

Chapter 13 Procedures

Adopted By the Court Pursuant to Local Rule XX

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Chapter 13 Procedure #1 - Duty to Make Payments and File Reports

A. Payments

1. Any extension of time granted by the Court for filing of the plan shall not also constitute an automatic extension of time for the submission of payments to the Chapter 13 Trustee. In the event that no plan has been filed within the time approved by the Court, the case will be dismissed and, if the debtor has not made provisions for payment to the Chapter 13 Trustee, the case will be dismissed.
2. Payments shall be made to the Chapter 13 Trustee in the form of a money order, cashier's check, check drawn on an attorney's trust account, or by wage attachment. Automated funds transfers may be approved by the Court in special circumstances.
3. The Chapter 13 Trustee shall commence payments to creditors before confirmation when ordered by the Court. In the event a plan is not confirmed, the Chapter 13 Trustee shall retain an administrative fee of twenty-five dollars (\$25.00) or the U.S. Trustee's prevailing percentage fee, whichever is greater, for payment to the Chapter 13 Fee and Expense Fund, in payment for the costs incurred in administering the case. This amount may be adjusted by the court in unusual cases.

B. The Debtor engaged in business in a Chapter 13 case shall

1. keep current and pay when due any debt which has arisen since the entry of the order for relief, including any debt for rent of any real or personal property or for utility bills;
2. submit by the end of the second business day after the payment of wages to employees an accounting on IRS Form 10186 (Bankruptcy Federal Tax Deposit Accounting) and a certified or cashier's check in full payment of the employee's and employer's FICA (Social Security) taxes and the employee's income taxes accrued as a result of the payment of wages to the IRS Insolvency Unit at the

address listed on the Address Appendix;

3. submit to the local office of the Department of Revenue of the Commonwealth of Pennsylvania a certified or cashier's check in full payment of the following taxes as follows:

(a) all Pennsylvania sales tax collected pursuant to 72 P.S. §7316 *et seq.* shall be remitted together with the proper tax returns no later than the end of the fifth business day following the last day of each month in which such sales taxes were required to be collected; and

(b) all employer withholding tax (personal income tax) withheld pursuant to 72 P.S. §7316 *et seq.* shall be remitted together with the proper tax returns no later than the end of the second business day after the payment of wages to employees;

4. submit no later than the last day of the month following the end of the quarter to the local office of the Field Accounting Service of the Commonwealth of Pennsylvania, Department of Labor and Industry, Office of Employment Security, in accordance with the filing and payment provisions of the Pennsylvania Unemployment Compensation Law, 43 P.S. §781.4, §784 and §785, tax returns together with a certified or cashier's check in full payment of the following taxes:

(a) employer contributions due pursuant to §305 of the Pennsylvania Unemployment Compensation Law, 43 P.S. §785; and

(b) employee contributions withheld pursuant to §301.4 of the Pennsylvania Unemployment Compensation Law, 43 P.S. §781.4.

C. Reports in Chapter 13 Cases

A Chapter 13 debtor engaged in business shall:

1. timely file all federal, state, and local tax returns with the applicable taxing bodies during the pendency of the bankruptcy case;

2. serve on the Chapter 13 Trustee an initial statement of operations on a form substantially in compliance with Local Form No. _____ at least ten (10) days prior to the first date set for the meeting of creditors;

3. serve on the Chapter 13 Trustee and others as ordered by the Court a report of operations no later than the fifteenth day of the month covering the preceding month. The monthly reports of operations shall not be filed with the Court.

D. Contents of Reports

1. The initial report of operations shall include a statement of the name and location of each depository or place of investment holding funds of the estate and the applicable account number(s).
2. In addition to the information required by Fed.R.Bankr.P. 2015, all statements of operations shall contain a cumulative list of all debts which have arisen since the order for relief was entered.

Procedure #2 - Claims

1. All creditors must file a proof of claim and serve a copy on the Chapter 13 Trustee and the debtor or debtor's attorney, if represented. The creditor's account number must be conspicuously stated on the claim form.
2. A claim filed by a secured creditor shall identify the collateral. A holder of a claim secured by the debtor's personal residence must separately state the following: arrearage, late fees, attorney's fees and foreclosure costs incurred through the date of filing of the debtor's bankruptcy petition, principal balance, applicable interest rate and amount of the regular monthly payment. Any postpetition arrearage must be separately stated and itemized.
3. All claims arising out of the rejection of executory contracts must be filed and served on the Chapter 13 Trustee and the debtor or debtor's attorney, if represented, by the later of the claims bar date or thirty (30) days after the date of rejection. Executory contracts may be rejected in the confirmed plan.
4. No deficiency shall be paid to a creditor following the consensual relinquishment of collateral unless the creditor files and serves on the Chapter 13 Trustee, the debtor and debtor's attorney, if represented, a notice of intention to collect a deficiency within thirty (30) days after the effective date of the surrender.
5. If an amended proof of claim is filed after the deadline for filing claims such claim must be served by the creditor on the Chapter 13 Trustee and the debtor and debtor's attorney, if represented. All objections to the amended proof of claim must be filed and served within seventeen (17) days after service.

Procedure #3 - Approval of Debtor's Attorney's Fees

1. At the discretion of the presiding judge in each case, fees may be approved for the debtor's attorney in Chapter 13 cases as part of the plan confirmation process.
2. Confirmation of the debtor's original Chapter 13 plan may serve to approve professional fees requested, at a level set by the Court.
3. Additional fees may be allowed through confirmation of an amended Chapter 13 plan, or an

amended confirmation order of a previously confirmed plan, for services reasonably related to the work performed in support of debtor's presentation of the amended plan. All such additional fees shall be itemized and shall be paid through the plan.

4. The Court may require a fee application in any case.

Procedure #4 - Distribution Under Plans and Objections to Claims

1. The distribution of any proceeds pursuant to a confirmed plan shall be mailed to the address of the creditor as designated pursuant to Fed.R.Bankr.P. 2002(g).

2. Following confirmation of a plan, the Chapter 13 Trustee shall make distribution to secured and priority creditors in accordance with the terms of the plan. Claims identified in the plan or proofs of claim filed shall be treated for distribution purposes as follows:

(a) after the filing of a plan and prior to confirmation of such plan, the Chapter 13 Trustee is authorized to make distribution of the designated monthly payments on secured non-tax claims, attorney's fees, and utility accounts;

(b) the debtor or debtor's attorney, if represented, shall review the proofs of claim filed and shall file objections to any disputed claims within ninety (90) days of the claims bar date. Absent an objection, the proof of claim will govern as to the classification and amount of the claim.

3. Failure of an unsecured creditor to file a claim shall inure to the benefit of the other unsecured creditors in the same class. The Chapter 13 Trustee shall increase the percentage to be paid accordingly, provided that payments shall not exceed 100 percent of the total amount of the allowed unsecured claims (unless interest is provided in the plan for such claims). Distributions to unsecured creditors shall be made on a *pro rata* basis as calculated by the Chapter 13 Trustee and not on a *per capita* basis.

4. The Chapter 13 Trustee is authorized to amend monthly payments to mortgage holders where required by floating interest rates or changes in the insurance and tax escrow payments, provided that the mortgage company has given notice to the debtor and the debtor has not filed and served an objection within seventeen (17) days.

5. If a secured creditor obtains relief from the automatic stay, the Chapter 13 Trustee shall suspend distributions to all creditors with claims secured by the collateral released from the automatic stay, following the Chapter 13 Trustee's receipt of notice of the grant of relief. However, the Chapter 13 Trustee shall continue to make distribution to other creditors in accordance with the terms of the plan.

6. In the event of conversion or dismissal following the confirmation of a plan, then the Chapter 13

Trustee shall distribute all funds received prior to the effective date of the conversion or dismissal, in accordance with the terms of the confirmed plan.

Procedure #5 - Additional Requirements

In all cases where the debtor owns real estate or operates a business, a search of public records in any county in which the debtor owns real estate or conducts business shall be conducted in advance of the filing of the petition. Verification of that search shall be made by the debtor's attorney through a statement filed with the bankruptcy schedules.

Procedure #6 - Motions to Dismiss or Convert

A. Content of Motion

A motion to dismiss a voluntary or involuntary petition shall set forth the reasons for the dismissal. The motion shall also set forth whether any arrangement or agreement has been made with any creditor or other person in connection with such motion to dismiss and the terms thereof.

B. List of Creditors

Any motion by a debtor for dismissal of a voluntary or involuntary petition shall be accompanied by a list containing the name and complete mailing address of any creditor not previously scheduled, including any creditor who has extended credit since the date of filing of the petition and who remains unpaid at the time of the motion. If there is no such creditor, the motion shall so state.

C. Procedures With Respect to Motions to Dismiss or Convert

1. A motion filed by a party other than the debtor to convert or dismiss a Chapter 13 case shall be scheduled initially for a hearing before the presiding judge on a Chapter 13 motions day.
2. Upon the filing by the Chapter 13 Trustee of a Certificate of Default Recommending Dismissal of Case based upon plan payment defaults, the debtor shall file and serve a written response accompanied by documentation that at least one full plan payment was sent to the Chapter 13 Trustee's lock box after the date of the Certificate of Default.

(a) The debtor's failure to respond in accordance with the requirement of the order will result in the dismissal of the case without a hearing.

(b) The response must set forth in detail the basis for denial of the Chapter 13 Trustee's request for dismissal and any prospective plan changes designed to cure the existing default. Proof of one full plan payment must be attached to any response, including an amended plan.

(c) If the response proposes that additional payments will be made prior to the hearing scheduled on the motion, verification of such payments must be made to the Court contemporaneously with delivery of payment to the Chapter 13 Trustee.

(d) If the response indicates that the plan payment is to be increased in order to cure the existing default, the new payment must be identified in the response and the plan shall be deemed amended as of the date of the response to include the adjusted payment.

(e) If the response expresses the debtor's intent to amend the plan other than by a payment increase, the amended plan is to be filed along with the response and served on all parties in interest. Upon the filing of the amended plan, the Court shall cancel the hearing previously set for consideration of the Chapter 13 Trustee's request for dismissal and a conciliation conference and plan confirmation hearing will be scheduled. If the debtor fails to make any plan payment prior to the conciliation conference and plan confirmation hearing, on Supplemental Certificate of Default filed and served by the Chapter 13 Trustee the case will be dismissed and the hearing cancelled.

Procedure #7 - Postconfirmation Matters

1. Notwithstanding any provision in a Chapter 13 plan revesting property of the estate in the debtor, all sales of real and personal property shall be conducted in accordance with Fed.R.Bankr.P. 2002 and Fed.R.Bankr.P. 6004, and Local Rule 6004-1. The notice of sale must state the proposed disposition of sale proceeds.

2. Any postpetition extensions of credit sought by the debtor shall be in the form of a motion subject to Fed.R.Bankr.P. 4001(c) and (d) and Local Rule 4001-2. Such motion shall be served on the Chapter 13 Trustee and all parties in interest.

3. A motion seeking real estate/mortgage financing shall include the following information:

- (a) identity of the property that is subject to the financing;
- (b) identity of the source of funds;
- (c) a description of the terms of the financing including:
 - (i) whether it will be the first mortgage on the subject property;
 - (ii) the amount of principal borrowed;
 - (iii) the interest rate;
 - (iv) the term of the loan and its amortization schedule;
 - (v) the amount of the monthly payment; and
 - (vi) all other material terms of the financing agreement;
- (d) whether the new mortgage financing is to be incorporated into the existing plan or is designed to complete payments under the plan;
- (e) the status of plan payments at the time that the motion is filed;

- (f) if a discharge is sought through the financing, whether the provisions of 11 U.S.C. §1328 are met; and
- (g) the date the loan is expected to close.

4. A motion seeking approval of motor vehicle financing shall include the following:

- (a) the type and cost of vehicle being purchased;
- (b) the source of funds;
- (c) the terms of financing, including:
 - (i) the principal borrowed;
 - (ii) the interest rate;
 - (iii) the term of the loan and its amortization schedule;
 - (iv) the amount of the monthly payment;
 - (v) all other material terms of the financing agreement;
- (d) how the new payment will be incorporated into the Chapter 13 plan;
- (e) the status of plan payments at the time the motion is filed;
- (f) whether any further plan modification is necessary;
- (g) the date the loan is expected to close;
- (h) if the treatment of other creditors will be changed as a result of this financing, a statement of the rationale and underlying facts in support of that change;
- (i) if the plan payment is to be changed as a result of the financing, sufficient facts to demonstrate the feasibility of the plan amendment;
- (j) whether the standards of 11 U.S.C. §1325(b) are met; and
- (k) whether and when an amended plan will be filed.

Procedure #8 - Pleading Special Matters in Motions

In Chapter 13 cases a motion for relief from stay shall include:

1. an itemized statement of the prepetition default and the amount necessary to cure as of the bankruptcy filing date;
2. a separate itemized statement of the postpetition defaults;
3. an attachment in the form of a Document and Loan History Abstract (Local Form No. ____);
4. a statement of the fair market value of the collateral and the basis of the opinion;
5. whether the debtor has equity in the property;
6. all other grounds for relief.