

Modifying a Chapter 12 or Chapter 13 Plan *Before* Confirmation

Page No. 1

Dated: December 29, 2017

When you have determined, after consulting with the chapter 12 or chapter 13 trustee, that a previously filed 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. A paper withdrawal document is not needed. Once the previously filed plan is withdrawn, the Court will review and enter Hearing Minutes cancelling the previously scheduled confirmation hearing. Advise the debtor and any planned 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. 3015-4(c), once a modified plan is filed and served, the hearing on the previous plan will be cancelled via Hearing Minutes. The only caveat is that the modified plan must be filed in good faith, *i.e.*, not just to get the hearing off the calendar or not just to delay the resolution of problems in the case. Advise the debtor and any planned 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 3015-4 and Appendix 3A (sample plan). Strictly follow the sample plan and include as part of the modified plan the EXHIBIT A. SUMMARY OF DEBTOR'S PAYMENTS TO TRUSTEE AND TRUSTEE'S DISBURSEMENTS and the EXHIBIT B. DEBTOR'S LIQUIDATION ANALYSIS FOUND AT APPENDIX 3A. Entitle the plan "Modified Plan Dated [insert the date the debtor actually signs the plan]," *e.g.*, MODIFIED PLAN DATED SEPTEMBER 13, 2012. Note, do not use the term "Amended" in the title and do not include, *e.g.*, "Chapter 13" in the title since the chapter number is already in the caption. Do NOT attach any Supplement Schedule I or Supplement Schedule J to the modified plan; just file them separately and reference them or any pertinent amended schedules in Part 7.2 of the modified plan.
3. File the modified plan using the CM/ECF event "Plan/Modified Plan" found under Bankruptcy - Plan. Once the modified plan is filed, the Bankruptcy Clerk's office will prepare and file a notice of the telephonic confirmation hearing. The notice will contain the date and time for the telephonic confirmation hearing and the last date for a party in interest to file an objection to the modified plan. If an objection to the modified plan is filed and if the objection cannot be resolved at the telephonic confirmation hearing, the Court will set any necessary evidentiary (in-court) confirmation hearing by separate order.

Modifying a Chapter 12 or Chapter 13 Plan *Before* Confirmation

Page No. 2

Dated: December 29, 2017

4. Serve the modified plan and the notice of confirmation hearing on all creditors and other parties in interest on the same day the Bankruptcy Clerk enters the notice of confirmation hearing. Use a fresh case mailing list obtained from CM/ECF on the day service is made.
5. Prepare a certificate of service regarding the modified plan and the notice of confirmation hearing. Use Appendix 9D as a sample. File the certificate of service using the CM/ECF event "Certificate of Service" found under Bankruptcy - Other. Be sure to attach the case mailing list used for service.
6. The docket entries discussed above will look similar to these:

09/11/2018 26 Withdrawal of (related document(s) [22] Plan). Pursuant to Bankr. D.S.D. R. 9014-2, Debtor withdraws the above-named document(s) and certifies that parties in interest who will not be served electronically have been advised of the withdrawal. (Attorney for Debtor) (Entered: 09/11/2018).

09/11/2018 27 Hearing Minutes Re: (related document(s) [22] Plan filed by Debtor. APPEARANCES: None. DISPOSITION: No hearing held. On September 11, 2018 Debtor withdrew the plan dated August 1, 2018. The hearing scheduled for September 18, 2018 is cancelled. No order needed. (nsar) (Entered: 09/11/2018).

09/14/2018 28 MODIFIED PLAN Dated September 14, 2018 filed by Debtor. (Attorney for Debtor) (Entered: 09/14/2018).

09/14/2018 29 Notice of Telephonic Confirmation Hearing (related document(s) [37]). Confirmation hearing to be held on 2/8/2018 at 09:35 AM (Central) (telephonic). Last day to object to confirmation 1/30/2018. (sstro) (Entered: 09/14/18).

09/14/2018 30 Certificate of Service (related document(s) [37] Plan, [38] Notice of Confirmation Hearing) filed by Debtor. (Attorney for Debtor) (Entered: 09/14/18).

7. 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.