

**CHAPTER 13 QUARTERLY NEWSLETTER  
SEPTEMBER 2024****1. AKRON COURT REQUIRES THE TRUSTEE TO ESCROW FUNDS FOR ALL NON-FILED SECURED CREDITORS LISTED IN THE PLAN**

As many counsel are aware, the Akron Court requires the Trustee escrow funds for all secured creditors listed in Section 3 of the Chapter 13 plan that have not filed claims.

If the secured creditor does not file a claim by the completion of the Chapter 13 plan, the Trustee will then motion the Court to turn those funds over to the Court's unclaimed funds.

This process may help debtor(s) motion the Court for car titles and/or the removal of liens when the underlying secured creditor has failed to file a claim.

To date, the Court has not issued an administrative order regarding the escrowing of funds.

The Trustee takes no position with respect to the following actions which some counsel have taken in response to the Court requiring the Trustee to escrow funds for non-filing secured creditors.

Amending the plan prior to confirmation to remove the secured creditor who did not file a claim. Proper notice to all creditors is required.

Modifying the plan after confirmation to remove the secured creditor who did not file a claim. Proper notice to all creditors is required.

Filing a pleading with the Court directing the Trustee not to escrow funds for non-filed creditors even if said creditors are listed in the plan.

File a claim on behalf of the secured creditor (see below). If the claim to be filed is late, then counsel will need to file a motion with the Court to have the Trustee pay the claim.

**2. WHEN CREDITORS DO NOT FILE CLAIMS**

In the post COVID-19 era, it seems that some creditors are not filing claims in a timely manner or not filing claims at all. The failure to file a claim late or not file a claim at all can hinder the main purpose of the plan as often times these claims represent automobiles and homes that the debtor is seeking to retain by making payments on these assets through the Chapter 13 plan.

Bankruptcy Rule 3004 allows the debtor(s) (and their counsel) to file claims on behalf of the creditor if the creditor has not filed a proof of claim by the claims bar date. Debtor(s) (and their counsel) have 30 days to file a claim, from the claims bar date on behalf of the creditor pursuant to Rule 3004.

Given that the late filed and non-filed claims appear to be an ongoing issue, the Trustee recommends that counsel follow up on their cases to make sure that creditors properly file claims in the case, especially when the claim is for an automobile or home the debtor is seeking to maintain. Debtor(s) (and their counsel) should file the claim within 30 days of the claims bar date if the creditor has not filed a claim. If the creditor has filed the claim late, counsel should file a motion with the Court to have the Trustee pay the claim.

Given recent Court decisions, the Trustee will pay on claims filed by debtor(s) and their counsel.

### **3. TRUSTEE'S MOTION TO ESCROW FUNDS**

When the bar dates (governmental and non-governmental claims) has expired, the Trustee will motion the Court to escrow funds for the non-filing secured creditor.

A copy of the Trustee's motion to escrow funds is attached to this newsletter. In response to the motion, counsel should take whatever action counsel deems appropriate.

### **4. SERVICE ON SUMMIT COUNTY FISCAL OFFICE**

Please note that some counsel have not been using the correct address to serve the Summit County Fiscal Office. When serving the Summit County Fiscal Office, please note that the following address should be used:

Summit County Fiscal Office  
175 S. Main Street Room 330  
Akron, Ohio 44308

### **5. BANK STATEMENTS REQUIRED FOR 341 MEETING OF CREDITORS**

Please note that prior to the 341 Meeting of Creditors, the Chapter 13 office needs a copy of all of the debtor(s) bank statements for 90 days prior to filing.

In some cases, the debtor(s) has not provided that information prior to the 341 meeting which requires the debtor(s) to appear at a subsequent 341 meeting.

The Trustee uses the bank statements to verify information on the debtor(s) plan and schedules as well as the testimony given at the 341 Meeting of Creditors. When the Trustee needs to review the bank statement subsequent to the 341 meeting, the debtor(s) and counsel will need to appear at a second 341 meeting.

To avoid having counsel or their client attend a second 341 meeting, the Trustee asks that all counsel emphasize to their clients that bank statements from all accounts for 90 days prior to filing must be submitted to the Trustee at least 5 days prior to the 341 meeting.

**6. AGREED ENTRIES GIVING CREDITORS 90 DAYS TO FILE A POST-PETITION SUPPLEMENTAL CLAIM**

Agreed entries which state that the creditor has 90 days from the date that the Court approves an order allowing the creditor to file a supplemental post-petition claim have had some issues.

It seems that creditors need additional time rather than the standard 90 days. If the proof of claim is filed after 90 days and the order only extended the time period for 90 days, the Trustee lacks authority to process payment on that claim.

While it is best practice to include a time limit for the creditor, it appears that the 90 day time limit being used is too short for the creditor to act upon the order and file the supplemental post-petition claim. The Trustee respectfully submits that both creditor and debtor(s) counsel should consider allowing the creditor 180 days from the date that the Court approves the order allowing the creditor to file a supplemental post-petition claim.

**7. CHAPTER 13 PLAN INSTRUCTIONS ON CASES FILED IN AKRON**

Some counsel have recently added new staff to their office and there have been questions on how certain items should be addressed in the Chapter 13 plan.

Please find attached to this newsletter an 8-point summary of items to be included in the Chapter 13 plan and how said items should be disclosed in the plan.

Additionally, please find a detailed list of instructions that the Trustee hopes that counsel will use as a desk reference in filing future plans.

**8. TRUSTEE'S MOTION TO DISMISS ADVISING DEBTOR(S) TO SEE COUNSEL TO MODIFY THEIR PLAN**

In the past several weeks, counsel have begun seeing a standard motion to dismiss filed by the Trustee when the debtor(s) has not made payments causing feasibility issues in the case.

When it appears that the case can be saved if the debtor(s) resumes payments and the plan is modified to restore feasibility, the Trustee asks counsel to note that there will be language included in these motions to dismiss advising their clients to seek the advice of their counsel to modify the plan.

For reference, please find a copy of the new motion to dismiss being filed which advises debtor(s) to consult their counsel about modifying the plan.

## **9. PERSONAL FINANCIAL MANAGEMENT COURSE**

The Chapter 13 office will continue to sponsor an on-line Personal Financial Management Course through the Trustee Education Network. Information regarding the online program is available on the Chapter 13 website at [www.chapter13info.com](http://www.chapter13info.com). There is no charge to take the course online for Chapter 13 debtor(s) who have filed in Akron, Ohio.

Please note in a joint case, each debtor must take the on-line course separately and use two different e-mails. The software program generates the required certificates of completion partly based on e-mails to keep track of who has taken the required course.

Please find attached to this newsletter, a flyer for the on-line course that counsel may share with their clients in Chapter 13 cases.

## **10. CHANGE IN INTEREST RATE FOR CHAPTER 13 PLANS**

On September 18, 2024, the Federal Reserve lowered interest rates. The interest rate for Chapter 13 plans is now 10% (ten percent), representing prime plus two percent.

## **SAVE THE DATE**

Please note that the Bench Bar for 2024 is scheduled to be held on Friday October 25 2024 at the Kent State Convention Center in North Canton, Ohio. Registration information for said seminar can be found at: <https://fba-ndohio.wildapricot.org/event-5768956>

## Trustee's Motion to Escrow Funds

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO**

IN RE:	)	CHAPTER 13
	)	CASE NO. XX-XXXXX
DEBTOR	)	
JOINT DEBTOR	)	
	)	
	)	DEBTOR(S)
	)	ALAN M. KOSCHIK
	)	BANKRUPTCY JUDGE
	)	
	)	TRUSTEE'S MOTION

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**MOTION TO AUTHORIZE TRUSTEE TO HOLD FUNDS IN ESCROW FOR  
SECURED CREDITOR(S) WHO DID NOT FILE A CLAIM**

Now comes Keith L. Rucinski, the Chapter 13 Trustee, and hereby states the following:

1. This Chapter 13 case was filed on or about .
2. The Debtor(s) Chapter 13 plan has disclosed secured creditor(s) in section 3 of the plan.
3. The bar date for non-governmental creditor(s) to file a claim was .
4. The bar date for governmental creditors(s) to file a claim is/was .
5. The following secured creditor(s) did not file a claim by the respective claims bar date:
  
6. The payment of these secured creditor(s) is an important part of the Debtor(s) Chapter 13 plan.
7. Neither the Debtor(s) nor the Trustee filed a claim for the above secured creditor(s) pursuant to Bankruptcy Procedure Rule 3004.
8. It is the professional opinion of the Trustee that the Trustee cannot file a proof of claim on behalf of the creditor(s) based on the Debtor(s) plan. The Trustee does not represent the Debtor(s) and cannot independently verify the information or valuations for the secured creditor(s) listed in section 3 of the Debtor(s) plan.
9. It is the Debtor(s) responsibility to file an accurate plan and schedules.
10. The Trustee is seeking to escrow funds for the secured creditor(s) based on the amounts and/or valuations for the secured creditor(s) listed in section 3 of the Debtor(s) plan.
11. At the end of the case, the Trustee would turn these funds over to the US

**CHAPTER 13**

Keith L Rucinski

Trustee

One Cascade Plaza

Suite 2020

Akron, Oh 44308

- Bankruptcy Court's unclaimed funds.
12. Once the funds are turned over to unclaimed funds, the Debtor(s) may motion the Court to release liens held by the secured creditor(s) for the funds turned over to the unclaimed funds if said funds represent the entire claim of the secured creditor(s).
  13. Lastly, the Trustee moves the Court for any other relief the Court deems necessary and proper.

### NOTICE

Pursuant to 11 USC § 102, unless a party in interest requests a hearing regarding this motion, the Court may grant this motion without further hearing or notice. Any party wishing to be heard with regard to this motion must file a response to this motion within 21 days from the date listed below.

Any party wishing to be heard must file a response at:

US Bankruptcy Court  
455 Federal Building  
2 South Main Street  
Akron, OH 44308

The following parties must be served with a copy of the request for hearing:

Debtor Attorney  
Address  
City, State, ZIP

Secured Creditor  
Address  
City, State, ZIP

Keith L. Rucinski, Chapter 13 Trustee  
One Cascade Plaza  
Suite 2020  
Akron, OH 44308

In the absence of any party in interest requesting to be heard on this motion, the Court may grant this motion without further hearing or notice.

#### **CHAPTER 13**

Keith L Rucinski

Trustee

One Cascade Plaza

Suite 2020

Akron, Oh 44308

Respectfully submitted,

/s/ Keith L. Rucinski

Keith L. Rucinski, Chapter 13 Trustee

Ohio Reg. No. 0063137

Joseph A. Ferrise, Staff Attorney

Ohio Reg. No. 0084477

One Cascade Plaza, Suite 2020

Akron, OH 44308

Tel 330.762.6335

Fax 330.762.7072

[krucinski@ch13akron.com](mailto:krucinski@ch13akron.com)

[jferrise@ch13akron.com](mailto:jferrise@ch13akron.com)

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Keith L Rucinski

Trustee

One Cascade Plaza

Suite 2020

Akron, Oh 44308



CERTIFICATE OF SERVICE

I hereby certify that on \_\_\_\_\_, a copy of the foregoing was sent via Regular Mail to:

Debtor  
Joint Debtor  
Address  
City, State, ZIP

Secured Creditor(s)  
Address  
City, State, ZIP  
(via the address listed in the creditor matrix filed by the Debtor)

via ECF:

Debtor Attorney, Esquire at [email address](#)  
Amy Good, Esquire-Office of the US Trustee at [Amy.L.Good@usdoj.gov](mailto:Amy.L.Good@usdoj.gov)

/s/ Monica Andrick  
Office of the Chapter 13 Trustee

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Keith L Rucinski

Trustee

One Cascade Plaza

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Akron, Oh 44308

Chapter 13 Plan Instructions on Cases Filed in Akron

# CHECKLIST FOR FORM PLAN

## Section 1

- A. HAVE ALL APPROPRIATE BOXES BEEN CHECKED IN SECTION 1.1 TO DISCLOSE WHETHER OR NOT THE PLAN INCLUDES VALUATIONS, LIEN STRIPPING, OR NON-STANDARD PROVISIONS?

## Section 2

- B. DO THE PLAN PAYMENTS LISTED IN SECTION 2.1 OF THE PLAN MATCH PETITION SCHEDULE J?
  
- C. DOES THE NUMBER OF MONTHS IN 2.1 EQUAL THE APPLICABLE COMMITMENT PERIOD (36 or 60)? IF YES, THE 3<sup>RD</sup> BOX IN 5.1 SHOULD BE CHECKED. IF NO, THE 2<sup>ND</sup> BOX IN 5.1 SHOULD BE CHECKED AND A PERCENTAGE ENTERED FOR THE UNSECURED CREDITORS TO RECEIVE.

## Section 3

- D. HAVE BOXES IN SECTION 3.1, 3.2 AND 3.3 BEEN CHECKED TO STATE IF THE TRUSTEE IS PAYING THE CREDITOR OR IF THE DEBTOR IS PAYING CREDITOR OUTSIDE THE PLAN?
  
- E. ARE THE INTEREST RATES USED IN THE PLAN IN SECTIONS 3.1, 3.2 AND 3.3 IN COMPLIANCE WITH ADMINISTRATIVE ORDERS 17-2 AND 18-5?
  
- F. DOES THE PLAN PROVIDE FOR PAYMENT OF ALL SECURED CREDITORS LISTED ON SCHEDULE D IN PLAN PROVISIONS 3.1, 3.2 OR 3.3?
  
- G. IF VALUATIONS OR LIEN STRIPPING ARE BEING DONE ON A CLAIM HELD BY AN FDIC LENDER IN SECTION 3.2 OR 3.4, HAS THE PLAN BEEN SERVED ON AN OFFICER OR DIRECTOR OF THE FDIC LENDER BY CERTIFIED MAIL AS REQUIRED UNDER BANKRUPTCY PROCEDURE RULE 7004?
  
- H. IS ALL PROPERTY THAT IS BEING SURRENDERED LISTED IN SECTION 3.5?

## Section 5

- I. IF THERE IS EQUITY, IS THE DOLLAR AMOUNT ENTERED IN SECTION 5.1?

## Section 6

- J. DOES THE PLAN PROVIDE IN SECTION 6.1 IF A LEASE HAS BEEN ACCEPTED AND IS THE LEASE DISCLOSED ON PETITION SCHEDULE G? (ALL ON-GOING LEASE MONTHLY PAYMENTS ARE TO BE MADE DIRECTLY BY THE DEBTOR OUTSIDE THE PLAN.)

## Section 8

- K. ANY SPECIAL PROVISIONS SHOULD BE NOTATED

## Misc

- L. DOES THE EXHIBIT ATTACHED TO THE PLAN REFLECT ADEQUATE FUNDING SO THAT THE PLAN IS FEASIBLE?

## **CHAPTER 13 PLAN INFORMATION**

### **General Information**

In the upper right-hand corner of the plan is a box to be checked if the plan is an amended plan. There is also space provided to state what sections are being amended.

It is important to remember that an amended plan voids all prior plans. The most recently filed plan on the Court's docket will control. Some counsel have attempted to make corrections to their plan by filing an amended plan for the corrections, but then deleting or omitting other information from the original plan.

For example, counsel may be amending the plan for a change in interest rate but then have removed the treatment of another secured creditor. There is no such thing as a supplemental plan. When a plan is amended, the prior plans are void; and therefore, counsel need to restate the plan in its entirety.

Some counsel have advised that there may be issues with their software and that is an issue for counsel to explore with their software providers. There should be a way for counsel to save all plans in a case so that when it becomes necessary to make a change, counsel does not have to start over again in drafting the plan.

Pursuant to Akron Administrative Order No. 18-5, counsel are responsible for amending their plan if there is a change in the interest rate between the time of filing and the confirmation date.

Prior to confirmation, counsel are also responsible for amending the plan should counsel enter an agreed order with a creditor or have an order objecting to a claim sustained by the Court. Note: some counsel have added language in orders that the order amends the plan. This language does not relieve counsel of the responsibility to amend their plan so that at the time the plan is confirmed the plan is an accurate account of how parties are to be treated.

### **Part 1: Notices**

Section 1 of the plan includes 3 boxes to state whether an item is included or not included. The 3 items are valuations, avoiding judicial liens and non-standard provisions that counsel believes should be included in the chapter 13 plan.

These boxes inform parties in interest that their claims may be affected by the plan in sections 3.2 (valuations) 3.4 (lien avoidance), and 8 (non-standard provisions).

It is important to note that if counsel are including anything in the above sections in the plan that it is necessary to check the appropriate box(es) in Section 1. If counsel includes language in those sections, it will not be binding on the creditor unless the appropriate box is checked in Section 1.

## **Part 2: Plan Payments and Length of Plan**

**Section 2.1** of the plan provides an area for the plan to state the amount of the regular payments and the number of months for each payment.

Many counsel are arbitrarily putting 60 months in these boxes even if the Debtor is a below median Debtor and may be able to finish the plan in less than 60 months.

It is important to remember that if counsel is asserting that the plan is a 60-month plan (even if it is a below median Debtor) that it will be given the interpretation that the plan has to be 60 months. In stating 60 months in this section, counsel are putting parties in interest on notice for the length of the plan and the approximate dollar amount to be paid into the plan.

The applicable commitment period is temporal and is determined by the means test calculation. See Baud v. Carol, 634 F.3d 327 (6<sup>th</sup> Cir.)(2011).

The only 2 numbers that should be provided in this area are 36 or 60 months.

If the debtor is a below median debtor, the paragraph should only provide payments for 36 months. Please note that there is a footnote under this line item that states: *if fewer than 60 months of payments are specified, additional monthly payments will be made to the extent necessary to make the payments to creditors specified in this plan.* This means that below median Debtors can of course extend the plan to 60 months if necessary. However, if a below median Debtor, for example, can complete their plan in 47 months it would not be necessary to lock them into a 60 month plan right from the start.

For above median Debtors, the applicable commitment period would be 60 months and 60 months' worth of payments should be specified in Section 2.1.

This section corresponds with marking the last box in section 5.1 allowing the plan to be a base plan. See discussion on section 5 below.

A base plan allows the Chapter 13 Trustee to adjust the return to non-priority unsecured creditors after payment of all administrative, conduit, secured and priority claims. This helps counsel in reducing post confirmation modifications should secured and priority claims be filed in amounts greater than projected. For a base plan, the Trustee must know the number of months the plan is to run. If for instance, in a below median case, the plan takes 40 months to pay all administrative, secured and priority claims, then unsecured would receive zero as the Debtor would be past their 36 applicable commitment period. Unless counsel stated in section 2.1 the plan will last 60 months, in which case it is assumed the Debtors voluntarily are extending their plan past their required applicable commitment period.

Note: In Cleveland, the practice is for the number of months in 2.1 to be an estimate and not be binding. However, Cleveland also requires that counsel state a dollar amount or percentage to

unsecured in section 5.1 (the first two boxes), so it is clear how much unsecured creditors are to receive.

**Section 2.2** of the plan is where the Debtor(s) states how the plan payments will be made. Please note that Administrative Order 17-3 requires that all employed Debtor(s) make their chapter 13 payment by wage deduction.

The only parties allowed to make their payment other than by wage deduction are those that are retired or have self-employed income. All other exceptions must seek permission of the Court.

**Section 2.3** of the plan the Debtor(s) should check the third box which states that the Debtor(s) will treat income tax returns as follows. The correct language to use is simply

“The Debtor(s) will treat income tax refunds as follows: **Pursuant to the Order Confirming Plan**”.

The Order Confirming Plan in Akron provides that Debtor(s) may retain the first \$1,500 in annual tax refunds in addition to any child or earned income credits.

**Section 2.4** stipulates additional payments. Generally, this section should have the “None” box checked as it would be impossible for the Debtor(s) to know if they were going to get additional payments through the length of the plan.

One possible exception the Debtor(s) could put in this section is the following:

*The Debtor(s) acknowledges that the chapter 13 plan is not feasible with the above funding. However, the Debtor(s) proposes to sell real property located at 123 Main Street with the net proceeds paid into the plan. The Debtor(s) agrees that this property must be sold within 60 months (or a lesser time frame) and failure of the Debtor(s) to sell said property for any reason will result in dismissal of this case. If the Debtor(s) has not sold the property within 60 months from the date their first plan payment is due, the Trustee is authorized to file an order of dismissal.*

**Section 2.5** asks for the total of the estimated payments. Some counsel have completed this section and others have left it blank. It is worth noting that it is useful to complete this section in order to complete the feasibility worksheet at the end of the plan so that counsel will know whether or not their plan is feasible.

**Note:** Counsel may have to manually calculate this section as one of the variables is the number of months stated in section 2.1. So, if in a below median Debtor(s) case, 36 months shows the plan not feasible, counsel will need to manually add additional monthly payments until the worksheet shows that the plan is feasible.

### **Part 3: Treatment of Secured Claims**

**Section 3.1** is for the treatment of secured creditor(s) whose total claim generally will not be paid in full during the Chapter 13 plan. If the Debtor(s) is not current in payments to the creditor, the arrearage must be paid through the plan. If the creditor is the lender on the Debtor(s) residence, the plan must provide for both a curing of the arrearage and for conduit mortgage payments through the plan. If the Debtor(s) is current in their installment payments, they can opt to continue to make the monthly payment to the creditor outside the plan.

It is imperative that counsel check the box under the “current installment payment” column to indicate if the Debtor or Trustee will be processing the payment to the creditor.

Items to be placed in this section include:

1. The Debtor(s) mortgage lender for any arrearages and current installment payment. Please note that it is imperative that counsel state the address of the property which secured the lenders claim under the collateral heading. This allows the Trustee to know which property the Debtor(s) is seeking to bring payments current. Additionally, counsel may want to consider inserting zero for the interest rate on the arrearage. Generally, there is no interest on an arrearage portion of the claim because the interest is already included in the arrearage amount.
2. The Debtor(s) homeowner’s association. Many Debtor(s) are seeking to bring current their homeowners association dues but to also keep current in said payments during the course of the Chapter 13 plan. As with mortgages, it is necessary to state the address for which the homeowner’s association dues are being paid.
3. If the Debtor(s) is seeking to pay property taxes through the Chapter 13 plan, both to bring delinquent property taxes current to the county and to make ongoing property tax payments to the county through the Chapter 13 plan, it is necessary for the Debtor(s) to state the parcel number for which the conduit property tax claim should be paid.
4. Although it may not fit this particular section, the best place to put property taxes which have been sold to third party tax lien certificate buyers should be listed in this section. The parcel numbers should be listed in the collateral box. The interest rate column should state, “Per Claim”.

Section 3.1 of the plan will control as to interest rates only on arrearages.

**Section 3.2** is for when the Debtor(s) is seeking to have the Court value collateral to the fair market value of said collateral which the Debtor(s) is asserting is less than the claim amount held by the creditor.

Please note it is imperative that if counsel are serving an FDIC lender, that the certificate of service for the plan reflect that the Debtor(s) served the FDIC lender by certified mail on an officer or director as required by Bankruptcy Procedural Rule 7004.

Absent an objection by a creditor, the Debtor(s) plan will control as to valuation and interest rate.

Generally, this section is for automobiles which the Debtor(s) has purchased more than 910 days before the petition filing. Furniture, jewelry or other personal property may also be listed under this section.

This section may also be used when stripping a second or other junior mortgage to unsecured status. Please note that pursuant to Bankruptcy Rule 5009, counsel may be required to get an order that directs the county officials to release said lien upon conclusion of the plan. The Chapter 13 form plan provides for the valuation but it provides no direction on how the lien which has been discharged through the bankruptcy process is to be removed by the appropriate county official.

Counsel should also review the creditor's claim prior to confirmation. If the creditor asked for less value than stated in the plan, the creditor will be paid according to the higher amounts listed in the plan unless counsel amends the plan. (Creditor will not receive more than the total amount of the claim.) Pursuant to Administrative Order 18-5, the interest rate in section 3.2 of the plan will control (absent a creditor objection) even if the creditor asked for less interest.

**Section 3.3** of the plan is for collateral which cannot be crammed down such as vehicles purchased within 910 days of the petition filing date or other personal property which the Debtor(s) are not able to cram down the principal owed.

It is possible for counsel to still cram down the interest rate on said collateral even if the principal cannot be crammed down. If the Debtor(s) is seeking to cram down the interest rate and the creditor is a FDIC lender, counsel will need to serve the FDIC lender by certified mail to the attention of officer or director as required by Bankruptcy Procedural Rule 7004.

Pursuant to Administrative Order 18-5, the plan will control as to interest rate. Therefore, if the plan has a higher interest rate than requested in the creditor's claim, the creditor will receive the higher interest rate unless the plan is amended to match the rate of interest requested by the creditor.

**Section 3.4** provides a calculation when a judgement lien impairs the Debtor(s) exemption pursuant to 11 USC § 522(f).



Please note that counsel may still have to return to the Court pursuant to Bankruptcy Rule 5009 to obtain an order removing said lien from the Debtor(s) property so said order can be properly served and filed on the appropriate county official at the conclusion of the chapter 13 plan.

**Section 3.5** is for the surrender of collateral. In this section the Debtor(s) should assert whatever collateral (auto, real estate) that the Debtor(s) is surrendering in the Chapter 13 plan. This section requires the Debtor(s) to state the name of the creditor. Under the collateral section the Debtor(s) should state the type of collateral.

If the Debtor(s) is a co-signer on a loan and the co-signer is seeking to retain the collateral, counsel may wish to put, after listing the collateral, a note that says the loan will be paid outside the plan by the co-signer.

The Debtor(s) should also list this creditor and the related collateral on Petition Schedule F. This will have the affect of once the Debtor(s) earns a discharge, the Debtor(s) would no longer be liable as a co-signer on the loan should the co-signer default in the future. By making the appropriate notations, the lender would be made aware if the co-signer intends to continue to make the necessary installment payments outside of the Chapter 13 plan.

#### **Part 4 Treatment of Fees and Priority Claims**

Generally, Section 4 is self-explanatory but the following tips may be useful:

**Section 4.2** Trustee fees, counsel should consider using ten percent. Ten percent is the maximum administrative percentage fee a Chapter 13 trustee can charge pursuant to 28 USC § 586. Chapter 13 administration fees are seldom at ten percent. However, by calculating the maximum ten percent, the plan can provide a cushion should secured and priority claims come in higher than anticipated. The additional cushion may help keep the plan feasible without the need to amend prior to confirmation.

**Section 4.3** is the balance of attorney fees that counsel is seeking to be paid through the Chapter 13 plan. This amount must match counsel's Disclosure of Compensation.

**Section 4.4** is for priority claims which generally will be the total of child support arrearages and applicable taxes (federal, state and local).

**Section 4.5** is for domestic support obligations which is owned by a governmental entity. This does not mean serviced by the governmental entity but it means owned by the governmental entity. This claim can be discharged if the Debtor(s) does a 60-month plan. However, it is extremely rare for governmental entity to take legal possession of a domestic support obligation claim.

## **Part 5: Treatment of Non-Priority Unsecured Claims**

Under Section 5.1 it is in the best interest of all parties if the Debtor(s) simply checks the third box which states *the funds remaining after disbursements have been made to all other creditors provided for in this plan.*

This essentially makes the plan a base plan and does not lock the plan into a certain percentage. All other claims such as attorney fees, conduit payments, secured creditors and priority creditors would have to be paid before unsecured creditors would receive a return. Once the plan is confirmed, this helps reduce the need for post-confirmation modification as the unsecured percentage can increase or decrease daily based on pre-petition claims and the amount of funding provided by the Debtor(s).

Please note that there is one last box for the few cases in which there is equity. If the Debtor(s) has equity in an automobile of \$3,500 (for example), that should be stated on this line and the \$3,500 becomes the minimum amount that unsecured creditors must receive in the chapter 13 plan pursuant to 11 USC Section 1325(a)(4).

**Section 5.2** is for maintenance of payments and cure of any default on nonpriority unsecured claims

The Debtor(s) will need to state the legal basis on why the Debtor(s) should be allowed to continue maintenance payments on an unsecured claim. Please be advised that simply because a claim is non-dischargeable does not mean that the Debtor(s) can make payments on this claim to the detriment of other unsecured creditors.

**Section 5.3** of the plan would be for a consumer debt if the Debtor(s) was a co-signer with a third party and the Debtor(s) is seeking to pay this unsecured claim.

## **Part 6: Executory Contracts and Unexpired Leases**

**Section 6.1** is for the Debtor(s) to assert leases which the Debtor(s) is assuming which can include automobiles and real property. The leases must also be disclosed on petition schedule G.

If a Lease is not listed in this section, it will be assumed that the Lease is being rejected.

All assumed Leases must be paid on-going monthly payments directly by the debtor outside of the plan. Only arrearages listed on the Lease Claim will be paid thru the Chapter 13 Plan.

## **Part 7: Vesting of Property of the Estate**

Pursuant to the Order Confirming Plan, property will vest in the Debtor(s) upon confirmation.

## **Part 8: Nonstandard Plan Provisions**

Counsel may want to consider the following nonstandard provisions:

- A. Government entities may file post-petition claims pursuant to 11 USC § 1305.

The above language allows taxing authorities to file, if necessary, post-petition tax claims. In the past, the IRS has moved to dismiss cases for nonpayment of post-petition taxes as it was the position of the IRS that they could not file a claim unless the plan so provided.

Please note that if the Debtor(s) is not paying post-petition taxes which were provided for in the Debtor(s) monthly budget, the Trustee will not oppose to allow the post-petition taxes be added to the plan but the Trustee will seek to raise the Debtor(s) payments as the Debtor(s) should not be permitted to take funds from the unsecured class when a Debtor(s) already retained funds in their monthly budget to pay for these post-petition claims.

- B. Since many of the plan provisions are binding on the parties, if the Debtor(s) has asserted that the Debtor(s) will pay per the claim in any section of the plan, the Debtor(s) may want to consider the following:

The Debtor(s) reserves the right to object to any claim the Debtor(s) believes is inaccurate.

This may help the Debtor(s) preserve the right to object to claims if the Debtor(s) believe the claim is inaccurate or contains inappropriate charges.

- C. If the Debtor(s) is not seeking to value collateral or avoid liens through the plan but wishes to do so by motion, the Debtor(s) should expressly state that the Debtor(s) will seek to value certain collateral or avoid certain liens by motion in paragraph 8 to put the creditor(s) on appropriate notice.

Trustee's Motion to Dismiss Advising Debtor(s) to see  
Counsel to Modify their Plan

THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

IN RE:

) CHAPTER 13  
) CASE NO:  
)  
) ALAN M. KOSCHIK  
) BANKRUPTCY JUDGE  
DEBTOR(S) )  
) TRUSTEE'S MOTION TO DISMISS DUE TO  
) FAILURE OF DEBTOR(S) TO MAKE PLAN  
) PAYMENTS

Now comes Keith L. Rucinski, the Chapter 13 Trustee, and requests this Court to dismiss the Debtor(s) plan pursuant to 11 USC Section 1307(c)(1) as the Debtor(s) has failed to make required plan payments as required by 11 USC Section 1326. The failure to make plan payments is prejudicial to creditors who cannot be paid unless the Debtor(s) make plan payments. The Trustee states the following:

1. Debtor(s) has/have not been making his/her/their Chapter 13 Plan payments as ordered.
2. The case was filed on 00/00/0000.
3. The monthly Plan payments are \$00.00.
4. As of this date, the payments into the Plan should total \$00.00.
5. As of this date, the payments into the Plan total \$00.00.
6. As of this date, the arrearages total is \$00.00.
7. The last payment was received on 00/00/0000.
8. Plan payments were suspended November 1, 2023, through January 31, 2024, per the October 12, 2023, agreed order (Docket #43).
9. A motion to suspend plan payments February 1, 2024, through February 29, 2024, was filed January 15, 2024 (Docket #45). No order has been filed.
10. The Trustee has deferred \$3207 (not forgiven) to the end of the pay due to pay suspensions.
11. **The Trustee states that the current payments into the Plan are not sufficient to allow the Debtor(s) to complete the plan within 60 months from the date of the petition filing; an increase in plan payments is necessary as current plan payments will not resolve the motion to dismiss**
12. The Trustee encourages the Debtor(s) to meet with Counsel to modify the plan.
13. The payment history is attached to this motion.

**NOTICE TO ATTORNEYS**

**\*\*Pursuant to this Court's Administrative Order 00-4, attorneys are required to file with the U.S. Bankruptcy Court a notice of no opposition or a notice of inability to communicate with the Debtor(s).**

Attorneys may contact Holly Byler, at the Chapter 13 Trustee's Office at 330.762.6335 ext. 225 or [hbyler@ch13akron.com](mailto:hbyler@ch13akron.com) to resolve this motion.

If attorneys do not file a response or contact the Chapter 13 Office by noon on Tuesday before the scheduled hearing, attorneys are required to appear at any Court hearing on this matter.

CHAPTER 13  
{TrusteeName}  
Trustee  
Akron, OH 44308  
(330)762-6335  
Fax  
(330)762-7072

Debtor(s) may make a payment either online or by phone. To pay online visit [www.chapter13info.com](http://www.chapter13info.com). To pay by phone call 1-888-439-5121.\*\*

Respectfully submitted,

**/s/ Keith L. Rucinski**

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Keith L. Rucinski, Chapter 13 Trustee

Ohio Reg. No. 0063137

Joseph A. Ferrise, Staff Attorney

Ohio Reg., No 0084477

Akron, OH 44308

Tel 330.762.6335

Fax 330.762.7072

**[krucinski@ch13akron.com](mailto:krucinski@ch13akron.com)**

**[jferrise@ch13akron.com](mailto:jferrise@ch13akron.com)**

**CHAPTER 13**

{TrusteeName}

Trustee

Akron, OH 44308

(330)762-6335

Fax

(330)762-7072

CERTIFICATE OF SERVICE

I hereby certify that on 00/00/0000, the following were served a copy of this pleading:

Via Regular Mail

Debtor name & address

Via ECF

Attorney (attorney email)

Office of the US Trustee (ustpregion09.cl.ecf@usdoj.gov)

Keith L. Rucinski. Chapter 13 Trustee (krucinski@ch13akron.com)

Date of Service: 00/00/0000

By: H. Byler  
Office of the Chapter 13 Trustee

**CHAPTER 13**  
{TrusteeName}  
Trustee  
Akron, OH 44308  
(330)762-6335  
Fax  
(330)762-7072

# Personal Financial Management Course



# **THIS COURSE IS REQUIRED TO EARN YOUR DISCHARGE !**

## **Online Chapter 13 Bankruptcy Course Finally Financial Freedom!**

\*\* The Trustees' Education Network (TEN) – an affiliate of the National Association of Chapter 13 Trustees – has created an online financial management course for the benefit and financial education of Chapter 13 debtors. This course is approved by the United States Trustee Program. \*\*

# **THIS COURSE IS FREE!**

***\*\*THIS COURSE IS ABLE TO BE COMPLETED PRIOR TO YOUR 341 HEARING WITH THE TRUSTEE\*\****

**SIGN UP ONLINE AT [WWW.13CLASS.COM](http://WWW.13CLASS.COM)**

### **WHAT YOU WILL NEED TO SIGN UP**

- Unique Trustee Identifier Number
  - **TEN13010**
- Bankruptcy Case Number
- Your full Name “exactly” as shown on bankruptcy petition
- A valid email address (each debtor will need a separate email address)
- Your bankruptcy Schedules A/B, D, and E/F for Lesson 1 and Schedules I and J for Lesson 3.



You must complete the entire course (all lessons and quizzes) to receive a Certificate of Completion from the Trustees' Education Network. Once you complete all coursework, the Trustees' Education Network will send a Certificate of Completion to you and to your Bankruptcy Court.

***\*\*Course satisfies legal requirements for debtors' Certificate of Completion and to gain a discharge of their bankruptcy case.***

***\*Other course providers may charge you a fee for this course.***