

Instructions for Using the Chapter 13 Trustee's Form Plan for the Northern District of Ohio, Eastern Division (Cleveland)

Introduction

Debtors filing Chapter 13 cases in the Cleveland Bankruptcy Court on or after October 17, 2005 are required to use the Form Chapter 13 Plan (attached as Exhibit A to the Bankruptcy Court's Administrative Order No. 06-04). These instructions provide a step-by-step guide for using the Form Chapter 13 Plan. Chapter 13 cases filed before October 17, 2005 should use the trustee's prior uniform plan.

Statutory references are to the Bankruptcy Code (Title 11, U.S.C.).

The form plan is designed to accomplish several purposes:

- To set out some of the rights and responsibilities of various parties affected by the plan – debtors, creditors, and the trustee;
- To present, in a uniform manner, the basic information needed to determine whether the plan is confirmable;
- To provide for treatment of claims consistent with the provisions of the Bankruptcy Code; and
- To allow for changes to form plan provisions, as long as clear notice is given that changes are being made.

One special feature of the form plan should be particularly noted. To include a special provision of the form plan, *a check must be placed in a notice box at the beginning of the plan and the changes must be set forth in Article 11*. The other provisions of the form plan must be left intact, even if provisions in Article 11 supplement them. If these steps are not taken, changes to the form plan provisions will not be effective.

Procedural Issue

If the Form Chapter 13 Plan is filed with the Chapter 13 petition or prior to the Bankruptcy Court's mailing of the Notice of Meeting of

Creditor's, the Bankruptcy Court will serve the plan on all creditors and other parties in interest. If the Form Chapter 13 Plan is not filed prior to the court's mailing of the Notice of the Meeting of Creditors, the debtor must serve the Form Chapter 13 Plan on all creditors and other parties in interest and file a Certificate of Service at the time that the Form Chapter 13 Plan is filed.

Questions regarding the Form Chapter 13 Plan may be directed to the Cleveland Chapter 13 Trustee office – Craig Shopneck, Trustee (216) 621-4268.

General Instructions

A. The form plan may be downloaded from either the Chapter 13 Trustee's or the Bankruptcy Court's website.

B. Throughout the plan, each paragraph with blank spaces should be completed. If the information required by the paragraph is not applicable, that fact should be indicated with an "N/A" (not applicable). If the amount for a blank space is zero, that fact should be indicated by entering "0".

C. Throughout the form plan (and in these instructions), the word "debtor" is understood as including both of the debtors in a joint case. Thus, when the plan is used in joint cases, it is not necessary to change the word "debtor" to "debtors."

D. It is permissible, though not mandatory, to state amounts of money in full dollars, rounding where necessary to avoid cents.

E. A wage order directing the debtor's employer to withhold a stated amount from the debtor's wages each pay period and pay it over to the Trustee is to be filed in each case. However, a wage order is not required if the debtor's income is not derived from wages, but instead from sources such as social security, pension, retirement or unemployment benefits. A copy of the Bankruptcy Court's required wage order form may be downloaded from the Bankruptcy Court's website.

F. The Form Chapter 13 Plan 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)(1)(C). The second phase provides for specified monthly payments consisting of equal monthly payments pursuant to 11 U.S.C. §1325(a)(5)(B)(iii). The amounts of the adequate protection payments and

equal monthly payments are to be set forth in the applicable provisions of the plan.

Caption and Notice Box

The caption of the form plan provides blanks for the name of the debtor, the case number and the judge, as well as check boxes to indicate whether the plan is the first one filed in the case (the “Original Chapter 13 Plan”) or a subsequent one (a “Modified Chapter 13 Plan”). The blanks should be filled out and one of the boxes must be checked. The check box for “Modified Chapter 13 Plan” is followed by a blank for the date on which the modified plan is filed; this blank must be completed whenever the “Modified Plan” box is checked.

Following the caption is the notice box for changes to the form plan, which must be checked if changes are included in Article 11. Provisions in Articles 1 through 10 of the form plan must be left intact

1. Plan Payments

This section defines the payments that the debtor will make to the Trustee. Debtors shall commence making payments as provided in the Form Chapter 13 Plan 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 the debtor to ensure that payments are made timely. Failure of an employer to make the appropriate deduction from the debtor’s wages does not excuse non-payment or late payment.

Article 1(A) sets out the initial payment terms, specifying a monthly payment to be made in either monthly, semi-monthly, bi-weekly, or weekly installments. For example, Paragraph A might be completed as follows:

A. To the Chapter 13 Trustee: \$300.00 [A] per month, payable in monthly semi-monthly bi-weekly weekly installments of \$138.46 each,”

Article 1(B) describes the pre-confirmation adequate protection payments required to be paid by the debtor to secured creditors pursuant to §1326(a)(1)(C). For example, Paragraph B might be completed as follows:

B. To secured creditors as adequate protection: \$450.00 [B] per month, allocated as follows:

<u>Creditor</u>	<u>Collateral</u>	<u>Amount</u>
GMAC	2003 Chevy Corsica	200.00
KeyBank	2004 Ford F-150	250.00

If instead of the debtor making the pre-confirmation adequate protection payments directly to the creditor, the debtor may seek an order from the court allowing the debtor to forward the pre-confirmation adequate protection payments to the Trustee and, in turn having the Trustee act as the disbursing agent for these payments. To do this the debtor must still complete Article 1(B) of the form plan and file the appropriate motion and order with the court. You should contact the Trustee’s office to obtain the information required to be included in the motion and order.

The last paragraph in this section provides for the monthly plan payment to be made to the Trustee following confirmation of the plan. This amount is the total of the amounts in Articles 1(A) and 1(B) referred to above. For example, based on the information in the above examples, this paragraph would be completed as follows:

Upon confirmation of this plan, the Debtor shall make the entire Monthly Plan Payment of \$750.00 [A+B] to the Trustee.

2. Order of distribution

This section lays out the order of disbursements from the Trustee. Any change from this disbursement order – for example, a provision that one secured creditor with a fixed monthly payment shall have a priority over other secured creditors receiving fixed payments – must be clearly set out in Article 11, with a check in the notice box at the beginning of the plan.

3. Claims Secured By Real Property

Article 3(A) specifies the treatment of mortgage arrearages and real estate tax arrearages to be paid through the plan. Ongoing monthly mortgage payments are not to be included in the plan and are to be made by the debtor to the mortgage company. You must include in this paragraph all mortgage claims indicated on Schedule D of the petition (except for property to be surrendered) even if there is no arrearage. If there is no arrearage, place a “0” in the column for the amount of the estimated arrearage. **Note: The amounts set forth in the filed proof of claims will control how much the Trustee will pay in**

mortgage and real estate tax arrearages, regardless of any amount stated in the plan. For each mortgage and real estate tax arrearage, the creditor, property address, estimated amount of the arrearage, and the fixed monthly amount the Trustee is to disburse must be specified. If the filed proof of claim provides for interest to be paid on the mortgage arrearage, the Trustee will pay interest unless an objection to the claim is filed and an order is entered disallowing the requested interest.

Article 3(B) specifies the treatment of “Other Real Estate Claims.” ***The amounts set forth here will control how much is paid through the plan, regardless of any amount stated in a filed proof of claim.*** However, the portion of any allowed claim that exceeds the amount to be paid through the plan will be treated as an unsecured claim and paid accordingly.

4. Claims Secured by Personal Property

You must include in Article 4 all claims secured by personal property that are indicated on Schedule D of the petition (except for property to be surrendered). If a Schedule D claim secured by personal property is not provided for in the plan, a modified plan will need to be filed.

Secured claims specified in Article 4(A) are to be paid in full through the plan. ***The amounts set forth in the filed proof of claims will control how much is paid, regardless of any amount stated in the plan.***

Secured claims specified in Article 4(B) are NOT to be paid in full through the plan. This is a critical feature of the form plan. The secured claim valuation is specified by the plan, not by the creditor’s proof of claim. ***The secured amounts set forth here will control how much is paid as a secured claim through the plan, regardless of any amount stated in a filed proof of claim.*** However, the portion of any allowed claim that exceeds the amount to be paid through the plan will be treated as an unsecured claim and paid accordingly. For example, if the total debt owed to an auto creditor is \$15,000.00, but the auto is valued at \$10,000.00 in a confirmed plan, the auto lender will be paid \$10,000.00 on its secured claim, even if it files a proof of claim asserting that the entire \$15,000.00 is secured. To the extent that a proof of claim exceeds the secured amount established by a confirmed plan, the amount of the allowed claim exceeding the secured amount will be treated as unsecured. Thus, all collateral values will be fixed

at the confirmation of the plan. If a secured creditor disagrees with the valuation in the plan, the creditor will have to object to confirmation. Since creditors receive a copy of the plan as part of the notice of the commencement of the case sent by the Bankruptcy Clerk, the values in the plan will constitute the notice to the secured creditors of the proposed treatment of their claims.

For each of the secured claims listed in Article 4(A) and 4(B), the following must be done.

- First, the creditor and the collateral have to be identified.
- Second, for Article 4(A) claims, the full amount of the claim must be specified; for Article 4(B) claims, the amount of the claim to be treated as secured must be specified
- Third, the rate of interest to be paid on the secured claim must be specified. Do not leave the interest rate field blank. (If no interest is to be paid, a “0” should be entered in the appropriate blank space).
- Finally, the fixed monthly amount the Trustee is to disburse must be specified.

5. Domestic Support Obligations

This section requires a specification as to whether the debtor does or does not have domestic support obligations pursuant to §101(14A). If the debtor does have domestic support obligations, the name, address and telephone number of the holder of the claim must be specified. If the holder of the domestic support claim is a minor, you are not required to disclose the name and address of the minor holder in the form plan. Instead, at the time of filing of the case you must provide the Trustee with the minor’s name and address in a separate writing delivered to the Trustee’s office. The debtor must specify the amount of any domestic support obligation arrearages that are to be paid by the Trustee through the plan. ***The amounts set forth in the filed proof of claims will control how much is paid, regardless of any amount stated in the plan.***

6. Other Priority Claims

This section requires a specification of the total amount of non-attorney priority claims. This

should be the total of all debts listed in Schedule E. ***The amounts set forth in the filed proof of claims will control how much is paid, regardless of any amount stated in the plan.***

7. General Unsecured Claims

This section provides an estimate of the amount of the debtor's non-priority unsecured debt. ***The amounts set forth in the filed proof of claims will control how much is paid, regardless of any amount stated in the plan.*** Creditors with allowed non-priority unsecured claims will be paid the larger of either a specific dollar amount or a percentage of the general unsecured claims.

8. Property To Be Surrendered

This section specifies the property the debtor intends to surrender to creditors. The property description must be consistent with the property description used in Schedules B, C and/or D of the Petition. This information is necessary so that when the claim is filed, the Trustee will not make disbursements on the claim as a secured claim.

9. Executory Contracts and Unexpired Leases

This section deals with executory contract and unexpired lease obligations that the debtor intends to assume. Executory contracts and unexpired leases that are identified in Schedule G of the Petition but are not listed in this section are presumed to be rejected. ***The amounts of the arrearages set forth in the filed proof of claims will control how much is paid, regardless of any amount stated in the plan.***

10. Other Provisions

This section sets out a number of general provisions.

11. Special Provisions

As has been previously stated, this section is to be used whenever there is a deviation from the form plan. For example, if the debtor's intended treatment of a claim will not fit anywhere else in the plan, it should be addressed here. Also, there may be additional provisions needed to address certain situations such as the sale of real estate, the addition of personal injury proceeds to the plan, or

the deferral of student loans claims until after completion of the Chapter 13 bankruptcy plan.

In order to use this section, the first step is to check the notice box at the beginning of the plan. This box *must* be checked if there are changes listed in Article 11. Any change in this section is ineffective if the box is not checked. Any change must be listed fully and clearly and, if the change relates to a specific creditor, that creditor must be listed by name (i.e. not simply "automobile"). If changes are made that cannot fit in the space provided in this section of the plan, a statement should be made in the space provided that the changes continue on a separate sheet, which should clearly identify the changes that are part of Article 11.

Form Chapter 13 Plan

A copy of the Form Chapter 13 Plan may be obtained from the Chapter 13 Trustee's or the Bankruptcy Court's website.