

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

GUIDELINES FOR USING MANDATORY CHAPTER 13 PLAN

1. GENERAL PRINCIPLES

A. Purpose of Guidelines

The Southern District of California Bankruptcy Court has adopted a form chapter 13 plan to reduce debtors' legal expenses and to provide creditors the clearest possible explanation of how their claims will be treated in accordance with the law. These goals should at all times guide debtors in completing the plan. Use of the plan is required, and any questions about the plan can be raised with the Chapter 13 trustee.

These guidelines are offered to assist parties and counsel in completing the required form plan and do not have the force of law. Based upon the circumstances of a particular case, the Court may interpret the legal requirements of a given plan provision differently from what is stated in the guidelines.

B. Do Not Include Unnecessary Provisions

The plan uses as its platform the proposed National Plan, Official Form 113. The plan is a fillable document that contains many instructions, blanks, and choices for different provisions. All required information must be included, all necessary choices must be made, and optional provisions must be clearly designated.

C. Secured Creditor Identification Must Include Last Four Digits of Account Number

The plan must list each secured creditor by name and the last four digits of the account number, which should match debtors' schedules. The plan must also state with specificity what each creditor will or is likely to receive on its claim – how often payments will be made, when payments will start, how many payments will be made, and the amount of each payment.

D. Alteration of Standard-Form Language Prohibited

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 a party alters the plan's language or does not alert creditors and the Court to changes made. Thus the plan includes Part 9, which requires all non-standard provisions to be identified there.

Any failure to list a material alteration in the standard-form language could lead to negative consequences for the debtors.

2. **HOW TO DOWNLOAD THE PLAN**

The plan is available as a Microsoft Word Document (.docx) and may be downloaded from the Southern District of California Bankruptcy Court's website at:

http://www.casb.uscourts.gov/html/latest_forms.htm

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

Debtors should not change the font type or font size of the plan. The body text should be in 11-point Arial font.

3. **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 13, for example, 12-34567-JJ13.

Date. The plan must be dated.

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

4. **GUIDELINES FOR SPECIFIC PARTS OF THE PLAN**

A. Part 1: Notices

This part provides information on procedures for objecting to a plan and also apply to supplemental motions that must be brought for certain plan provisions.

Do not forget to check any box that might apply to:

- limiting the amount of a secured claim; or
- inclusion of a nonstandard provision

These sections also assist your clients in further notifying their creditors that the creditors' rights may be modified in the proposed plan.

B. Part 2: Plan Payments and Length of Plan

The plan must state the monthly payments proposed to be made to the trustee. Debtors must also affirm the applicable commitment period as being either 36 or 60 months in section 2.1. In the case of a below-median income earner, plan payments may exceed 36 months if necessary to perform the plan.

Section 2.2 allows debtors to propose step-ups for certain periods of time (e.g., plan payment step-up after repayment of a 401k loan or a vehicle loan that was paid outside the plan). All plan payment adjustments should be stated in section 2.2 and not in the "non-standard" provision section at the end of the plan.

Section 2.3 provides that debtors can opt to make payments either directly or through an

employment or payroll deduction order, which would be issued by the Court. Debtors' selection on how payments will be made does not preclude the trustee from asking the Court to issue an Employer Withholding Order if debtors miss plan payments.

Section 2.4 expands on additional payments coming from income tax refunds or whether debtors will retain such refunds. Committing future tax refunds as additional plan payments may create feasibility risks for the plan and should be carefully considered. The second option in Section 2.4 provides that debtors "will timely pay all post-confirmation tax liabilities directly to the appropriate taxing authority as they become due." This clause is intended to clarify that debtors remain responsible for: (a) the correct withholding allowance for wage earners; and (b) making sufficient quarterly income tax payments to the Internal Revenue Service and to state taxing authorities. The filing of a post-petition claim by a taxing authority asserting liability under 11 U.S.C. § 1305(a) may be evidence of a plan breach and may also cause the plan to become infeasible. Debtors must pay these claims either through extra payments under the plan or by separate payments, as payment of this increase will not reduce the payment to the other unsecured creditors in the plan.

Section 2.5 allows debtors to propose additional periodic payments to the trustee beyond the monthly plan payment if necessary either to ensure: (a) that certain arrearage claims can be paid; or (b) payment of projected disposable income over the applicable commitment period. These irregular payments may come from commissions, bonuses, or sale of assets (e.g., real estate). Debtors may need to provide supporting documents to the trustee or to the Court if an objection is filed to the plan to validate these anticipated additional payments.

Section 2.6 requires debtors to calculate an aggregate sum of money anticipated to be paid to the trustee over the plan's life. This calculation will assist the Court in determining whether the plan is or will be feasible based on the estimated claims to be paid through the plan.

C. Part 3: Treatment of Secured Claims

Part 3 contains five different options for treatment of secured claims. The purpose of providing standard language for alternate treatments is to streamline debtors' selection of those various treatments and to make it easier for creditors to understand how their claims are being treated. Whether the trustee or debtors will make the payment must also be identified in certain sections of Part 3.

A secured claim should appear in only one section of Part 3.

Section 3.1

Section 3.1 is used when debtors intend to keep the property securing the claim, cure any pre-petition default over the plan term, and make all post-petition payments as they come due outside the bankruptcy, so that the loan is reinstated according to its original terms when the plan is completed. The trustee will only make the cure payments, but will not make either the ongoing payments to the creditor or adequate protection payments to them. The trustee will begin disbursements only after the plan is confirmed. Debtors should therefore continue to make both the regular payments and any required adequate protection payments immediately after the case is filed.

A common objection to confirmation arises when there is a discrepancy between the estimated arrears identified by debtors and the arrears in the creditor's filed proof of claim. The third sentence of section 3.1 makes clear that a timely filed proof of claim controls over the amounts listed in the plan with respect to the arrearage. If this discrepancy is significant, however, the monthly plan payment on the arrearage may have to increase accordingly. In that event, a plan modification would need to be sought so that debtors' monthly payments are sufficient to cure the entire arrearage by the end of the plan. Debtors and their counsel should monitor the proofs of claim as they are filed to ensure the plan can be performed in accordance with its original terms. They should also carefully consider the effect of a loan modification if the arrearage amount changes after the plan is confirmed.

Section 3.2

Section 3.2 is used when the amount owed to the secured creditor exceeds the value of its collateral, and debtors intend to pay the amount equal to the value of creditor's collateral as an allowed secured claim according to the plan's terms. Any remaining amount greater than the collateral's value should be treated as an unsecured claim in Part 5. This provision is not available for claims secured solely by debtors' principal residence, unless the lien in question is entirely unsecured.

Note that a separate motion must be brought if the collateral is real estate, but not if the collateral is personal property. Make sure that the proper box is checked in the plan.

For personal property secured claims where the collateral is valued under the plan, the arrearage is not separately paid since debtors will only pay the value of the collateral regardless of the arrearage.

If a personal property lease is also a secured claim, it should be addressed in Section 6.1. Arrears should be paid separately and in addition to ongoing lease payments.

The trustee or debtors must make adequate protection payments to creditors listed under this section in accordance with general orders of the court. Note that debtors who fail to timely make either adequate protection payments or their regular payments to the trustee risk the creditors claiming a default and seeking to foreclose on their collateral.

Section 3.3

Section 3.3 deals with secured claims excluded from 11 U.S.C. § 506 that will not be valued under the plan, although the interest rate and payment terms may be modified. These claims are specified in this section of the plan.

One example of such claims are those that may not by law be bifurcated into secured and unsecured portions under § 506(a), such as for claims secured by the debtors' principal residence where the value of the collateral is not less than the affected claim plus all senior liens.

Another example includes claims for which only the payment terms are restructured under the plan, such as by proposing a different interest rate than the contract rate for payment of the claim.

This section also applies to claims that debtors must pay in full (e.g., cars purchased less than 910 days before filing the petition or personal property purchased less than one year before the petition date) and that debtors seek to pay in full through the plan.

Finally, this section also applies to debts secured by debtors' residence that are fully due and payable.

A claim may be treated under Section 3.1 instead of Section 3.3 if no modifications of the terms are sought and only the arrearage is to be cured.

The trustee or debtors must make adequate protection payments under this section. Timely plan payments must be made to avoid default if trustee is designated to make the payments.

Section 3.4

Section 3.4 allows debtors to surrender the collateral to the secured creditor. In that event, the automatic and co-debtor stays under 11 U.S.C. §§ 362(a) and 1301 both terminate with respect to the collateral surrendered. The trustee will not pay anything on these secured claims.

Surrender of the collateral may result in a deficiency claim filed once the creditor liquidates the collateral. Unless an objection is filed to the deficiency claim and is sustained, the trustee will treat the deficiency claim as an unsecured claim pursuant to Part 5 of the plan.

Section 3.5

This section should be used to identify claims that debtors do not want the trustee to pay, but which will be paid or otherwise handled by debtors or third parties outside the bankruptcy case.

Secured claims that are not to be impaired under the plan can be identified here. This might be the case where the secured claim is current and fully secured. If a debtor is the co-signor on a secured claim that another party directly pays and is current, this may be the proper section to use.

D. Part 4: Treatment of Priority Claims

This part provides for the treatment of administrative expenses such as trustee and attorney fees, as well as other claims entitled to priority status under 11 U.S.C. § 507 such as tax claims or employee wage claims.

Sections 4.1 and 4.2 provide that all allowed priority claims (other than those domestic support obligations treated in sections 4.4 and 4.5) will be paid in full, but without interest unless interest is required to be paid under law. Since the plan may be confirmed before the priority claims are filed, debtors and their counsel must monitor the filing of these claims to ensure that plan performance remains feasible.

Section 4.5 provides for unassigned domestic support obligations. The trustee will pay the priority claim identified by naming the creditor and the amount of the claim, although the

creditor's timely filed proof of claim will control if it states an amount different from what was estimated in the plan. Here as well, debtors and counsel must monitor these claims and either object to a wrongfully filed claim or file a claim for a domestic support obligation creditor to ensure all these claims are paid in full before the plan is completed. Unassigned domestic support obligations must be paid or debtors will not receive their discharge. And failure to pay may constitute a breach of the plan.

Section 4.6 addresses *assigned* domestic support obligations and provides that these claims are paid at the same level as general unsecured claims. The plan may propose to pay less than the full amount of a domestic support obligation that has been assigned to or owed to a governmental unit, but not less than the amount that claim would have received in a chapter 7 liquidation.

Section 4.7 requires a statement of the attorney fees to be paid under the plan and should match the "unpaid balance of fees" as noted on the Disclosure of Compensation plus any anticipated guideline fees such as a motion to extend the automatic stay or a motion to value.

Debtors may agree with their counsel to payment of attorney fees through specified installments, instead of from the first payments available. This should be considered to ensure adequate protection payments are made to a secured lender whose monthly adequate protection payments would be delayed due to a substantial amount owing to debtor's counsel (e.g., a \$3,000 balance in attorney fees would be paid over ten months if the installment payment amount is \$300).

Section 4.8 deals with other priority claims identified in 11 U.S.C. § 507, including unsecured priority tax claims. This section also treats the secured portion of tax claims. The trustee will pay any allowed pre-petition priority claim that is not explicitly excluded from the plan in section 3.5. Priority income tax claims that disclose "estimated liability" or "under audit" for specific years may be paid in the amounts stated in later amendments. This could create performance problems under the plan if the amended claims are higher than expected. In this event, debtors and counsel should monitor the claims filed and seek a plan modification or other relief if necessary. An amended tax claim that reduces the amount due and leads to a refund request by the trustee may also delay the closing of the case.

E. Part 5: Non-Priority Unsecured Claims Not Separately Classified

Section 5.2 requires the trustee to adjust the payment percentage of the general unsecured creditors to account for claims that are filed in higher or lower amounts than scheduled. Regardless of whether the payment percentage changes, debtors must make the plan payments required for the entire applicable commitment period.

Debtors must calculate and state the amount that general unsecured creditors would receive if the case were hypothetically liquidated in a chapter 7 case. Generally stated, debtors must calculate the value of their property less secured claims, priority claims, exemption amounts, sales costs, and estimated chapter 7 costs of administration and pay the general unsecured creditors at least as much as the remaining balance.

If unsecured creditors would be paid in full in a Chapter 7 liquidation, or if debtors retain disposable income, then interest on both priority and general unsecured creditors may be required under 11 U.S.C. §§ 1325(a)(4) or (b)(1). Otherwise, unless debtors separately classify a non-priority unsecured creditor's claim, interest is generally not paid on general unsecured or priority claims.

Section 5.5 of the plan recognizes that debtors may separately classify and provide special treatment for certain non-priority unsecured claims, such as student loan claims, so long as they can provide evidence to meet the legal requirement that the plan does not unfairly discriminate against non-priority unsecured creditors.

F. Part 6: Executory Contracts and Unexpired Leases

If debtors elect to assume an executory contract, including a car lease, this means they must maintain the ongoing payments outside of the plan and may cure any default under this Section. In that instance, debtors should check the box for Current Installment Payment to come from "Debtor." Debtors can also choose to have the trustee make the ongoing payments on the executory contract and pay the arrearage cure due under the contract or lease, but debtors will need to increase their plan payments to accommodate these payments to be made by the trustee.

Check the box "None" if no executory contracts are being assumed. If a contract or lease is not assumed, it will be rejected and not become part of the bankruptcy estate.

Note the arrears on a mortgage should not be listed in Part 6. Rather, debtors should use Section 3.1.

G. Part 7: Order of Distribution of Trustee Payments

As stated in the plan, the trustee will have discretion to determine the order of distribution within the requirements of applicable law and whether to reserve payment to claims that are subject to a pending objection.

H. Part 8: Vesting of Property of the Estate

This section provides that the estate property will remain in the estate and not revert in debtors until a chapter 13 discharge is granted or the case is dismissed or closed. For this reason, a motion must be filed for Court authorization if debtors seek to sell or refinance any material real or personal property before any of these events occur.

When the estate property reverts in debtors, it is revested subject to all liens and encumbrances on that property at the time the case was filed, except for those liens avoided by Court order or extinguished by operation of law. Debtors must bring an appropriate motion or action to avoid liens that they seek to remove from their property.

If a motion to value property is granted but the case does not successfully close and is later dismissed, the affected lien remains on the property.

I. Part 9: Nonstandard Plan Provisions

This part gives debtors the opportunity to propose provisions that are not otherwise in the plan, or deviate from it, if:

1. The nonstandard provision is set forth in this section;
2. The appropriate box in part 1 is checked; and
3. The nonstandard provision complies with applicable law.

J. Part 10: Signatures

This part requires the signature of debtors' counsel (if they have an attorney), or of debtors themselves (if they do not have an attorney). It also contains the signers' certification that their plan is identical to the mandatory form, except for nonstandard provisions in part 9.

**Practice Pointers that Aid Timely Plan Completion and
Tools for Monitoring the Plan Post Confirmation**

A. Review the Notice of Claims Filed and Intent to Pay Claims

This report issued after confirmation and after the governmental bar date will let you know at a glance if the case will perform as desired.

i. For the cases confirmed before the bar date, this report is a timely recheck of the plan. A review of the report will identify if any secured creditors have failed to file a claim; the claim amount will be listed as \$0.00.

ii. If a claim secured by personal property was not provided for in the plan, such as a furniture claim, it will be listed as excluded.

B. Review the Trustee's Periodic Reports

The trustee also issues periodic reports to provide debtors with current information about their progress under the plan. Simple arithmetic will let you know if the plan is going to exceed 60 months. Debtors must review these reports to avoid surprises when the plan does not complete within the expected applicable commitment period. Excessive length may result from estimated claims based on unfiled tax returns, or from debtors not keeping their post-petition tax liabilities current.

C. Unfiled Tax Returns

If debtors have one or more years of unfiled federal income tax returns, the Internal Revenue Service will typically file a Proof of Claim based on "Estimated Liability," often estimated at the highest end of the range. Debtors should consider whether it would be expeditious to mail a duplicate original of the return (i.e., a copy of the outstanding return signed and dated in blue ink) to the local Special Procedures Branch. The original return should be sent to the regularly designated Service Center. Following review, the Internal Revenue Service will often file an amended Proof of Claim reflecting the amount actually assessed and this is generally lower than the Estimated Liability. To avoid overpayment on the secured or priority portion of the tax claim, the Chapter 13 Trustee may elect to disburse on the tax claim at a lower distribution level to avoid the delay in administration that is required if an overpayment collection letter is required.

D. Minimum Monthly Installment for Creditor and Caveat Concerning Interest

The recommended minimum monthly installment is \$25. This is based on the increased cost of postage and trustee's administrative overhead. Non-institutional creditors often take extra time to cash smaller checks and this delays case closing.

However, a small installment may be insufficient to fully amortize a claim entitled to interest under the plan or by statute. For example, the claim of a County Tax Collector in California will likely assert that interest must be paid at 18%. To ensure that the tax claim is fully amortized and timely paid, debtors should consider providing a specified installment payment on these claims if necessary.