

**EVERYTHING YOU WANTED TO KNOW ABOUT
THE NEW CHAPTER 13 PLAN FORM - BUT WERE AFRAID TO ASK**

Local Form 8, Chapter 13 Plan and Motions, has been drafted to promote uniform Chapter 13 practice in the three vicinages, to inform creditors, fully and fairly, about the debtor's plan, to facilitate review by the Chapter 13 Standing Trustees and the court, and to ease the confirmation process by incorporating a limited motion procedure to be joined with confirmation of the debtor's plan. Commencing _____ all debtors are required to utilize the form, with such alterations as may be appropriate to suit the circumstances.

HIGHLIGHTS

1. A separate document designated as a Summary of the Debtor's Chapter 13 Plan is no longer required.
2. Certain designated motions, including motions to avoid liens under 11 U.S.C. § 522(f) and/or to avoid liens and reclassify claims in whole or in part, may be filed as a part of the debtor's plan. Such motions will be considered at the confirmation hearing.

REVIEW OF LOCAL FORM 8

A. INTRODUCTORY PARAGRAPHS

1. The requirement to file a summary of the Chapter 13 plan on Local Form 8 is amended. No summary of the plan will now be required. The Chapter 13 plan will be filed with the court. The court will disseminate the entire plan to all creditors, without a summary.
2. If the debtor's Chapter 13 plan modifies a plan that was previously filed, it must be marked to reflect whether notice to creditors of the modified plan is required.
3. The recipient of the plan is referred to the Notice of Hearing on Confirmation, which is sent by the Bankruptcy Court to all creditors at the commencement of the Chapter 13 case, to inform the recipient about the time frame for filing written objections to the plan or to any motion included in the plan.

B. Part 1: PAYMENT AND LENGTH OF PLAN

1. A debtor who intends to rely on sources such as personal injury recoveries or workers compensation awards for plan payments may list such sources under "Other Sources", with a description of the anticipated nature and amount of the award, and an estimated time for recovery.

C. Part 2: PRIORITY CLAIMS (Including Administrative Expenses)

1. All priority claims under 11 U.S.C. § 507 should be listed in this section, including attorney’s fees to be paid through the plan. If an administrative creditor agrees to receive less than the scheduled amount the creditor would otherwise be entitled to receive, the creditor’s agreement to that treatment should be noted.

D. Part 3: SECURED CLAIMS

1. This section includes plan provisions governing the treatment of all secured claims, including curing of arrears on secured debt, secured claims that are proposed to be modified under § 1322(b)(2), secured claims on which the collateral will be surrendered, and secured claims that are unaffected by the plan.
2. Subsection a. is applicable to the curing of default on long-term secured claims such as residential mortgages. If applicable, the debtor must calculate the amount of interest to be paid to the creditor on arrears through the plan. The regular monthly payment required to be paid by the debtor directly to the secured creditor must also be listed. The curing of default on leases and executory contracts should not be listed here, but should be treated in Part 5, entitled “Executory Contracts and Unexpired Leases”.

Example:

| Creditor | Collateral or Type of Debt | Arrearage | Interest Rate on Arrearage | Amount to be Paid (in Plan) | Regular Monthly Payment (Outside Plan) |
|------------------|----------------------------|-----------|----------------------------|-----------------------------|--|
| AAA Mortgage Co. | Residence | \$5,000 | 8.5% | \$5,425 | \$725 |

3. Subsection b. contemplates the listing of secured claims that will be modified in the plan. The “Scheduled Debt” is the full amount due on the obligation. The “Value of the Creditor Interest in Collateral” is the value of the collateral minus any senior liens.

Examples:

| Creditor | Collateral | Scheduled Debt | Total Collateral Value | Superior Liens | Value of Creditor Interest in Collateral | Annual Interest Rate | Amount to be Paid in the Plan |
|-------------------|------------|----------------|------------------------|-----------------------------------|--|----------------------|-------------------------------|
| Ford Motor Credit | 1998 Chevy | \$ 8,365 | \$ 5,000 | None | \$5,000 | 9% | \$5,863 |
| Household Finance | Residence | \$15,000 | \$80,000 | First mortgage GMAC - \$90,000 | No value | N/A | 0 |

4. If collateral is to be surrendered, the plan provides that the automatic stay under 11 U.S.C. § 362 is terminated upon confirmation, without the need to file a separate motion.
5. The plan provides that when the full amount of the allowed secured claim is paid, and the debtor completes the plan, the corresponding lien may be discharged.
6. All secured claims that are unaffected by the plan must be listed. For instance, if a mortgagee on the debtor's residence is not in arrears and will continue to be paid in the normal course, that creditor should be listed in this section.

E. Part 5: EXECUTORY CONTRACTS AND UNEXPIRED LEASES

1. Where an executory contract or unexpired lease will be assumed, the creditor, the nature of the contract or lease, and the treatment by the debtor must be listed.
2. Under "Nature of Contract or Lease", the executory contract or unexpired lease being assumed should be described. For instance, if a residential lease is being assumed, the nature of the lease would be described by an indication of the duration of the lease, whether the lease is oral or written, and the location of the leased property.
3. Under "Treatment by Debtor", the manner in which arrearages are proposed to be cured, including the length of time proposed to cure pre-petition default, should be described.

Example:

| Creditor | Nature of Contract or Lease | Treatment by Debtor |
|--------------------|---|--|
| ABC Management Co. | Residential Lease. Term expires 9/1/03. Written lease. Leased premises: 406 Adams Place, Clinton, New Jersey. Monthly payments: \$850 | Arrearage - \$2,550. 10-month cure \$255 per month through the plan. |
| XYZ Credit Company | Car loan - 2000 Chrysler. Term expires 10/31/03. Written lease. Monthly payment \$365 | Arrearage: \$730. 5-month cure. \$146 per month through the plan. |

F. Part 6: MOTIONS

1. The motions listed under Section 6 are the only motions that may be incorporated in the debtor's Chapter 13 plan. Other motions may be filed in conformance with regular motion practice.

2. In addition to listing the substance of the motion under this section in the debtor’s plan, the debtor must send out another form to the affected creditor(s) entitled “Chapter 13 Plan Transmittal Letter”. Local Form 22. The second notice may be supplemented with certifications and/or exhibits which support the motion, such as appraisals. Such certifications and/or exhibits must also be filed with the court. A proof of service must be filed at least seven (7) days prior to the scheduled confirmation hearing, reflecting that the debtor served each creditor affected by a motion contained in the Chapter 13 plan with a second copy of the plan and a second notice to creditors, per Local Form 22.
3. The only motions which may be incorporated in the debtor’s plan are a motion to avoid liens under 11 U.S.C. § 522(f), and a motion to void liens and reclassify claims from secured to completely unsecured, or from secured to partially secured and partially unsecured.
 - a. Motion to Avoid Liens Under 11 U.S.C. § 522(f). Under this section, the “Type of Lien” may be described as a judicial lien, or a non-possessory, non-purchase money security interest. The amount of the lien is the amount due to the judgment creditor or the holder of a non-possessory non-purchase money security interest. The sum of all other liens on the property include all mortgages, as well as statutory and judicial liens besides the particular lien sought to be avoided. The amount of the lien to be avoided is the amount by which the sum of the lien sought to be avoided, all other liens on the property, and the amount the debtor seeks to exempt, exceeds the value that the debtor’s interest in the property would have in the absence of the lien. 11 U.S.C. § 522(f)(2)(A).

Example:

| Creditor | Nature of Collateral | Type of Lien | Amount of Lien | Value of Collateral | Amount of Claimed Exemptions | Sum of all Other Liens on the Property | Amount of Lien to be Avoided |
|------------|----------------------|---------------|----------------|---------------------|------------------------------|--|------------------------------|
| John Smith | House | Judgment lien | \$45,000 | \$100,000 | \$17,000 | \$68,000 | \$30,000 ¹ |

¹ **Explanation of Calculation**

| | | |
|---|------------------|--|
| | \$ 45,000 | Lien sought to be avoided |
| + | \$ 68,000 | Sum of all other liens on the property |
| + | <u>\$ 17,000</u> | Claimed exemption |
| | \$130,000 | |
| - | <u>\$100,000</u> | Value of debtor’s interest in property |
| | \$ 30,000 | Amount to be avoided |

b. Motion to Void Liens and Reclassify Claim from Secured to Completely Unsecured or from Secured to Partially Secured and Partially Unsecured. To the extent that superior liens exceed the value of the collateral, the junior lien may be reclassified as an unsecured claim. The information about the value of the collateral and the superior liens against the collateral are contained in Part 3 of the plan, and need not be repeated here. Part 6 is intended to highlight for the affected creditor the proposed reclassification of the creditor's claim by the debtor.

4. The motions included in the debtor's plan will be considered at confirmation.

G. Part 7 OTHER PLAN PROVISIONS

1. An important clarification is provided to creditors and lessors to whom a debtor's obligations outside the plan will continue during the plan in the normal course. Such creditors and lessors may continue to mail customary notices or coupons to the debtor notwithstanding the automatic stay.

2. Order of Distribution. The debtor may provide a proposed order of distribution. In most cases, the order of distribution would be as follows:

Trustee Commissions
Other Administrative Claims
Secured Claims
Lease Arrearages
Priority Claims
General Unsecured Claims

However, the debtor may revise the order of distribution. For instance, where a lease arrearage must be promptly cured, the debtor may provide that such arrearage shall be paid by the Trustee after payment of Trustee Commissions, followed by administrative expenses and other claims.