

# **PRACTICAL TIPS FOR CONFIRMING CHAPTER 13 PLANS**

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# **Chapter 13 Plan Confirmation Issues:**

# Parts 1.1 through 1.3 and Part 7

- Mark one option for each part – either Included or Not Included.
- If Part 1.1 or 1.3 is marked as “not included” and there is information listed in Parts 3.2 and 7 then the following confirmation issues could be raised:

## **Treatment of Secured Creditors:**

Part 3.2 of the plan lists creditor ABC to be paid to value, but the “Included” box in Part 1.1 regarding a proposed limit on the amount of the secured claim has not been checked (or both have been checked). Please amend to clarify.

## **Nonstandard Plan Provisions:**

The debtor includes a nonstandard plan provision in Part 7 of the plan calling for the retirement loan being paid directly. Part 1.3 is not marked “included” so that provision is ineffective. Please clarify and amend the plan if necessary.

## Plan sections 2.1 and 2.2:

- The Trustees office will issue wage orders for a monthly amount only and issue wage orders as follows:
  - a. If the employer payment box is marked in Part 2.2 and the direct payment box is not marked, the wage order will be issued to the employer based on information in the plan.
  - b. If the direct payment box is marked in Part 2.2 and no employer information is provided, the wage order will be issued direct.
  - c. If the employer information is provided in Part 2.2 of the plan and neither option is marked or the direct payment option is marked, the wage order will be issued direct.
- If a time reference is made in Part 2.1 the following issue could be raised:

**Plan Payment Not Clear:** Part 2.1 of the plan indicates plan payments of \$200 are to be paid for 36 months. The reference to the number of months should be removed.

## Value of Collateral in Part 3.2

- The following issue could be made if the value of collateral and amount of secured claim do not match:

### Treatment of Secured Creditors:

Debtor lists creditor ABC in Part 3.2 of the plan and requests that court determine the value of the secured claim. The value of collateral is listed as \$1,000 and the amount of the secured claim is listed as \$1,500. It is the trustee's position that the "Value of Collateral" column and the "Amount of Secured Claim" column should match unless the claim is over secured or there is a senior lien. The trustee has loaded the claim to be paid to value in the amount of \$1,000. Please verify that the debtor is attempting to pay the claim to the value of \$1,000.

## Interest Rates in Part 3.2 and Part 3.3

- If you choose to use a different interest rate other than the Chapter 13 interest rate, the following issues could be raised:

### **Local Rule 3084-1E:**

In Part 3.2 of the plan, an interest rate of 9% is proposed for the debt owed to ABC. The trustee is bringing this to the Court's attention under *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010). Until the proof of claim is filed it is unclear whether this is the proper rate to determine present value under 11 U.S.C. Section 1325(a)(5)(B).

OR

This interest rate is neither the Chapter 13 rate nor the creditor's contract rate. The trustee believes the chapter 13 rate of interest is the proper rate to determine present value under 11 U.S.C. Section 1325(a)(5)(B).

OR

Though this interest rate matches the contract rate listed on the proof of claim, the debtor is proposing an EMA that is less than the contractual monthly payment. The trustee believes the chapter 13 rate of interest is the proper rate to determine present value under 11 U.S.C. Section 1325(a)(5)(B).

## **No EMA In Part 3.2 or 3.3**

- If an equal monthly amount (EMA) is not listed in Part 3.2 or Part 3.3, the following confirmation issue could be raised:

### **11 U.S.C. Section 1325(a)(5):**

The plan does not provide an equal monthly payment for the secured claim of ABC.

## Part 3.4 Mortgage Paid in Full

- If the mortgage claim is to be paid in full per Part 3.4, then the following confirmation issues could be raised:

### **Treatment of Mortgage Creditors:**

The debtor proposes to pay the mortgage claim of ABC in full in Part 3.4 of the plan. Debtor does not indicate in Part 3.4 whether there is an escrow account associated with the claim listed in Part 3.4. As the trustee will only pay principal and interest on this claim, the trustee requests clarification whether the mortgage contains an escrow component.

The mortgage claim of ABC is listed in Part 3.4 of the plan to be paid in full with associated escrow account to be paid directly by the debtor. Schedule J does not include the escrow payment.

The debtor proposes to pay the mortgage claim of ABC in full in Part 3.4 of the plan. The debtor has indicated that this mortgage has no escrow component. The creditor has filed a proof of claim indicating that there is an escrow component of this mortgage. Please explain.





## Parts 4.3 and 4.4 Domestic Support

- If the debtor has domestic support obligations listed in Parts 4.3 and 4.4 or on Schedules I/J, then the following confirmation issues could be raised:

### **Insufficient Information in Plan:**

- a. The plan includes a domestic support obligation but the name and address of the domestic support recipient are not provided. The trustee requests the name and address of the domestic support recipient so that the required notice pursuant to 11 U.S.C. Section 1302 can be sent by the trustee.
- b. A domestic support obligation is listed on Schedule E/F (*or on Schedule I/J*), but the plan is silent.

# Creditors on Matrix

- If the debtor fails to list a scheduled creditor on the matrix, the following confirmation issue could be raised:

**Fed. R. Bankr. P. 1007(a)(1),**

In a voluntary case, the debtor shall file with the petition a list containing the name and address of each entity included or to be included in Schedules D, E/F, G, and H as prescribed by the official forms.

## **Local Rule 3083-1(A)**

- If the debtor fails to use the proper plan form and/or plan provisions, then the following confirmation issues could be raised:

### **Local Rule 3083-1(A):**

The Local Form required in the Western District of Missouri has not been filed.

The Local Form required in the Western District of Missouri has not been filed. Though the body of the plan has been updated, the attached plan provisions are from a prior version of the Local Form. Please amend to include the updated plan provisions.

## Local Rule 3083-1(B)

- If the debtor fails to file a proper certificate of service per Local Rule 3083-1(B), then the Trustee will file a request for denial of confirmation.
  1. Debtor shall serve the original plan on all creditors when the plan is filed with the court. Debtor shall file a certificate of service reflecting service on all creditors pursuant to all applicable federal and local rules within three (3) days after the plan is filed with the court.
  2. Debtor shall serve an amended plan on all creditors affected by the amendment when the plan is filed with the court. Debtor shall file a certificate of service reflecting service on all creditors affected by the amendment pursuant to all applicable federal and local rules within three (3) days after the plan is filed with the court.
  3. No plan will be considered for confirmation unless it is served when it is filed with the court and a certificate of service is filed within three (3) days thereafter.



# Motions to Dismiss

## Delinquency Issues

- In general the Trustee reviews and files motions to dismiss for default in plan payments when the debtor is approximately two months or more delinquent.
- In the event that the debtor's plan is running long, the Trustee may file a motion to dismiss for both delinquency and length.

# Motions to Suspend

- The Trustee may object to a motion to suspend for the following reasons:
  - a. Length (amended plan)
  - b. No plan payment within a significant period of time
  - c. Multiple previous suspensions and/or no payments since last suspension
  - d. Specific amount for suspension not stated and/or timeframe is not set out
  - e. Body of the motion does not match the prayer section of the motion

# Conditional Orders

- The Trustee will follow up on:
  - a. Payment issues
  - b. Documents/Tax returns/wage orders
- In the event additional time is needed to comply with the conditional order, the Trustee does not usually object to a motion for extension of time.
- The Trustee will review conditional orders based on the time frame set out in the order and will file either a request for dismissal for non-compliance or a notice of compliance as needed.
- Court will follow up on any pleadings required to be filed.

# Electronic Payment Platforms

	TFS	EPAY
<b>Cost</b>	Sliding scale depending on amount of payment	\$2.00 per transaction
<b>Debtor attorney</b>	Allows for debtor attorneys to set up, monitor, and change monthly payments for debtor accounts	Does not allow for debtor attorney to set up accounts
<b>Schedule payments</b>	Allows for recurring payments to be preset	Must schedule each payment
<b>Types of payments</b>	Allows for moneygram or bank account	Only allows payments from bank account
<b>Posting to trustee system</b>	Takes at least 5 days to post	Takes 1-2 days to post
<b>Debtor refund checks</b>	Held for 15 days	Held for 60 days
<b>Amount limitations</b>	No amount limitations	Allowed \$9,999.99 a day for transaction
<b>Dismissed case</b>	You may still use	Can only use for active cases
<b>Provider</b>	Third party, the TFS staff answers user questions	SunTrust Bank (the trustee's bank), the trustee's staff answers user questions



# Chapter 13 Websites

[www.wdmo13.com](http://www.wdmo13.com)

[www.NDC.org](http://www.NDC.org)

[www.13network.com](http://www.13network.com)