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Consumer Workshop III

Practicing with the New Chapter 13 Form and Rule Changes

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CONCURRENT SESSION

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Rule 3002.1 and Post-Petition Defaults

Fed. R. Bankr. P. 3002.1 was adopted in 2011 to "address the rather significant concern created when a debtor cures a mortgage arrearage under Chapter 13 only to find that postpetition obligations arose during the plan term unbeknownst to the debtor because the secured creditor was concerned that any communication would be considered a violation of the automatic stay."[1] Rule 3002.1 has various provisions which include a requirement for mortgage companies to file notices of (b) mortgage payment changes and (c) post-petition fees, expenses, and charges and also provides (d) a mechanism for resolving disputes regarding post-petition fees. Additionally, Rule 3002.1(f) through (h) establish a procedure requiring (f) the chapter 13 trustee to send out a notice of final cure payment, (g) mortgage creditor to file a response, and (h) a mechanism to resolve any disputes that may arise.

As many debtors have found out, the implementation of Rule 3002.1 has come with some unintended consequences. In some cases the 3002.1(g) responses filed by creditors reveal significant defaults in post-petition mortgage payments that debtors were supposed to be making directly to the creditor. In response, trustees and courts began grappling with how to respond to the alleged defaults. The courts have uniformly held that direct pay mortgage payments are "payments under the plan" and a debtor is not eligible for a 1328(a) discharge if they have not completed all payments. There is less uniformity on how these cases should proceed once arrears are discovered: dismissal, conversion, closing without a discharge, or giving the debtors an opportunity to cure the arrears.

I. Mortgage payments paid "outside" the plan are "payments under the plan"

As noted by the court in *In re Gonzales,* 532 B.R. 828, 831 (Bankr. D. Colo. 2015) "[a]ll courts that have examined the question of whether payments required to be made directly to creditors under a confirmed chapter 13 plan are "payments under the plan," as that term is used in § 1328(a), have answered the question in the affirmative." The case law on whether direct mortgage payments are payments under the plan predates the 3002.1 issues, for example *In re Foster*, 670 F.2d 478 (5th Cir. 1982)(Direct mortgage payments are "payments under the plan.").

II. Debtor is not eligible for a discharge under 1328(a) if they have not made all post-petition mortgage payments that came due during the term of the plan

Under 11 U.S.C. § 1328(a), a debtor is eligible for a discharge "as soon as practicable after **completion** by the debtor of **all payments under the plan** . . . ."[2] Because post-petition mortgage payments are payments under the plan, a debtor is not eligible for a discharge if they have not made all direct pay mortgage payments during the term of the plan. This raises the question of whether a single missed payment will prevent a discharge from entering. At least one court has answered that question in the affirmative:

i. *In re Cherry*, 2016 Bankr. LEXIS 4492, *3-5 (Bankr. D. Colo. 2016).

[1] *In re Kreidler*, 494 B.R. 201, 203 (Bankr. M.D.Pa. 2013).
[2] (emphasis added).

> "*All* means *all*. Unlike Section 1307(c)(6), which gives the Court discretion to dismiss for a "material default," Section 1328(a) does not implicate concepts of materiality. It does not permit the Court to enter a discharge if *some, many, most, or almost all* payments under the plan have been made. Instead, the only statutory path to discharge is to make all payments under the plan."
>
> "The Court is loathe to deny the Debtors a discharge under circumstances based on **failure to make a single $365.90 payment** to one secured creditor; however, 'completion by the debtor of *all* payments under the plan' is . . . an 'express predicate' for the receipt of a discharge under § 1328. As such, the Court cannot grant a discharge absent a showing that the Debtors have, in fact, made this payment."

ii. *Evans v. Stackhouse*, 564 B.R. 513 (E.D. Va. 2017)(Upholding the bankruptcy court's decision that debtor was not eligible for discharge because the debtor failed to complete all direct payments to mortgage holder according to the terms of the plan).

III. Should the case be dismissed, converted to chapter 7, or closed without a discharge?

Even though the law is seemingly settled on the issue of whether a debtor is eligible for a discharge, questions still remain on how the case should be concluded.

a. Dismissal under 1307(c)(6)

The failure to make post-petition mortgage payments may be raised by the court *sua sponte* but is more likely to be raised by the chapter 13 trustee in the form of a motion to dismiss for a material default.

i. *In re Formaneck,* 534 B.R. 29 (Bankr. D. Colo. 2015)(Denying discharge and dismissing case).

ii. *In re Tumblson,* 2016 Bankr. LEXIS 735 (Bankr. E.D. Okla. 2016)(Holding that debtor was not entitled to a discharge because she had not made all direct payments to mortgage creditor and failure to make payments was a material default resulting in dismissal).

b. Conversion to Chapter 7

Many of the early cases, and some of the more recent cases, allow a debtor to convert to chapter 7 instead of having the case dismissed.

i. *In re Daggs,* 2014 Bankr. LEXIS 2509 (Bankr. D. Colo. January 6, 2014)(Discharge denied and case converted to Chapter 7).

ii. *In re Furuiye,* 2014 Bankr. LEXIS 2403 (Bankr. D. Colo. April 7, 2014)(Discharge denied and case converted to Chapter 7).

iii. *In re Heinzle*, 511 B.R. 69 (Bankr. W.D. Tex. 2014)(Trustee's Motion to Dismiss granted subject to debtors exercising their right to convert within 14 days.).

iv. *In re Hoyt-Kieckhaben*, 546 B.R. 868 (Bankr. D. Colo. 2016)(Holding that the debtor was not entitled to discharge but case was converted rather than dismissed).

v. *In re Thornton*, 572 B.R. 738 (Bankr. W.D. Mo. 2017)(The debtor was given 14 days to convert or the case would be dismissed.).

However, at least one court has called into question whether rewarding a debtor with a chapter 7 discharge is appropriate when the debtor has failed to comply with the terms of their chapter 13 plan.

i. *In re Strimbu*, 2016 Bankr. LEXIS 4493 (Bankr. D. Colo. 2016)("[T]he Court finds it would be inappropriate to reward the Debtors with a Chapter 7 discharge when they are not eligible for the broader Chapter 13 discharge.").

c. Closing the case without a discharge

Courts have been reluctant to close a case without a discharge in a case where the debtor would otherwise be eligible for a discharge.

i. *In re Evans*, 543 B.R. 213 (Bankr. E.D. Va. 2016)(Debtor is not eligible for a discharge so the only options for concluding the case are dismissal or conversion. Cannot close case without discharge.).

ii. *In re Kallander*, 12-28000-MER, Docket No. 67 (Bankr. D. Colo. May 10, 2016)(Final resolution of these cases requires a motion seeking dispositive relief: discharge, dismissal, or conversion).

iii. *In re Abila*, 2016 Bankr. LEXIS 3535 (Bankr. D. Colo. 2016)(Court cannot simply close case without a discharge and needs a party to file a dispositive motion).

IV. What are the debtor's options?

a. Rule 3002.1(h)

If the debtor disputes the amount of arrears alleged by the mortgage creditor the most important thing to do is to file a motion under Rule 3002.1(h) asking for court determination of the final cure amount. This may be appropriate even when the debtor knows they are not current but do not agree with, or do not know, the precise amount of arrears alleged by the creditor. A hearing will also give the debtor an opportunity to ask the court for time to cure a default if one exists.

i. *In re Payer*, 2016 Bankr. LEXIS 1941 (Bankr. D. Colo. 2016)("The result reached by the Court in this case does not mean that a debtor has no ability, following the end of the plan, to make up missed mortgage payments or to pay post-petition fees. Rule 3002.1(h) sets up a process by which a bankruptcy court, after the debtor has completed all payments to the chapter 13 trustee, may determine the amount necessary to cure the mortgage debt. The very fact that, upon a timely Rule 3002.1(h) motion, the court must make that determination strongly suggests that the court must also permit a reasonable time period to effect that judicially determined cure. Any other interpretation would relegate a court's determination under Rule 3002.1(h) to a determination of whether or not the mortgage debt was cured during the plan term.").

If a debtor does not request a hearing or otherwise dispute the arrears, a court may take their silence as an admission.

ii. *In re Abila*, 2016 Bankr. LEXIS 3535 (Bankr. D. Colo. 2016)("The Court construes the Debtors' silence as an admission. As a consequence, the Court cannot grant the Debtors a discharge.").

b. Cure the arrears

On its face, the holding in *In re Cherry* discussed above is harsh as the court determined even one missed mortgage payment was enough to prohibit an entry of discharge. However, the court did not dismiss the case. Instead, the court gave the debtor approximately one month to file a new certification confirming they had made the missing mortgage payment. This in effect gave the debtor additional time to make the required payment.

A debtor may have other options to become current including dipping into exempt retirement funds, refinancing the property, or looking to friends and family for assistance. If a debtor needs time to cure the arrears the court may grant them a "reasonable" time to cure the arrears, even if that extends beyond the term of the plan. Courts have not specifically defined what a reasonable time to cure is and it will most likely continue to be determined on a case by case basis. The majority of court's hold a debtor can cure defaults even if the case is beyond month 60.

i. *Germeraad v. Powers*, 826 F.3d 962 (7th Cir. 2016)("Or, the bankruptcy court might allow the debtors to cure their default . . . . Although these payments would be made outside of the five-year period specified in § 1329(c), they would not be payments 'provide[d] for' by the modified plan; rather, they would be payments made to cure a default under the modified plan, *i.e.*, payments made because the debtors did not make the payments 'provide[d] for' by the plan in the first place.").

ii. *In re Payer*, 2016 Bankr. LEXIS 1941 (Bankr. D. Colo. 2016)(see above).

There is a minority approach that holds all obligations under the plan must be performed by the end of month 60 and no cure can happen after that time.

i. *In re Brian T.*, 2017 Bankr. LEXIS 2283, *19-20 (Bankr. E.D. N.Y 2017)("While sympathetic to the plight of the debtor who faithfully makes plan payments for five years and finds himself at the 11th hour faced with fixing this problem of missed post-petition mortgage payments, this Court must depart from the majority opinion on this issue. The Court finds that the plain language of the statute dictates a drop dead date for payments made pursuant to a chapter 13 plan. *See* 11 U.S.C. §§ 1322(a)(4), (d)(1), (d)(2), § 1325(b)(1)(B) and § 1329(c). The Code contemplates a plan's '5-year period beginning on the date that the first payment is due under the plan' and the court is unable to 'approve a period longer than 5 years' or 'a period that expires after five years.' *Id*. In addition, §1329 is clear that any plan modification must be accomplished 'before the completion of payments under such plan.' 11 U.S.C. §1329(a). Thus, the Court concludes that a plan may not be modified after the plan term has expired, and no 'reasonable time' to cure payments beyond the expiration of the plan term is contemplated by the plain language of §1328 or §1329.").

c. Modification of the plan to surrender property

i. *In re Coughlin*, 568 B.R. 461 (Bankr. E.D. N.Y. 2017)(The debtors proposed a modified plan to surrender their residence because they had not made all post-petition mortgage payments. The modification was filed in the final week of a 60 month plan and before the last plan payment had been made. The court notes its "concerns" over the delay in filing a modification and addressing the failure to make direct payments but granted the modification as it met statutory requirements and there was no opposition to the modification.).

ii. *In re Ramos*, 540 B.R. 580 (Bankr. N.D. Tx. 2015)(Following the *In re Nolan* line of decisions and finding that a debtor cannot modify a plan to surrender property).

d. Modification of the plan to cure arrears through the plan

If the default is discovered before the end of the plan, or the plan term was less than 60 months, a debtor may be able to propose a modification that pays the post-petition arrears through the plan.

e. Loan modification

A debtor may be able to "cure" the arrears through a loan modification. In general courts have found that a completed loan modification is sufficient to overcome the 1328(a) discharge issues. However, there may still be issues concerning the "material default" that occurred when the debtor failed to make post-petition mortgage payments. When determining whether a default was either mitigated or not material courts look at a number of factors including why payments were not made, the delay in not addressing the arrears, and most importantly – where did the money go-.

i. *In re Strimbu*, 2016 Bankr. LEXIS 4493 (Bankr. D. Colo. 2016)("Although the Debtors applied for and were accepted to a trial mortgage modification program in May 2015, this alone does not mitigate the material default." The case ultimately dismissed.).

ii. *In re Diggins*, 561 B.R. 782 (Bankr. D. Colo. 2016)(The debtors completed a loan modification and the court denied the trustee's motion to dismiss and granted the debtors discharge. In this case the court found debtors acted promptly and there were no concerns regarding what happened to funds that should have been used to make the mortgage payments).

iii. *In re Young*, 2017 Bankr. LEXIS 3170 (Bankr. M.D.La 2017)("[A] default that is cured before completion of the plan should not, without more, be fatal to a debtor's discharge if the debtor can cure the default timely. The debtor's loan modification cures the default as surely as if the debtor had made the missing payments timely.").

f. Term of the plan

Although not entirely clear from the case law, it appears a debtor only needs to be current on payments that came due during the "term" of the plan to receive a discharge. This can be extremely important, especially in the case of minor defaults. A 3002.1 response may be filed several months after the plan term has ended and all or part of the arrears may have occurred outside the term of the plan. In cases where there are only a few missed payments the court may afford the debtor some additional time to cure the arrears.

i. In *In re Cherry* the court states "[t]he Debtors need not provide any certifications regarding post-Plan time periods."

g. Hardship discharge

One option that has been suggested by courts as a possible solution is a hardship discharge under 11 U.S.C. § 1328(b). To date, there do not appear to be any written opinions where a hardship discharge has been granted. The biggest hurdle a debtor is likely to face is showing that the failure to make payments was "due to circumstances for which the debtor should not justly be held accountable." This is a high bar but under the right set of facts this may be a viable option.

h. Fees and costs

Another reason to closely examine the 3002.1 response is that in some cases the entire alleged arrearage stems from post-petition fees and costs charged by the lender. This type of arrearage may not prevent a discharge if a court determines they are not payments due under the terms of the plan. This appears to be an issue that has not been squarely addressed by the courts.

V. Does an order improperly granting a discharge have to be vacated?

Sometimes a discharge is granted in a case before the 3002.1 response is filed or without the court being aware of the arrears. In these cases the court is faced with the question of whether to vacate the debtor's discharge. In one of the first 3002.1 cases the court raised this issue *sua sponte* after granting a debtor's discharge.

i. *In re Gonzales,* 532 B.R. 828 (Bankr. D. Colo. 2015)(Order granting discharge was vacated.).

There are some recent opinions that recognize it may be appropriate to vacate a discharge but it is not required. Two courts have examined the issues under Fed. R. Civ. P. 60(b) as incorporated by Fed. R. Bankr. P. 9024 and determined that Rule 60(b) is an equitable remedy and absent fraud the court must weigh the particular facts of the case before vacating the discharge order.

i. *In re Coughlin*, 568 B.R. 461 (Bankr. E.D.N.Y. 2017)(The court found debtors were not entitled to discharge but under Rule 60(b) discharge did not have to be vacated because it was not procured by fraud and the equities of this case favored discharge).

ii. *In re Bethe*, 2017 Bankr. LEXIS 2554 (Bankr. E.D. WI. 2017)(Holding that debtors were not eligible for discharge because they had not made all payments under the plan but declining to vacate order granting discharge under Rule 60(b) because the equities in this case did not warrant vacating the discharge. However, the court notes the chapter 13 trustee needs to change its procedures to ensure compliance with 1328(a)).

A conversation on the new National Form for Chapter 13 plans and the accompanying rule amendments

1. Timing

- December 1, 2017:
  - Effective date for new rules.
  - Effective date for either the national Chapter 13 form or a local form complying with the new rules

- HOLD SLIDE FOR STATISTICS OF DISTRICTS OPTING IN AND OUT.

2. Why the changes were proposed

- A *national form* was suggested by judges and creditors, in order to
  - follow the usual bankruptcy procedure: forms, used nationally, but do not dictate content
  - lead to lower costs, after transition, for all parties
  - allow more effective education
  - make decisions more useful
  - comply with *Espinosa*
  - allow national data collection

2. Why the changes were proposed

The general goals of the *rule amendments*:

- A. Make a Chapter 13 plan form effective
- B. Make plan confirmation final
- C. Provide adequate notice
- D. Allow for an order declaring a lien satisfied

3. The rule amendments

A. To make the forms effective

- Require use of specified forms (national or local) and prohibit and limit most modifications of the forms
- Require local forms to meet specified standards

3A. Make the form effective

Require use of the specified forms

- Rule 3015(c):

If there is an Official Form for a plan filed in a chapter 13 case, that form must be used unless a Local Form has been adopted in compliance with Rule 3015.1.

3A. Make the form effective

- Amended Rule 9009(a)
  - The Official Forms prescribed by the Judicial Conference of the United States shall be used "*without* alteration, **except**
    - as otherwise provided in these rules,
    - in a particular Official Form,
    - or in the national instructions regarding a particular Official Form

3A. Make the form effective

Prohibit most modifications

- Amended Rule 9009(a) also provides:

"Official Forms may be modified to permit minor changes not affecting wording or the order of presenting information, including changes that

(1) expand the prescribed areas for responses in order to permit complete responses;

(2) delete space not needed for responses;

(3) delete items requiring detail by checking 'no' or 'none' or by stating in words that there is nothing to report on that question

3A. Make the form effective

Special place for nonstandard provisions

- Rule 3015(c):

"With either the Official Form or a Local Form, a nonstandard provision is effective only if it is included in a section of the form designated for nonstandard provisions and is also identified in accordance with any other requirements of the form."

3A. Make the form effective

Requirements for local forms

- Rule 3015.1:
  - (a) one local form per district
  - (b) separate paragraphs, numbered and headed in bold type
  - (c) initial warning paragraph on nonstandard provisions, stripoff, and lien avoidance
  - (d) separate paragraphs for curing and maintaining mortgages, paying DSOs, paying hanging paragraph claims, and surrendering collateral (with stay termination)
  - (e) a final paragraph for nonstandard provisions and a certification that no nonstandard provisions are placed elsewhere.

3. The rule amendments

B. Make plan confirmation final

- All non-governmental claims must be filed before confirmation
- Treatment of priority and secured claims may be determined at confirmation
- Lien avoidance may be obtained through the plan

3B. Make plan confirmation final

Rule 3002: Filing proof of claim or interest

(a) NECESSITY FOR FILING. A secured creditor, unsecured creditor, or an equity security holder must file a proof of claim or interest for the claim or interest to be allowed . . . . A lien that secures a claim against the debtor is not void due only to the failure of any entity to file a proof of claim.

(c) TIME FOR FILING. In a voluntary chapter 7 case, chapter 12 case, or chapter 13 case, a proof of claim is timely filed if it is filed not later than 70 days after the order for relief under that chapter or the date of the order of conversion to a case under chapter 12 or chapter 13.

Non-governmental entities have accelerated filing date.

3B. Make plan confirmation final

Non-governmental claims have accelerated filing date

- Rule 3002:

(c)(7) A proof of claim filed by the holder of a claim that is secured by a security interest in the debtor's principal residence is timely filed if:

. . . . (B) any attachments required by Rule 3001(c)(1) and (d) are filed as a supplement to the holder's claim not later than 120 days after the order for relief is entered.

- Rule 3004 timeframe for Debtor/Trustee to file claims also accelerated since creditor's deadline so early.

3B. Make plan confirmation final

Treatment of priority and secured claims may be determined at confirmation

- Rule 3012:

  [A] request to determine the amount of a secured claim may be made by motion, in a claim objection, or in a plan filed in a chapter 12 or 13 case.

  [This allows the plan to provide for § 506(a) stripdown.]

3B. Make plan confirmation final

Treatment of priority and secured claims may be determined at confirmation

- Rule 3012:

  A request to determine the amount of a claim entitled to priority may be made only by motion made after the filing of the claim or in a claim objection.

  [Early claim filing should allow a motion to determine priority amounts at confirmation.]

3B. Make plan confirmation final

Treatment of priority and secured claims may be determined at confirmation

- Rule 3012:

  (c) CLAIMS OF GOVERNMENTAL UNITS. A request to determine the amount of a secured claim of a governmental unit may be made only by motion or in a claim objection after the governmental unit files a proof of claim or after the time for filing one under Rule 3002(c)(1) has expired. [Rule 3002(c)(1): government POCs to be filed not later than 180 days after case filing.]

3B. Make plan confirmation final

Treatment of priority and secured claims may be determined at confirmation

- Rule 3015:

  (g) EFFECT OF CONFIRMATION. Upon the confirmation of a chapter 12 or chapter 13 plan: any determination in the plan made under Rule 3012 about the amount of a secured claim is binding on the holder of the claim, even if the holder files a contrary proof of claim . . . and regardless of whether an objection to the claim has been filed . . . .

  Plan controls value of secured 506(a) claims

3B. Make plan confirmation final

Lien avoidance done through the plan

- Rule 4003:

(d) AVOIDANCE BY DEBTOR OF TRANSFERS OF EXEMPT PROPERTY. A proceeding under § 522(f) by the debtor to avoid a lien or other transfer of property exempt under § 522(f) of the Code shall be commenced by motion in the manner provided by Rule 9014, or by serving a chapter 12 or chapter 13 plan on the affected creditors in the manner provided by Rule 7004 . . . .

3. The rule amendments

C. Provide sufficient notice

- Heightened service for claim modification
- Service of the full plan
- Adequate time for objection

3C. Provide adequate notice

Heightened service for claim modification

- Rule 3012(b), allowing for stripdown of secured claims through the plan,
- and Rule 4003(d), allowing for lien avoidance,

both require service "in the manner provided for service of a summons and complaint by Rule 7004."

3C. Provide adequate notice

Service of the full plan

- Rule 3015(d):

  NOTICE AND COPIES. If the plan is not included with the each notice of the hearing on confirmation mailed under Rule 2002, the debtor shall serve the plan on the trustee and all creditors when it is filed with the court.

3C. Provide adequate notice

Adequate time for objection

- Rule 2002(b)(3): 28 days notice of the hearing on confirmation
- Rule 2002(a)(9): 21 days notice of deadline for objections to confirmation
- Rule 3015(f): objections to confirmation must be filed 7 days before the hearing

3. The rule amendments

D. Allow for an order declaring a lien satisfied

- Rule 5009(d):

  In a chapter 12 or chapter13 case, if a claim that was secured by property of the estate is subject to a lien under applicable nonbankruptcy law, the debtor may request entry of an order declaring that the secured claim has been satisfied and the lien has been released under the terms of a confirmed plan."

4. The Proposed Plan Form

Overall approach

- Nine parts (not all used in every case)
- "None" boxes allowing content of used sections to be omitted = shorter form
- One exhibit (estimated payments by the trustee; a check on feasibility)
- Designed to include all significant options (even if not available in every court)

4. The Proposed Plan Form

The 9 parts (note colors!):

1. Warning notices
2. Payments to trustee
3. Secured debt
4. Priority claims
5. Unsecured claims
6. Executory contracts & unexpired leases
7. Property vesting
8. Nonstandard provisions
9. Signatures

4. The Proposed Plan Form

Significant provisions

- Part 1: Notice
  - ***New feature***—First item in the form: warning to debtors that options in the form don't guarantee confirmation:

To Debtors: This form sets out options that may be appropriate in some cases, but the presence of an option on the form does not indicate that the option is appropriate in your circumstances or that it is permissible in your judicial district. Plans that do not comply with local rules and judicial rulings may not be confirmable.

4. The Proposed Plan Form

Significant provisions

- Part 1: Notice to Interested Parties
  - Next, warning for creditors:
    - Checkboxes for claim modification, lien avoidance, and non-standard provisions, ineffective if not checked.
    - Advice regarding legal rights
  - The warnings are set out with check boxes indicating whether or not each warning applies.

1.1	A limit on the amount of a secured claim, set out in Section 3.2, which may result in a partial payment or no payment at all to the secured creditor	❑ Included	❑ Not included
1.2	Avoidance of a judicial lien or nonpossessory, nonpurchase-money security interest, set out in Section 3.4	❑ Included	❑ Not included
1.3	Nonstandard provisions, set out in Part 8	❑ Included	❑ Not included

4. The Proposed Plan Form

Significant provisions

- Part 2: Plan Payments and Length of Plan
  - § 2.1 allows payments to the trustee in other than monthly installments and
  - allows changing payment amounts
  - § 2.2 allows the debtor to specify payroll deductions (but does not prevent the court from ordering payroll deductions if not chosen by the debtor)

4. The Proposed Plan Form

Significant provisions

- Part 2: Plan Payments and Length of Plan
  - § 2.3 gives options for turnover of tax refunds
  - § 2.4 provides for other possible sources of funding, such as property sales
  - § 2.5 estimates total payments from the debtor to the trustee

4. The Proposed Plan Form

Significant provisions

- Part 3: Treatment of Secured Claims
  - Five sections with separate treatments
  - All sections in this part are collapsible—if no claims are covered, a check box for "None" allows the remainder of the section to be omitted from the filing.

4. The Proposed Plan Form

Significant provisions

- Part 3: Treatment of Secured Claims
- § 3.1: Cure arrearage and maintain current payments
  - Proof of claim controls unless court rules otherwise (on claim objection)
  - As default: relief from stay terminates secured treatment (only in § 3.1)
  - Option for current payment to be made by debtor (subject to local practice)
  - Arrearage payments made by trustee

4. The Proposed Plan Form

Significant provisions

- Part 3: Treatment of Secured Claims
  - § 3.1: Cure arrearage and maintain current payments

Current installment payment (including escrow)	Amount of arrearage	Interest rate on arrearage (if applicable)	Monthly plan payment on arrearage	Estimated total payments by trustee
$_____	$_____	_____%	$_____	$_____

Disbursed by:

❑ Trustee

❑ Debtor(s)

4. The Proposed Plan Form

Significant provisions

- Part 3: Treatment of Secured Claims
  - § 3.2 Value property, alter payments of fully secured claims or modify undersecured claims (§ 506(a) cramdown bifurcation)
    - Plan controls secured value EXCEPT
      - Court otherwise rules
      - Governmental entities
    - States lien terminates at discharge or completion of plan (§ 1325)(a)(5) and §349(b))
    - Only effective if Part 1 warning box is checked

4. The Proposed Plan Form

Significant provisions

- Part 3: Treatment of Secured Claims
  - § 3.3 Hanging paragraph claims (910/365 PMSI)
    - States grounds for applying the paragraph
    - Allows choice of direct payment by debtor or payment by the trustee
    - Timely filed claim controls amount of debt

4. The Proposed Plan Form

Significant provisions

- Part 3: Treatment of Secured Claims
  - § 3.4 Lien avoidance
    - Requires check in warning box in Part 1
    - Calculation as required by § 522(f)
  - § 3.5 Surrender
    - Provides for request of stay relief
    - A Part 8 provision is required to prevent stay relief for surrendered collateral

4. The Proposed Plan Form

Significant provisions

- Part 4: Trustee's Fees and Priority Claims
  - Five sections: for amounts, not timing
    - § 4.1 General rule: full payment, no interest; DSO claims included unless otherwise treated in the plan
    - § 4.2 Amount of trustee fees estimated
    - § 4.3 Amount of unpaid attorney fees estimated
    - § 4.4 Amount of other priority claims
  - Estimate only; actual amount determined by proofs of claim or separate court order

4. The Proposed Plan Form

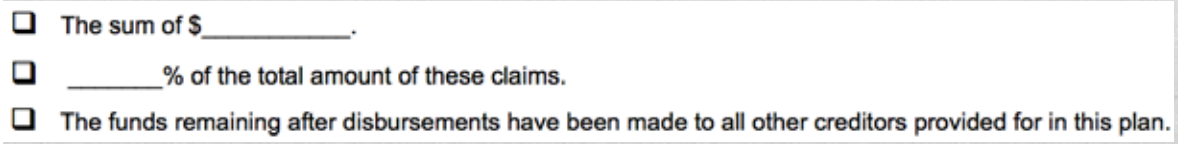
Significant provisions

- Part 4: Trustee's Fees and Priority Claims
  - § 4.5 DSO claims assigned or owed to a governmental unit paid less than in full (under§ 1322(a)(4))
    - "None" box; provides for detail
    - Here the amount of payment must be specified, since it is not full payment.

4. The Proposed Plan Form

Significant provisions

- Part 5: Nonpriority Unsecured Claims
  - Three sections
    - § 5.1 Claims not specially classified (usual)
      - Three options; more than one can be chosen
      - If so, option with highest payment applies



Best interest test of § 1325(a)(4) sets minimum

4. The Proposed Plan Form

Significant provisions

- Part 5: Nonpriority Unsecured Claims
  - Three sections
    - § 5.2 Cure arrearage and maintain current payments (commonly for student loans)
      - Detail list
      - Direct pay option (subject to local practice)
      - Arrearage always paid through trustee

4. The Proposed Plan Form

Significant provisions

- Part 5: Nonpriority Unsecured Claims
  - Three sections
    - § 5.3 Specially classified claims (again might be used for student loans)
      - Detail list

Name of creditor	Basis for separate classification and treatment	Amount to be paid on the claim	Interest rate (if applicable)	Estimated total amount of payments
_____	_____	$_____	_____%	$_____

4. The Proposed Plan Form

Significant provisions

- Part 6: Executory Contracts and Unexpired Leases
  - One section: rejected unless listed
  - "None" box
  - Detail list set out
  - Choice for direct pay of current obligations on listed contracts and leases

4. The Proposed Plan Form

Significant provisions

- Part 7: Vesting of Property of the Estate
  - Gives options for vesting property *in the debtor* (subject to court order under § 1327(b))

Check the applicable box:

☐ plan confirmation.

☐ entry of discharge.

☐ other: _____

4. The Proposed Plan Form

Significant provisions

- Part 7: Vesting of Property of the Estate
  - Gives options for vesting property *in the debtor* (subject to court order under § 1327(b))
  - A plan may also vest estate property in a third party under § 1322(b)(9). That possibility could be put into effect through the "other" box.

4. The Proposed Plan Form

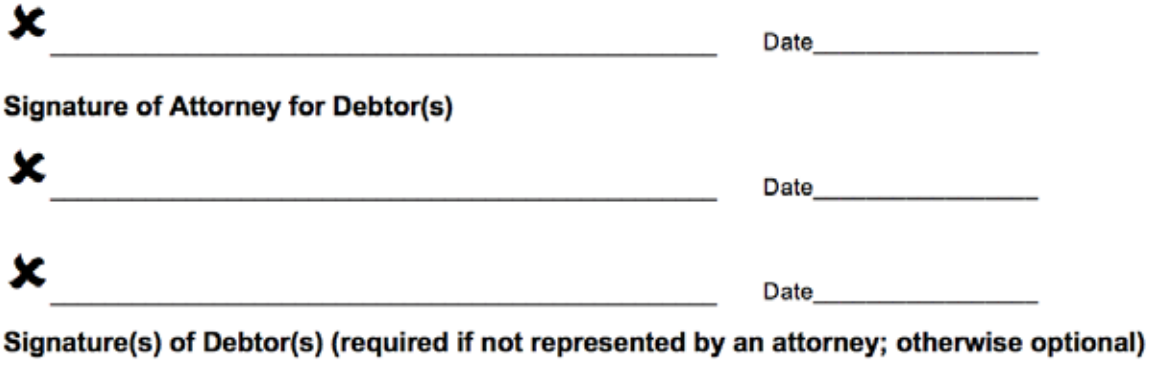
Significant provisions

- Part 8: Nonstandard Plan Provisions
  - Open for any provisions contrary to or in addition to those set out in the form
  - Not effective unless the warning box in Part 1 is checked.

4. The Proposed Plan Form

Significant provisions

- Part 9: Signatures
  - Debtor signatures required only if not represented by an attorney



4. The Proposed Plan Form

Exhibit: Estimated trustee payments

- Should be automatic through software
- Will check feasibility
- Review against the total of plan payments in Part 2.5