

BANKRUPTCY ^{UP}DATE

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

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. Here are the last five common errors we see to add to last week's four.

5. Incomplete payment information. In all parts where a creditor's claim is being paid by the trustee, make sure the plan *specifically* states the amount of the payment to the creditor, the frequency of the payment, in what months of the plan term the payments to that creditor will be made, and the total to be paid to that creditor. When that information is missing, the trustee, creditors, and the Court are left puzzling who gets paid what and when. Next time we update the plan form, we will make sure the need for this information is clearer. In the meantime, however, please include all the necessary payment information.

6. Forget to delete language from unused sections. If the debtor is not treating any claims in Parts 3.2, 3.3, 3.4, 3.5, 4.1, 4.2, 5.1, 5.2, 5.3, 5.4, 5.5, or 6, check the "No such claim

owed" (or similar language) box and delete all the rest of that section. Unlike Part 8, there is no required language a debtor needs to leave in these sections if there are no claims under that section. Just keep the section header and the checked "No such claim owed" box.

7. The debtor has not actually filed a Supplement Schedule I or J. Most often, a debtor proposes his or her plan based on the schedules I and J that were originally filed. If so, the debtor should check the "No post-petition changes in income or expenses" box in Part 7.2 and delete the next paragraph. If, however, the debtor's post-petition income and expenses have changed sufficiently to affect - up or down - how much he or she can afford to repay creditors, the debtor should file a Supplement Schedule I and/or a Supplement Schedule J before or at the same time the proposed plan is filed. In that situation, the "No post-petition changes in income or expenses" box should not be checked and the explanatory paragraph in Part 7.2 should be included in the plan. The supplement schedules should *not* be attached to the plan.

8. Forget to include the required paragraph in Part 8. As everyone knows, if the debtor wants to treat a particular claim differently than what is provided by the standard plan language, the debtor needs to put that particular claim's treatment in Part 8. However, even when no claim is being treated under Part 8, *always* include the definitional paragraph that begins "A nonstandard provision is a provision" This paragraph is required in every chapter 13 plan pursuant to Fed.R.Bankr.P. 3015.1(e).

9. Information in Exhibit A is incomplete. When listing the payments to creditors Trustee Wein will make in Part A.2 of Exhibit A, make sure to list each priority and secured claim holder and each lease or executory contract holder separately and then provide the total number of plan payments each will receive; do not lump the payees by category.

Link

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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.