

Instructions for Using the Form Chapter Plan for the Northern District of Ohio - Eastern Division (Cleveland)

Introduction

Chapter 13 bankruptcy cases filed in the Cleveland Bankruptcy Court on or after August 10, 2009 are required to use the Form Chapter 13 Plan (the “Plan”) (attached as Exhibit A to the Bankruptcy Court’s Administrative Order No. 09-04). These instructions provide a step-by-step guide for using the Plan. Chapter 13 cases filed before August 10, 2009 should use the form plan effective October 17, 2005.

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 Plan should be particularly noted. To include a special provision of the Plan, *a check mark must be placed in the appropriate box of the notice section at the beginning of the plan and the changes must be set forth in paragraph 11.* All other provisions of the Plan must be left intact, even if provisions in Paragraph 11 supplement them. If these steps are not taken, changes to the Plan provisions will not be effective.

Procedural Issue

If the 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 creditors and other parties in interest. If the Plan is not timely filed prior to the court’s mailing of the Notice of the Meeting of Creditors, the debtor must serve the Plan on all creditors and other parties in interest. The debtor must also file with the Court a Certificate of Service evidencing the Plan has been properly served on creditors.

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

Practice and procedural information is also available at the following web sites:

- Craig Shopneck, Chapter 13 Trustee at www.13trusteecleveland.com.
- United States Bankruptcy Court for the Northern District of Ohio – Eastern Division (Cleveland) at www.ohnb.uscourts.gov.
- United States Trustee Program at www.usdoj.gov/ust/index.htm.

General Instructions

A. The 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 Plan (and in these instructions), the word “debtor” is understood as including both of the debtors in a joint case. Thus, when preparing the Plan in a joint case, it is not necessary to replace the word “debtor” with the word “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 is to be filed in each case directing the debtor’s employer to withhold a stated amount from the debtor’s wages each pay period and to pay it over to the Trustee. A wage order, however, 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 Plan provides for payment to secured creditors in two phases. The first phase provides for pre-confirmation 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.

G. Ongoing post-petition mortgage payments made by the debtor on the debtor's principal residence are to be included in the Plan. These mortgage payments paid by the Trustee are referred to as conduit payments.

Caption and Notice Box

The caption of the 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 plan filed in the case (the "Original Chapter 13 Plan") or a subsequent plan filing (a "Modified Chapter 13 Plan"). The check box for "Modified Chapter 13 Plan" is followed by a blank for inserting the date on which the modified plan is filed. This blank must be completed whenever the "Modified Plan" box is checked.

Following the caption section is the notice section for additional plan language, which must be checked if additional language is included in paragraph 11. All other sections and paragraphs of the Plan must be left intact

1. Plan Payments

Paragraph 1(A) specifies the amount of the debtor's monthly plan payment to the Trustee. Debtors shall commence making payments within 30 days after the Chapter 13 petition is filed. Failure to make timely payments may result in dismissal of the case or conversion to Chapter 7. 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.

As described in paragraph 1(B), the monthly plan payment specified in paragraph 1(A) must be

sufficient to cover conduit payments and adequate protection payments. Increases in the debtor's mortgage payment made by the Trustee during the life of the Chapter 13 bankruptcy case may necessitate an increase in the debtor's plan payment to the Trustee.

2. Order of distribution

Paragraph 2(A) denotes the order of disbursements made by 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 forth in Article 11, with a check in the notice box at the beginning of the plan.

3. Claims Secured By Real Property

Paragraph 3(A) specifies the treatment of mortgage arrearages and real estate tax arrearages to be paid through the plan. Except for property provided for in paragraph 3(B) or to be surrendered in paragraph 8, you must include in this paragraph all mortgage claims indicated on Schedule D of the petition, even if there is no arrearage. If there is no mortgage 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 arrearages and real estate tax arrearages, regardless of the amount stated in the plan.** For each mortgage arrearage and real estate tax arrearage, indicate the creditor, property address, estimated amount of the arrearage, and the fixed monthly amount the Trustee is to disburse. 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.

Paragraph 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.

Paragraph 3(C) details each mortgage creditor to whom the Trustee is to make monthly conduit payments (i.e. mortgage payments). Provide the address of the property secured by the creditor's

claim, amount of the monthly mortgage payment, and denote with a “Yes” or “No” whether the mortgage payment does or does not include insurance and/or real estate taxes. **Note: The amounts set forth in the filed proof of claims (including Addendum to Chapter 13 Proof of Claim and the Notice of Mortgage Payment Change pursuant to Administrative Order 09-02) will control the monthly mortgage payment figure the Trustee will pay, regardless of the amount stated in the plan.**

Be sure all mortgage claims shown on Schedule D of the petition are accounted for in your plan.

4. Claims Secured by Personal Property

You must include in paragraph 4 all claims secured by personal property that are shown on Schedule D of the petition (except for property to be surrendered which is to be denoted in paragraph 8). If a Schedule D claim secured by personal property is not provided for in the plan, you must file a modified plan which includes the claim.

Secured claims specified in paragraph 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 paragraph 4(B) are NOT to be paid in full through the plan. This is a critical feature of the 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 indicated; 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 stated; and
- Finally, the fixed monthly amount the Trustee is to disburse to each secured creditor must be specified.

Paragraph 4(C) describes the pre-confirmation adequate protection payments to be paid by the debtor to secured creditors pursuant to §1326(a)(1)(C) and Administrative Order 09-03.

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 arrearage amount to be paid inside the plan by the Trustee must be specified in paragraph 5(A). **The amounts set forth in the filed proof of claims will control how much is paid, regardless of any amount stated in the plan.**

If the holder of the domestic support claim is different than the creditor, paragraph 5(B) needs to be completed. However, if the holder is a minor, you are not required to disclose the name and address of the minor holder in the 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.

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 priority 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

Paragraph 7 denotes a total 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

Paragraph 8 specifies property the debtor intends to surrender to creditors. The property descriptions must be consistent with property descriptions used in Schedules B, C and/or D of the petition. This information is necessary for the Trustee's review of filed proof of claims and his determination as to the appropriateness of making a creditor disbursement.

9. Executory Contracts and Unexpired Leases

This section deals with executory contract and unexpired lease obligations the debtor intends to assume. Executory contracts and unexpired leases identified in Schedule G of the petition but not listed in paragraph 9 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 forth a number of general provisions.

11. Special Provisions

As has been previously stated, paragraph 11 is to be used whenever there is a deviation from the Plan. For example, if the debtor's intended treatment of a creditor's claim is not appropriate for inclusion in another paragraph or requires supplemental information, it should be addressed here. Also, there may be a need for additional provisions to address situations such as the sale of real estate, settlement proceeds from a personal

injury claim, claims to be paid by a co-debtor, or the deferral of student loans claims until after completion of the Chapter 13 bankruptcy.

This paragraph should not be used to include provisions that are restatements of the Bankruptcy Code, Federal Rules of Bankruptcy Procedures, Local Bankruptcy Rules or case law.

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 you are using paragraph 11. Any added language in this paragraph is ineffective if the box is not checked. Any added language must be clear and concise, and if the change relates to a specific creditor, that creditor must be listed by name (i.e., not simply "automobile"). If the special provisions cannot fit in the space provided in this section of the plan, a statement should be made in the space provided that the special provisions continue on a separate sheet, which should clearly identify the special provisions 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 website at www.13trusteecleveland.com or the Bankruptcy Court's website at www.ohnb.uscourts.gov.