

After my chapter 13 plan is confirmed, what happens if an asset I have increases in value and I want to sell it and use the proceeds?

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Answer: The whole picture changes and you have to account for the increase in the asset's value, so you may want to think very hard before taking that path.

Your chapter 13 plan is moving along and your plan has been confirmed, that means it has been accepted and the bankruptcy court has issued an order establishing the terms of the plan. (The most important term to debtors is usually how much they have to pay to the trustee on a monthly basis.) Then something changes, it could be that the debtor starts to struggle to make the payments, or that the debtor wants to end the chapter 13 sooner than the chapter 13 plan is expected to end by paying what they think remains under the plan. One attractive thought is to sell an asset, such as the debtor's house, which has increased in value in order to reach the goal. But this path has been taken before by other debtors and it can be dangerous. There is much law that applies, so you must plan in advance to see if you should pursue this.

First to understand is that in the (federal) First Circuit, which includes Massachusetts, the increase in funds from the sale of the asset is indeed something that the unsecured creditors in your case are entitled to. *In re Barbosa*, 235 F.3d 31, 41 (1st Cir. 2000). To be more technical, the creditors will be entitled to whatever exceeds the amount you can exempt in the asset (to satisfy what is called the "best interests of creditors test"). In fact, it is standard for Massachusetts chapter 13 trustees to insert the following language into the terms of the chapter 13 plan:

Unless otherwise ordered by the court, all property of the estate as defined in U.S.C. §§ 541 and 1306, including, but not limited to, any appreciation in the value of real property owned by the debtor as of the commencement of the case, shall remain property of the estate during the term of the plan and shall vest in the Debtor(s) only upon discharge.

This language is just icing on the cake for the proposition that an appreciation in value after the petition date is to be considered when deciding the amount of payment to be paid to the trustee in a modified chapter 13 plan. *In re Kieta*, 315 B.R. 192, 198 (Bankr. D. Mass. 2004).

Many times, because the new appreciated value obtained is larger than any amount you could exempt, selling and realizing the funds will lead to an increase in payments to the unsecured creditors through the trustee. However, the increased payments occur only if you actually sell the asset and realize the increase value. If you just keep the asset and do not sell it during your plan, you are entitled to keep the increase/appreciation in value in its original non-liquidated form. *In re Kieta*, 315 B.R. 192, 197-98 (Bankr. D. Mass. 2004); *In re Trumbas*, 245 B.R. 764, 767 fn.6 (Bankr. D. Mass. 2000). This is why it is very important to plan accordingly before deciding to try to sell the asset and use the proceeds that represent the appreciation in value during the chapter 13 case. If you do, you must file a new, amended chapter 13 plan and other documents with the court.

If you do plan and decide that selling an asset for some purpose during a chapter 13 plan is the right way to go, an important housekeeping item is that you must seek and obtain court authorization prior to any sale of the asset. Keep in mind, during a chapter 13, almost all of the property you have and will have is property of the chapter 13 estate and you are not permitted to sell it prior to obtaining court approval.

In the event you are planning to file a chapter 13, feel free to call us.

Contact: George E. Bourguignon, Jr., Esq.

Phone: (508) 769-1359 or (413) 746-8008

Email: gbourguignon@bourguignonlaw.com

Website: <http://www.bourguignonlaw.com>