

Rule 2083 - 1

Chapter 13 - General

(b) Filing The Plan and Other Documents

The debtor shall file the following documents as prescribed by the appropriate local form, ~~along with four (4) copies, unless otherwise required by the Clerk of the Court:~~

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

Note: No copies of documents are required, therefore this language is no longer required.

(c) **Notice Mailing of Plan and Notice 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.

~~Unless otherwise required by the Clerk of Court:~~

- ~~(1) The Chapter 13 trustee shall mail a copy of the plan to each party in interest as required by FRBP 3015(d).~~
- ~~(2) If the debtor fails to file the plan with the petition or within fifteen (15) days thereafter, then the debtor shall mail to each party in interest a copy of the plan as required by FRBP 3015(d).~~
- ~~(3) The entity mailing the plan shall file as soon as practicable the certificate of mailing required by LBR 2002-1(b)(3).~~

Note: This rule change reflects more accurately and clearly the procedure in place. The present procedure is that the clerk sends a copy of the initial plan to all creditors with the 341 notice. In those cases where a plan is filed more than fifteen days after the petition is filed, the clerk retains the authority to direct the debtor to send out the copies, however, this direction has rarely if ever been given with the advent of the BNC.

(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.

Failure by the debtor to file tax returns in accordance with a confirmed plan may constitute a material default in the plan.

Note: In light of 11 USC 1325(a)(9) that requires that all applicable tax returns be filed as a condition to confirmation, the second sentence to this provision may no longer be required. Also see proposed sub-section (j).

(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 secured 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 a secured debt, ~~including the debtor's personal residence;~~ 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 secured 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 ~~A~~ arrearages are brought current, then the plan may be modified to allow for payments to be made directly to the creditor by the debtor.

(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) twenty-one (21) 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.

Note: The time was reduced from 21 days to 5 days, but did not seem to make it to the final version of the last modification.

(j) Confirmation

~~If no objection to confirmation is pending, a plan may be confirmed promptly upon expiration of the time set to object to confirmation without additional notice so long as the Chapter 13 trustee has verified by affidavit or unsworn statement under penalty of perjury that the plan is feasible and satisfies the requirements of 11 USC 1325:~~

-
- (A) 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. The statement shall state 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).

(c) 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 sub-sections (1) & (2) are satisfied, the debtor, debtor's attorney and trustee need not participate in the hearing unless specifically required by the court.

Note: The proposed change to the rule would require the debtor to file a motion asking that the plan be confirmed and a separate unsworn statement under penalty of perjury. Both the motion and the statement would need to in a prescribed format that would require the debtor to certify under penalty of perjury that certain of the nine mandatory requirements of 11 USC 1325(a) have been satisfied. Changes to 11 USC 1325(a) added three additional requirements, two of which, (8) and (9), require factual statements only able to be verified by the debtor. Seven (7) days before the hearing is suggested based on the fact that LBR 9073-1 (c)(1) provides for 7 days in submitting documents prior to hearings. The application of this rule would suggest that the trustee's statement would be filed no later than three (3) days prior to the hearing.

(I) ~~Distributions and Payments~~ To and Distributions by Chapter 13 Trustee

(1) Payments to Chapter 13 Trustee

~~The Chapter 13 trustee shall not pay funds from the estate, except pursuant to a proof of claim or an order of the court.~~ **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 this rule, unless otherwise ordered by the court.**

Note: This proposed change would require all payments of obligations for leases of personal property and secured debt to be made through the office of the trustee, except those for real property, unless where the debt is in arrears and therefore required to be paid through the plan pursuant to LBR 2083-1(f). This change would avoid the accounting concerns when payments would be made pre confirmation by an entity different from that making the payments post confirmation as contemplated by 11 USC 1326(a)(1)(B) & (C).

(6) Adequate Protection Payments Pre Confirmation Distributions

The Chapter 13 trustee may make adequate protection payments is authorized to make distributions prior to the confirmation of the plan ~~if the debtor files a request on the prescribed local form~~ 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 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 ~~payment~~ 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~~ out in the plan.

Note: This rule would grant the trustee authority to make certain types of pre-confirmation distributions, where so provided in the Chapter 13 Form Plan.

LBR 2083-1
JUNE 15, 2005