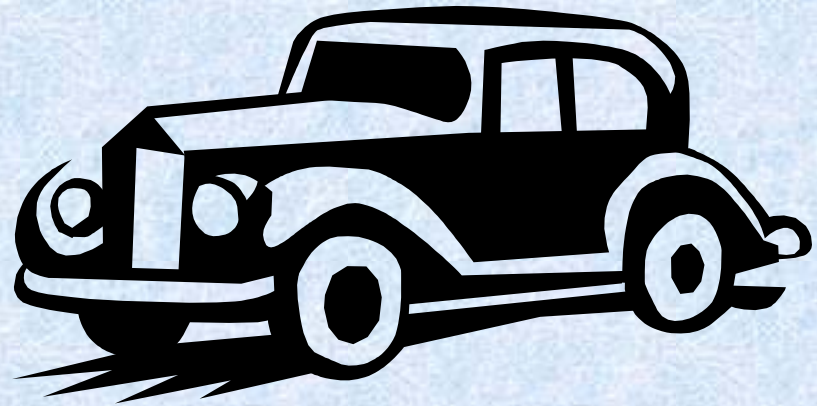


Adequate Protection Payments In Chapter 13 Cases

- Sections 1325 & 1326
- Timing of payments
- Amount of payments
- Prerequisite for payment to creditor
- Motions to modify adequate protection
- Evidence of payment
- Insurance



1325(a)(5)(B)(iii)

“(I)[P]roperty to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and

(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan; or...” [Emphasis added].

1326(a)(1)

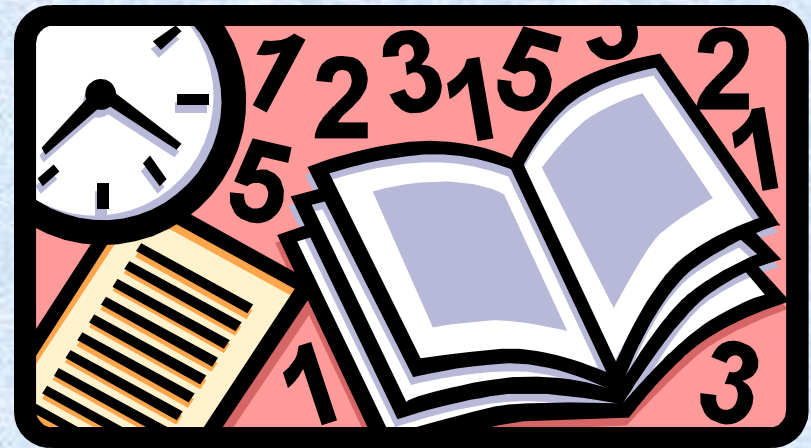
“Unless the court orders otherwise, the debtor shall commence making payments not later than 30 days after the date of the filing of the plan or the order for relief... in the amount--

- (B) Scheduled in a lease of personal property directly to the lessor for that portion of the obligation that becomes due after the order for relief, reducing the payments under subparagraph (A) by the amount so paid and providing the trustee with evidence of such payment, including the amount and date of payment, and
- (C) That provides adequate protection directly to a creditor holding an allowed claim secured by personal property to the extent the claim is attributable to the purchase of such property by the debtor for that portion of the obligation that becomes due after the order for relief, reducing the payments under subparagraph (A) by the amount so paid and providing the trustee with evidence of such payment, including the amount and date of payment,...

Timing for Payments

Section 1326 requires payments be tendered not later than 30 days after the filing of the plan or order for relief.

Do payments need to be paid monthly post-confirmation?



Amount of Payments

1. Does adequate protection need to be in an amount sufficient to offset monthly depreciation?
2. If so, what is the appropriate amount?
3. If payment amount is insufficient, can a plan be confirmed over an objection by a secured creditor?
4. “Direct Pay” and lease payment amounts?

Prerequisite for Payment to Creditor

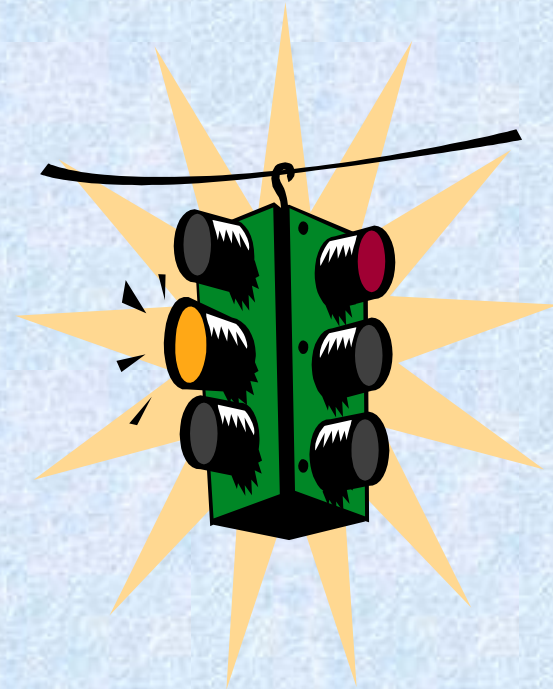
Secured Creditors must hold an “allowed secured claim” before they are entitled to payment of Adequate Protection.

Does this apply to lessors?



Motions to Modify Adequate Protection

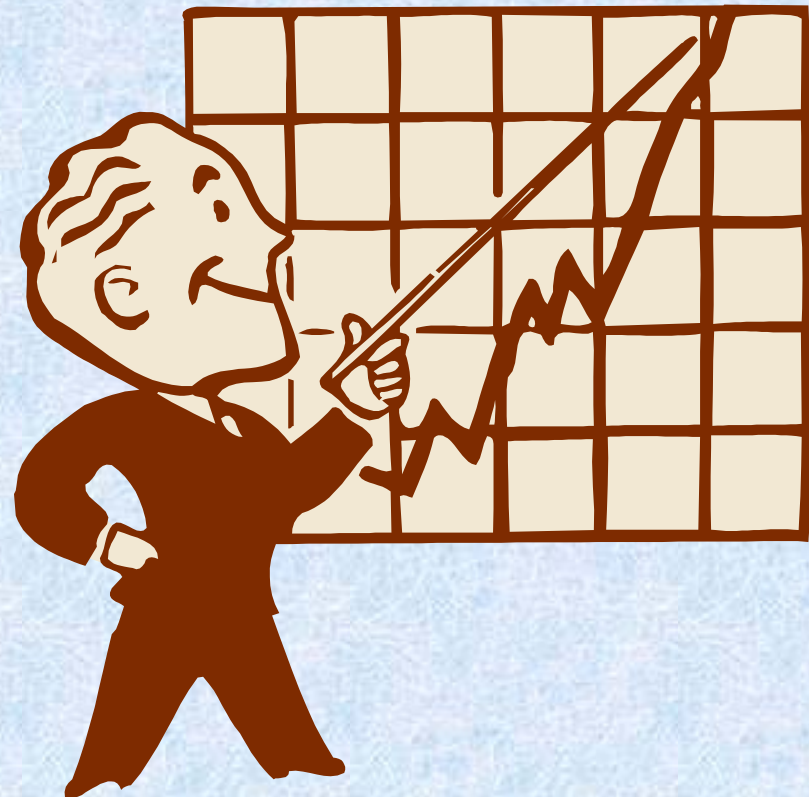
Section 1326(a)(3) permits a debtor to modify, reduce or increase monthly adequate protection payments upon a noticed motion and after a hearing.



Evidence of Payment

Section 1326 requires that evidence of payment of adequate protection be provided to the trustee.

Payment may be “charged against” the Plan payment.



Proof of Insurance

1326(a)(4) requires proof of insurance be provided within 60 days of the filing of the petition.

What are the consequences for noncompliance?

