

Western District Local Plan Trustee's Tips (02/12/2024)

Section I Notices:

A claim **must be filed timely** to receive payment through the Ch 13 plan. Note, the **plan no longer controls** the amount/balance of **secured, non-government** claims. If a secured or priority creditor does not file a claim, consider filing a claim within 30 days of the bar date as allowed under Rule 3004. Late claims will not be paid.

Failure to check the appropriate box(es) in this Section will make the later corresponding part of the plan unenforceable (for example, any non-standard provisions in Section VIII will be ignored unless the box is checked in the notices section).

The default disbursement order has been changed to add "equal monthly payments to secured creditors" which are to be paid after trustee fees but before administrative expenses including attorney fees.

Section II Payments and Attorney

(A) Payment Details: The plan states an employer wage order will be issued unless otherwise specified. Use Non-Standard Provisions at Section VIII if there are special considerations (split between employers, issued to one employer vs. the other, etc.). Do not include a specific dollar amount for plan payments equivalents (bi-weekly, weekly) as our system will generate the correct wage order. If you are requesting a waiver of the employer payment requirement, a separate request must be submitted in writing to the Trustee's office general email address at the time the case is filed. The Trustee will determine whether the waiver will be granted. Please note, if direct payment is authorized but the debtor fails to stay current an employer wage order, if appropriate, will be required.

Do not file a Notification in Change in Manner of Payment to the Chapter 13 Trustee at the time the case is filed.

Correctly indicate the total amount estimated to be paid through the Plan.

(B) Attorney Fees: Fill in the total fee, total paid and balance due pursuant to Form 2106. If the attorney fee is to be paid first and secured claims will not have set payments leave the rest blank. If set monthly payments to secured creditors are specified in Section III, *those will be paid first* absent a clear directive in the Nonstandard Provision section, or a clear directive in both this **and** the appropriate secured section. Said directive might have attorney fees paid alongside or prior to set secured payments depending on wording.

Section III Secured Claims

Secured claims filed but not provided for in this section will not be paid.

Post Petition Fee Notices will be paid without the need for additional language added to the plan. **NOTE:** best practice suggests adding a PPFN creditor amount in Section (A) Payment in Full if

a PPFN has been filed(amended or modified plans) to ensure the amount is included in your feasibility calculation.

(A) Payment in Full:

This section is intended for the treatment of 910 claims and matured mortgages which must be paid In full during the plan term.

With the exception of government tax claims, the plan will direct the interest rate to be paid. For tax claims the plan must provide the rate required by 11 U.S.C. Section 511.

The balance due stated on an allowed proof of claim controls over the amount stated in the plan, whether that amount is higher or lower. **NOTE: it is indicated this only applies to Section IIIA however it does also apply to Section IIIB.**

If the plan is providing for payment of a matured mortgage, and the monthly payment includes an escrow component, provide a breakdown of the principal and interest portion of the payment(including the interest rate) along with the current escrow amount.

(B) Maintenance of Payments and Cure of Default:

Arrears as indicated on the filed claim will be paid by the Trustee.

(C) Valuation of Collateral:

There are options for proceeding with a separate Valuation Motion or to proceed under Rule 3012(determine what your Judge requires). Complete the boxes, in particular, the center box in full.

The portion of any allowed claim that exceeds the *Amount of Secured Claim* will be treated as an unsecured claim under Section V. of the plan and the allowed amount of the creditor's total claim will be used to determine the unsecured portion(of concern if a 100% plan is proposed).

There is a line to enter an Objection deadline date. A bit hard to anticipate but likely indicating "28 days following service" is enough to provide the required notice.

(D) Lien Avoidance:

List (non-purchase money security) liens secured by personal property that you plan to avoid to preserve an exemption.

(E) Surrender of Collateral

Check one of the boxes and fill in the information for collateral to be surrendered.

Section IV Treatment of Fees and Priority Claims:

Trustee fees are not to be specifically provided for on the plan. The fees are governed by statute and subject to change. Please note however that the trustee fees **MUST** be included in your final calculation to ensure feasibility. As of 2024 the Trustee's office uses a fee of 7% when projecting feasibility(our 2024 fee is 6.6%).

(A): Priority Tax Claims:

The plan software now allows for the creation of separate boxes for each priority tax entity (IRS, WDR etc). Please break out the priority tax amounts, likely as shown on Schedule E, for ease of comparison with filed claims.

(B): Domestic Support Obligations: if it is current, click Current paid outside the plan box, if not fill in the child support payment terms. You might consider including the payee name and address only on Schedule E so as not to broadcast this information to all creditors

(C): Other: List any other debts you listed on Sched E (fines for example)

Section V: Unsecured Nonpriority Creditors: If paying 100%, click the box **(B)**, if not, the filed unsecured claims will be paid pro rata from any remaining funds available.

(C): Separately Classified: List unsecured non-priority creditors that would get special treatment (ex. to protect a co-debtor, student loans to receive set monthly payment, etc.).

Section VI: Executory Contracts: Look at Sched G & list any/all of them, otherwise select NONE.

Section VIII: Non-Standard Provisions: Should be used **rarely**, however, if special circumstances make the above categories unfit for use, check the box (as well as the box on page 1) and provide the details. **NOTE:** this section might be used to supplement Section IIIB if the Trustee is being directed to disburse current monthly mortgage payments.

Section VIII: Mortgage Modification Mediation: Click only if debtor intends to participate in program. Note this is part of the Non-Standard Provisions section so the box on page 1 must be checked as well.

MISCELLANEOUS

Request to Amend Unconfirmed Plan and Request to Modify Confirmed Plan documents must be filed along with Amended/Modified Plans. The purpose of these forms is to alert the Court, creditors and the Trustee to changes being made to the actual plan document. The Request and the Amended/Modified Plan should be consistent. "See attached amended/modified plan" does not fulfill the notice requirement and is not acceptable. A request for additional attorney fees should be noted.

Amended (other than for drafting corrections) and Modified plans should include amended Schedules I and J anytime there is a job change or the plan payment changes by \$100 or more.

Depending on circumstances, delaying the filing of an amended plan until secured claims have been filed or the bar passes might be an advantage.

A stipulation might be used to address plan drafting corrections when the stipulated terms do not affect other creditors' payments