

BANKRUPTCY ^{UP}DATE

February 12, 2019

If someone else would like to receive these ^{UP}dates, please send an e-mail to Mary_Frederickson@sdb.uscourts.gov.

Common Errors in Chapter 13 Plans and How to Avoid Them - Part I

Often the same or similar errors pop up when a chapter 13 plan, a modified plan, or a Plan as Confirmed is filed. We hope this list of common errors, created with Trustee Dale Wein's assistance, will help you and your staff avoid making necessary corrections to a new plan. The list starts at the top of the plan form and works down. We will share the other common errors in next week's ^{UP}date.

1. Caption and plan title do not comport with the local plan form. The plan's caption should comport with Bankr. D.S.D. R. 9004-2 and Appendix 9A or Appendix 9B. If your caption looks like the caption used by the Court in its orders, you should be good to go. Also, please make sure the plan title is correct, *e.g.*, PLAN DATED JANUARY 30, 2019 or MODIFIED PLAN DATED JANUARY 30, 2019. Please do **not** get creative with the title and use something like DEBTOR'S CHAPTER 13 PLAN DATED THIS 30TH DAY OF JANUARY, 2019.

2. The plan language has been altered. A debtor should use the plan language as is, except in the situations noted below. There is no need to retype the plan form. Word and WordPerfect versions are available for single and joint debtors on the Court's website under "Local Rules and Forms - All Local

Forms - New Ch 12 & 13 . . . Plan Effective Dec 1, 2017." Here are the limited exceptions:

- (1) The payment interval in Part 2.2 may be altered if the debtor will make payments to the trustee on something other than a monthly basis, *e.g.*, "Debtor will pay \$200.00 every two weeks to the chapter 13 trustee";
- (2) In Parts 3 and 5, the months the trustee will make payments to administrative, priority, or arrearage claim holders should be stated, *e.g.*, "for 14 months beginning June 2021"; and
- (3) If the debtor has filed either a Supplement Schedule I or a Supplement Schedule J, but not both, the language in Part 7.2 may be modified accordingly.

3. Incorrect last plan payment date in Part 2.1. If the plan payment term is for full years (usually 3 years/36 months or 5 years/60 months), the last plan payment date is the number of years from the first plan payment date and then back one month, *e.g.*, for a five-year plan, "Debtor will make the first plan payment on or before June 1, 2019 and the last plan payment on or before May 1, 2024."

4. Inconsistent numbers in the plan and Exhibit A. We see this most often when a plan is modified in Part 2.2. The debtor will make a necessary change to the payment terms in Part 2.2 but forget to reflect that change in Exhibit A.

As always, should you have questions regarding this ^{UP}date or anything else concerning your dealings with the Court or the Clerk's office, please let us know.