

The new plan

Revisions to the Eastern District of Wisconsin Model plan. Spring 2021

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Why?

- ▶ Current model plan went into effect in November 2017.
- ▶ Changes in the law have impacted options in the current plan. See *In re Cherry*, No. 19-1534, 2020 WL 3638398 (7th Cir. July 6, 2020).
- ▶ Certain sections of the current model plan proved difficult to use correctly, specifically 3.2 and 3.3.
- ▶ Eliminate more “standard” special provisions, special provisions should be special

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Part 1—Notices:

- ▶ Adds definition of “debtor” and “estate”
 - ▶ **“Debtor” as used in this plan means both debtors in a joint case, except where otherwise specified. “Estate” means the estate of each debtor, unless otherwise specified.**
- ▶ Clarifies that the trustee will only pay creditors who hold allowed claims that are provided for by the plan.
 - ▶ Under “To Creditors:” **You must timely file a proof of claim. The trustee will only pay creditors who hold allowed claims provided for by the plan.**

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Part 2—payments to trustee and plan length:

- ▶ Introductory Paragraph:
 - ▶ States that all plan terms relating to debtor’s submission of funds to the trustee as is necessary to execute the plan must be contained in Part 2.
 - ▶ Payment terms should NOT be put in the special provisions. All information about payments should be in part 2.
 - ▶ States that each debtor is responsible for making all payments required by the plan, including wages deducted through payroll orders.
 - ▶ Provides that the debtor may change the manner of payment to the trustee by filing new Local Form 9011 requesting change (for example, when a debtor has a new employer to which a payroll order must be issued).
 - ▶ Prohibits debtor from changing the amount of the plan payment except by filing amendments/modifications to the plan.

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Subpart 2.1 plan term and length

- ▶ Brings back designation of debtor as under/over-median to aid in reviewing the plans.
- ▶ Revised the provisions for determining when the applicable commitment period begins.
 - ▶ Choices are 30 days after filing, 30 days after confirmation, or 30 days after the filing fee is paid.
 - ▶ The first payment is still due to the Trustee 30 days after filing as required by 11 U.S.C. 1326, regardless of the selection made.
 - ▶ Considerations for counsel - if 30 days after filing is your choice, the maximum term is 60 months from then, no running from confirmation to make it feasible. Conversely, choosing 30 days after confirmation may cause a “36 month” plan to run several months more than a lay person may expect when they see 36 months.

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Subpart 2.2 Plan payments And 2.5 Tax Returns

- ▶ Requires all plan payments to be stated in monthly amounts, with another section providing detail regarding how the payroll order will work (weekly, bi-weekly, etc.) to be made by Debtor 1 and Debtor 2 (either directly or through payroll orders).
 - ▶ The Trustee will calculate the weekly, bi-weekly or semi-monthly amount for any payroll order.
 - ▶ Direct payments are assumed to be monthly, but the debtor can divide the payments as desired, as long as the full payment is made each month.
- ▶ Includes a new provision for step payments and provides more detail for payments, including when the payments begin.
 - ▶ Do not use \$X payments for month 1-12, then \$Y payments thereafter. Plan is designed to tell us the month and year the change takes place so there is no guessing.
- ▶ Tax return provision has been moved from 2.3 to the end of Part 2 to keep all the plan payments sections together

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Part 3—Treatment of Secured Claims

- ▶ Introductory paragraph to Part 3 stating provisions common to subparts 3.1, 3.2, and 3.3:
- ▶ Moves language from Parts 3.1 and 3.2 to the introductory paragraph of Part 3 regarding payments and payments of arrears.
- ▶ Adds language to clarify that if a secured creditor obtains relief from the stay, then the plan will be deemed not to provide for that creditor's secured claims (beyond the payments actually made to the creditor as of that date) or any further payment of those claims.
- ▶ Provides for payment of Rule 3002.1(c) notices in most circumstances.
 - ▶ Counsel should already be monitoring these notices in case there is an objection to file, but more critical going forward as the plan may need modification for feasibility.

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Part 3 Introductory Paragraph

Treatment of Secured Claims

The following provisions apply to subparts 3.1, 3.2, and 3.3.

The trustee will disburse amounts listed in the *Monthly plan payment on arrearage* and *Monthly payment to creditor* columns each month. If no amount is listed in the *Monthly plan payment on arrearage* or *Monthly payment to creditor* columns, the trustee will disburse payments to the creditors listed in Part 3 pro rata with other secured creditors that do not receive equal monthly payments.

If a secured creditor obtains relief from the automatic stay as to collateral listed in this section, the trustee will cease further payments to that creditor, and, as of the date of entry of the order granting stay relief, the plan will be deemed not to provide for that creditor's secured claims (beyond payments actually made to creditor as of that date) or any further payment on those claims to the extent secured by that collateral regardless of whether the plan provided for payment on those secured claims before the creditor was afforded relief from stay.

The trustee will pay any arrearage listed on a proof of claim filed before the filing deadline under Bankruptcy Rule 3002(c) or 3004, and allowed amounts listed on such proof of claim control over any contrary amounts stated below as to the current installment payment and arrearage.

Payment of Notices filed under Rule 3002.1(c): The trustee will pay post-petition notices of fees, expenses, and charges filed pursuant to Bankruptcy Rule 3002.1(c) ("3002.1(c) Notice") pro rata when the trustee pays other secured creditors, unless the debtor timely objects to the 3002.1(c) Notice. If the debtor timely objects, the trustee will pay the amount as determined by the court. The trustee will not pay 3002.1(c) Notice amounts if the plan provides for avoidance of the creditor's lien or the surrender of all property securing the creditor's claim.

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Subpart 3.1 Secured Cure and Maintain

- ▶ Removes the “Current installment payment” column in Part 3.1 to prevent confusion.
 - ▶ Simple reference to “contractual payment” avoids an issue with the creditor, if the amount is wrong in the plan.

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Subpart 3.2 Secured claims subject to “cram down”

- ▶ Clarifies that Subpart 3.2 only applies to requests for valuation of security and modification of unsecured claims held by non-governmental units.
 - ▶ Secured government claims, like property tax claims moved from 3.2 to 3.3. Rule of thumb for new plan, if it should be paid in full, it goes in 3.3.
- ▶ Further provides that valuation of a secured government claim must be made by claim objection or motion and not in the chapter 13 plan.
- ▶ Clarifies that the lien release upon discharge is limited to the lien on the debtor’s and the estate’s interest in the collateral.

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Subpart 3.3 Secured claims paid in full

- ▶ Now covers secured claims excluded from §506, payment of fully secured claims, and payment of secured claims held by governmental units.
- ▶ Requires the debtor to state the interest rate required by 11 U.S.C. §511 for tax claims of governmental units.
 - ▶ In general, IRS interest is amount on the claim, WDOR is 12%, property taxes 12%
 - ▶ Put the rate in for government claims so feasibility is calculated correctly.
 - ▶ If the plan has 3% for the IRS and the claim has 5%, the Trustee will pay 5%
- ▶ Clarifies that the lien release upon discharge is limited to the lien on the debtor's and the estate's interest in the collateral.

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Subpart 3.5 Surrender

- ▶ modified language on effect of surrender provision to abandon and provide for payment of claim as unsecured claim in the manner provided for in Part 5.
 - ▶ Part of old language stated that "Any allowed unsecured claim resulting from the disposition of the collateral is provided for in Part 5 below."
 - ▶ Language to be updated, beyond the published version of the plan, as follows:
 - ▶ **The debtor surrenders to each creditor listed below the collateral that secures the creditor's claim. As to those creditors, entry of an order confirming this plan immediately (1) terminates the stay under 11 U.S.C. § 362(a) as to the collateral only, (2) terminates any stay under 11 U.S.C. § 1301, (3) abandons the collateral under 11 U.S.C. § 554(b), (4) satisfies each creditor's allowed secured claim in full, and (5) pays any allowed unsecured claim in the manner provided for in Part 5. Unless otherwise ordered, confirmation of the plan does not preclude requests to determine the secured and unsecured amounts of claims provided for by this Part 3.5.**

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Part 4—Treatment of Fees and Priority Claims

- ▶ Subpart 4.3
 - ▶ Clarifies that “Unless otherwise ordered, allowed administrative expenses for attorney’s fees will be paid by the trustee.”

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Part 5—Treatment of Nonpriority Unsecured Claims

- ▶ Introductory Paragraph to Part 5: **NOTE THIS LANGUAGE MAY CHANGE**
 - ▶ Clarifies that any payments on future allowed administrative expenses, including attorney’s fees incurred on debtor’s behalf, will reduce the amounts not yet paid to non-priority unsecured claims once that administrative claim is allowed, but the amounts to be paid to non-priority unsecured creditors will in no event be reduced below the amount necessary to meet the liquidation amount listed in subpart 5.1.
 - ▶ Determination must be made if there should or should NOT be a reduction to unsecured creditors. No reduction if unsecured floor is due to the best interest test (un-exempt assets).
 - ▶ The last sentence of 5.1 is not changed but has been reformatted to make clear that it over-rides any other choice made.

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Part 7—Vesting of Property of the Estate and Order of Distribution

- ▶ Subpart 7.1: Modifies the options for revesting property of the estate.
 - ▶ Change made to make the plan consistent with *In re Cherry*, No. 19-1534, 2020 WL 3638398 (7th Cir. July 6, 2020).
 - ▶ Subpart 7.2: adds uncontested and court-allowed fees, expenses and charges filed pursuant to Rule 3002.1(c) or authorized by court order. Trustee will now be paying on these notices per the part 3 introductory paragraph.

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Part 8—Mortgage Modification Mediation and Other Nonstandard Plan Provisions

- ▶ Added introduction paragraph and language.
- ▶ Adds new Subpart 8.2: New language regarding Mortgage Modification Mediation Program participation.
 - ▶ Plan provision is not effective unless the debtor files and serves a motion for MMM no later than 7 days before the first meeting of creditors or such other time as the court for cause orders.
 - ▶ States that if the debtor and creditor fail to reach an agreement, the debtor surrenders the Mediation Property effective 30 days after the mediator files the report or such other date as the court for cause orders. That date is the “Date of Surrender” and on that date the stay is deemed terminated as to the Mediation Property only, and then mirrors the language in 3.5 regarding surrender.

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