

## **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**

(1) The debtor shall file the following documents separately using the prescribed local forms:

- (A) Chapter 13 Plan (LF 2083)
- (B) Plan Payment Declaration (LF 2083A)
- (C) Plan Funding Analysis (LF 2083B)
- (D) Liquidation Analysis (LF 2083C)

(2) A Certificate of Debtor's Regarding Payments to and Disbursements by the Chapter 13 Trustee (LF 2083-1F) shall be filed as a separate document.

#### **(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 subsection (i) 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 § 506(d) of the Code. In the event of dismissal of the case prior to discharge, this voided lien will be reinstated pursuant to § 349(b)(1)(C) of the Code 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 § 522(f) of the Code 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**

- (1) If at the time of the filing a petition for relief, a delinquency exists on any payments for debt secured by real property, 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 (k) 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) Confirmation**

- (1) Upon resolution of all objections, the trustee shall file as soon as practicable an unsworn statement under penalty of perjury stating the plan is feasible and satisfies the requirements of § 1325(a)(1),(4) and (5) of the Code.
- (2) The court will prepare the confirmation order.

**(i) Modification of Plans**

(1) Modification Prior to Confirmation

Modifications made pursuant to § 1323 of the Code shall be on twenty-one (21) 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-one (21) 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-one (21) days' notice and hearing to the Chapter 13 trustee and any adversely affected party, and if the modification provides for payment of a post-petition 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) The debtor shall file an amended Plan Funding Analysis (LF 2083B) upon the making or proposing of a modification pursuant to subparagraph (i) (1) or (2) of this rule.

**(j) 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 § 1326(a)(1) of the Code, 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

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) Post-petition Claims

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

(5) Disposition of Funds on Conversion or Dismissal

On the conversion or dismissal of a case, the Chapter 13 trustee shall, as soon as practicable, disburse any remaining funds in accordance with § 1326 of the Code. If a motion is filed pursuant to § 348(f)(2) of the Code 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.

(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. Upon confirmation of the plan, payments will be made as set forth in the plan.

**(k) Post-confirmation Sale of Property by Debtor**

If the debtor proposes to sell property pursuant to § 363 of the Code, then, unless the property is fully exempt or is valued in an amount of \$7,500 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.

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

**(1) Notice**

If the debtor proposes to purchase any property involving a credit transaction that may affect the debtor's ability to satisfy the plan, the debtor, prior to seeking any relief from the court, shall file and serve a Notice of Intent to Incur Post Petition Debt (LF 2083-11), along with an amended statement of income and expenses 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 documents.

**(2) Consideration by the Court**

(A) The court will decide requests for approval of proposed postpetition incurrence of credit if an objection to the Notice of Intent to Incur Post Petition Debt is filed.

(B) In all other instances, the court may, in its discretion, either resolve the request on the merits or deny the request without reaching the merits. Requests to approve the postpetition incurrence of credit are not, and should not be used as, a substitute for modifying the plan when otherwise required by the applicable statutory provisions and rules. Requests for mere “comfort orders” relating to the postpetition incurrence of credit are disfavored and may be denied as unnecessary.

**(m) Debtors Engaged in Business**

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

**(n) 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:
- (A) After filing of a motion for an order authorizing the debtor to make the plan payments directly to the trustee; and
  - (B) After seven (7) days' notice and hearing to the trustee; and
  - (C) Upon a showing of cause.

**(o) Dismissal and Conversion**

- (1) A debtor desiring to convert a chapter 13 case to a chapter 7 case pursuant to 11 U.S.C. § 1307(a) must file a notice of conversion using the prescribed local form (LF 2083-1o) or text-only docket entry. No motion is required or will be entertained.
- (2) A party in interest or the United States trustee moving for dismissal or conversion shall provide no less than 21 days' notice to all parties on the Master Mailing List.
- (3) Notwithstanding section (2), the United States trustee may move the Court for dismissal for failure to timely file schedules or other required documents or attend the meeting of creditors on seven days' notice to the debtor, debtor's attorney, and any entity that has filed and served the United States trustee, or appointee, with a request to receive such notice.

**(p) Minimum Plan Payments**

A plan that proposes payments of less than \$50 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.

**(q) 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 form (Official Form 2830).

## **Related Provisions**

FRBP 1006	Filing Fees
FRBP 1007	Lists, Schedules, Statements and Other Documents; Time Limits
FRBP 1017	Dismissal or Conversion of Case; Suspension
FRBP 1019	Conversion of a Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to a Chapter 7 Liquidation Case
FRBP 2002	Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee
FRBP 2016	Compensation for Services Rendered and Reimbursement of Expenses
FRBP 3007	Objection to Claims
FRBP 3012	Valuation of Security
FRBP 3015	Filing, Objection to Confirmation, and Modification of a Plan in a Chapter 12 Family Farmer's Debt Adjustment or a Chapter 13 Individual's Debt Adjustment Case
FRBP 6004	Use, Sale, or Lease of Estate Property
FRBP 9013	Motions; Form and Service
FRBP 9014	Contested Matters
LBR 2016-1	Compensation of Professionals
LBR 3016-1	Chapter 11 Pre-Confirmation Requirements
LBR 4001-2	Cash Collateral
LBR 4003-2	Lien Avoidance
LBR 9011-1	Attorney Duties
11 USC 348	Effect of 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 1305	Filing and allowance of 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 1329	Modification of plan after confirmation
28 USC 959	Trustees and receivers suable; Management; State Laws