

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

INSTRUCTIONS FOR USE OF CHAPTER 13 PLAN FORM
IN CASES FILED ON OR AFTER OCTOBER 17, 2005

GENERAL INSTRUCTIONS

Consumer debtors are required to use the Chapter 13 Plan Form (attached as Exhibit 1 to this Court's Standing Order 05-01 for Administration of Chapter 13 Cases filed on or after October 17, 2005) unless, upon motion, an order is entered allowing an alternative chapter 13 plan to be used.¹ Debtors who are engaged in business, as defined by 11 U.S.C. §1304(a), are not required to use the Chapter 13 Plan Form, although they may elect to use it.

The Chapter 13 Plan Form consists of three mandatory pages followed by pages containing **optional** addenda. If a debtor elects to use one or more addenda, the debtor must mark with an "X" each addendum to be used at sections 10 through 15 on page 3 of the Chapter 13 Plan Form. In addition, the debtor must attach each corresponding addendum as a separate page following the three mandatory pages of the Chapter 13 Plan Form (Do not attach in blank addenda that do not apply to the debtor's plan). If a debtor marks an "X" indicating use of a particular addendum, yet fails to attach that addendum to the Chapter 13 Plan Form, the addendum will not be considered to be part of the chapter 13 plan and parties will not be bound by the terms of the addendum.

The Chapter 13 Plan Form provides for payment to secured creditors in two phases. The first phase provides for adequate protection payments pursuant to 11 U.S.C. § 1326(a). The second phase provides for Specified Monthly Payments (hereinafter referred to as SMP's) consisting of equal monthly payments and adequate protection payments pursuant to 11 U.S.C. § 1325(a)(5)(B)(iii). The amounts and duration of adequate protection payments and equal monthly payments are to be set forth in the applicable addenda. Care should be taken to insure that monthly payments do not extend beyond the permissible plan duration.

PROCEDURAL ISSUES: The Chapter 13 Plan Form filed with the Court may be printed on one side only. Copies served on parties in interest may be printed on both sides and have reduced print size, so long as the document is easily readable.

If the Chapter 13 Plan Form is filed with the chapter 13 petition, it will be served on all creditors and other parties in interest by the chapter 13 trustee. If the Chapter 13 Plan Form is not filed with the chapter 13 petition, the debtor must serve the Chapter 13 Plan Form on all creditors and other parties in interest and file a Certificate of Service at the time that the Chapter 13 Plan Form is filed.

¹ In contrast, a debtor who is using the Chapter 13 Plan Form, but is making minor revisions or additions to it, must utilize section 16 of the Chapter 13 Plan Form. Use of section 16 does not necessitate filing a motion.

The Instructions for Use of Chapter 13 Plan Form in Cases Filed on or after October 17, 2005 are available to the public at the Benton and East St. Louis offices of the Bankruptcy Clerk and on the Court's website at www.ilsb.uscourts.gov.

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

INSTRUCTIONS CORRELATING WITH SPECIFIC SECTIONS
OF THE CHAPTER 13 PLAN FORM

1. SUBMISSION OF INCOME

This section is self-explanatory.

2. PLAN DURATION AND PAYMENTS

a. Plan Duration

See 11 U.S.C. §§ 1325(b)(4) and 1322(d).

b. Payments

Debtors shall commence making payments as provided in the Chapter 13 Plan Form within 30 days after the chapter 13 petition is filed. Failure to do so may result in dismissal of the case. It is the obligation of a debtor to ensure that payments are made timely. Failure of an employer to make the appropriate deduction from a debtor's wages does not excuse non-payment or late payment.

Debtors shall choose one of the options for payment listed in sections 2(b)(1) through 2(b)(3) of the Chapter 13 Plan Form. Although subsections 2(b)(1) through 2(b)(3) allow a debtor to designate that he or she will make direct payments to the Trustee, with few exceptions, plan payments must be made through payroll deduction by an employer. These **exceptions are: debtors with income derived from Social Security benefits, retirement funds, unemployment benefits and/or self-employment, and debtors who are unemployed.** If a debtor designates on the Chapter 13 Plan Form that he or she will make direct payments (as opposed to payroll deduction payments by an employer), but does not fall into one of the exceptions outlined above, the Bankruptcy Clerk will issue a payroll deduction order to the debtor's employer unless the debtor then has pending before the Court a motion seeking permission to make plan payments directly to the trustee.

For all payments made by payroll deduction, the complete address of the employer must be listed in subsection 2(b)(4).

If a debtor is required to make lump sum payments during the bankruptcy case (e.g., personal injury or worker's compensation proceeds), subsection 2(b)(5) also must be completed.

3. PRE-CONFIRMATION (INTERIM) DISBURSEMENTS

See paragraph 2 of the Court's Standing Order 05-01 for Administration of Chapter 13 Cases filed on or after October 17, 2005. Debtors may not make adequate protection payments directly to creditors. In order for a claim to be paid pre-

confirmation by interim disbursements by the trustee, the conditions set forth in footnote 3 of Standing Order 05-01 must be met. Standing Order 05-01 also governs other pre-confirmation distributions by the trustee that will be paid as provided in the plan.

4. CLAIMS GENERALLY

This section of the Chapter 13 Plan Form modifies the prior policy and practice in the Southern District of Illinois pursuant to which the terms of the chapter 13 plan controlled certain issues and left other issues for determination through claims adjudication. By contrast, section 4 of the Chapter 13 Plan Form provides that, upon confirmation, the terms of the Chapter 13 Plan Form will control claim amounts, classifications, interest rates, and monthly payments notwithstanding a proof of claim at variance with its treatment in the Chapter 13 Plan Form. Claims will be paid only if a proof of claim is filed. However, with the exception of non-priority unsecured claims as set forth in section 7 below, any inconsistency between a proof of claim and the terms of the confirmed Chapter 13 Plan Form will be governed by the terms of the confirmed Chapter 13 Plan Form. Therefore, a creditor who does not object to the proposed Chapter 13 Plan Form will be bound by its terms and conditions as confirmed.

With the exception of non-priority unsecured claims, the trustee will not make payments on any claim that has been filed, but that is not addressed in the Chapter 13 Plan Form, until and unless the Chapter 13 Plan Form is amended to fund and address such claim.

Non-priority unsecured claims shall be paid after all secured, priority and administrative claims have been paid.

5. ADMINISTRATIVE ATTORNEY'S FEES

Debtors shall choose between subsections 5(a) or 5(b) and shall indicate the selection by deleting the non-applicable subsection. Once a debtor elects either subsection 5(a) or 5(b), the debtor is bound by this selection throughout the bankruptcy case, unless on motion, the Court orders otherwise.

If a debtor elects to pay attorney's fees under subsection 5(a), then the debtor must indicate whether this is a business or a non-business bankruptcy case. A business bankruptcy is one in which the debtor is engaged in business as defined by 11 U.S.C. §1304(a).

The Rule 2016(b) attorney disclosure form must be filed by every attorney entering an appearance on behalf of a debtor. Care should be taken to ensure that the disclosures on this form are consistent with the attorney fee amounts requested in the Chapter 13 Plan Form.

Leave of court is required for counsel to withdraw as attorney for a debtor, regardless of whether or not the plan has been confirmed. In addition to any other grounds upon which a motion to withdraw is predicated, the motion must set forth the amount of attorney fees that have been paid.

6. ADMINISTRATIVE CLAIMS

Administrative claims shall be paid as provided in section 6. If "Other Administrative Claims are to be paid, debtors shall utilize section 16 of the Chapter 13 Plan Form to provide for payment. Until the treatment of an "Other Administrative Claim" is set forth in section 16 and funded, the trustee will make no payments on such claim.

In calculating the amount of the Trustee's fee, debtors are to use the maximum 10% fee. No Trustee's fee is collected on current payments on the first and second mortgages on a debtor's residence, nor on current child support or maintenance payments. The Trustee's fee is collected on arrearage claims and on continuing payments on non-residential real estate.

7. UNSECURED CLAIMS

This section establishes the minimum amount to be paid to unsecured creditors. As to non-priority unsecured claims (listed in Schedule F), the proof of claim will control the amount of the claim, unless the Court orders otherwise.

8. POST-PETITION CLAIMS

If post-petition claims are to be paid, debtors shall utilize section 16 of the Chapter 13 Plan Form to provide for payment. Until the treatment of a post-petition claim is set forth in section 16 and funded, the trustee will make no payments on such claim.

9. REVESTMENT

This section provides that, upon confirmation, property of the bankruptcy estate shall re-vest in the debtor with the exception of income required to be paid to the trustee under the terms of the Chapter 13 Plan Form.

10. REAL ESTATE TAXES

A debtor is to utilize the addendum titled "Real Estate Tax Addendum" when applicable. All real estate tax liability must be identified on the Real Estate Tax Addendum by listing the following information under the table headings provided for that purpose: tax year; parcel number(s); tax deed case number (if applicable); entity to whom the real estate taxes are owed; amount; and date of payment. The directives for payment are listed in provisions (a) through (c) on the Real Estate Tax Addendum. Debtors should calculate the "Amount" to be paid by including all projected post-petition penalties, interest and fees up to the "Date of Payment."

The Real Estate Tax Addendum is intended to provide for payment to an "Entity to Whom the Taxes are Owed" prior to the date of redemption for the tax years listed on the Addendum. It is also intended to prevent such "Entity" from using pre-petition taxes as a basis to obtain a tax deed or to reject payment from the trustee.

11. RESIDENTIAL AND NON-RESIDENTIAL MORTGAGES ON REAL ESTATE AND MOBILE HOMES

A debtor is to utilize the addendum titled "Residential and Non-Residential Mortgages on Real Estate and Mobile Homes" if there is a mortgage or mobile home payment to be paid in the case. In provision (a) of this addendum, a debtor may elect to make payments directly to the Mortgage Holder, notwithstanding an arrearage claim, or may have the Trustee pay the Mortgage Holder.

If a debtor elects to have the Trustee pay the monthly mortgage payments, then the debtor should list the date that the second post-petition contractual payment comes due under the heading "First Payment Due" in the table in provision (a) of this addendum. (For example, if a debtor's mortgage payments are due on the first of each month and the debtor files bankruptcy on the 15th of October, "December 1" should be listed as the "First Payment Due"). **In this situation, a mortgage holder should file a**

claim that includes both the pre-petition arrearage and the first post-petition contractual payment. Similarly, a debtor must include the amount of the first post-petition contractual payment in the pre-petition arrearage calculation. (For example, using the facts from the earlier illustration, the amount of the November 1 contractual payment should be included when computing the pre-petition arrearage owed the mortgage holder). Doing so is intended to eliminate late payments to mortgage holders, and the corollary late fees and charges incurred by debtors, that may be caused by the Trustee's end-of-month distribution schedule. Given that at the end of the calendar month in which the debtor filed for bankruptcy relief, the debtor's first monthly plan payment typically has not yet come due, this leaves the Trustee unable to pay the first post-petition mortgage payment on a timely basis.

Provision (b) of this addendum is used when there is a mortgage arrearage. Debtors completing provision (b) must adjust the specified monthly payment so that the arrearage amount will have been paid in full by ninety (90) days prior to the last scheduled distribution by the Trustee.

Under provision (c)(1) of this addendum, Mortgage Holders are required to monitor mortgage payments and report changes as provided in the plan. Provision (c)(2) sets forth consequences for failure to monitor and report changes. Provision (c)(3) provides a mechanism to advise and determine whether a debtor is current on all obligations with the Mortgage Holder before the entry of the order of discharge. Provision (c) is designed to ensure that a debtor emerges from the Chapter 13 bankruptcy case in total compliance with obligations under the note or agreement, or in the alternative, to provide a debtor with a mechanism to timely challenge or address any deficiency.

12. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A debtor is to utilize the addendum titled "Executory Contracts and Unexpired Leases" when applicable.

13. SECURED CLAIMS

A debtor is to utilize the addendum titled "Secured Claims" when applicable. Provision (a) of this addendum should be used when a debtor wishes to retain property securing a debt. A debtor must describe with detail (by filling in the tables) the amount to be paid to each secured creditor for both adequate protection payments (provision (a)(1)) and for Specified Monthly Payments (SMPs) (provision (a)(2)).

How to Calculate SMP's: Debtors should use a "simple interest" calculation based on a declining principle balance rather than an "add-on interest" (pre-computed interest) calculation. See discussion in *In re Pokrzywinski*, 311 B.R. 846 (Bankr. E.D. Wis. 2004). Refer to Rule 3010(b) of the Federal Rules of Bankruptcy Procedure regarding the treatment of any payment amount that is less than \$15.00. **Full payment of the SMP's to a creditor in accordance with the Chapter 13 Plan Form shall constitute payment in full of the creditor's allowed secured claim.**

Provision (b) of this addendum should be used when a debtor surrenders collateral securing the claims of creditors.

14. PRIORITY CLAIMS

A debtor is to utilize the addendum titled "Priority Claims" when applicable. This section of the Chapter 13 Plan Form is most commonly used for the treatment of income taxes, domestic support obligations and sales taxes.

15. SEPARATELY CLASSIFIED CLAIMS

A debtor is to utilize the addendum titled "Separately Classified Claims" when applicable.

Provision (a) of this addendum should be used if there are claims with co-debtors (secured or unsecured) that will be paid in full at the contract rate of interest in order to protect the co-debtor from collection efforts by a lender.

Provision (b) of this addendum applies to continuing, long-term debts. It provides for maintaining regular contract installments on claims that will not be paid in full through the plan.

Provision (c) of this addendum is a catchall provision allowing a debtor to separately classify other categories of debt, not of a type treated in provisions (a) and (b) of this section, when there is a valid basis for discriminatory treatment of the debt.

16. OTHER PROVISIONS

This section must be used if a debtor is adding any provision(s) to the Chapter 13 Plan Form or is deviating from the standard language of the Chapter 13 Plan Form. If section 16 is used, a debtor must mark an "X" in the space provided on the first line of page 1 of the Chapter 13 Plan Form. In addition, the debtor must set forth in full the additional or deviating provision(s) at section 16 on page 3 of the Chapter 13 Plan Form. If deviating from the standard language of the Chapter 13 Plan Form, care should be taken to avoid conflicting directives for payment by the chapter 13 Trustee.