

12-01-2017 “National” Form Plan Instructions

Original Confirmation Hearings will generally be continued to a date seven or more days beyond the bar date. Please wait until after the Bar Date for routine plan amendments. Please strive for ONE amended plan per case.

Part 1: Notices

One box **and only one box** must be checked in each of Parts 1.1 1.2 and 1.3.

If Section 3.2 values the lien of a secured creditor at less than the amount of the claim the debtor must check the first box in Section 1.1.

If Section 3.4 avoids a lien the debtor must check the first box in Section 1.2.

If Section 8 sets out ANY nonstandard provision the debtor must check the first box in Section 1.3.

Part 2: Plan Payments and Length of Plan

Section 2.1 Payments to the trustee.

Payments are per Month only. No other time intervals are to be used.

The minimum term for below median income debtors is 36 months; the minimum term for above median income debtors is 60 months. See §1322(d).

Plan step payments are to be shown in Section 2.1, not in Section 8.

Section 2.2 Source of payments.

If the debtor is going to make payments via payroll deduction the debtor’s attorney must e-file a Proposed Order to Employer to Pay Trustee, Local Form Order No. 25, preferably immediately upon filing the case.

If the debtor is going to make payments via TFS the debtor’s attorney should see to it that the debtor is set up with a TFS account immediately upon filing the case.

Section 2.3 Income tax refunds.

If income tax refunds are required to be paid into the plan the third box must also be checked and the following provision added:

Tax refunds must be remitted to the trustee no later than May 30 each year. Tax refunds submitted by the debtor are additional payments into the plan and increase the plan base dollar for dollar. The plan will conclude before the end of the initial term only at such time as all allowed claims are paid in full, with any interest required by the plan.

Section 2.4 Additional payments.

Other sources commonly include sale of an asset, proceeds of a lawsuit and periodic bonus; be very specific, if the debtor is entitled claim a portion as exempt, state that in this section.

If a plan is funded in whole or in part by sale of an asset or by a large lump sum of cash already on hand, that payment must be tendered before confirmation, unless otherwise ordered by the court.

If the plan is partially funded with any of these sources of funds the following provision must be added to Section 2.4:

The plan will conclude before the end of the initial term only at such time as all allowed claims are paid in full, with any interest required by the plan.

Section 2.5 Total amount of estimated payments provided for in §§2.1 and 2.4. If the payments from §2.1 will not fund the amount required by the liquidation test of §1325(a)(4) and / or the disposable income test of §1325(b) then the debtor will have to prove that the additional payments provided are reasonably likely to be made to satisfy §1325(a)(6).

Part 3: Treatment of Secured Claims

Section 3.1 Maintenance of payments and cure of default, if any.

Section 3.1 is to be used for cure and maintain of mortgages (direct pay or trustee pay) and for cure and maintain of auto loans (direct pay or trustee pay).

The timely filed Proof of Claim controls as to the amount of the arrears to be paid unless there is no claim, then the plan controls.

In all cases where a claim has been timely filed, the Plan must match the POC as to name of creditor, collateral, current installment payment and amount of arrearage. The claim controls over any arrears amount or monthly payment amount in the plan. The Plan controls as to any interest, if any, paid on the arrears.

If no timely claim is filed, the Plan controls.

Mortgage creditors only receive interest on arrears if the loan originated before October 22, 1994.

If relief from the stay is granted **as to any item of collateral** in Section 3.1, all payments under this section **as to that collateral will cease**, unless otherwise ordered by the court.

The trustee will disburse adequate protection payments for all claims provided for as “Disbursed by trustee” in the amount of the installment payment listed in the plan or in the claim, if one is filed.

Important notes regarding automobile loans in 3.1: If the trustee is disbursing, the remaining term of the loan MUST exceed the term of the Plan. There is no mechanism in 3.1 to stop disbursements. If the trustee is disbursing and the remaining term of the loan is less than the plan term, use Part 3.2 or 3.3.

Do Not use 3.1 for ongoing HOA payments, use Schedule J. Use 3.2 for HOA arrears.

Do Not use 3.1 for ongoing property tax payments, use Schedule J. Use 3.2 for delinquent or sold property taxes.

Section 3.2 Request for valuation of security, payment of fully secured claims, and modification of undersecured claims. (This section combines sections E3.1 and E3.2 of the old NDIL Plan). This section uses 11 USC § 506 to value the liens of creditors and is not to be confused with Section 3.4 which uses 11 USC §522 to avoid liens.

The claim of a governmental unit controls over any contrary amount in the plan. If a governmental claim is filed the plan must be amended to match the claim or the debtor must object to the claim.

If a claim is filed, the plan controls as to the secured amount, the claim controls as to the total amount of the claim and therefore the unsecured portion.

If the plan gives a value of zero, any claim filed related to that collateral will be administered as wholly unsecured.

If no claim is filed, the plan controls as to the secured amount, there is no unsecured portion.

If a claim is filed after the applicable bar date, the secured amount in the plan controls. The trustee will seek to have an order entered determining the secured amount of the claim to be the amount in the plan and determining the unsecured amount of the claim to be zero. If the value in 3.2 is zero, the entire claim will be objected to as late.

In all cases where a claim has been timely filed, the Plan must match the POC as to name of creditor and description of collateral. If an amended Plan is filed after the claim has been filed, the estimated amount of creditor's total claim in the plan must match the POC.

The trustee will disburse adequate protection payments for all claims provided for in this section in the amount of the monthly payment to creditor listed in this section. Any deviation from this must be set forth in Section 8.

Note regarding "910 claims": Do NOT use Part 3.2 for 910 claims, use Part 3.3, your case filing software may try to force a 910 claim into 3.2, don't let it.

Section 3.3 Secured claims excluded from 11 USC § 506 (910 auto claims / one year PMSI other).

These claims must be paid in full, trustee disburses or debtor disburses.

The Proof of Claim controls as to the amount of the claim unless there is no claim, then the plan controls.

05/15/2018

In all cases where a claim has been timely filed, the Plan must match the POC as to name of creditor, collateral and amount of claim.

The trustee will disburse adequate protection payments for all claims provided for as “Disbursed by trustee” in the amount of the installment payment listed in this section.

Exceptions to automatic adequate protection payments The following creditors provided for in Part 3 will **NOT** receive adequate protection payments unless otherwise ordered or provided for in Part 8.1 because they are clearly not PMSI creditors:

Federal and State Taxing Authorities and other Municipal entities

County Treasurers, County Clerks, Property Tax Buyers

If the debtor alleges that a creditor their plan provides for in Part 3 is not a PMSI creditor and is not entitled to pre-confirmation adequate protection payments they must specifically state that in Part 8.

Section 3.4 Lien avoidance.

This section uses 11 USC §522(b) to avoid judicial or nonpossessory, non PMSI liens that impair debtor’s exemptions. This is not to be confused with Section 3.2 which uses 11 USC 506 to value liens. Do not attempt to use Part 3.4 for junior mortgages.

If the claim in question has already been filed, please include the claim number in one of the fields in the column titled “Information regarding judicial lien or security interest”.

The debtor must complete Section 3.4 once for every creditor with a lien to be avoided. The debtor must complete the “Calculation of lien avoidance” table once for every creditor with a lien to be avoided.

If only a portion of the lien is avoided then Section 3.4 will provide for the creditor’s claim as partially secured.

If the entire lien is avoided, the entire claim is treated as unsecured.

Creditors provided for in section 3.4 are not entitled to pre-confirmation adequate protection payments.

Section 3.5 Surrender of collateral

Upon confirmation the debtor “requests” that the stay under 11 USC §362(a) terminate as to the collateral and the stay under §1301 terminates entirely. Don’t expect a reduction in stay lift motions.

This provision surrenders collateral to the specified creditor in satisfaction of their secured claim. A wholly secured claim treated in this section will not be paid by my office.

If a creditor provided for in Section 3.5 files a wholly unsecured claim, or amends a previously filed secured claim to an unsecured claim, their claim will be paid along with other general unsecured creditors.

05/15/2018

This provision appears to do away with the practice of surrendering collateral in full satisfaction of a creditor's entire claim. Upon confirmation the §362(a) stay terminates as to surrendered property and the §1301 stay terminates entirely.

Part 4: Treatment of Fees and Priority Claims

4.2 Trustee's fees

Trustee's fees are taken on receipt pursuant to 28 USC §586(e)(2). Trustee fees are set in the trustee's budget as approved by the United States Trustee and as such may change from time to time. The maximum trustee fee is 10%. Each trustee's fee is posted on their web site. The percentage fee entered in 4.2 is an estimate only and does not control in any way.

4.3 Attorney fees

Attorney's fees are determined by court order, any amount entered in 4.3 is an estimate only and does not control in any way. The estimated amount in 4.3 should be consistent with the amount sought in the fee application and proposed order.

4.4 Priority claims to be paid in full

POCs control over any amount entered in 4.4. Be sure to refer to filed claims so the number in this section is not understated. Be sure to include any scheduled delinquent DSO.

4.5 DSO assigned or owed to a governmental unit and not paid in full

Do not include DSO owed to a parent or former spouse as those debts must be paid in full.

This provision is for the very narrowly defined obligations assigned to or owed to a governmental unit that are eligible to be paid less than the full amount owed pursuant to 11 USC § 1322(a)(4). If this provision is invoked the term of the plan must be 60 months. Match the name of the creditor to their POC. Disbursements on these claims are at the same priority level as other priority claims.

Part 5: Treatment of Nonpriority Unsecured Claims

5.1 Nonpriority unsecured claims not separately classified

If more than one option is selected, the option providing the largest dividend to unsecured creditors will govern.

Box #1 The sum of \$_____ Use this selection when the Means Test dictates a minimum dollar amount to general unsecured creditors. Watch out for your software populating this filed incorrectly.

Box #2 _____% of the total amount of these claims, an estimated payment of \$_____. This selection replaces E8 from the old NDIL model plan. This will be the default choice when the liquidation test or disposable income test does not control. This box must be checked when the initial plan term is less than 60 months.

Box #3 The funds remaining after disbursements have been made to all other creditors provided for in this plan.

Box #3 must always be checked.

If the debtor's initial plan term is less than 60 months, the plan cannot complete by paying the dividend specified in Box #2 before the end of the initial term unless all creditors have been paid in full. The initial plan term controls over all other provisions.

If the Chapter 7 liquidation test in §1325(a)(4) controls, the minimum dollar dividend to general unsecured creditors must be entered in the field in the "hanging provision" at the end of 5.1.

5.2 Maintenance of payments and cure of default on nonpriority unsecured claims.

Pursuant to §1325(b)(5) the debtor can maintain current payments and cure default for unsecured debts when the term of the debt exceeds the term of the Chapter 13.

This provision is likely to apply only to student loan debts.

Every claimant to be treated in this section must be listed individually. If a claim has been filed, the name of the creditor must match the name on the claim and the plan should refer to the PACER claim number.

If the debtor is disbursing, Schedule J must have an entry for the current installment payment(s) listed in 5.2 as disbursed by the debtor. Arrearage payments shall be disbursed by the trustee regardless of who disburses ongoing payments. The arrears amount in 5.2 is controlling: "...arrears amount will be paid in full as specified below and disbursed by the trustee".

5.3 Other separately classified nonpriority unsecured claims

§1322(b)(1) allows debtors to treat co-signed debts differently than other unsecured claims.

Every claimant to be treated in this section must be listed individually. If a claim has been filed, the name of the creditor must match the name on the claim and the plan should refer to the PACER claim number. The trustee's office will examine the claim and attachments to verify that the debt is in fact co-signed.

Part 6: Executory Contracts and Unexpired Leases

6.1 Executory contracts and unexpired leases listed in this section are assumed. All others are rejected.

Each lease provided for in this section must be listed separately. The debtor or the trustee may disburse ongoing payments. Any arrearage listed in the plan on any assumed lease will be disbursed by the trustee, the amount of the arrearage in the plan controls. The name of the creditor and the amount of the arrears to be paid by the trustee must match the proof of claim (if filed). If no claim is filed the trustee will disburse the arrears amount provided in the plan, if any.

If the term of the lease is less than the term of the plan and the trustee is disbursing ongoing payments, the plan must specify the date of the final lease payment.

If a lease is rejected, any timely filed claim will be administered as an unsecured claim.

Part 7: Vesting of Property of the Estate

In this district, property of the estate, as specified by 11 USC §541 and §1306 has remained property of the estate following confirmation so the second box “entry of discharge” must be checked.

Part 8: Nonstandard Plan Provisions

Do not include “boiler plate” provisions that do not apply to the case.

Provide for interest to unsecured creditors, if required.

Provide for debts to be paid directly by the non-filing co-signer.

Identify creditor(s) that are not entitled to pre-confirmation adequate protection payments here.

Pre-confirmation adequate protection payments different than the fixed payment in 3.1, 3.2 or 3.3 are set forth here.

Part 9: Signature(s)

Debtor(s) signatures are optional but recommended.

The attorney must sign; by signing the attorney certifies that the wording and provisions of the plan have not been changed from the Official Form 113, other than nonstandard provisions in Part 8.