

Notes for Western District of Louisiana - Local Form Plan ____/2021

These Notes are presented in a summary fashion and do not fully restate or explain every aspect of the Local Form Plan. These Notes are not controlling authority and should always be read along with the Local Form Plan.

Fed. R. Bankr. P. 3015(c) requires the use of an Official Form Plan in all chapter 13 cases except to the extent that Rule 3015(c) permits the use of a Local Form. Rule 3015.1 sets forth the requirements for a Local Form. The Western District of Louisiana has adopted a Local Form for Chapter 13 cases in accordance with Rule 3015.1. The Local Form must be used by debtors for all original plans, plan amendments and plan modifications. No other form is authorized for use in this district, and, unless otherwise ordered or allowed by the Court, debtors are prohibited from altering the Local Form. As the form explains, spaces for responses may be expanded or collapsed as appropriate, and sections that are inapplicable do not need to be reproduced. Portions of the form provide multiple options for provisions of a debtor's plan, but some of those options may not be appropriate in a given debtor's situation or may not be allowed in the court presiding over the case. Debtors are advised to refer to applicable local rulings. Nothing in the Local Form requires confirmation of a plan containing provisions inconsistent with applicable law. Moreover, the Local Form does not provide the order of distribution of payments under the plan, leaving that to local rules, orders, custom, and/or practice.

Part 1. This part sets out warnings to both debtors and creditors. For creditors, if the plan includes one or more of the provisions listed in this part, the appropriate boxes must be checked. For example, if Part 9 of the plan proposes a provision not included in, or contrary to, the Local Form, that nonstandard provision will be ineffective if the appropriate check box in Part 1 is not selected.

Part 2. This part sets forth the applicable commitment period (§ 2.1), the regular periodic plan payments (§ 2.2), and sources of funding for the plan (§ 2.3). Section 2.4 provides for timely filing and turnover of income tax returns and allows the debtor to pledge income tax refunds as appropriate. Debtors should complete the tax pledge box in accordance with court rulings applicable to their particular division. Section 2.5 allows debtors to propose payments in addition to those in part 2.2, including, but not limited to, proceeds of causes of action, bonuses, etc.

Part 3. This part provides for the treatment of secured claims.

Section 3.1 provides for the treatment of claims secured by real estate where the ongoing contractual payments will be maintained. It also provides for curing of any arrearage under Code §§ 1322(b)(3) and (b)(5). A check box is provided to indicate if the property is the principal residence, to identify who will make disbursements, and if arrearages are pre or post-petition. A contrary arrearage or current installment payment amount listed on the creditor's allowed proof of claim, unless contested by objection or motion, will control over the amount given in the plan.

Section 3.1 also provides certain terms which are applicable specifically to § 3.1 – *Effect of Proof of claim* (allowed claims control), *Effect of granting relief from the automatic stay* (payments cease upon lift of stay and claim is no longer treated by the plan), and *Notice of payment change* (if ongoing payments are disbursed by trustee, the trustee may, but is not required to, change the amount of payment pursuant to notices of payment changes filed by lienholder, subject to certain conditions).

In Section 3.2, the plan may propose to determine under Code § 506(a) the value of a secured claim. For example, the plan could seek to reduce the secured portion of a creditor's claim to the value of the collateral securing it. For the secured claim of a non-governmental creditor, that determination would be binding upon confirmation of the plan, with the exception that if a proof of claim is filed with a lower secured value than what is stated in the plan, the trustee will pay whichever amount is less.

For the secured claim of a governmental unit, however, a contrary valuation listed on the creditor's proof of claim, unless contested by objection or motion, would control over the valuation given in the plan. See Bankruptcy Rule 3012. Bankruptcy Rule 3002 contemplates that a debtor, the trustee, or another entity may file a proof of claim if the creditor does not do so in a timely manner. See Bankruptcy Rules 3004 and 3005. Section 3.2 will not be effective unless the appropriate check box in Part 1 is selected.

Section 3.2 also contains certain terms which are applicable to all secured claims in § 3.2 – *Effect of granting relief from the automatic stay* (payments cease upon lift of stay and claim is no longer treated by the plan), *Treatment of allowed claim in excess of amount of secured claim* (allows for unsecured portion of claim to be treated under Part 5 where applicable), and *Lien retention* per 11 U.S.C. §1325(a)(5)(B)(i).

Section 3.3 deals with secured claims that, under the so-called “hanging paragraph” of § 1325(a)(5), may not be bifurcated into secured and unsecured portions under Code § 506(a), but it allows for the proposal of an interest rate other than the contract rate to be applied to payments on such a claim. Should a proof of claim be filed with a lesser amount than provided for in the plan, the trustee will pay the lesser amount.

Section 3.3 contains certain terms applicable to all secured claims in § 3.3 – *Effect of granting relief from the automatic stay* (payments to creditor ceases upon lift of stay and claim is no longer treated by plan), and *Lien Retention* per 11 U.S.C. §1325(a)(5)(B)(i).

In Section 3.4, the plan may propose to avoid certain judicial liens or security interests encumbering exempt property in accordance with Code § 522(f). This section includes space for the calculation of the amount of the judicial lien or security interest that is to be avoided. Section 3.4 will not be effective unless the appropriate check box in Part 1 is selected. Further, the lien or security interest will be avoided only pursuant to a supplemental motion filed by the debtor(s) and confirmation of the plan alone will have no effect. To the extent allowed, the lien or security interest that is avoided will be treated in Part 5 as an unsecured claim.

Section 3.5 provides for elections to surrender collateral and requests for termination of the stay under § 362(a) and § 1301 with respect to the collateral surrendered. Termination will be effective upon confirmation of the plan. Any allowed unsecured claim resulting from the surrender will be treated in Part 5.

Part 4. This part provides for the treatment of trustee's fees and claims entitled to priority status. Section 4.1 provides that trustee's fees and all allowed priority claims, including domestic support obligations other than those treated in §4.4 will be paid in full without post-petition interest. In § 4.2, the plan provides that trustee fees should be calculated at 10% of plan payments. Although the estimate may indicate whether the plan will be feasible, it does not affect the trustee's entitlement to fees as determined by statute.

In § 4.3, the form provides that debtor's counsel either elect the "no-look" attorney fee as authorized by the Western District of Louisiana's Standing Order, or elect to apply for attorney fees by way of Application for Compensation in accordance with 11 U.S.C. §330(a) and all applicable Bankruptcy Rules and Local Bankruptcy Rules. If a formal Application for Compensation is elected, then the hearing should be noticed for the same day as the hearing on plan confirmation.

Section 4.3 requires debtor's counsel to set out (i) Fees for services through original confirmation, and (ii) Fees for services after original confirmation. The fees for services after original confirmation will be a compilation of all fees awarded, whether awarded in conjunction with an amended plan or in conjunction with some other pleading. When filing an amended plan after the original confirmation the attorney should set forth *all* fees that have been awarded up to that point along with any new fees being requested.

In § 4.4, the plan provides for priority claims other than attorney's fees and those treated in § 4.5. Domestic Support Obligation arrearages belong here unless they fit into § 4.5. Priority tax claims also belong in this section. The priority claims in § 4.4 will be disbursed by the trustee. Ongoing Domestic Support Obligations falling under § 4.4 shall be disbursed by debtor.

In § 4.5 the plan may propose to pay less than the full amount of a domestic support obligation that has been assigned to, or is owed to, a governmental unit, but not less than the amount that claim would have received in a Chapter 7 liquidation. See §§ 1322(a)(4) and 1325(a)(4) of the Code. This plan provision requires that the plan payments be for a term of 60 months and that all of the debtor's projected disposable income be applied to make payments under the plan. See § 1322(a)(4). Check the box provided to declare who makes the disbursements on claim(s) in §4.5.

Section 4.6 supplements §§ 4.4 and 4.5 by providing that on claims disbursed by the trustee, to the extent a proof of claim is filed for an amount less than what is provided for in these sections, the trustee shall pay the lesser amount contained in the proof of claim.

Part 5. This part provides for the treatment of unsecured claims that are not entitled to priority status. In § 5.1, the plan provides that allowed nonpriority unsecured claims that are not subject to separate classification will be paid on a pro rata basis. Unscheduled nonpriority unsecured debts that have a timely filed proof of claim will be allowed unless they are objected to. All nonpriority debts on Schedule E/F, and unsecured and undersecured debts on Schedule D are also incorporated into this class of claims.

Section 5.1 provides an anticipated, approximate payout to unsecured creditors based upon the unsecured and undersecured claims that are scheduled. The payout is represented in both a monetary amount and as a percentage.

Section 5.1 also requires a stated liquidation amount payable to nonpriority unsecured creditors if the estate were liquidated under Chapter 7. Regardless of what is stated in the above paragraph of 5.1 regarding the anticipated, approximate payout to unsecured creditors, this liquidation amount is a required minimum payout on allowed nonpriority unsecured claims.

In § 5.2, the plan may provide for the separate classification of nonpriority unsecured claims (such as co-debtor claims) as permitted under Code § 1322(b)(1).

Part 6. This part provides for executory contracts, unexpired leases, and unmodified secured debts (other than real estate claims treated in §3.1). An executory contract or unexpired lease is rejected unless it is listed in this part. If the plan proposes neither to assume nor reject an executory contract or unexpired lease, that treatment would have to be set forth as a nonstandard provision in Part 9. For assumed items or unmodified secured debts the current installment payments will be disbursed either by the trustee or directly by the debtor (or a named third party), as set forth in the plan, subject to any contrary court order or rule. All arrearage payments will be disbursed by the trustee. The number of installment payments remaining due *must* be stated.

Part 7. This part defines that property of the estate will revert in the debtor(s) upon entry of discharge pursuant to 11 U.S.C. § 1327(b).

Part 8. This part is titled “Other Plan Provisions.” Adequate protection payments are described under §8.1. In addition to the adequate protection payments provided herein, also refer to Appendix G of the Local Bankruptcy Rules regarding disbursement of adequate protection payments.

Section 8.2 provides that debtors are to make full and timely disclosures regarding changed circumstances. A motion is required for disposition of any applicable funds.

Section 8.3 simply provides that to the extent there is any conflict between the plan and the confirmation order, the confirmation order controls.

Part 9. This part gives the debtor or debtors the opportunity to propose provisions that are not otherwise in, or that deviate from, the Local Form Plan. All such nonstandard provisions must

be set forth in this part and nowhere else in the plan. This part will not be effective unless the appropriate check box in Part 1 is selected. See Bankruptcy Rule 3015(c).

Part 10. The plan must be signed by the attorney for the debtor or debtors. If the debtor or debtors are not represented by an attorney, they must sign the plan, but the signature of represented debtors is optional. In addition to the certifications set forth in Rule 9011(b), the signature constitutes a certification that the wording and order of the Local Form Plan have not been altered, other than by including any nonstandard provision in Part 9.