

Wis. Stat. § 128.21
A Creditor's Perspective
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I. Effects of a Plan of Amortization on Creditors

A. Actions stayed

1. Applies only to unsecured debts included in the debtor's affidavit of debts.
2. Creditors are prohibited from levying executions, attachments, and garnishments. § 128.21(2).

B. Actions not stayed

1. Creditors may commence or continue litigation and obtain a judgment. § 128.21(7). If a judgment is obtained, the amount of the judgment is substituted into the plan of amortization.
2. Secured creditors may realize on their collateral. The only limitation is that the creditor must give the trustee at least 5 days written notice of the time, place and manner of the proposed realization. Once the collateral is realized, the secured creditor must inform the trustee of the amount realized and how much the creditor's claim is reduced. § 128.21(8).
 - a. A debtor cannot force a secured creditor to participate in a plan of amortization. However, there is no reason that a debtor could not negotiate with a secured creditor to voluntarily accept a plan of amortization.

II. Proof of Claim Procedures

- A. Once a trustee is appointed, the trustee will send notice to all creditors listed on the debtor's affidavits of debts and will also provide a proof of claim form.
- B. If the creditor disputes the amount of its claim as set forth in the debtor's affidavit of debts, the creditor must file a proof of claim with the trustee. The trustee will attempt to mediate any dispute of the amount of debt.

III. Objections to Confirmation. § 128.21(3r)

- A. A creditor may object to the amount of its claim included in the plan, feasibility of the plan, and/or the person nominated as the trustee.
- B. Objections must be in writing and must specifically request a hearing on the objection.
- C. In order to confirm a plan, the court must find that the plan is both feasible and equitable.

IV. Delinquent utilities (WE Energies)

- A. Section 128.21 does not mention utilities.
- B. The only protections are from executions, attachments, and garnishments and therefore it seems unlikely that disconnection of utilities would be precluded by this statute.
- C. WE Energies is currently seeking a declaratory judgment from Milwaukee County Circuit Court to confirm this interpretation.
- D. A favorable decision to WE Energies would likely have the following affects:
 - 1. WE Energies could ignore a plan of amortization and continue with disconnection of utilities.

2. Utilities that have already been disconnected would not be reconnected.
 3. Debtors would then have to use the remedies and procedures set forth in Wis. Admin. Code *PSC* Chapters 113 and 134 or file bankruptcy.
- E. An unfavorable decision to WE Energies would likely have the following affects:
1. WE Energies would not be able to disconnect utilities and would be required to reconnect utilities that were previously disconnected.
 2. WE Energies would likely take a more aggressive approach to obtain dismissals of cases based on feasibility.
 3. WE Energies and the Trustees would work together to seek sanctions against attorneys and debtors who file frivolous petitions.
 - a. Types of frivolous petitions are those that are not feasible on their face as there would be no factual basis to support the petition and the only purpose is to delay disconnection of utilities.
 - b. Section 802.05 would provide the legal basis for a motion for sanctions and WE Energies and/or the trustee would seek attorney fees and an injunction against refiling.

V. Multiple/Serial Filings

- A. Section 128.21 does not place any limits on the number of plans of amortization that a debtor may file.
- B. When trustees become aware that a debtor has multiple filings, the trustee is more likely to require the debtor to appear in person for the meeting of creditors and will more closely scrutinize the feasibility of the plan.
- C. A creditor has the ability to object to the plan on the basis that it is either not

feasible or not equitable.

- D. If WE Energies believes that a multiple/serial filer is filing for the sole purpose of avoiding disconnection of utilities and is not making an effort to pay their debt, a sanctions motion could be filed on the basis that the sole purpose of the petition is for an improper purpose, such as to harass or to cause unnecessary delay.