

Western District Local Plan Trustee's Tips (8/16/2018):

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. *If the fee is to be paid in conjunction with adequate protection and/or equal monthly payments to secured creditors add language here and/or in the appropriate creditor section. Example language might be: Attorney's fees shall be paid with all available funds on hand at confirmation and each month thereafter with all available funds, after fixed monthly payments on secured claims, until paid in full.*

Section III Secured Claims

(A) Secured Claims: List secured debt (such as principal home mortgage obligation) that is not receiving additional special treatment,

- 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)
- Include the amounts of arrears/balance owed at the time of filing (\$1,000 / \$125,000)
- If entering direct mortgage here select 'Maintain' or otherwise indicate debtor making ongoing payments directly.
- If adequate protection or payment concurrent with attorney fees is desired, note it in IIB and add language similar to the following: *Adequate protection payments of \$xx.xx/month until plan confirmed. Upon confirmation paid fixed monthly payments of \$yy.yy per month.*

(B) Valuation: The section does not include pre-printed language regarding the retention of liens. Attorneys may wish to consider a non-standard provision providing retention when using this section.

If challenging the value this section requires: a separate motion be served pursuant to BR 7004 & Local Rule 3015-1 (alternatively, a stipulation and order might work), the "910 days or more" or the "1 year or more" box should be checked, the "Value of Collateral" should show the challenged value to be paid, the "Amount of Creditor's Lien" would be pre-petition amount due the creditor.

If not challenging the value: the "Amount of Creditor's Lien" must be given, the amount shown in "Value" will be ignored for payment purposes, the appropriate "less than 910 or one year" box must be checked.

(C) Lien Avoidance: List (non-purchase money security) liens secured by personal property that you plan to avoid to preserve an exemption. Similar to the above valuation section, a separate motion pursuant to BR 7004 and LR 3015-1 should be served.

(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. 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 "News" page for a summary of rule changes that took place 12-1-2017.

With shortened bar date there might be an advantage to delaying amended plans until after claims are known.

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.*

A stipulation might be used to address plan drafting corrections when the stipulated terms do not affect other creditors' payments. If other creditor payments are altered, an order or amended/modified plan would be needed.

If a secured claim is filed for less than the amount set in the plan, the lower claim amount will be paid. With that exception, other terms set for that creditor in the plan will be followed.