

**NATIONAL CHAPTER 13 FORM PLAN (Official Form 113)**

**AND RULE CHANGES**

**Northern District of Ohio, Canton Division**

The information I am giving you today, is my opinion and does not reflect the opinion of the Judge. If you disagree with the instructions or advice I am giving you, please feel free to complete the plan as you chose and I will determine if your approach should be objected to and the court will then decide.

See **Administrative Order 17-1** – this order requires that in compliance with Federal Rule of Bankruptcy Procedure 3012 and 4003 you will be able to value certain claims and avoid certain liens through the Chapter 13 plan. Therefore, it is necessary for you to serve the plan in accordance with Rule 7004 for service of summons and complaints. You must append a certificate of service that includes the date and method of service and the identity of name and address of each entity served in compliance with Local Bankruptcy Rule 9013-3. It is the trustee’s responsibility to assure this is done. Failure to do so will result in an objection to the confirmation of the plan.

**THE PLAN:**

**PART 1**: **NOTICES (check all boxes that apply to proposed Plan)**

To Debtors: you must comply with local rules and judicial rulings to get the case confirmed

To creditors: the objection period is 7 days prior to the hearing set on the confirmation.

You must check the appropriate:

**1.1** Cram down of secured claims (3.2)

**1.2** Avoidance of liens (3.3)

**1.3** Nonstandard (i.e. special) provisions (8)

Note: failure to check an applicable box negates the inclusion of a cram down, lien avoidance or special provision listed later in the Plan.

**PART 2:** **PLAN PAYMENTS AND LENGTH OF PLAN**

**2.1.** List amount, frequency and duration in months of plan payments. Extra lines must be used for decreases, increases and/or seasonal variations in payments. Total number of months listed must equal or exceed the applicable commitment period or one may expect objection to confirmation by Trustee. Note the statement at the bottom of page 1: If the plan is less than 60 months, additional monthly payments will be made to the extent necessary to make payments to creditors specified in this plan.

**2.2.** Method of Plan payment – **Administrative Order No. 17-3**:

 Unless “good cause” is shown by debtor, Plan payments must be by wage order in Canton, Akron and Cleveland divisions. You do not have to file a motion for direct pay if schedule I reflects income from sources from which a pay order is not practical. In Canton, Trustee will prepare wage order, so debtor must complete Schedule I with complete and accurate address and other employer information to allow issuance of wage order. The administrative order places the burden on debtor to provide “all the information the trustee needs to prepare the order.” Wage order will be placed in full on primary debtor by default. If wage order is to be split between joint debtors, or paid exclusively by the joint debtor, this instruction must be in Nonstandard Plan Provisions (**Part 8** of Plan).

**2.3.** Tax refunds:

 Canton has no requirement as to disposition of post-confirmation tax refunds. In cases of over-withholding, Trustee may impute income to monthly budget. Note: Canton Confirmation Order will now require that copies of all post-petition federal tax returns filed during the Plan be delivered to Trustee within 14 days of filing with the IRS. If the debtor files an extension, you must send proof to my office. All returns must be filed through the trustee portal. Sending it by email will not be acceptable.

**2.4.** List projected additional Plan payments here.

**2.5.** Debtor must calculate and list estimated total of Plan payments here.

**PART 3:** **TREATMENT OF SECURED CLAIMS**

 **Note all the following sections require you to indicate none if it is not applicable.**

**3.1.** Maintenance and Cure i.e. Mortgages

1. **See Administrative Order 17-4**. In Canton and Cleveland all installment mortgage loans secured by principal residence of debtor must be paid on conduit basis regardless of default status. This does not include Home Equity Lines of Credit, but does include mobile/manufactured home loans. To pay a mortgage directly requires a separate motion and an order. It further states that if Relief from Stay is granted on a piece of property, all liens for that piece of property will cease to be paid.
2. Information included in Proof of Claim (“P.O.C.”) supersedes information included in the Plan where a timely P.O.C. is filed. Where timely P.O.C. is not filed, information in Plan will control. Arrears will not be paid until a proof of claim is filed and the case is confirmed. Debtor must object to timely filed P.O.C.s which debtor believes are inaccurate.
3. A.O. 17-4 authorizes trustee to commence conduit mortgage payments upon filing of P.O.C. Conduit payments will not be paid until a proof of claim is filed or the case is confirmed, whichever happens first. If the proof of claim does not have the Official form 410A, the trustee will pay the amount on the plan. Trustee has no obligation to make partial installment payments. In Canton, only full payments are made. If there is not enough money, no disbursement will be paid to any creditor until the full payment can be made for the mortgage monthly payment. If the creditor does not file a P.O.C., the trustee will pay the conduit payments as indicated on the plan upon confirmation.
4. A.O. 17-4 prohibits mortgage creditor from assessing late charges unless Plan payment default by debtor causes delay in payment distribution by trustee.
5. If a creditor files a Notice of Mortgage Payment Change that increases the monthly installment payment by more than $20, Trustee shall file a Notice of Change in Debtor’s Plan Payment if required. This will be a Modification of Plan, and a new wage order will issue after requisite notice period.
6. Plan now provides for specifying monthly plan payment on mortgage arrearage. This amount should be the total of arrears divided by the number of months the debtor expects to be in the plan. Also note the projected “total payments by trustee” on each specific mortgage claim must be completed. This should be the total of the arrears and the mortgage payments paid by the trustee. The interest rate to be paid on arrearages must be completed. (Generally 0% in Ohio unless loan documentation specifically provides for interest of arrears).
7. A.O. 17-4 specifies 2 new forms for mortgage creditors to use for noticing the transfer of a claim and the transfer of the servicing of a claim in the Canton and Cleveland divisions.

**3.2.** Request for valuation of security, payment of fully secured claims and modification of undersecured claims.

1. This section is about cram-down and stripping of non-governmental secured claims. For governmental claims, P.O.C. supersedes Plan, and debtor must still move to value governmental claims if the debtor believes it to be under/unsecured. All creditors included in this section will be paid by the trustee.
2. “Amount of secured claim” listed in Plan by the debtor controls, and any amount exceeding the “Amount of secured claim” will be paid as unsecured. Burden is on creditor to object to plan confirmation.
3. **Administrative Order 17-02** governs the interest rate paid on secured claims in Canton, Akron, Cleveland and Youngstown absent further action by the parties in interest. Presumptive interest rate is established at confirmation of plan according to A.O. 17-2, and is equal to prime rate plus risk factor of 2%. It is the Trustee’s position that in the absence of an order establishing a different rate, A.O. 17-2 will supersede the Plan and the applicable interest rate will be adjusted as needed at confirmation.
4. **Per the Judge’s Administrative Order 17-08** notwithstanding that cram-down and lien stripping is self-effectuating at confirmation of the Plan, the Canton division requires that documentation in support of lien modification be submitted with the **Confirmation Review Summary (“C.R.S.”)** where the same documentation will not be filed in support of a motion seeking the issuance of a comfort order finding that a claim is wholly or partially unsecured. See Judge Kendig’s **Memorandum RE: Motions and Orders to avoid liens or mortgages on real estate in Chapter 13 cases** dated December 21, 2005, on the Judges website for documentation and information required.
5. Debtor should be sure that the “Monthly payment to creditor” amount listed for each secured claim is sufficient to amortize the secured portion of the claim, together with interest, during the term of the Plan.
6. **Administrative Order 17-05** governs adequate protection payments in Canton and Cleveland, and requires the trustee to disburse adequate protection payments to creditors listed under Section 3.2 of the Plan after a P.O.C. is filed. The amount of the adequate protection payment will be the amount of “Monthly payment to creditor” for each claim listed in Section 3.2. The trustee is entitled to fees on adequate protection payments regardless of whether the case is dismissed prior to confirmation under A.O. 17-5.

**3.3.** Secured claims excluded from 11 USC Section 506

1. This section must do with 910 car claims and 1 year purchase money security interest for other personal property. The claim amount will rule for these creditors.
2. Debtor should be sure that the “Monthly plan payment” amount listed for each claim that is being disbursed by the Trustee is sufficient to amortize the claim, together with interest, during the term of the Plan.
3. As stated above, **Administrative Order 17-02** governs the interest rate paid on secured claims in Canton, Akron, Cleveland and Youngstown absent further action by the parties in interest. Presumptive interest rate is established at confirmation of plan according to A.O. 17-2, and is equal to prime rate plus risk factor of 2%. It is the Trustee’s position that in the absence of an order establishing a different rate, A.O. 17-2 will supersede the Plan and the applicable interest rate will be adjusted as needed at confirmation.
4. Do not include the total of payments to be paid directly by the debtor in “Estimated total payments by trustee” column.
5. As stated above, **Administrative Order 17-05** governs adequate protection payments in Canton and Cleveland, and requires the trustee to disburse adequate protection payments to PMSI creditors listed under Section 3.3 of the Plan after a P.O.C. is filed. The amount of the adequate protection payment will be the amount listed in the “Monthly plan payment” column for each claim **being disbursed** by the trustee in Section 3.2. The trustee is entitled to fees on adequate protection payments regardless of whether the case is dismissed prior to confirmation under A.O. 17-5. Absent further guidance of the Court, it is the intent of the trustee to **not disburse** adequate protection payments for claims being paid directly by the debtor and included in Part 3.3.

**3.4.** Avoiding Liens Impairing Exemptions

* 1. Stripping/cram-down is effective upon confirmation of the Plan.
1. As stated above, **Per the Judge’s Administrative Order 17-08** notwithstanding that cram-down and lien stripping is self-effectuating at confirmation of the Plan, the Canton division requires that documentation in support of lien modification be submitted with the **Confirmation Review Summary (“C.R.S.”)** where the same documentation will not be filed in support of a motion seeking the issuance of a comfort order finding that a claim is wholly or partially unsecured. See Judge Kendig’s **Memorandum RE: Motions and Orders to avoid liens or mortgages on real estate in Chapter 13 cases** dated December 21, 2005, on the Judges website for documentation and information required.

**3.5.** Surrender of Collateral

* I believe this section gives creditors the right to foreclose on property without having to get a relief from stay.

**PART 4:** **TREATMENT OF FEES AND PRIORITY CLAIMS**

**4.1.** General trustee fees and DSO are to be paid in full. If there is a DSO, you must include the recipient’s name on schedule E along with the agency to whom payments are sent. It is my obligation to send letters to both entities at filing and upon discharge. Failure to include the names on schedule E will result in a motion to dismiss the case.

**4.2.** Trustee’s Fees

* Trustee’s fees in Canton through September 30, 2018, are currently 7.5% on receipts. It is prudent to use 10% on your plans in case the percentage changes. It provides a cushion for the funding of the plan.

**4.3.** Attorney Fees

* Amount listed here should be **unpaid** balance of attorney fees, and it should not include the amount of attorney fees paid directly by the debtor prior to filing. Include case closing fee in amount of unpaid balance.

**4.4.** Other Priority Claims

* The full amount of priority claims must be included here. Contrary P.O.C. will control.

**4.5.** DSO Claims Owed to Governmental Units and Being Paid Less than Full Balance

* This would be for DSO claims which the debtor believes should not be paid in full. Do not include DSO obligations under section 4.1

**PART 5:** **TREATMENT OF NONPRIORITY UNSECURED CLAIMS**

* 1. Nonpriority Unsecured Claims Not Separately Classified
1. Debtor may check any or multiple boxes in this section. In the event that more than one box is checked, feasibility and unsecured distributions will determined under whichever selected option yields the largest unsecured disbursement.
2. The third option is the one most often used in the Canton division under the former plan. This results in an unspecified pro-rata distribution to general unsecured creditors in the range of 0% to 100%.
3. Debtor should insert the estimated hypothetical chapter 7 liquidation value of debtor’s bankruptcy estate in the second to last sentence of this section.

**5.2.** Maintenance of Payments and Cure of Default on Nonpriority Unsecured Claims

* I would imagine this would be for student loans.

**5.3.** Other Separately Classified Nonpriority Unsecured Claims

**PART 6: EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**6.1.** Leases and Executory Contracts Being Assumed

1. List only leases and executory contracts that are being assumed, unlisted leases are deemed rejected.
2. Arrears will be paid by the trustee through the plan if a claim is filed. You must indicate who will pay ongoing lease payments.
3. List only total payments estimated to be paid by the trustee in final column.

**PART 7:** **VESTING OF PROPERTY OF THE ESTATE**

* Debtor should elect vesting at upon plan confirmation. This comports with the Canton Court’s Confirmation Order.

**PART 8**: NONSTANDARD PLAN PROVISIONS

* All “special” or nonstandard Plan provisions may only be included in this section. Special or nonstandard Plan provisions appearing in any other section of the Plan will be ineffective pursuant to the language of the form and will be disregarded by the trustee. If the wage order is not to be placed exclusively on the employer of the primary debtor in a joint case, list instructions for issuance of the wage order(s) here.

**Official form 113 Exhibit**

It is the trustee’s opinion this part of the plan must be completed until the court orders otherwise.

**OTHER PROCEDURAL CHANGES OF NOTE:**

* Priority of trustee distributions in the Canton division is listed in Judge Kendig’s **Administrative Order 17-08** and will also appear in the new Confirmation Order. It has not changed.
* Payment of attorney fees through the Plan will now be governed by the Confirmation Order. No change.
* The Confirmation Order will now require the debtor to submit post-confirmation federal tax returns to the trustee **within 14 days after** filing the returns with the IRS. The trustee will not remind the debtor or make an additional request for the returns.
* If a debtor is stripping or avoiding a lien, and an appraisal will be required to support this, the trustee will require the phone number of the debtor, and the party occupying the property, if not the debtor. Please supply this contact information to us upon filing of the petition, but in no event later than the 341 meeting. This will be transmitted to the appraiser to allow for coordination of the appraisal.
* With amendments to F.R.B.P. 9009, Official Form 420, Notice of Motion or Objection, should also be used with only specifically permitted modifications.
* **341 Meeting Change.** The trustee will no longer permit debtors who appear at the 341 meeting without all requested documentation to remain during the orientation program with the expectation debtor’s counsel will bring the missing documentation. Debtors appearing without all requested documentation will now be dismissed immediately from the 341 meeting proceedings.

**RULE CHANGES OF NOTE:**

Claims Bar Dates:

* Federal Rule of Bankruptcy Procedure 3002 now sets claims bar date 70 days after order for relief (i.e. date of filing petition or conversion).
* Secured creditors are now explicitly required to file a claim by bar date in order to have allowed claim.
* Where a secured creditor does not file allowed claim, lien is not defeated solely by failure to file allowed claim.
* If creditors claim is secured by interest in debtor’s principal residence, a two stage claims bar date now applies. Mortgage creditor must file P.O.C. with mortgage attachment 410A and escrow statement within 70 days of order for relief. Mortgage creditor then must supplement the claim with copy of note and mortgage within 120 days of order for relief.
* Bar date for governmental units is unchanged at 180 days from order for relief.
* If a secured claim is not filed, and retention of collateral is material to debtor’s fresh start, debtor’s counsel may still file claim on secured creditor’s behalf within 30 days of expiration of bar date under Federal Rule of Bankruptcy Procedure 3004.

Objections to Claims:

* Federal Rule of Bankruptcy Procedure 3007 has been amended to specify manner of service of objection to P.O.C.; to specify service according to Federal Rule of Bankruptcy Procedure 7004 on certain types of claimants; to permit objecting party to give claimant notice and opportunity for a hearing; and, to mandate service of the official notice form with the objection.
* Rule 3007 now requires objection and notice to be mailed to person and address contained on P.O.C. in section labeled, “Where should notices to the creditor be sent?” If claim is amended, most recent information must be used.
* Service according to Rule 7004 now only required where creditor is an insured depository institution, or the United States, its officers or agencies.
* Negative notice is now explicitly permitted for objection to P.O.C.
* Rule 3007 now mandates use of Official Form 420B along with the objection to P.O.C. Federal Rule of Bankruptcy Procedure 9009 now states that Official Form 420B “shall be used without alteration, except as provided in these rules, in a particular Official Form, or in the national instructions for a particular Official Form.”

Determination of Secured and Priority Claims and Lien Avoidance:

* Valuation of secured claim is now explicitly permitted by motion, an objection to P.O.C., or in the Plan for non-governmental claimants.
* Valuation of governmental secured claims, and priority of claims, must be done by motion or objection to previously filed P.O.C. The Plan may not be used to do this.
* If valuation is incorporated in Plan, service of Plan must be done in accordance with Federal Rule of Bankruptcy Procedure 7004 by the debtor.
* Notice period of Plan must be a minimum of 21 days for filing of objection and 28 days prior to hearing date under Federal Rule of Bankruptcy Procedure 2002.