur Debt?

[www.ch13.org/forms](http://www.ch13.org/forms)

# Completing the Application

- Is Application complete and accurate?
  - All information required by LBR 4001-3(c)?
  - Do terms listed in application match terms on purchase order?
  - Is entire purchase order attached to application?

# Completing the Application

- Is Application Complete and Accurate?
  - Has budget been analyzed to ensure feasibility?
  - Have you attached Amended Schedules I and J?
  - Have you disclosed the source of any down payments?

# Completing the Application

- Is the Application Complete and Accurate?
  - Will any vehicles be traded-in?
  - Is there a lien on the vehicle to be traded in?
  - Will the creditor be paid in full under non-bankruptcy law?

# Completing the Application

- Do you need a Motion to Sell Free and Clear of Liens?

# Completing the Application

- Will plan need to be modified due to purchase?
  - Will plan payments decrease?
  - Will unsecured dividend decrease?
  - If so, is proposed Motion to Modify attached to the application?

# Completing the Application

- Have you considered adding the debt as a conduit payment?
- Some lenders have shown a willingness for allowing disbursements by the Trustee

# Completing the Application

- Benefits of the conduit payment:
  - Regular and timely payments disbursed by the Trustee
  - Payments generally tied to a wage order
  - One less payment for Debtor to worry about
  - Complete record of all payments made to creditor



# Conduit Process

- Include in application that plan will be modified to provide for a conduit payment.
- Once application is approved, Debtor can get the car – there is no need to wait for approval of plan modification.

# Conduit Process

- Once Debtor has possession, file a Motion to Modify providing for increase in plan payment and specifically providing for conduit car payment
- Motion to Modify should state that debt will be paid its contractual payment as a long-term continuing debt and is not subject to discharge

# Conduit Process

- Motion to Modify must be served on the lender (new creditor) (not on the dealership)
- If lender (new creditor) objects to Motion to Modify, the Motion can be withdrawn or amended accordingly

# Conduit Process

- Once Motion to Modify is filed, the Trustee will place hold on the monthly car payment
- Once Motion to Modify is granted, and POC filed by Creditor, the Trustee will be able to fully disburse on the new claim

# Conduit Process

- NOTE: The Trustee does not object to Debtor making the first month's payment directly while the Motion to Modify is pending

# Common Reasons for Denial

- Loan and Documentation Issues:
  - Incomplete or illegible loan documents
  - VIN number not provided
  - Contract provides for GAP and/or extended warranty
  - Interest rate exceeds 15.99%
  - Agreement contains “or similar vehicle”
  - Discrepancies between application and loan docs

# Common Reasons for Denial

- Debtor has not provided a sufficient basis
  - Does car being replaced actually need replaced?
  - Is car being replaced repairable?
  - What is cost of repair?
    - Has estimate been provided?

# Common Reasons for Denial

- Issues with the vehicle to be purchased
  - Mileage is too high considering age and price of vehicle
  - Debtor seeks to purchase a luxury vehicle
  - Debtor is financing unnecessary aftermarket additions



# Common Reasons for Denial

- Budget and Feasibility Issues
  - No Amended I or J to support
  - Monthly car payment does not fit within budget
  - Inclusion of payment creates a budget shortfall

# Common Reasons for Denial

- Plan Issues:
  - Plan has accumulated an arrearage
  - Plan is projecting longer than 60 months
  - Debtors need to decrease dividend to finance purchase
  - Plan no longer meeting ACP

# Common Reasons for Denial

- Issues related to trade-in:
  - Trade-in has a lien that is not being paid in full under non-bankruptcy law
    - Need Motion to Sell
  - Is payoff being sent through the Trustee?
  - Debtors are rolling negative equity into the new loan
  - Loan documentation does not accurately disclose trade-in information

Why Does this Matter to the Trustee?

What is a fresh start?