

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

INSTRUCTIONS FOR CHAPTER 13 PLANS

Consumer debtors are expected to use this standard plan unless a motion is filed to show cause why the use of another plan should be allowed. The form filed with the Court must be printed on one side only. Copies served on parties in interest may be printed on both sides and have print reduced in size, so long as the plan is easily readable. Debtors who are in business are not limited to this plan. All sections must be completed. If a section is not applicable, the debtor may type the number and heading of that section and indicate "not applicable." (For example: F. Executory Contracts and Leases: Not Applicable). Additional provisions not provided for in the form may be added where circumstances warrant, except that, unless otherwise provided in these instructions, such additional provisions may modify existing provisions only if the debtor first obtains leave of court.

I. FUNDING OF PLAN

A. Debtor's Net Monthly Income

The amounts listed here must be consistent with Schedules I & J. Expenses are those to be paid by the debtor after the Chapter 13 is filed, and do not include amounts to be paid by the Trustee under the plan. Monthly take-home pay may not reflect deductions taken for savings or for the Chapter 13 plan payment, or any items listed on Schedule J. Charitable deductions have, in the past, been disallowed as a budgeted item.

B. Payments

The debtor shall commence making the payments proposed by a plan within 30 days after the plan is filed, except as set forth below. Failure to do so may result in dismissal of the case. It is the obligation of debtor and debtor's counsel to make sure payments are timely made. It is not an acceptable excuse that an employer has failed to make the appropriate deduction from debtor's wages.

Amount: Must be within \$99.00 of the "surplus" in Paragraph 1A. (The \$99.00 is a cushion allowed in this district to cover miscellaneous expenses or savings.)

Frequency: It is preferred, although not required, that monthly payments be chosen for ease of calculation. This does not prevent the debtor's employer from gearing payments to debtor's paydays: for example, four weekly payroll deductions of one fourth the monthly payment.

If the plan provides for weekly payments, plan payments should be received by the Trustee within 7 days after filing; if the plan provides for bi-weekly payments, payments should be received by the Trustee within 14 days after filing, etc.

Duration: Per 11 U.S.C. §1325 (b), unless 100% is being paid to unsecured creditors, a minimum of 36 months is required.

The provision for payment of Paragraph III (I) (3) claims is listed here. If, for example, in Paragraph III (I) (3), a criminal fine is intended to be paid, the estimated amount of the claim would be increased by the amount of the Trustee fees payable on such distribution, and this amount would then be divided by the number of months in the plan, resulting in the periodic increase in plan payments. This amount will then be added to the wage deduction order to ensure proper payment to all creditors.

Source: Wage order must be issued to a debtor's employer unless the source of income is Social Security, retirement income, unemployment compensation, or self employment.

This provision of the plan may be altered where factual situations require that plan payments vary during the life of the plan; e.g., where debtor proposes a two tier payment schedule either because of an arrearage that will be cured over a period of time which is less than the life of the plan, or because future circumstances which are predictable may allow the debtor to propose a plan calling for a subsequent increase in payments.

C. Other Payments

Self explanatory.

II. PRECONFIRMATION DISBURSEMENT

In order that funds paid to the Chapter 13 Trustee are distributed as rapidly as possible to creditors, and that the creditors receive the benefit of all such payments, the Chapter 13 Trustee will disburse, in the first regular disbursement following the §341 meeting, all funds received from the debtor in each case. For all disbursements made prior to the actual confirmation of the debtor's plan, the disbursement shall be made first to administrative expenses and then to other creditors pursuant to the debtor's pending plan of reorganization. However, before disbursements are made to other creditors prior to confirmation, certain conditions must be established: (1) the claim must be listed in the debtor's schedules and not reflect that it is contingent, unliquidated or disputed; (2) the claimant must have a proof of claim on file; (3) the claim as filed must agree with the classification in the debtor's schedules; and (4) there must be no pending objection to payment of the claim. If there is a difference between amounts claimed and amount scheduled by the debtor, the Trustee will use the lower amount for purposes of preconfirmation distribution. No

preconfirmation disbursement will be made to claimants until all conditions are met.

Preconfirmation distributions to attorneys shall be made in the same manner as postconfirmation distributions. See III A (3) below.

III. POSTCONFIRMATION PAYMENTS TO CREDITORS

The Trustee distributes receipts for each month during the first week of the next month.

No disbursement will be made to a creditor unless a claim has been filed.

A. Administrative Claims

1. See Rule 1006 for payment of filing fee in installments.
2. To calculate this amount, multiply the number of pages in the plan, plus one for the notice, by the number of creditors on the matrix, and add two (for notices to the debtor and attorney), and multiply the total by \$0.50.
3. Attorney's fees will be paid according to the plan. The attorney for debtor(s) shall receive 50% of all funds distributed to creditors after payment of administrative expenses and fixed monthly payments on executory contracts and arrearages, first liens on a residence, second liens on a residence, current child support and/or alimony, and monthly payments on residential mortgage arrearages.

Two options are available to debtor and debtor's counsel in this district for payment of attorney's fees. One of these options must be elected at the time of filing. The election is irrevocable. These options are:

OPTION #1: Fees in any amount may be requested so long as an itemized fee application consistent with In re Wiedau's Inc., 78 B.R. 904 (Bankr. S.D. Ill. 1987) is filed with the Court. The application must itemize all fees requested from the inception of the case.

OPTION #2: A flat fee in the amount of \$2,200.00¹ will be allowed, without the necessity of itemizing; provided, however, that a copy of this Court's form entitled Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys [hereafter "form"] is

¹From which the sum of \$300.00 will be paid to debtor's counsel prior to the distribution to other creditors, but after payment of the filing fee, if any.

executed by debtor(s) and his/her/their attorney. A copy of the form must be provided to the debtor(s) at the time of its signing. A copy of the form is attached to these Instructions. The attorney for debtor(s) shall retain the original form until two years after the closing of the case, and shall, at the request of any interested party, provide a copy of the form to that party. Debtor(s) attorney agrees to perform all services listed on the form until the case is closed without additional fees. Leave of the Court is required for counsel to withdraw as attorney for the Debtor, regardless of whether the plan has been confirmed or not. In addition to the grounds upon which the motion is predicated, a motion for leave to withdraw must also set forth any attorney fees which have been paid.

4. To calculate the amount needed to be paid to the Trustee, assume the maximum 10% fee. No Trustee fee is collected on current payments on the first and second mortgage on debtor's residence, nor on current child support or maintenance payments. The fee is collected on arrearage claims.

5. It is the policy of the Court in the Southern District of Illinois to grant relief from the stay if secured property is not protected by insurance.

If the debtor fails to insure a pledged personal vehicle (other than a motorcycle), the Trustee may place collision and comprehensive insurance on the vehicle up to the NADA blue book value of the vehicle. The debtor may terminate the forced insurance if, within 20 days of notice from the Trustee requiring it, the debtor provides evidence satisfactory to the Trustee that the debtor has obtained collision and comprehensive insurance and has paid the premium for three months. After the expiration of the 20 day period, the debtor may terminate the forced insurance at any time by providing evidence that debtor has obtained such insurance and has paid the premium for six months.

6. This section is to be used for actual postage costs incurred by debtor's counsel as a result of mailing amended plans to creditors. Entitlement to payment under this paragraph requires an application to be filed with the Court for such postage. After the Order is entered, the Trustee will pay these fees as an administrative claim.

B. Past Due Real Estate Taxes

The tax year and parcel number(s) in the first paragraph identify all past due real estate taxes to be paid. Each tax year and parcel number must appear in either subparagraph (1), (2), (3), or (4).

“Estimated Amount to be Paid” should include any penalties or fees due under state law that will accrue by the date specified for payment so that when the Trustee makes the distribution, redemption will be effectuated.

Subsection (1) should be used when taxes have been sold and a redemption is needed to prevent the issuance of a tax deed, and no agreement with the tax purchaser for repayment of the taxes has been reached. "Not Later Than" is the last date provided by law that the property may be redeemed from the tax sale.

Subsection (2) is to be used when an agreement has been reached with a tax purchaser. A copy of the stipulation should be attached to the plan.

Subsection (3) is for use when a co-debtor (other than the debtor's non-debtor spouse) will be responsible for payment of the tax.

Subsection (4): Self explanatory.

C. Home Mortgages/Residential Mobile Homes

(In this section of these instructions, use of the word mortgage or mortgages also denotes the same treatment to a claim secured by a lien on a residential mobile home.)

Debtors are allowed to make mortgage payments directly to the mortgagee(s) only if current on all mortgages. If an arrearage claim is filed and allowed, the Trustee will move to increase plan payments accordingly to effectuate payment to the mortgagee inside the plan.

"First Payment Due" informs the Trustee of the date when the next unpaid mortgage payment is due after the case is filed. It avoids confusion as to whether the debtor made the payment for the month the case is filed, or whether the Trustee is to make it.

Mortgage holders: If the payment amount of a mortgage changes during the case, notify the Trustee, allowing ample time (1 month or more) for the Trustee to adjust his records.

Debtors: The Trustee will file a Motion to Increase Plan Payments if mortgage payments increase.

D. Continuing Claims

This section is to be used when the debtor wishes to maintain a long term contract on a current basis, rather than modifying it. It applies to continuing debts and provides for maintaining regular contract installments on claims which will not be paid in full through the plan. This section may be used, for example, for a student loan when the loan will outlast the case.

Exception: See Paragraph III C for house payments.

E. Current Child Support/Maintenance

The amount is the support amount set by the divorce court. Usually it is paid by the debtor, but it can be paid by the Trustee.

F. Executory Contracts and Leases

Only true leases (as opposed to financing arrangements labeled "leases") may be paid directly to the creditor by the debtor. Proof that it is a true lease must be submitted to the Trustee.

G. Other Secured Claims

The introductory paragraph in this section provides for lien avoidance actions by the Chapter 13 Trustee. The Trustee may bring such an action if evidence of the perfection of the lien is not filed with the proof of claim.

1. This sub-paragraph is for use when 100% of the debt is to be paid, rather than as in sub-paragraph 2 where only the value of the collateral is to be paid. Usually this is used for auto loans which have only a few payments remaining when the case is filed.

2. To be used for cramdown. Method of valuation: appraisal, NADA, debtor's estimate or other. For used vehicles, the valuation should normally be the average of the wholesale and retail NADA value, absent some explanation to the contrary. The plan is intended to allow for flexibility in naming creditors in paragraph G (2). This is a recognition of the fact that debtors often do not know that a debt of this nature is secured (e.g., television set purchased at Sears by means of a Sears charge card). Hopefully, this provision will allow the debtor and the trustee flexibility in adding claims to this category when they are discovered to be secured without the necessity of the trustee having to file a formal objection to confirmation.

3. Property to be surrendered - Self explanatory. See instructions for G (2) for method of valuation.

H. Priority Claims

This section is most commonly used for income taxes for three preceding years and sales taxes.

I. Separately Classified Claims

1. Claims with co-debtors

If a co-debtor claim (secured or unsecured) is to be paid in full at the contract rate of interest to protect the co-debtor from collection efforts by the lender, use this paragraph.

2. Priority Child Support/Maintenance Arrearage

Interest is ordinarily paid only when a judgment has been entered by a court for the amount of the arrearage claim. In that case, the interest rate is the legal rate for judgments. A non-priority arrearage claim may be treated as a general unsecured claim.

3. Other

This subsection is to be used where there is a valid basis for discriminatory treatment in favor of certain otherwise general unsecured claims. Examples include the following:

- (a) When time is of the essence for paying certain criminal fines or for payment of restitution in full.
- (b) If the Trustee has raised an objection to confirmation based on this court's ruling in In re Rybicki, 138 B.R. 225 (Bankr. S.D. Ill. 1992), the debtor is permitted to use his or her cushion (see Paragraph I (b), supra.) to increase the monthly payment to pay for a luxury item not otherwise allowable in the Chapter 13 plan.

J. General Unsecured Claims

Self-explanatory. The percentage to be paid on unsecured claims should ordinarily be at least 10%. Those creditors who file claims will receive the share that would have been paid to those creditors who fail to file claims.

K. Post Petition Claims

These are claims incurred after the filing of the petition where the creditor agrees, by filing a claim, to be paid through the plan by the Trustee. Unless provided otherwise, these claims will be paid 100% without interest. If the plan payments are increased to cover the claims, the claimant will receive each month the amount of the increase (net of Trustee fee).

L. Secured Claims

Self-explanatory.

M. Objections to Claims

This section sets forth specific times within which debtor(s) will file objections to claims.

N. Other Provisions

This section may be used to add provisions to the plan not otherwise provided for. It cannot be used to modify existing plan provisions.

IV. RESPONSIBILITY WHEN SIGNING PLAN

Bankruptcy Rule 9011 provides that by signing certain documents specified in Rule 9011, a debtor and counsel certify that they have read the document and to the best of their knowledge, information, and belief, formed after reasonable inquiry, the contents of the document are well grounded in fact and warranted by existing law and are not interposed for improper purpose. Rule 9011 further provides that a document signed in violation of Rule 9011 will lead to possible sanctions by the Court. Counsel are expected to explain to their clients the consequences of failing to make truthful statements on documents filed in these proceedings, including Rule 9011, 11 U.S.C. §727 (a) (4) and the criminal penalties for perjury.

Questions? Call the Chapter 13 Trustee's Office:
James W. McRoberts, Belleville, IL (618) 277-0086
-or-
Bob Kearney, Benton, IL (618) 435-3001