

## **Working with the New Chapter 13 Plan**

The United States Bankruptcy Court for the Western District of Washington has a new form Chapter 13 plan effective December 1, 2017. The form is mandatory. Every Chapter 13 plan (original, amended or modified post-confirmation) that is filed on or after December 1, 2017 must be on the new form regardless of when the bankruptcy case was filed.

**Disclaimer:** The attached outline is designed to assist bankruptcy lawyers in understanding how to work with the new form plan. The outline, however, is not a rule or a court approved procedure. Nothing in the outline is binding on the Court or ensures a particular outcome in any individual case.

The outline is an educational tool provided in connection with the following bench/bar meetings:

Tacoma – October 26, 2017

Seattle – October 30, 2017

Vancouver – November 6, 2017

## Bench/Bar Talking Points

### The New Chapter 13 Plan

#### I. Section I.

- A. This section is new. The information in this section is required by the national rules and must be the first section.
- B. All three questions must be answered. There is no default.
  - 1. If you have anything in Section X, the answer to Section I.A must be yes.
  - 2. Even if you answer Section 1.B and 1.C no, you may still limit the amount of a secured claim based on a valuation of the collateral for the claim and avoid a security interest or lien using current methods (i.e. motions, adversary proceedings and claim objections).
  - 3. If you are paying less than the full amount of a non-910 collateral secured claim based on the value of the collateral in Section IV.C.3.b through the plan (as opposed to by claim objection or separate motion), then:
    - a. The answer to Section I.B must be yes.
    - b. You must state the amount of the proposed secured claim in the Debtor's Value of Collateral column in Section IV.C.3.b.
    - c. You must complete Section IV.C as required by new Local Bankruptcy Rule 3015-1(f)(1).
    - d. You must use the exact language of new Local Bankruptcy Rule 3015-1(f)(2) in Section X.
    - e. You must file evidence, use adversary proceeding service and file proof of service as required by new Local Bankruptcy Rules 3015-1(f)(3)-(5).
  - 4. If you are paying less than the full amount of a secured claim based on 11 U.S.C. § 522(f) (i.e. judgment and certain other liens that impair an exemption) and you are doing the lien avoidance in the plan (as opposed to by separate motion), then:
    - a. The answer to Section I.B must be yes.
    - b. You must complete Section IV.C as required by new Local Bankruptcy Rule 3015-1(g)(1).
    - c. You must use the exact language of new Local Bankruptcy Rule 3015-1(g)(2) in Section X.

- d. You must file evidence, use adversary proceeding service and file proof of service as required by new Local Bankruptcy Rules 3015-1(g)(3)-(5).
    - 5. If you are stripping a wholly unsecured junior lien based on 11 U.S.C. § 506 and you are doing so in the plan (as opposed to by an adversary proceeding or separate motion), then:
      - a. The answer to Section I.C must be yes.
      - b. You must complete Section IV.C as required by new Local Bankruptcy Rule 3015-1(f)(1).
      - c. You must use the exact language of new Local Bankruptcy Rule 3015-1(f)(2) in Section X.
      - d. You must file evidence, use adversary proceeding service and file proof of service as required by new Local Bankruptcy Rules 3015-1(f)(3)-(5).
  - C. Confirmation will be denied if:
    - 1. There is not an answer to each question in Section I.
    - 2. Section I.A is marked no, but there is anything in Section X.
    - 3. Section I.B is marked yes, but:
      - a. Section IV.C is incorrect.
      - b. Section X is incorrect.
      - c. There is not compliance with new Local Bankruptcy Rule 3015-1(g).
    - 4. Section I.C is marked yes, but:
      - a. Section IV.C is incorrect.
      - b. Section X is incorrect.
      - c. There is not compliance with new Local Bankruptcy Rule 3015-1(f).
  - D. Filing a new plan that switches any answer in Section I to yes from either blank or no requires new service.

- E. “Paper” (i.e. non-text) confirmation orders will be used when Sections I.B or I.C are marked yes.
  - 1. The paper order may only be submitted by the trustee as it is a replacement for the trustee’s current text entry recommending confirmation.
  - 2. The language of the paper order will be identical to the language of the text order.
  
- II. Section II.
  - A. This section combines the information in Sections I and III of the existing plan.
  - B. There are minor language changes to existing Section II.
  - C. The primary reasons for combining the existing sections are:
    - 1. The topics are related.
    - 2. The Debtor bar did not like that the language about automatic extension of the plan term was separated from the commitment period language because a lot of debtors just saw the 36 month commitment period and assumed their plan would be done in 36 months.
  
- III. Section III.
  - A. This is Section II of the existing plan.
  - B. There are minor language and format changes.
  
- IV. Section IV.
  - A. Subsections A and B have minor language and format changes.
  - B. Subsection C was fairly significantly revised.
    - 1. The paragraphs in Subsection C before the numbered subsections were revised because there were some errors in the existing language and consensus that some of the language was not clear or inconsistent with how the trustees actually administered the plan.
    - 2. The numbered subsections in C were changed to meet the separate paragraph requirements of the national rules and to make the column headings and format more consistent.
    - 3. There are minor language changes.
  - C. Subsection E.
    - 1. There are minor language changes

2. The order of the information in existing subsections 1 and 2 (no longer numbered) was switched to fix a potential interpretation of the existing language that a debtor who has specially classified unsecured claims had to pay those in addition to the debtor's full projected disposable income.

V. Section V.

- A. This is Section VII of the existing plan. It was moved up to improve the flow of the plan by having the payment to creditor sections consecutive.
- B. There are minor language changes.

VI. Section VI.

- A. This is Section V of the existing plan.
- B. Relief from the co-debtor stay has been added as required by the national rules.
- C. There are minor language changes dictated by the national rules.

VII. Section VII.

- A. This is Section VI of the existing plan.
- B. There are minor language changes designed to simplify the section and the deletion of language that was originally for the benefit of the trustees, but which they no longer wanted.
- C. There is new language granting creditors relief from stay for rejected property designed to match the relief secured creditors get on surrendered property. In part, this was in recognition that leased vehicles are almost always subject to security interests too.

VIII. Section VIII.

- A. There are minor language changes.

IX. Section IX.

- A. There are minor language changes.

X. Section X.

- A. This is sort of Section XII of the existing plan.
- B. The information in this section is required by the national rules and must be the last section.
- C. Voids all nonstandard provisions that appear in any other section and all modifications to or omissions from the form plan.
- D. There can be absolutely no changes made to the form plan.

XI. Other.

- A. Sections X and XI of the existing plan no longer exist as separate sections.
- B. Section X.A of the existing plan is now in Section IV.E.
- C. Section X.B of the existing plan is now in the first paragraph of Section IV.C.
- D. Sections X.C-E of the existing plan have been eliminated as largely duplicative of FRBP 3002.1 and no longer necessary.
- E. Section XI.A of the existing plan has been eliminated as no longer necessary and unfair since it required the debtor to certify something in the future.
- F. Section XI.B of the existing plan is replaced with the certification required by the national rules that appears in Section X of the new plan.