

# **THE NUTS AND BOLTS OF CHAPTER 13**

## **OR THE 50 (fifty) MOST COMMON CHAPTER 13 PLAN AND OCP DRAFTING AND CONFIRMATION ISSUES AS SEEN THROUGH THE EYES OF THE CHAPTER 13 TRUSTEE**

(The common errors discussed below are issues that will likely draw an objection to confirmation by the Trustee. Most of the errors are simple and should be corrected before the plan is filed with the court. Filing a plan that includes these problems will cause unnecessary work for both the debtors' counsel, the Trustee's office and in some cases, creditors. Failure to correct by the initial confirmation hearing will likely result in an adjourned setting for the plan. Adjourning the confirmation hearings slow the payment for creditors and attorney fees. Eliminating these common errors will result in speedier disbursements, including attorney fees)

**Revised August 18, 2016**

# CHAPTER 13 PLAN

**1. Use the correct plan form:** Use **1300.14 (3/10/16)** for cases filed after 6/1/14. If you are filing a modified plan for cases filed before 6/1/14, you must use the same plan form with which you started. 1300.05 (12/1/12)  
REMEMBER: PRINTED TEXT MAY NOT BE STRICKEN!

**2. Be sure to date the plan.** Sometimes a debtor will file several plans, some pre and some post confirmation. Dates are used instead of numbers. The plan date is simply an identifier so that when you are talking about a plan, there is no confusion about which plan you are talking. Make sure each succeeding plan has a new & different date. The date of the plan you wish to have confirmed, must be found in ¶ 1 of the Order Confirming Plan.

**3.** “Paragraphs 2 (f), (g) and (h) should be completed. All blanks in the plan must be filled in, even if only with n/a.

**4.** Do not include **pennies** in any of the payments, both plan and creditors. Use whole dollar amounts only.

**5.** Use the **Standard Language Paragraphs** when an appropriate version is available....do not chop it to the point that it becomes useless or unrecognizable. The Standard Language Paragraphs are available at the Trustee’s web site: [www.portland13.com](http://www.portland13.com) And, do not attach a separate unrelated idea at the end of a Standard Language Paragraph. For that, use an additional paragraph number.

**6. Three boxes in the caption:** Always check the appropriate box. If the box is not checked, the relief sought will not be granted and an amended plan will likely be required. Checking a box when it is not warranted will require correction, i.e., do not mark “**motion to value collateral**” unless you are actually cramming down the value of collateral.

**7. Improper Service.** Service upon certain creditors must conform to FRBPs 3012, 4003(d), 9014, 7004 and LBR 6006-1(b). Instructions in this regard are found at the bottom of the form plan, 1300.14 (310/16).

**8.** Issues concerning **feasibility** and **liquidation**. There are programs available to check for feasibility and liquidation (paragraph 2g best interest number). These programs are essential for proper drafting of Chapter 13 plans. Obtain copies by contacting Hung at [hungn@portland13.com](mailto:hungn@portland13.com)

## Plan Paragraph 1(a)

**9. Do not write confusing plan payments:** Since at confirmation, it is difficult to predict the exact time a plan will be completed, leave plan payments open ended. For example, instead of \$500 x 60, simply add \$500; instead of \$500 x 24, 600 x 36, simply add \$500 x 24, 600 thereafter. If an expense found on 106J will be extinguished during the life of the plan, a step up (increase of plan payment) of the amount of that no longer needed expense should be included. (See # 33 below)

**10.** Paragraph 1(a) plan payment must include sufficient funds to pay the monthly scheduled payment of ¶ 2(b). The total *per month (permo)* payments in any given month cannot exceed the amount being paid into ¶1(a) for that month - Remember you must first deduct the Trustee's statutory commission from ¶1a before you begin. We see this error often when there is a change in either the plan payment or *permo* in ¶2(b), but it is not followed by balancing the plan payment and the *permo* together so they match up.

**11.** Paragraph 1(a) plan payment must match Schedule 106J disposable income. (If not, be ready to explain) Be careful of “trickle down” *permo* cases where all obligations under the plan have been met EXCEPT for a set *permo* claim which will carry on well past any other plan requirement.

## Plan Paragraphs 2(b)(1) & (2)

**12. Define AAFAAF** (What does it mean? – Creditors don't know. Spell it out with an asterisk: (*\*All available funds after attorney fees* )

**13.** If you are curing an arrearage, you must put the amount of the arrears in the “**Estimated Arrearage if Curing**” column. If you are cramming down collateral, it must be in the “**Collateral Value if Not Paying in Full**” column. Do not put a collateral value in that column unless you are actually cramming it down. Use the correct column, i.e., don't put a cram down in column labeled “**Estimated Secured Claim if paying Secured Claim In Full**” because you will be required to pay the full amount of the secured claim...AND you must include an interest rate. If it is zero, then add “0”.

**14.** Do not use a “*permo*” and “all available” or “all available after attorney fees” as one “periodic payment” in ¶2(b) (Use the **split claim** example, # 9 in the Standard Languages)

**15.** If you decide to **surrender collateral** after it has been noticed out as being retained on the original plan, you must give notice to the creditor by adding it to ¶2(b)(5) and add 15 days to further object in ¶13 of the Confirmation Order.

**16.** You cannot have a zero *permo* payment for collateral that has an interest rate. Each month’s *permo* must include enough to at least pay the interest due for that month. (Using the feasibility program will greatly assist you with this issue)

**17.** Do not use dates for step up payments in the initial plan for confirmation. (do not write “\$150 starting 8/09”, but rather “50 X 5, \$150 Thereafter”) Use dates for post confirmation modified plans.

**18.** If there is negative equity in a ¶ 2(b)(2), 910 vehicle, be sure to account for it and use the formula set out in the Standard Languages #10.

**19.** Impaired collateral (more is owed than its value - except principal residences \*) must be paid through the plan in ¶2(b). Paragraph 4 of the plan is for *fully secured* collateral paid outside the plan and it states: “*The debtor shall pay directly to each of the following creditors, whose debts are either fully secured or secured only by a security interest in real property that is the debtor’s principal residence...*” \* In the near future, expect that impaired mortgages will also be required to be paid through the plan.

## **Plan Paragraph 2(b)(4)**

**20.** Always mark the box “other” and add: “All attorney fees, including Supplemental compensation shall be paid from all available funds after any fixed monthly payments in ¶2(b) are made.” The exception is when you want a *permo* for your fees. In that case, check “other” and disclose the amount you wish to be paid monthly.

**21.** Amount of fees and expenses remaining unpaid in the plan must match the attorney fee disclosure and any fee agreement with the debtors must be attached.

## Plan Paragraph 7

**22.** Paragraph 7 sets the “applicable commitment period” If the plan will exceed 36 months, state the reason after “as follows” If the plan is over median and will extend to the full 60 months, insert “applicable commitment period” Paragraphs 1(c) and 7 must match.

## Schedule 106A/B

### Part 1:

**23.** If a debtor owns a percentage of realty, include the full value under the “Current value of the entire property” and the value attributable to the debtor under “Current value of the portion you own?” **Mark the boxes.**

### Part 2:

**24.** Always provide descriptive and accurate information, i.e., if an account receivable has no value, state the amount actually owed but say it is uncollectible and why. Make sure you list all bank accounts under 17 and their account numbers so the Trustee can match up the amounts with the provided bank statements. (Some listings call for assets that will be supported by documents – if you have an item listed under one of those numbers, bring the documents to the 341, i.e., if there is an annuity, the Trustee will be obliged to investigate that asset)

## Schedule 106C

**25.** Use the full amount of all of your exemptions even if the value appears to be less than the exemption allowed. Be sure to note the recent changes in exemptions. You now may use either State or Federal exemptions. If you do not list an exemption, you cannot claim it. If you don’t possess the item to be exempted you can’t claim it. (No claiming of future interests) You cannot mix and match Federal and State exemptions. If using State, be sure to check the 2 year residency rule to find the correct exemptions. Some states require that the person using their exemptions actually be residents of the state when using. In such a case, the exemptions default to Federal Exemptions found in §522 of the Code. **Mark the boxes.**

## Schedule 106D

**26.** The treatment of all secured creditors listed on Schedule 106D must be found somewhere in the plan. They should be somewhere in paragraphs 2b, 4, 6 or an added paragraph of the plan. Values of collateral should be consistent throughout Schedules 106A/B, 106D and the plan.

## **Schedule 106E/F**

### **Part 1:**

**27.** Be sure to list the entities and amounts entitled to priority and be sure to list the IRS and ODR to insure that they get service even if no claim.

### **Part 2:**

**28.** Be sure to list all unsecured claims in alphabetical order and identify it in a way that it can later be matched with the claim that will be filed by that creditor.

## **Schedule 106I**

**29.** There must be complete occupation information, including the complete address for any employer, and data concerning all wage earning members of the household and household dependents on Schedule 106J. If a debtor is self-employed, be sure to describe the occupation in the employment section.

**30.** Information regarding line 4 monthly gross income must closely match the pay stubs provided. Line 5 payroll deductions should closely match the pay stubs. If a debtor is self-employed, state whether the income is net or gross if there is no Exhibit D-2.

## **Schedule 106J & D-2**

**31.** An Exhibit D-2 or detailed business statement attached to Schedule 106J is required if the debtor is self - employed or has income not reported on Schedule 106I. Filing one prior to the “first meeting” is very helpful. (Remember you are required to attach the most recent IRS 1040, Schedule C, to the D-2 or attach an explanation why it is not there and if you list a business expense on Schedule 106J, you must “attach a detailed list”)

**32.** If more income than is shown on pay stubs is discovered during the Trustee’s initial review, do not file an amended Schedule 106I with the

added income and a Schedule 106J with the newly discovered expenses and the exact same bottom line unless instructed to do so. (That is viewed by the judges as *prima facie* expense and plan payment manipulation)

**33.** Support, auto, 401K loan repayments or other payments that might complete before the applicable commitment period should be identified with the balance and number of months remaining to completion. The Trustee will be looking for a stepped up ¶1(a) payment or explanation why not. Come to the 341 prepared with this information.

**34.** Do not not list an auto payment or other collateral on both Schedule 106J and in ¶2(b). You cannot pay both inside and outside the plan on the same collateral. That would constitute “double dipping” from the disposable income.

**35.** If collateral is being paid outside in paragraph 4 of the Plan, the payment must appear on Schedule 106J.

**36.** Large charitable contributions must be accompanied by#14 of the Standard Languages. If there is any question about whether the added language is required, it will be discussed at the 341meeting.

## **Form 107 SOFA**

**37.** Information regarding closed accounts, potential avoidable transfers and fraudulent transfers, i.e., must be specific. If there is a potential preference, come to the 341 prepared with the proof of the garnishment, the actual dates and the name and address of the transferee along with any relevant pay stubs.

## **Form 122C-2**

**38.** Use the current Means Test numbers. They can be found at:  
<http://www.justice.gov/ust/eo/bapcpa/meanstesting.htm>

## **ORDER CONFIRMING PLAN**

- 39.** Use LBF 1350.05 (12/1/12)
- 40.** Plan date in paragraph 1 must match the date on the plan you wish to have confirmed.
- 41.** The numbers in paragraph 4 - attorney fees - must match the Debtor's Attorney's Disclosure of Compensation LBF 1305 (12/1/12)
- 42.** Paragraph 5 must include the name and service address of any creditors whose collateral is being valued in ¶2(b) of the plan along with the name and service address of any leases listed in ¶3 of the plan.
- 43.** Paragraphs 7(a) & (b) must include the name and service address of any creditors whose liens are being avoided in ¶6 of the plan.
- 44.** If Schedule 2(b) on LBF 1305 (Attorney fee disclosure) has been elected, the certification at the bottom of the OCP must be completed and those fees cannot exceed the estimate on LBF 1305.
- 45.** Send the OCP as a fillable PDF file to [precon@portland13.com](mailto:precon@portland13.com) New LBR 3015-3 (c)(2) requires the OCP to be submitted to the Trustee no later than 21 days after the 341 is concluded if no timely objection to confirmation has been filed. REMEMBER: We now have a "fast track" option to eliminate the need for counsel to appear in court.

## **Other Issues**

- 46.** Tax certificates: If the Oregon Department of Revenue (ODR) has filed an objection to confirmation and no withdrawal has been filed, a tax certificate may be filed in lieu of a withdrawal IF the attorney signing the certificate has seen the returns, can verify that the returns have been filed and can state the amount of any liabilities. Be sure to identify both the priority and non- priority amounts.
- 47.** Do not email, call, fax or send documents shortly before the 341 meeting. If they haven't been sent at least one week before the meeting, bring them to the meeting for inspection. In addition, if you have not sent us the required documents before the 341, wait until after you get our objection before you send anything additional.

**48.** Do not forward anything but \$ to the lock box in Memphis, Tennessee. All the \$ goes to Memphis and everything else comes to the Portland office.

**49.** Do not send documents directly to the Trustee or one of the Trustee's staff unless specifically requested to do so. For pre confirmation matters, use [precon@portland13.com](mailto:precon@portland13.com) and for post confirmation matters, use [postcon@portland13.com](mailto:postcon@portland13.com) Any 341 reset requests must be in writing and sent to the Precon email address only.

**50.** Read any materials before you send them to the Trustee's office. Too often materials (pay stubs, bank statements and tax returns) are sent when it is obvious that they have not been previously reviewed by debtor attorneys. And be mindful that the Trustee's mail server will not accept emails that exceed 5MB in total w/attachments. And separate each category, i.e., tax returns; bank statements; paystubs into individual PDFs.

Communicate with your client. Too many debtors arrive at the 341 having no idea when the first plan payment is due or what questions will be asked. This process is stressful enough. Your clients will be far more at ease if they have an understanding of what is about to occur.

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