

## ORDER CONFIRMING CHAPTER 12 PLAN

### Applicable Law and Rules

1. Section 1221 of the Bankruptcy Code (11 U.S.C. § 1221) requires each debtor to file a plan within 90 days after the filing of the original petition. The court may extend this deadline “if the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable.”
2. Under section 1222 of the Code, the plan must provide for funding from future income, pay most priority creditors in full, and provide the same treatment for all claims and interest within a particular class. The holder of a priority claim may agree to a different treatment and the holder of a claim or interest in a class may agree to a less favorable treatment. Section 1222(a)(2)(A) includes special provisions for certain claims owed to government units.
3. Section 1222(c) further states that the plan period may not exceed three years, except that the court, for cause, may extend the plan to a maximum of five years. Section 1222(b) lists other provisions which the debtor is permitted to include in the plan. This section should be read in its entirety before a plan is written.
4. Prior to confirmation, the debtor may modify a chapter 12 plan pursuant to section 1223 of the Code. The debtor may not modify the plan so that the plan as modified fails to meet the requirements of section 1222.
5. After the debtor files a modification under section 1223, the plan as modified becomes the plan. 11 U.S.C. § 1223(b). Any holder of a secured claim that has accepted or rejected the plan is deemed to have accepted or rejected, as the case may be, the plan as modified, unless the modification provides for a change in the rights of such holder from what such rights were under the plan before modification, and such holder changes such holder’s previous acceptance or rejection. 11 U.S.C. § 1223(c).
6. Under section 1225, the court must confirm the plan if the court finds that
  - (1) the plan complies with the provisions of [chapter 12] and with the other applicable provisions of [the Bankruptcy Code];
  - (2) any [court] fee, charge, or amount required under [28 U.S.C. §§ 1911 - 1932], or by the plan, to be paid before confirmation, has been paid;
  - (3) the plan has been proposed in good faith and not by any means forbidden by law;

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of [the Bankruptcy Code] on such date;

(5) with respect to each allowed secured claim provided for by the plan –

(A) the holder of such claim has accepted the plan;

(B)(i) the plan provides that the holder of such claim retain the lien securing such claim; and

(ii) the value, as of the effective date of the plan, of property to be distributed by the trustee or the debtor under the plan on account of such claim is not less than the allowed amount of such claim; or

(C) the debtor surrenders the property securing such claim to such holder;

(6) the debtor will be able to make all payments under the plan and to comply with the plan; and

(7) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first became payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation.

7. If the trustee or the holder of an allowed unsecured claim objects to confirmation of the plan, then the court may approve the plan only if it satisfies the requirements of section 1225(b). That section requires that the plan provide for the payment of the claim in full, provide that all of the debtor's "projected disposable income" will be used to make plan payments, or provide for the distribution of property of not less value than the debtor's "projected disposable income" over the duration of the plan.
8. Section 1225(c) authorizes the court to order any entity from whom the debtor receives income to pay all or part of that income directly to the trustee to fund the plan.
9. Bankruptcy Rule 2002(f)(7) requires that the clerk, or some other person as the court may direct, give creditors notice of the confirmation of a chapter 12 plan.

## **Instructions**

### **General**

Many courts have developed their own form order for the confirmation of a chapter 12 plan. Before submitting a proposed confirmation order on Form 230A, an attorney should inquire whether the court uses the form. Furthermore, the local rules or practice may require the standing trustee to prepare the confirmation order.

### **Caption**

1. Identify the judicial district in which the bankruptcy case was filed. Example: Eastern District of California.
2. “In re”: Insert the name of the debtor as it appears in the bankruptcy petition.
3. “Case No.”: Insert the bankruptcy case number assigned at the time of filing.

### **Line 1, first paragraph**

Insert in first blank the date of filing of the plan. Insert in the second blank the date of filing of any modification.

### **Numbered section 1**

Select the appropriate check boxes.

Line 2: insert the amount of each payment.

Line 3: insert the day of the month payment is due, or specify the alternative payment schedule, if any, in the blank on Line 4.

Line 5: insert the length of the plan, in months, specify on Line 6 the total percent of dividend to be paid to creditors holding allowed unsecured claims, or fill in the blank on Line 8 with any other event which will terminate the plan.

Line 9: insert the name and address of the standing trustee.

### **Numbered section 2**

Insert in the first blank the total amount paid and to be paid to the attorney for the debtor.

In the second blank indicate the balance to be paid to the attorney for the debtor through the plan, if any.

### **Numbered section 3**

Set forth any additional provisions ordered by the court at the confirmation hearing. An order directing an entity from which the debtor receives income to make all or part of the plan payments may be set forth in this section or as a separate order.

### **General Information for the Clerk**

Form 230A seeks a middle ground between two forms of confirmation orders used in the courts. The first is a “short form” order which merely recites that the court finds the plan to be in compliance with section 1225 of the Bankruptcy Code and decrees the plan to be confirmed. The second is a “long form” order which sets forth specific findings on each section 1225 requirement, as well as detailing the provisions of the confirmed plan. Form 230A does not specifically list the findings required by section 1225 and summarizes the terms of the plan.

Clerks should review this form with the judges to determine whether the form should be adopted in their district.

Clerks also may wish to establish a policy fixing the party to be charged with the responsibility for submitting this form to the court for signature: the trustee, the debtor, or the clerk. There are arguments to be made in favor of each of these policies, and each is in use somewhere in the country.

An order directing an entity from which the debtor receives income to pay all or part of the income directly to the trustee may be included in the confirmation order or it may be prepared as a separate order. If such a provision is included in the confirmation order, the caption of the order should be revised to reflect it.

Bankruptcy Rule 2002(f)(7) requires that the clerk, or some other person as directed by the court, give notice of the confirmation of a chapter 12 plan. Many courts delegate this function to the debtor or the chapter 12 trustee. The rule does not specify a time for the notice but it should be given in a timely manner.