

Western District Local Plan Trustee's Tips (3/22/2018):

Section I Notices:

A claim must be filed timely to receive payment through the Ch 13. However, **the plan now controls** treatment of **secured, non-government** claims in cases filed after 12/1/17. Consider filing a claim as allowed under Rule 3004 to make your plan work if a creditor does not timely file a claim.

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).

Section II Payments and Attorney

(A) Payment Details: The plan states an employer wage order will be issued unless otherwise specified. Use the Non-Standard Provisions at Section VIII if there are special considerations (split between employers, issued to one employer vs. the other, etc.). If you are requesting a waiver of the employer payment requirement, a separate request must be submitted in writing to the Trustee's office.

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

(B) Attorney Fees: Fill in the total fee to be paid, pursuant to Form 2106, but leave the rest blank if attorney is to be paid first. If there is a set monthly payment entered, ensure there are enough funds to pay it. There will need to be language added here and/or in the appropriate creditor section if the fee is to be paid in conjunction with adequate protection and/or equal monthly payments to secured creditors.

Section III Secured Claims

(A) Secured Claims: ONLY list secured debt that is not receiving additional special treatment (such as principal home mortgage obligation, 910 vehicle loan debts)

- a. You will need to add: interest rate, adequate protection amount, set monthly payment, pro rata, etc. to the "Other" line. (____% interest rate, \$____adequate protection, paid pro rata)
- b. Include the amounts of arrears/balance owed at the time of filing (\$1,000 / \$125,000)
- c. If entering direct mortgage here select 'Maintain' or otherwise indicate debtor making ongoing payments directly.

(B) Valuation: The plan does not include pre-printed language regarding the retention of liens which attorneys may wish to consider when using this section. This section requires a separate motion be served pursuant to BR 7004 & Local Rule 3015-1.

(B)(1) Real Property: ONLY list real property if you are challenging the fair market value and trying to avoid the lien. A separate Motion must be filed as well.

(B)(2) Vehicles: ONLY list vehicles for which valuation (cram down) is being sought.

(B)(3) Personal Property: ONLY list debts secured by personal property for which valuation (cram down) is being sought.

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

(D) Surrender of Collateral: list any secured debts if the collateral is to be surrendered.

(E) Direct Payments Secured Claims: list any payments the Debtor(s) will be paying direct: home mortgages, student loans- if current at time of filing, etc.

Section IV Administrative and Priority

(A) Administrative Fees: Should be used for additional admin claimant (accountant). You do not need to include Trustee fee since it is addressed in Section 1(A). The filing fee can be entered, but please don't enter how it is to be paid – the Court has their own rules for how the fee is paid through the plan.

(B): Priority Claims: Should list creditors separately if more than one. Section 1325(a)(5) doesn't require equal monthly payments to be paid to unsecured priority creditors so no need to include. Instead can type 'pro-rata' on the monthly payment line. Likewise, no interest is appropriate for unsecured priority obligations.

(C): 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.

(D): Other: List any other debts you listed on Sched E (fines, non-dischargeable debt, etc.)

Section V: Unsecured Nonpriority Creditors: If paying 100%, click the box (B), if not, don't do anything. Type "pro-rata" or leave as \$0/mo unless a certain dollar amount is required to be distributed.

(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 VII: Income Tax Returns: Regardless of how checked, Trustee may request annual tax returns; see Section 521(f).

Section VIII: Non-Standard Provisions: Should be used **very 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.

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. Keep in mind 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.

See the Trustee's website: ch13wdw.org Attorney FAQ page or the News page article dated 12-1-2017 for a summary of rule changes that took place 12-1-2017.

Notice of Postpetition Mortgage Fees, Expenses & Charges (Form 410S2) filed after 2-1-18 will no longer be treated as a filed claim and no payment will be made by this office unless specifically provided for in the plan. A special provision within your plan worded similar to the following would allow payment: *If any post-petition claims are filed under Rule 3002.1(c) during the term of this plan, the trustee will disburse funds on the claim. Debtor(s) will modify the plan if necessary to maintain plan feasibility.*

Before filing the plan, review the creditor payments under Sections, III, IV, and V, to make sure the total set payments do not exceed the plan payment shown in Section II. We have seen both commercial software and manually created plans with this problem.

If using the PDF form from the Court's website, you must convert it to read only format or print it and scan it as a PDF document before filing. Do not file the form directly as is.

Be aware that many of the check boxes expand and contract sections of the plan. We have seen attorneys fill in sections detailing creditor treatment and then incorrectly check the section check box making all their work in that section essentially disappear in the filed plan. Some of the commercial software currently has errors where both the NONE check box can be checked but detail also entered. It is not clear what your intent is in that situation. Please review all checkboxes before filing.