

## **Rule 2083 - 1**

### **Chapter 13 - General**

#### **(a) Applicability**

This rule shall apply only to cases under Chapter 13 of the Bankruptcy Code.

#### **(b) Filing The Plan and Other Documents**

The debtor shall file the following documents as prescribed by the appropriate local form:

- 1) Chapter 13 Plan
- 2) Plan Payment Declaration
- 3) Plan Funding Analysis
- 4) Liquidation Analysis

#### **(c) Mailing of Plan to Parties in Interest**

A copy of the plan required to be provided to all creditors pursuant to FRBP 3015(d) shall be as directed by the Clerk of Court. Notice of modifications and copies required to be sent to all creditors shall be provided by the party making the modification in accordance with sub-section (k) of this rule.

#### **(d) Valuation of Security, Determination of Extent of Lien, and Lien Avoidance**

- (1) Valuation of claims secured by a lien on property in which the estate has an interest shall be by a separate motion pursuant to LBR 3012 - 1. The order valuing the claim voids the lien to the extent of the unsecured portion of the claim pursuant to 11 USC 506(d). In the event of dismissal of the case prior to discharge, this voided lien will be reinstated pursuant to 11 USC 349(b)(1)(C) unless otherwise ordered.
- (2) All actions to determine the validity, priority or, other than (1) above, the extent of a lien, shall be made by Adversary Proceeding, however, such relief may also be sought in an objection to allowance of claim pursuant to LBR 3007 - 1.
- (3) Actions to avoid judicial or non-possessory non-purchase money security interests under 11 USC 522(f) shall be by a separate motion pursuant to LBR 4003 - 2.

#### **(e) Delinquent Tax Returns**

A statement as to whether or not the debtor is delinquent in the filing of any tax return shall be included in the plan as well as a statement as to when any delinquencies in filing will be cured.

**(f) Treatment of Secured Creditors Secured by Real Property Whose Rights are Modified by the Plan and Arrearages**

- (1) If the plan proposes to modify the rights of a creditor secured by real property or, if at the time of the filing a petition for relief, a delinquency exists on any payments for such debt, then all payments, both current and delinquent, for such debt shall be paid through the office of the Chapter 13 trustee.
- (2) If during the pendency of the plan a debt secured by real property falls into arrearage, then the plan may be modified pursuant to subsection (l) of this rule to require payments, both current and delinquent, to be paid through the office of the Chapter 13 trustee.
- (3) If during the pendency of the plan arrearages are brought current, then the plan may be modified to allow for payments to be made directly to the creditor by the debtor.

**(g) Funding of Plan by Sales**

- (1) If the debtor proposes to partially fund the plan through the sale of property of the estate, then the debtor must also file a marketing plan with the plan. The marketing plan shall include:
  - (A) a description of the property to be sold;
  - (B) identification of all lien holders and the amount of each lien;
  - (C) if a broker is to be employed, the name of the broker and when the property was or will be listed;
  - (D) the terms of the broker's agreement;
  - (E) the price sought for the property;
  - (F) the method used in arriving at the value of the property; and
  - (G) the time frame, including mileposts where appropriate, during which the property will be marketed.
- (2) The debtor shall provide quarterly status reports to the Chapter 13 trustee.

**(h) Challenges to Eligibility of Debtor**

Challenges to the eligibility of the debtor should be initiated at the earliest possible time in the case. Such challenges may be made by fifteen (15) days notice and hearing to the Master Mailing List pursuant to LBR 2002 - 1.

**(i) Objections to Confirmation**

In order to be timely, objections to confirmation of a plan shall be filed and served on the Chapter

13 trustee and the debtor and debtor's attorney no later than five (5) days following the conclusion of the meeting of creditors or twenty-five (25) days following mailing of the original plan pursuant to subparagraph (c) above, whichever is later.

**(j) Confirmation**

- (1) The debtor shall file a motion for an order confirming the plan and a separate **unsworn statement under penalty of perjury in support of the motion**. Each debtor in a joint case shall file a separate statement in support. The statement shall say that the requirements of 11 USC 1325(a)(2),(6),(7),(8) and (9) have been satisfied, and both shall be as prescribed by the appropriate local form. The Motion and Statement shall be filed no sooner than the expiration of the time to file objections to confirmation and no later than seven (7) days prior to the hearing.
- (2) The trustee shall file as soon as practicable an unsworn statement under penalty of perjury stating whether or not the plan is feasible and satisfies the requirements of 11 USC 1325(a)(1),(4) and (5).
- (3) If the debtor has filed a request for an order confirming the plan and submitted a proposed order in accordance with LBR 9013-1, and if the requirements of subsections (1) and (2) are satisfied, the debtor, debtor's attorney and trustee need not participate in the hearing unless specifically required by the court.

*Note: This proposed change would require that in a joint case, each joint debtor would need to file a separate statement of intent. In joint cases, frequently only one of the debtors has a support or tax problem. By requiring separate statements, no debtor would be required to make an inaccurate statement.*

**(k) Modification of Plans**

(1) Modification Prior to Confirmation

Modifications made pursuant to 11 USC 1323 shall be on twenty (20) days notice and hearing in accordance with LBR 2002 - 1. A plan shall not be confirmed until the time to object to any such modification has expired and all objections resolved.

(2) Modification After Confirmation

- (A) A modification proposed by any entity other than the debtor shall be on twenty (20) days notice and hearing to any adversely affected party, the Chapter 13 trustee, debtor and debtor's attorney. The modification shall become effective upon the expiration of the time to file objections, if there are no objections, or upon resolution of all objections made.

(B) A modification proposed by the debtor shall be on twenty (20) days notice and hearing to the Chapter 13 trustee and any adversely affected party, and if the modification provides for payment of a postpetition debt, the holder of such debt. The modification shall become conditionally effective upon the filing and service of the notice. The modification shall become permanent upon the expiration of the time to file objections if no objections are timely made or upon resolution of all objections made.

(3) Effect of Disallowance of Modifications

If a proposed modification is disallowed, the plan in effect immediately prior to such modification shall be the plan, and debtor shall be responsible for curing any default occurring during the period of conditional modification.

(4) Modification by Stipulation Between Chapter 13 Trustee and Debtor

The Chapter 13 trustee and the debtor may stipulate to a modification before or after confirmation where no parties are adversely affected. Such modifications shall be effective upon the filing of the stipulation.

(5) Certificate of Modification

The proponent of a modification pursuant to (1) or (2) above shall serve on the Chapter 13 trustee, promptly after the time to file objections has expired, a copy of the modification and a certificate indicating the date the modification was filed, that notice and hearing were properly given and that no objections were received or filed.

(6) The debtor shall file an amended Plan Funding Analysis (LF 2083B) upon the making or proposing of a modification pursuant to subparagraph (k)(1) or (2) of this rule.

**(l) Payments To and Distributions By Chapter 13 Trustee**

(1) Payments to Chapter 13 Trustee

The debtor shall make all pre and post confirmation payments on obligations for leases of personal property and obligations owed to a creditor that has a security interest in personal property to the Chapter 13 trustee including all obligations provided by 11 USC 1326(a)(1), as well as obligations secured by real property as required by sub-paragraph (f) of the rule, unless otherwise ordered by the court.

(2) Filing Fee Installments

Installment payments of filing fees where allowed shall be paid directly to the Clerk, however, if such fees are received by the Chapter 13 trustee, the Chapter 13 trustee may return them to the payor or deliver them to the Clerk without further order of the Court.

(3) Distributions by Chapter 13 Trustee Based on Modifications

(A) The proponent of a modification shall be responsible to serve notice on the Chapter 13 trustee in writing when a modification becomes effective, either conditionally or permanently, and until so notified the Chapter 13 trustee may make distributions without regard to such modification.

(B) Distributions may be made by the Chapter 13 trustee in accordance with a conditional modification until such modification becomes permanent, is disallowed or otherwise ordered, and the Chapter 13 trustee is served with a copy of such order by the objecting party.

(4) Postpetition Claims

Proofs of claim filed pursuant to 11 USC 1305(a)(1) for postpetition tax claims may be paid without a modification to the plan, however, proofs of claim filed pursuant to 11 USC 1305(a)(2) for consumer debt may only be paid if a modification to the plan so provides.

(5) Disposition of Funds on Conversion or Dismissal

(A) On the conversion or dismissal of a case, the Chapter 13 trustee shall, as soon as practicable, disburse any remaining funds in accordance with 11 USC 1326. If a motion is filed pursuant to 11 USC 348(f)(2) and the trustee is served a copy thereof prior to disbursement, then the Chapter 13 trustee shall not further disburse until resolution of the motion.

(B) If a case is dismissed or converted prior to confirmation, then the Chapter 13 trustee shall be entitled to deduct and retain as reimbursement for set up and maintenance costs an amount as established by the Court.

(6) Pre Confirmation Distributions

The Chapter 13 trustee is authorized to make distributions prior to the confirmation of the plan on obligations for leases of personal property, and on obligations secured by personal or real property. Such pre confirmation distributions shall be made in the

sequence and in the amount set forth in the debtor's plan. If the Trustee has insufficient funds on hand to make the distributions to all classes, the funds will be distributed as provided in the plan to the extent the funds are available. Claims within a particular class which cannot be paid the proposed distribution shall be paid a pro rata share of the funds available. On each such distribution, the Chapter 13 trustee will be entitled to an administrative fee equivalent to that authorized by 11 USC 1326(b). Upon confirmation of the plan, payments will be made as set forth in the plan.

**(m) Postconfirmation Sale of Property by Debtor**

If the debtor proposes to sell property pursuant to 11 USC 363, then, unless the property is fully exempt or is valued in an amount of seven thousand, five hundred (7500) dollars or less, the debtor shall promptly provide to the Chapter 13 trustee an amended statement of income and expenses as prescribed by the appropriate official form projecting any changes occasioned by the sale and a good faith estimate of closing costs or other similar document and any other documents requested by the Chapter 13 trustee relating to such sale.

**(n) Incurring Credit by Debtor During the Pendency of the Plan**

If the debtor proposes to purchase any property involving a credit transaction that may potentially affect the debtor's ability to satisfy the plan, the debtor, in addition to obtaining the Chapter 13 trustee's approval if practicable, shall transmit to the Chapter 13 trustee an amended statement of income and expense as prescribed by the appropriate official form projecting any changes caused by the purchase, and if the transaction involves real estate, a good faith estimate of closing costs or other similar document and any other documents requested by the Chapter 13 trustee.

**(o) Debtors Engaged in Business**

Debtors engaged in business shall comply with the applicable provisions of LBR 3016 - 1(e) and 28 USC 959(b), and serve a copy of the Monthly Financial Report on the trustee.

**(p) Income Directive**

- (1) The Chapter 13 trustee may, at any time, issue a Trustee's Income Directive or present an ex-parte order, based upon a proposed or confirmed plan requiring any entity from whom the debtor receives money to pay all or part of such income to the Chapter 13 trustee.
- (2) In any case in which a debtor desires to make plan payments directly to the trustee in lieu of an income directive, the debtor may do so only upon the entry of an order of the court authorizing such direct payments. Such an order will be entered only:

- (3)
  - (A) upon the filing of an objection to the income directive by the debtor prior to the entry thereof; and
  - (B) after ten (10) days notice and hearing to the trustee; and
  - (C) upon a showing of cause.

**(q) Motion to Dismiss or Convert Case**

- (1) A party in interest desiring that a case be dismissed or converted shall give twenty (20) days notice and hearing to the Master Mailing List.
- (2) The Chapter 13 trustee may move the Court for an order of dismissal or conversion on five (5) days notice to the debtor and debtor's attorney and any entity that has filed and served the Chapter 13 trustee with a request to receive such notice for failure to timely file schedules or other required documents or attend the meeting of creditors and on twenty (20) days notice for failure to timely make payments required by 11 USC 1326(a) or pursuant to a confirmed plan.
- (3) A debtor shall serve a copy of a request for voluntary dismissal on the trustee.

**r) Minimum Plan Payments**

A plan that proposes payments of less than fifty (50) dollars per month to be paid to the Chapter 13 trustee shall be supported by an affidavit or unsworn declaration under penalty of perjury explaining the necessity of such minimum payments.

**(s) Orders to be Served on Chapter 13 Trustee**

A conformed copy of all orders in a Chapter 13 case shall be served on the Chapter 13 trustee by the party obtaining such order. If the order directs the Chapter 13 trustee to act or refrain from acting, the order shall not be effective as to the Chapter 13 trustee until such service has been accomplished.

**(t) Domestic Support Obligation Certificate**

**Upon completion of all payments by the debtor under the plan, each debtor shall file a Domestic Support Obligation Certificate as prescribed by the appropriate local form.**

*Note: 11 USC 1328 requires that after completion of all payments under the plan, the debtor is required to file a certificate to the effect that all domestic support obligations required by a judicial or administrative order, or by statute, have been paid. Failure to file this certificate will prohibit the issuance of a discharge under 1328. Should the debtor fail to file*

*such a certificate it would be possible to close the case without the entry of a discharge under FRBP 4006. The Clerk's office could send out a notice of such an intent when the court receives the notice from the trustee that all plan payments have been made. The use of a local form would be helpful for all concerned. Technically, the statute does not require a "negative" report, however, without such a report the process would be most difficult to administer.*

## **Related Provisions**

FRBP 1006	Filing Fees
FRBP 1007	Schedules
FRBP 1017	Dismissal or Conversion of Case
FRBP 1019	Conversion
FRBP 2002	Notice and Hearing
FRBP 2016	Compensation of Attorneys
FRBP 3007	Objection to Claims
FRBP 3012	Valuation of Security
FRBP 3015	Filing of Plan
FRBP 6004	Sale of Estate Property
FRBP 9013	Motions
FRBP 9014	Contested Matters
LBR 2016 - 1	Application of Administrative Expenses
LBR 9011 - 1	Attorney Transactions With Debtors
LBR 3016 - 1	Chapter 11 Cases
LBR 4001 - 2	Cash Collateral
LBR 4003 - 2	Lien Avoidance
11 USC 348	Conversion
11 USC 349	Effect of Dismissal
11 USC 506	Determination of Secured Status
11 USC 522(f)	Avoidance of Liens
11 USC 1304	Debtor Engaged in Business
11 USC 1304	Postpetition Claims
11 USC 1307	Conversion or Dismissal
11 USC 1323	Modification Before Confirmation
11 USC 1325(c)	Income Directive
11 USC 1326	Payments
11 USC 1328	Discharge
11 USC 1329	Modification After Confirmation
28 USC 959	Duties of Managers of Estate Property

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