

1 UNITED STATES BANKRUPTCY COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 Oakland Division

4 ORDER RE FORM CHAPTER 13 PLAN (Before August 1, 2013)

5 Certain members of the bar have expressed confusion and concern over the intended meaning
6 of the boxes in Paragraph 2(b) of the form of Chapter 13 Plan approved for use in the Oakland
7 Division of this court. Those boxes read, respectively, "§ 506" and "Non § 506." The "plain
8 language" of these boxes is meaningless. It follows that the confusion is justified.

9 Although it is in no-way apparent from the plan, the court understands that the boxes were
10 intended for a very narrow purpose, specifically, to indicate whether or not a debtor incurred a debt
11 secured by a motor vehicle within the 91 O-days prior to the date of the petition. If so, then pursuant t
12 the "hanging paragraph" of Bankruptcy Code § 1325(a), Bankruptcy Code § 506(a)'s method of
13 valuing secured claims would not apply, and the debtor would be required to pay the full amount of
14 such a secured debt without regard to the value of the vehicle securing the claim.

15 The problem, however, apart from the meaningless language of the boxes, is that the model
16 plan language below the boxes states, in relevant part:

17 With respect to secured claims per § 506, valuation stated shall
18 bind unless a timely objection to confirmation is filed. With
19 respect to a non § 506 claim as referenced in § 1325, the claim,
20 to the extent allowed, shall control.

21 Chapter 13 debtors may not modify a debt secured only by a first deed of trust on a residence,
22 or a junior deed of trust that attaches to some equity (both hereinafter referred to as a "secured deed
23 of trust") by reducing the amount of the creditor's claim based on the value of the property. See
24 Bankruptcy Code § 1322(b)(2).

25 However, if the debtor checks the "§ 506" box, a creditor whose claim is secured only by a
26 secured deed of trust may be bound by a property valuation that is not germane to the issue of
27 confirmation. Similarly, if a debtor were to check the "Non § 506 box," list a claim thereafter that is
28 a claim secured by a secured deed of trust, then the plan, taking into account the language below the
boxes, might reasonably be construed as binding a creditor by a value and claim amount listed by the
debtor that is less than what might be the actual amount of an undersecured debt secured by a secured
deed of trust.

Generally, documents should be construed in a manner that is legal, rather than illegal.
Even so, and to avoid any confusion or misunderstanding while the ambiguity in Oakland's form
chapter 13 plan exists, it is

