

**ORDER FIXING TIME TO OBJECT TO PROPOSED MODIFICATION
OF CONFIRMED CHAPTER 12 PLAN**

Applicable Law and Rules

1. Section 1229(a) of the Bankruptcy Code (11 U.S.C. § 1229(a)) permits the debtor, the trustee, or the holder of an allowed unsecured claim to request the modification of a confirmed chapter 12 plan at any time after confirmation of the plan and before the completion of payments under the plan. The statute does not authorize secured creditors to request plan modifications.
2. Pursuant to section 1229(a), the proposed modification may
 - (1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;
 - (2) extend or reduce the time for such payments; or
 - (3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan.
3. Section 1229(b)(1) requires that the proposed modification comply with sections 1222(a), 1222(b), 1223(c), and 12225(a) of the Bankruptcy Code.
4. Pursuant to section 1229(b)(2), the plan as modified becomes the plan automatically unless, after notice and a hearing, the modification is disapproved by the court.
5. Section 1229(c) provides that a modified plan may not provide for payments over a period that exceeds three years, unless the court, for cause, extends the plan period to a maximum of five years. The time begins when the first payment was due under the original confirmed plan.
6. Section 1229(d) states a confirmed plan may not be modified
 - (1) to increase the amount of any payment due before the plan as modified becomes the plan;
 - (2) by anyone except the debtor, based on an increase in the debtor's disposable income, to increase the amount of payments to unsecured creditors required for a particular month so that the aggregate of such payments exceeds the debtor's disposable income for such month; or

(3) in the last year of the plan by anyone except the debtor, to require payments that would leave the debtor with insufficient funds to carry on the farming operation after the plan is completed.

7. Fed. R. Bankr. P. 3015(c) requires that the modification be dated.
8. Rule 3015(g) provides, in part, that a request to modify a confirmed chapter 12 plan shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 20 days notice by mail of the time fixed for filing objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee. A copy of the proposed modification, or a summary thereof, shall be included with the notice. If required by the court, the proponent shall furnish a sufficient number of copies of the proposed modification, or a summary thereof, to enable the clerk to include a copy with each notice.
9. Any objection to the proposed modification shall be filed; served on the debtor, the trustee, and any other entity designated by the court; and transmitted to the United States trustee. Rule 3015(g).
10. An objection to a proposed modification is governed by Fed. R. Bankr. P. 9014. Rule 3015(g).
11. Prior to confirmation, the debtor may modify a chapter 12 plan pursuant to section 1223 of the Code. The debtor may not modify the plan so that the plan as modified fails to meet the requirements of section 1222 of the Code. After the debtor files a modification under section 1223, the plan as modified becomes the plan. Form 231A should NOT be used for a plan modification filed prior to confirmation.

Instructions

Caption

1. Identify the judicial district in which the bankruptcy case was filed. Example: "Eastern District of California."
2. "In re": Insert the name of the debtor as it appears in the bankruptcy petition.
3. "Case No.": Insert the bankruptcy case number assigned at the time of filing.

Order

In the first sentence of the order, the blanks are to be completed with the name of the proponent of the proposed modification and the date the request for modification was filed.

The boxes in the numbered paragraphs are to be completed by the clerk.

A copy of the proposed modification **MUST** be attached to this order and notice when it is served on the parties.

General Information for the Clerk

Section 1229(a) of the Bankruptcy Code permits the debtor, the trustee, or the holder of an allowed unsecured claim to request the modification of a confirmed chapter 12 plan at any time after confirmation and before completion of payments under the plan.

Prior to confirmation, the debtor may modify a chapter 12 plan pursuant to section 1223 of the Code. Form 231A should NOT be used for a plan modification filed prior to confirmation.

Rule 3015(g) requires 20 days notice to the debtor, the trustee, and the creditors of the time fixed for filing objections to the proposed modification of a confirmed plan. The rule provides that a copy of the proposed modification, or a summary thereof, shall be included with the notice. The court can require that the proponent furnish the copies. Form 231A was designed to order the proponent of the modification to give the notice. Clerks may wish to consider whether this comports with local practice.

The rule provides that the court may waive notice for creditors who are not affected by the proposed modification. If so, Form 231A should be revised accordingly.

Rule 3015(g) requires that objections to the proposed modification be filed; served on the debtor, the trustee, and any other entity designated by the court; and transmitted to the United States trustee. Form 231A was designed to require service of objections on all creditors. The court may find that this is not necessary. If so, Form 231A should be revised accordingly.

If no objection is filed, the proposed modification takes effect automatically. 11 U.S.C. § 1229(b)(2). The statute does not require a hearing or a court order on uncontested modifications of confirmed plans. In order to avoid either sending two notices or providing for a hearing on uncontested modifications, Form 231A includes a tentative hearing date and states that, if no objection is filed, the court may not hold a hearing.

The instructions to the public provide that the boxes for the filing deadline for objections and the hearing date should be left empty, so that the clerk may fill in the correct information. Be sure that the last day for filing objections and the hearing date are fixed far enough in advance to permit the proponent time to mail the notices and still meet the requirement to give 20 days notice.