

**Fill in this information to identify your case:**

Debtor 1	_____	_____	_____
	First Name	Middle Name	Last Name
Debtor 2 (Spouse, if filing)	_____	_____	_____
	First Name	Middle Name	Last Name
United States Bankruptcy Court - District of Hawaii			
Case number (If known)	_____		

Local Form H2016R (7/22)

## **Chapter 13 Rights, Responsibilities and Fee Agreement**

Debtors in a Chapter 13 bankruptcy case must understand their rights and responsibilities, as well as understand their attorney's responsibilities and the importance of communicating with their attorney to make the case successful. The parties must also understand and agree how the debtor will pay for the attorney's services. To assure a mutual understanding of these rights and responsibilities, and to document how the attorney will be paid, the debtor and the attorney agree to the terms below.

### **PART A - Rights and Responsibilities of the Debtor and the Attorney**

#### **BEFORE THE PETITION IS FILED**

##### **A-1: DEBTOR agrees to:**

1. Discuss with the attorney the debtor's objectives in filing the bankruptcy case.
2. Inform the attorney of all prior bankruptcy cases filed by the debtor or the debtor's spouse in the District of Hawaii and any other districts.
3. Provide the attorney with accurate, complete information about the debtor's financial situation, including assets and debts, income and expenses, pending lawsuits, foreclosures, repossessions and garnishments, domestic support obligations such as alimony, child support, and divorce agreements, and the status of tax returns and payments, including income, general excise, or other tax due federal, state, and local taxing authorities.
4. Provide the names and addresses of creditors to be notified of the bankruptcy case and automatic and codebtor stays, including any address where the creditor has requested in a written communication to receive correspondence and notices (not where to send payment).
5. For the period specified by the attorney, timely provide copies of:
  - a. Pay stubs or other evidence of payment received from an employer;
  - b. All federal tax returns or transcripts of the returns; and
  - c. All bills, notices, statements, or communications from creditors.
6. Pay directly to the attorney any required fee for filing the petition.
7. Arrange for the preparation of any past due federal or state tax returns.
8. Obtain credit counseling required by the Bankruptcy Code from an authorized provider.

**A-2: ATTORNEY agrees to do the following personally:**

1. Meet with the debtor to review the debtor's financial information and answer questions.
2. Counsel the debtor regarding the advisability of filing either a Chapter 7 or Chapter 13 case and discuss with the debtor both alternatives as well as non-bankruptcy options.
3. Explain to the debtor the separate requirements for credit counseling and completion of a personal financial management course ("debtor education").
4. Explain the petition, schedules, statements, plan, and any other documents to be filed on the debtor's behalf and that the debtor must sign them under penalty of perjury.
5. If the petition is filed electronically, obtain the debtor's original signature on the petition and any schedules and statements filed together with the petition, as well as the declaration re: electronic filing before the petition is filed, and retain the originally signed documents for one year after the bankruptcy case is closed.
6. Timely prepare the petition, schedules, statements, plan and any related motions to value collateral or to avoid liens (staff may prepare the documents but the attorney must personally review them).
7. Explain which payments will be made directly by the debtor and which payments will be made by the trustee to creditors through the plan, with particular attention to mortgage and vehicle loan or lease payments, as well as any other claims that accrue interest.
8. Explain that the debtor must make monthly plan payments to the trustee beginning 30 days after the petition is filed (not when the plan is confirmed) or the case may be dismissed.
9. Explain to the debtor how, when, and where to make the plan payments to the trustee.
10. Advise the debtor that failure to file current and any delinquent tax returns will prohibit confirmation of a plan, delay the case, and may result in dismissal of the case.
11. Advise the debtor of the requirement to provide the Trustee with a copy of each federal tax return, or transcript of the return, for each tax year during the bankruptcy case.
12. Explain to the debtor how the fees of the attorney and the trustee will be paid and provide to the debtor an executed copy of this Chapter 13 Rights, Responsibilities and Fee Agreement.
13. Explain that the court will send a notice of the date, time, and location of the meeting of creditors and advise the debtor of the requirement to attend the meeting and be questioned under oath.
14. Advise the debtor of the need to maintain liability, collision and comprehensive insurance on vehicles securing loans or leases, and any appropriate insurance if the case involves a business.

15. Advise the debtor that court approval is required for sales of real or personal property and obtaining or modifying loans.
16. Explain to the debtor any other matters in which the attorney will represent the debtor.

**AFTER THE PETITION IS FILED**

**A-3: DEBTOR agrees to:**

1. Appear on time at the meeting of creditors with recent proof of income, a photo identification card, proof of Social Security number, and any financial documentation requested by the attorney or the trustee.
2. Timely make the required payments to the trustee and to any creditors being paid directly.
3. Timely pay any domestic support obligations, such as alimony and child support.
4. Promptly inform the attorney if the debtor loses his or her job or has other financial problems, including missing payments to the trustee, on a mortgage or other secured debt, or domestic support obligation.
5. Provide the trustee annually with copies of the most recent federal tax return and cooperate with the attorney in updating schedules for income and expenses, and a statement of monthly income that shows how income, expenditures, and monthly income are calculated.
6. Keep the trustee and the attorney informed of the debtor's current address and telephone number.
7. Inform the attorney of any garnishments or foreclosures that continue or occur after the filing of the case, and any attempts to collect a debt incurred before filing for bankruptcy.
8. Inform the attorney if the debtor is sued or wishes to file a lawsuit during the case.
9. Contact the attorney before buying, refinancing, or selling real property and before entering into any long-term loan agreements to see if approvals are required.
10. Maintain liability, collision and comprehensive insurance on vehicles securing loans or leases, and appropriate insurance if the case involves a business.
11. Complete a personal financial management course from an approved agency prior to making the last payment due under the plan.
12. At the time of the last plan payment, certify that all domestic support obligations have been paid.

**A-4: ATTORNEY agrees to:**

1. Appear at the meeting of creditors with the debtor or, in an emergency, notify the debtor in advance that another attorney will appear on the debtor's behalf at no cost to the debtor.
2. For the duration of the case and for no additional fees, prepare, file, and serve amended statements and schedules, and notice of any change in the debtor's address, in accordance with information provided by the debtor.
3. Respond to objections to plan confirmation, and prepare, file, and serve an amended plan as needed.
4. When necessary for the success of the case, prepare, file, and serve motions to modify a confirmed plan.
5. Prepare, file, and serve necessary motions to buy, sell, or refinance real property.
6. Review claims and file objections to improper or invalid claims; file a claim on behalf of the debtor when it is in the debtor's best interest to include a creditor in plan distributions.
7. Represent the debtor in opposing motions for relief from stay and motions to dismiss.
8. Where appropriate, prepare, file, and serve necessary motions to avoid liens on real or personal property.
9. Promptly prepare and submit any proposed orders as directed by the court.
10. Provide such other legal services as are necessary for the administration of the present case through plan confirmation, except that representation or non-representation in an adversary proceeding may be the subject of a separate fee agreement by the debtor and the attorney.
11. Promptly respond to the debtor's questions and inquiries for the duration of the case.
12. Promptly respond to trustee's request and inquiries for the duration of the case and comply with any requirement to meet and confer with the trustee to resolve issues.

## **PART B - Fee Agreement**

### **ATTORNEY FEES**

Establishing attorney fees for a chapter 13 case is a two-step process. First, the attorney and the client must agree on how much the attorney will charge for services. Second, the court must decide whether that amount is reasonable. The total amount of fees that will be approved will depend on the number and complexity of the issues in the case. Issues that make a case more difficult and more expensive usually involve an ongoing foreclosure, repossession, or garnishment; delinquent tax returns or payments; alimony, child support, and other domestic obligations that are past due; student loans delinquencies; asking the court to value property that secures a mortgage or loan; and requesting the court to void a lien or security interest.

Standard Fee Application versus Presumptive Fees. To determine the amount of reasonable compensation, the attorney may file a "standard fee application" itemizing the work done and how long it took to accomplish. The amount of time spent is multiplied by an hourly rate, and the application is set for a court hearing. Alternatively, the debtor and the attorney may agree to limit the fee in ordinary cases to an amount the court has presumed to be reasonable - a "presumptive fee." An attorney may charge less, but not more than the presumptive fee for anticipated typical services, described below in more detail. A detailed standard fee application with time entries and a court hearing are not required for approval of presumptive fees. The presumptive fee may not cover all services that are required; in that case, the attorney may seek additional compensation by filing a standard fee application.

Deposits to Client Trust Account. Before the petition is filed, the attorney may request a reasonable amount of funds from the debtor for deposit in the attorney's client trust account to prepay the attorney fees. Before the petition is filed, the attorney may withdraw funds for services completed up to that point. After the petition is filed, the attorney may not withdraw funds from the trust account until a court order allows it. After the plan is confirmed, the trustee will make distributions for attorney fees, after all remaining funds in the client trust account have been paid out. The attorney may ask the debtor to deposit an additional reasonable amount of funds in the client trust account for further services that may be required. The attorney may not transfer these funds to the attorney's operating account without court approval of a fee application.

Disposition of Fees Upon Dismissal Before Confirmation. If the bankruptcy case is dismissed before plan confirmation, any funds being held by the trustee, including funds being held for payment of attorney fees, will ordinarily be returned to the debtor. However, the attorney is allowed to file a standard fee application for compensation for actual time spent in providing services prior to dismissal. If the court approves, the trustee will pay the compensation to the attorney return any remaining funds to the debtor. There will be notice and a hearing and the debtor is free to object to the compensation being requested.

## FEE AGREEMENT

The terms below supersede any separate agreement between the debtor and the attorney with regard to services in this bankruptcy case. If the debtor and the attorney subsequently do not agree on fees to be charged for additional services that were not expected, the attorney may ask the court for permission to withdraw from the case. However, the attorney must continue to provide legal services until the court approves the attorney's withdrawal.

### **Check Box 1 or Box 2:**

**1. Standard Fee Application(s).** The attorney will file one or more standard fee applications under LBR 2016-1(a). There will be no request for additional presumptive fees. At the time this agreement is executed, these are the hourly rate(s) for the attorney signing this agreement and any other attorneys and legal assistants whose work will be involved. These rates will apply unless the attorney files a notice in advance of any future increase in these rates that will be used in a fee application. Fee applications may be filed not more than once every 120 days.

Hourly Rate(s):

**2. Use of Presumptive Fees.** The attorney agrees that the presumptive fees stated below will be charged in this case. The attorney certifies that the attorney is eligible for the streamlined fee approval process under the court's Chapter 13 Attorney Fee Guidelines. The fee amount may be less but may not exceed the presumptive fee amount. Certain exceptions are described below. Compensation requesting use of the presumptive fee schedule will be allowed as part of plan confirmation. If the use of presumptive fees is elected, the attorney is limited on what additional fees may be requested. Presumptive fee amounts include associated costs.

- **\$5,000 Presumptive Fee for Standard Services.** The attorney may not charge more than the presumptive fee amount of **\$5,000** for (1) all services listed in Part A-2 and (2) all services listed in Part A-4 except additional fees may be requested for items 4-9 for services provided after the one-year anniversary of plan confirmation.
- **"Success Fee"**. If the plan is confirmed at or before the initially scheduled confirmation hearing, the presumptively reasonable fee is increased by **\$400** as a "success fee".

- **Additional Presumptive Fees.**

- **Request for Valuation of Collateral - Real Property and Vehicles.** The presumptively reasonable fee for filing a plan that includes **Attachment A** requesting the valuation of a secured claim involving real property and vehicles is increased by **\$1,000 per parcel of real property or vehicle**. There is no increase for requests involving secured claims in any other type of property. This fee includes services and expenses related to obtaining title reports, appraisals, and subsequent orders declaring lien satisfied and recordation of releases.
- **Motion to Avoid Lien in Real Property.** The presumptively reasonable fee for filing a plan that includes **Attachment B** requesting the avoidance of a lien involving real property is increased by **\$1,000 per parcel** of real property in which lien is being avoided. This fee includes services and expenses related to obtaining title reports, appraisals, and subsequent orders declaring lien satisfied and recordation of releases. The presumptively fee is not increased for requests involving secured claims in personal property.
- **Participation in Court-Approved Loan Modification Program.** Reserved.

- **Standard Fee Application in Conjunction with Presumptive Fees**

- **Additional Fees for Preconfirmation Contested Matters that are Opposed.** Preparing and filing a preconfirmation motion or objection to claim is included as part of the presumptive fee but responding to an opposition to such a motion or objection is not. An attorney who seeks compensation for such a response must file a standard fee application. The application may not include time spent in preparing and filing the underlying motion or objection.
- **Additional Fees for Uncovered Services.** An attorney who seeks compensation for any services that are not covered by the presumptive fee must file a standard fee application.

**Calculation of Presumptive Fees to be Charged in this Case**

Presumptive Fee Component	Maximum Amount	Agreed Amount
1. Presumptive fee for standard services through 1 year after plan confirmation ( <i>\$400 will be added if plan confirmed before or at initially scheduled hearing</i> )	\$5,000	
2. Request for valuation of collateral - \$1,000 per real property parcel or vehicle Number of parcels: _____ Number of vehicles: _____	\$1,000 per parcel/vehicle	
3. Motion to avoid lien in real property - \$1,000 per real property parcel in which lien is being avoided Number of parcels: _____	\$1,000 per parcel	
Total dollar amount of fee components in this case:		
Amount Debtor paid before petition was filed (excluding filing fee):		
Balance in client trust account to be drawn upon after court approval:		
Balance of attorney fees and costs to be paid by trustee through the plan:		

**THIS AGREEMENT SUPERSEDES ANY OTHER AGREEMENT BETWEEN DEBTOR AND ATTORNEY REGARDING SERVICES TO BE PERFORMED IN CONNECTION WITH THIS CASE.**

\_\_\_\_\_  
Debtor 1  
Dated: \_\_\_\_\_

\_\_\_\_\_  
Debtor 2  
Dated: \_\_\_\_\_

\_\_\_\_\_  
Attorney for Debtor(s)  
Dated: \_\_\_\_\_