

Modifying Chapter 13 Plan *Before Confirmation*

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Dated: September 18, 2012

When you have determined, after consulting with the chapter 13 trustee, that a previously filed chapter 13 plan needs to be changed, you will:

1. If you need a few days before filing a modified plan, withdraw any previously filed plan using the CM/ECF event "Withdrawal of Document (Text Entry)" found under Bankruptcy-Other. It is a text entry only. A paper withdrawal document is not needed. Once the previously filed plan is withdrawn, the Court will review and file hearing minutes cancelling the previously scheduled confirmation hearing. Advise the debtor and any scheduled witnesses that the hearing is cancelled.

- or -

If you can file the modified plan before the scheduled hearing on any previous plan, you do not need to first withdraw the previous plan. Just prepare and file the modified plan, as discussed below. Under Bankr. D.S.D. R. 3015-3B(c)(1), once a modified plan is filed and served, the hearing on the previous plan will be cancelled via hearing minutes. The only caveat is the modified plan must be filed in good faith, *i.e.*, not merely to get the hearing off the calendar or to delay the resolution of problems in the case. Advise the debtor and any scheduled witnesses that the hearing is cancelled.

2. Prepare a modified plan pursuant to 11 U.S.C. § 1323, Fed.R.Bankr.P. 2002(a)(5), and Bankr. D.S.D. Rs. 3015-2 and 3015-4B and Appendix 3A (sample plan). Strictly follow the sample plan. Title the plan "Modified Plan Dated [insert the date the debtor actually signs the plan]," *e.g.*, MODIFIED PLAN DATED SEPTEMBER 13, 2012. Do not use the term "Amended" and do not include "Chapter 13" in the title since the chapter number is already in the caption.
3. Prepare a notice of confirmation hearing. See Bankr. D.S.D. Rs. 3015-4B(a)(3) and 2002-1(c) and Appendices 2D or 2E (sample notices). Strictly follow the appropriate sample notice.

If at least 31 days remain between the date a modified plan is served and the last date for objections to the previously filed plan, the notice may incorporate the previously scheduled date and time for the confirmation hearing.

If fewer than 31 days remain between the date the modified plan is served and the last date for objections to the previously filed plan, the notice shall incorporate a new date and time for the confirmation hearing and a new last date for objections. Call the scheduling deputy clerk before preparing the notice and she will give you the date and time for the confirmation hearing on the modified plan.

If you are unsure, e-mail the scheduling deputy or the law clerk for assistance.

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4. Serve the modified plan and the notice of confirmation hearing on all creditors and other parties in interest.

Attach to and serve with the modified plan any Exhibit Schedule I, Exhibit Schedule J, or Exhibit Statement of Current Monthly Income the Court has ordered the debtor to file or the trustee or another party in interest has requested. Be sure to specifically reference each attachment in paragraph 6 of the modified plan and label each exhibit as "Exhibit."

Amended schedules, forms, or statements should not be attached to a modified plan. Amended schedules, forms, and statements should be filed only when the original documents contained errors as of the petition date. See Bankr. D.S.D. R. 1009-2(a). *Exhibit* schedules, attached to a modified plan, are appropriate when a debtor's financial circumstances have changed post-petition and those changes need to be placed on the record to support the modified plan.

5. Prepare a certificate of service regarding the modified plan and the notice of confirmation hearing.
6. File the documents in CM/ECF by going to:
 - Bankruptcy
 - Plan
 - Case Number
 - Modified Plan
 - Select the Party filing the Modified Plan
 - Browse for the Modified Plan - say Yes to Attachments
 - Attach the Notice of Confirmation Hearing
 - Attach the Certificate of Service
 - Enter the confirmation hearing date, time, and location, and the last day to object to confirmation
 - Enter the date of the Modified Plan, *i.e.*, "September 28, 2012"

7. The docket entries discussed above will look similar to these:

09/11/2012 26 Withdrawal of (related document [22] Plan). Pursuant to Bankr. D.S.D. R. 9014-2, Debtor withdraws the above-named document and certifies that parties in interest who will not be served electronically have been advised of the withdrawal. (Attorney for Debtor) (Entered: 09/11/2012)

09/11/2012 27 Hearing Minutes Re: (related document [22] Plan). APPEARANCES: None. DISPOSITION: No hearing held. On September 11, 2012 Debtor withdrew the plan dated August 1, 2012. The hearing scheduled for September 18, 2012 is cancelled. No order needed. (nsar) (Entered: 09/11/2012)

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09/11/2012 28 MODIFIED PLAN Dated September 11, 2012 filed by Debtor. Confirmation hearing to be held on 11/08/2012 at 09:00 AM (Central), Assigned Courtroom, Sioux Falls. Last day to object to confirmation 10/12/2012. (Attachments: #1 Notice #2 Certificate of Service) (Attorney for Debtor) (Entered: 09/11/2012)

8. If a plan has already been confirmed and the debtor needs to make changes to that confirmed plan, do not use this procedure. Instead, see Bankr. D.S.D. R. 3015-5.