

**U.S. Bankruptcy Court
Southern District of California
325 West F Street
San Diego, CA 92101**

**INSTRUCTIONS FOR USING STANDARD-FORM PLAN AND DISCLOSURE STATEMENT
FOR INDIVIDUAL CHAPTER 11 DEBTORS**

1. GENERAL PRINCIPLES

The standard-form combined plan and disclosure statement (the “Plan”) for individual cases was adopted by the court to reduce Debtor’s legal expense, and to provide creditors the clearest possible explanation of how their claims will be treated. Both of these goals are furthered by a plan that is short, simple, and clear. These goals should at all times guide Debtor in completing the Plan. Use of the Plan is not required, but is strongly encouraged by the judges of the Southern District. Any questions about whether use of the Plan is appropriate in a particular case can be raised at a Chapter 11 status conference.

A. Do Not Include Unnecessary Provisions.

The Plan is a word processing document that contains many instructions, blanks, alternate forms of language, and optional provisions that will not be used in every case. Only the language that is needed and appropriate in the particular case should be included in the filed Plan. In this regard, this Plan is different from many standard-form Chapter 13 plans, where Debtor typically reproduces all provisions of the plan and inserts "N/A" (not applicable) where appropriate.

Thus, for example, if Debtor does not intend to create a separate convenience class (Class 2A) for small general unsecured claims, Debtor should not include in the filed Plan the standard-form language designating and providing for such a class. Similarly, the Plan provides language for eight different ways to treat secured claims. Debtor should reproduce only those treatment provisions actually used in the Plan and renumber them as appropriate.

There are four exceptions to this general rule: (1) Debtor should always reproduce the standard-form language regarding general unsecured claims in Section 4(b); (2) Debtor should always reproduce the standard-form language regarding administrative and priority claims in Sections 1 and 2; (3) Debtor should always reproduce the standard-form language regarding executory contracts in Section 5; and (4) Debtor should always reproduce the standard-form language regarding lawsuits in Section 8(f). In each instance, Debtor should insert “none” where applicable.

B. List Each Secured Creditor by Name.

The Plan must list each secured creditor by name, and state with specificity what each creditor will or is likely to receive in respect of its claim — how often payments will be made, when payments will start, how many payments will be made, and the amount of each payment.

C. Certification Regarding Alteration of Standard-Form Language.

A major advantage of any standard form is that parties and the court will become familiar with its language and will learn to find quickly and easily the information they seek. This advantage is lost, and creditors and the court can be misled, if Debtor alters the language of the Plan and does not alert creditors and the court to the changes made. Thus, the Plan includes a Certification Regarding Alteration of Standard-Form Language, which must be completed and signed by Debtor or Debtor's attorney. The certificate requires Debtor to list the page and line in which the standard-form language has been altered in any way. (Merely filling in the blanks and boxes in the Plan does not constitute an alteration.) **The certificate must be completed very carefully. Any failure to list a material alteration in the standard-form language could be viewed as an attempt to mislead the court.**

D. Standard of Compliance Required.

One of the goals of the Plan is clarity for creditors and the court, and this goal will not be fulfilled unless the form is completed in full compliance with these instructions. Debtor must take care that unnecessary standard-form language is not included in the Plan, that classes are numbered appropriately, that cross references are accurate, and that all required information is provided and is set forth in a manner that is neat and clear. The court will review the Plan carefully before it is submitted to creditors, and will require Debtor to modify and resubmit the plan as necessary to achieve full compliance with these instructions.

E. Procedures Regarding Use of Form, Approval of Disclosure Statement, and Confirmation Hearing.

1. Determining when to use this Plan. If the judge does not affirmatively suggest that Debtor use the Plan, Debtor may inquire at any Chapter 11 status conference whether its use is appropriate in that case.

2. Separate disclosure hearing or conditional approval of disclosure. Debtor may inquire at a Chapter 11 status conference whether Debtor should present the completed form to the court for conditional approval of the adequacy of disclosure, with final approval of disclosure to be considered at the confirmation hearing, or whether Debtor should set a separate hearing regarding the adequacy of disclosure. For notice requirements, see Fed. R. Bankr. Proc. 2002(b), 3017(a).

3. Schedule for confirmation hearing. At the time the court gives approval or conditional approval regarding the adequacy of disclosure, the court will set deadlines for ballots and objections to confirmation and a date for the confirmation hearing. At this time, Debtor should fill in those times and dates in the third paragraph of the Introduction to the Plan and should rename the Plan as noted on page 4 of these instructions. For notice requirements, see Fed. R. Bankr. Proc. 2002(b), 2002(d), 3020(b)(2).

4. Procedure regarding contested confirmation hearing. At the hearing at which the court gives approval or conditional approval regarding the adequacy of disclosure, Debtor may wish to discuss with the court how and when the court will resolve objections to confirmation that require an evidentiary hearing.

2. **DETAILED SECTION-BY-SECTION INSTRUCTIONS HOW TO DOWNLOAD THE PLAN**

The Plan is available as a Microsoft Word Document (.docx) and may be downloaded from the United States Bankruptcy Court, Southern District of California's website at: http://www.casb.uscourts.gov/html/individual_forms.htm.

After downloading the Plan, open the document in your word processing application.

Font Type and Size. Debtor should not change the font type or font size of the Plan. The body text should be in 11-point Arial font and the contents of all tables and exhibits should be in 10-point Arial font.

NAMING THE PLAN

Caption. Insert the full name of each Debtor exactly as it appears on the petition.

Case Number. Insert the full 7-digit case number followed by the initials of the judge assigned to the case and the number 11, for example, 14-87654-JJ11.

Title. The title of the Plan contains three optional terms: proposed, conditionally approved, and approved. The initial Plan should be titled "Proposed Combined Plan of Reorganization and Disclosure Statement" followed by the current date. All other alternative terms should be deleted from the title. If Debtor files a modified Plan, the title should remain unchanged, except the date should be updated to the current date. Debtor should not include "Amended" or "First Amended" in the title. Once the court either conditionally approves or approves the Plan, Debtor should file a new Plan titled "Combined Plan of Reorganization and [Approved] or [Conditionally Approved] Disclosure Statement" followed by the current date. All other alternative terms should be deleted from the title.

Page Number. The footer should contain a page number on each page.

INTRODUCTION

The second paragraph of the Introduction to the Plan contains several alternate forms of language. Debtor should include only the appropriate form of language and delete those that are not applicable.

The third paragraph of the Introduction contains a table that shows the various classes of creditors. Secured creditors are in Class 1 and the treatments of their claims are discussed in Section 3 of the Plan. Each secured creditor has its own subclass. Unsecured creditors are in Class 2 and the treatments of their claims are discussed in Section 4 of the Plan.

The fourth paragraph of the Introduction contains two dates: (1) the date that ballots and objections to the Plan are due; and (2) the date of the hearing on confirmation. The initial Plan should leave both dates blank. Once disclosure is either conditionally approved or approved, the court will provide dates to include in this paragraph.

The fifth paragraph of the Introduction lists all exhibits attached to the Plan. Not all exhibits are required, see Exhibit Section below, and Debtor may include additional exhibits. If Debtor deletes an exhibit from the Plan, Debtor should also delete the language in the Introduction referencing the exhibit, and should renumber the remaining exhibits in that paragraph. If Debtor includes an additional exhibit to the Plan, Debtor should include a brief description of the exhibit in the Introduction, and should renumber the remaining exhibits accordingly.

SECTION 1: TREATMENT OF ADMINISTRATIVE CLAIMS

A. Professional Fees. Include the name, role, and estimated amount of payment for each professional, including Debtor's attorney. If the professional was paid a pre-petition retainer, Debtor should only insert the estimated balance of fees owed to the professional on the Effective Date and not the total fees requested by the professional. For example, if Debtor estimates \$10,000 of attorney's fees and paid attorney a \$3,000 pre-petition retainer, the estimated amount would be \$7,000. This is a mandatory category that Debtor should not delete. If Debtor does not owe any professional fees, Debtor should write "none" in the first row under the column Name and Role of Professional.

This category also includes alternative payment terms. Debtor should select the appropriate payment term and delete those that are not applicable.

B. Other Administrative Claims. Include the name and estimated claim amount for each claim entitled to priority under § 503(b). Do not include professionals in this category. This is a mandatory category that Debtor should not delete. If Debtor does not have other administrative claims, Debtor should write "none" in the first row under the column Name of Administrative Creditor.

SECTION 2: TREATMENT OF PRIORITY CLAIMS

A. Tax Claims. Include all tax claims entitled to priority under § 507(a)(8). Debtor should make sure that all of these claims will be paid in full within 5 years after the petition date. See § 1129(a)(9)(C)(ii). This is a mandatory category that Debtor should not delete. If Debtor does not have any tax claims entitled to priority under § 507(a)(8), Debtor should write "none" in the first row under the column Name of Creditor.

SECTION 3: TREATMENT OF SECURED CLAIMS

Section 3 of the Plan contains eight different options for the treatment of secured claims. The purpose of providing standard language for alternate treatments is to make it easier for Debtor to invoke those various treatments, and to make it easier for creditors to understand how their claims are being treated, by carefully defining each treatment and by making sure each treatment addresses all details required under that treatment.

A. When Each Treatment Should Be Used.

Debtor to Make Regular Payments and Pay Arrears Over Time (Section 3(a)). Use when Debtor intends to keep the property, but is in default, and intends to cure the pre-petition default over the term of the Plan and make all post-petition payments as they come due, so that the loan is reinstated according to its original terms when the plan is completed.

Debtor to Cure Default and Obligation to Be Reinstated (Section 3(b)). Use when Debtor intends to keep the property, but is in default, and intends to cure the pre-confirmation default and make all post-confirmation payments as they come due, so that the loan is reinstated according to its original terms as of the date designated in the Plan.

Creditors' Rights Remain Unchanged (Section 3(c)). Use when Debtor intends to keep the property, but is not in default and intends to make all post-petition payments as they come due. The secured creditor is not prevented either by the plan or the automatic stay from enforcing all of its rights under non-bankruptcy law.

Debtor to Reduce Lien to Value of Collateral and Pay over Time (Section 3(d)). Use when the amount owed to the secured creditor exceeds the value of its collateral, and Debtor intends to pay as a secured claim the amount equal to the value of creditor's collateral over time (which may extend beyond completion of the Plan) according to the terms specified in the Plan (which may provide for an interest rate, maturity date, and amortization schedule different from the original loan). Any remaining amount due should be treated as a general unsecured claim in Section 4 of the Plan.

Debtor to Strip Off Lien Entirely (Section 3(e)). Use when the amount of liens (including secured real property tax liens) senior to that of the creditor exceed the value of the property, and when Debtor intends to keep the property without paying any amount to the affected creditor as a secured claim. The total amount of the claim should be treated as a general unsecured claim in Section 4 of the Plan.

Debtor to Adjust Terms and Pay Amount Due in Full over Time (Section 3(f)). Use when Debtor intends to pay the amount due in full, but on terms different from the original loan (e.g. different interest rate, different maturity date, or different amortization schedule).

Property to Be Surrendered (Section 3(g)). Use when Debtor does not intend to keep the property, and intends to surrender the property in full satisfaction of the secured claim. The secured creditor is not prevented either by the plan or the automatic stay from enforcing all of its rights under non-bankruptcy law.

Property to Be Sold (Section 3(h)). Use when Debtor intends to sell the property following confirmation of the Plan and pay the secured claim from proceeds of the sale. Debtor should reproduce the standard-form language regarding payments pending sale, and should insert "none" if no such payments are to be made.

B. Establishing the Value of Property

Value may be established by:

1. A declaration by Debtor or valuation expert stating the basis for the opinion of value;
2. A stipulation of parties; or
3. A motion filed in advance of the confirmation hearing.

C. How to Complete the Form.

1. Delete Unnecessary Provisions. Debtor should include only those treatment options for secured claims that are appropriate for the particular case, and should delete those treatment options that are not applicable. See Section 1(B) above. For example, if Debtor has two properties and intends to surrender one property and pay the full amount of the other property over time, then Debtor would include only the following treatment options in Section 3 of the Plan: **Property to be Surrendered**; and **Debtor to Pay Amount Due in Full Over Time**. Debtor would delete the text and tables regarding all other treatments in Section 3 of the Plan.

2. Separate Classes. Each secured claim should be in a separate class. The first class in Section 3 should be numbered "1A". Each additional class in Section 3 should be numbered using a "1" followed sequentially by the next letter in the alphabet. For example, if Debtor has four secured claims in Section 3, the classes would be "1A", "1B", "1C", and "1D".

Debtor should place each secured claim in a separate class, even if Debtor proposes the same treatment option for more than one secured claim. For example, if Debtor intends to surrender two properties, the first property should be assigned class "1A" and the second property should be assigned class "1B". Debtor should not classify both properties as class "1A".

3. Use Current Information. Debtor should use the most current information available about each claim when preparing the Plan. If Debtor is required to file a modified Plan, Debtor should look at each filed proof of claim to verify that the most current information is included in the Plan.

SECTION 4: TREATMENT OF GENERAL UNSECURED CLAIMS

Class 2A. Small Claims. Debtor may create a separate class for unsecured creditors holding small claims, who will receive a single payment on the Effective Date of the Plan. Creation of a separate class for small claims is optional. Debtor should delete the text and table for this class if the Plan does not create a convenience class. If Debtor does not create a convenience class, Debtor should retitle Class 2B as "**Class 2. General Unsecured Claims**". This class includes alternate payment terms. Debtor should select the appropriate payment term and delete those that are not applicable.

Class 2B. Other General Unsecured Claims. General unsecured claims include allowed claims of creditors whose executory contracts or unexpired leases are being rejected under the Plan and deficiency claims of secured creditors. This is a mandatory class: Debtor should not delete this class. If Debtor does not have any general unsecured claims, Debtor should write "none" in the first row under the column Name of Creditor.

The standard-form language contains two options for specifying the amount creditors are to receive. Debtor should select and complete one of the following options and should delete the other:

Percent Plan. Use when Debtor intends to pay each creditor a certain percentage of its allowed claim.

Pot Plan. Use when Debtor intends to pay a sum certain amount to the class collectively and each creditor is paid a pro rata share of its allowed claim.

Other Arrangements. Use when Debtor intends to pay creditors pursuant to some other arrangement.

SECTION 5: EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Executory Contracts/Unexpired Leases Assumed. Include all executory contracts and unexpired leases that Debtor intends to assume and perform fully. Debtor will continue with all obligations to counterparties in this category as they come due under the contract. This is a mandatory category that Debtor should not delete. If Debtor does not have any executory contracts or unexpired leases to assume, Debtor should write “none” in the first row under the column Name of Counter-Party. This category has alternate payment terms for pre-petition arrears. Debtor should select the appropriate payment term and delete those that are not applicable.

B. Executory Contracts/Unexpired Leases Rejected. Debtor will not continue with obligations to creditors in this category as they come due under the contract. Any claim arising from rejection of an executory contract or unexpired lease is included in Class (2). This is a mandatory category that Debtor should not delete.

SECTION 8: GENERAL PROVISIONS

B. Disputed Claims. Debtor must list in Section 8 of the Plan all disputed creditors. This plan provision is mandatory. Debtor should not delete this provision or table from the Plan. If Debtor does not have any disputed creditors, Debtor should write “None” in the first row under the column for Name of Creditor.

C. Cramdown. Debtor’s ability to “cramdown” the Plan over the objections of creditors is limited by the “Absolute Priority Rule.” The Absolute Priority Rule provides, in essence, that junior claimants, including Debtor, are barred from taking anything under the Plan unless senior claimants are paid in full, Debtor provides new value to support the Plan, or creditors accept the plan. The disclosure statement must state whether the Absolute Priority Rule applies in this case. And if it does apply, the disclosure statement must discuss how the Plan addresses it.

F. Lawsuits and Other Claims for Relief. Include all pending or potential lawsuits regarding fraudulent conveyances, voidable preferences, or other claims for relief that Debtor believe exist against a party. This plan provision is mandatory, Debtor should not delete this provision or table from the Plan. If Debtor does not have any potential lawsuits, Debtor should write “none” in the first row under the column Name of Party.

Payments by Third Parties. Debtor should include a new paragraph in Section 8 to specify the name, relationship to Debtor, and the payment amount that any third party will make to assist Debtor in funding the Plan. These payments should also be reflected on Exhibit 4 as an additional source of income.

EXHIBITS TO THE PLAN

Exhibit 1 – Events that Led to Bankruptcy, Significant Events that Have Occurred During the Bankruptcy and Summary of Plan. This exhibit is mandatory. Debtor should use this exhibit to explain the circumstances that led to the filing, the extent to which those circumstances have changed, major events in the case, and how the plan addresses the financial problem that led to the filing. The statement should be informative rather than argumentative.

Exhibit 2 – Liquidation Analysis: What Creditors Would Receive if the Case Were Converted to a Chapter 7. This exhibit is mandatory and is intended to help creditors determine whether they will receive as much under the Plan as they would in a Chapter 7 liquidation. Debtor should expand and complete the tables to address each property, as necessary.

Exhibit 3 – Summary of Monthly Operating Reports. This exhibit is mandatory and is intended to help creditors determine whether Debtor's Plan is feasible.

Exhibit 4 – Projected Post-Confirmation Monthly Income & Expenses. This exhibit is mandatory and is intended to help creditors determine whether Debtors are contributing all of their disposable income to the Plan and whether the Plan is feasible. The Debtor must provide projected income & expenses for each year of their proposed Plan. If Debtor owns a business, Debtor should attach a statement showing the projected net business income.

Exhibit 5 – Effective Date Feasibility. This exhibit is mandatory and is intended to help creditors determine whether Debtor will be able to make the effective date payments called for in the Plan.

Exhibit 6 – Investment Property Analysis. This exhibit is mandatory if Debtor owns investment property. Debtor should separate investment property according to positive and negative monthly cash flow. All properties generating positive monthly cash flow should be included under the heading **Properties with Positive Monthly Cash Flow** and the subtotal of these properties should be calculated on Line A (insert this amount on Exhibit 3, Income, Line 8). All properties generating negative monthly cash flow should be included under the heading **Properties with Negative Monthly Cash Flow** and the subtotal of these properties should be calculated on Line B (add this amount on Exhibit 3, Expenses, Line 16). Debtor should add additional tables as necessary for each additional investment property, and renumber the tables as appropriate.

Additional Exhibits. If necessary, Debtor may attach additional exhibits to the Plan.

Numbering Exhibits. If Debtor includes additional exhibits following Exhibit 6, then Debtor should sequentially number each additional exhibit and also include a brief description of the exhibit in the fourth paragraph of the Introduction to the Plan.