

COMMITTEE NOTE

Official Form 113 is new and is the required plan form in all chapter 13 cases. See Bankruptcy Rule 3015. Alterations to the text of the form or the order of its provisions, except as indicated on the form itself, are prohibited. See Bankruptcy Rule 9009. As the form explains, spaces for responses may be expanded or collapsed as appropriate, and sections that are inapplicable do not need to be reproduced.

Part 1. This part is intended to highlight some provisions of the plan for the benefit of interested parties and the court. For that reason, if the plan includes one or more of the provisions listed in this part, the appropriate boxes must be checked. For example, if Part 9 of the plan proposes a provision not included in, or contrary to, the Official Form, then that nonstandard provision will be ineffective if the appropriate check box is not selected.

Part 2. This part states the proposed periodic plan payments, plan length, the estimated total plan payments, and sources of funding for the plan. Section 2.1 allows the debtor or debtors to propose periodic payments in other than monthly intervals. For example, if the debtor receives a paycheck every week and wishes to make plan payments accordingly, that should be indicated in § 2.1. Section 2.2 provides for the manner in which the debtor will make payments. The debtor may also make payments through a designated third party, such as an electronic funds transfer program.

Part 3. This part provides for the treatment of secured claims.

Section 3.1 provides for the treatment of claims under Code § 1322(b)(5) (maintaining current payments and curing any arrearage). For the claim of a secured creditor listed in § 3.1, an estimated arrearage amount should be given. A contrary arrearage amount listed on the creditor's proof of claim, unless contested by objection or motion, will control over the amount given in the plan.

In § 3.2, the plan may propose to determine under Code § 506(a) the value of a secured claim for which a proof of claim has been filed. For example, the plan could seek to reduce the secured portion of a creditor's claim to the value of the collateral securing it. For the secured claim of a nongovernmental creditor, that determination would be binding upon confirmation of the plan. For the secured claim of a governmental unit, however, a contrary valuation listed on the creditor's proof of claim, unless contested by objection or motion, would control over the valuation given in the plan. See Bankruptcy Rule 3012. Although § 3.2 applies to secured claims for which a proof of claim has been filed in accordance with Bankruptcy Rule 3002, that rule contemplates that a debtor, the trustee, or another entity may file a proof of claim if the creditor does not do so in a timely manner. See Bankruptcy Rules 3004 and 3005. Section 3.2 will not be effective unless the appropriate check box in Part 1 is selected.

Section 3.3 deals with secured claims that may not be bifurcated into secured and unsecured portions under Code § 506(a), but it allows for an interest rate other than the contract rate to be applied to payments on such a claim.

In § 3.4, the plan may propose to avoid certain judicial liens or security interests encumbering exempt property in accordance with Code § 522(f). A separate exhibit shows the calculation of the amount of the judicial lien or

security interest that is avoided. A plan proposing avoidance in § 3.4 must be served in the manner provided by Bankruptcy Rule 7004 for service of a summons and complaint. See Bankruptcy Rule 4003. Section 3.4 will not be effective unless the appropriate check box in Part 1 is selected.

Section 3.5 provides for elections to surrender collateral and consent to termination of the stay under § 362(a) and § 1301 with respect to the collateral surrendered. Termination will be effective upon confirmation of the plan.

Part 4. This part provides for the treatment of claims entitled to priority status. In § 4.4, the plan calls for an estimated amount of each such claim. A contrary amount listed on the creditor's proof of claim, unless changed by court order in response to an objection or motion, will control over the amount given in the plan.

Part 5. This part provides for the treatment of unsecured claims that are not entitled to priority status. In § 5.3, the plan may propose to pay nonpriority unsecured claims in accordance with several options. One or more options may be selected. For example, the plan could propose simply to pay unsecured creditors any funds remaining after disbursements to other creditors, or also provide that a defined percentage of the total amount of unsecured claims will be paid.

Part 6. This part provides for executory contracts and unexpired leases. An executory contract or unexpired lease is rejected unless it is listed in this part.

Part 7. This part provides an order of distribution of payments under the plan. Other than the trustee's fees and monthly payments to secured creditors, the order of distribution is left to be completed by the debtor in keeping with the requirements of the Code. A separate exhibit lists the estimated amounts of these distributions.

Part 8. This part defines when property of the estate will revert in the debtor or debtors. One choice must be selected—upon plan confirmation, upon closing the case, or upon some other specified event. This plan provision is subject to a contrary court order under Code § 1327(b).

Part 9. This part gives the debtor or debtors the opportunity to propose provisions that are not otherwise in, or are contrary to, the Official Form. All such nonstandard provisions must be set forth in this part and nowhere else in the plan. This part will not be effective unless the appropriate check box in Part 1 is selected. See Bankruptcy Rule 3015.

Part 10. The plan must be signed by the attorney for the debtor or debtors, unless the debtor or debtors are not represented by an attorney, in which case the plan must be signed by the debtor or debtors. The signature in this part is a certification to the court that the plan's provisions are identical to the Official Form, except for any nonstandard provisions contained in Part 9.