

U.S. Bankruptcy Court, Northern District of Florida

Chapter 13 Process & Forms

Effective November 1, 2009

The Clerk's Office worked with the Chapter 13 Trustee in an effort to streamline procedures for dealing with post-confirmation delinquencies in chapter 13 plan payments. The goal was to provide a more efficient, uniform method for debtors to submit proposals to cure delinquencies without a hearing. To that end, optional plan language, a procedure for accrued delinquencies, and several filing events and local forms were developed. All local forms referenced herein are located on the "Forms" page our website at www.flnb.uscourts.gov/forms.

THE PLAN

Optional Plan Language - the excerpts below, or substantively similar language, can be added to the Chapter 13 Form Plan in the Northern District of Florida in the "Other Provisions" section:

Abatement of Plan Payment Procedures Where the Plan Payment is Ultimately Returned to the Estate by the Debtor

During the life of the plan, and with notice only to the Chapter 13 Trustee, the debtor may file the Debtor's Election to Abate Plan Payment in a maximum of three (3) plan payments in a 36 month term case, and for a maximum of seven (7) plan payments in a 60 month case. The election can only be used for payment of necessary expenses, or loss of job, and must provide in the Debtor's Election the method to replace the estate funds, unless the Debtor's Election states that the plan is and will remain a 100% repayment plan notwithstanding the current and prior abatements. The Debtor's Election may not be used to abate more than two (2) consecutive payments at any one time. This election does not prohibit the debtor from filing and noticing to all creditors a Motion to Abate for a plan payment abatement which does not meet the criteria of this plan provision. However, the Debtor's Election may not be used in any case in which the Trustee is paying the regular monthly mortgage payment through the Plan unless the abatement is only for a portion of the plan payment which will still allow payment of the mortgage payment and the trustee's fee. The Trustee is authorized to adjust the Debtor(s)' pay schedules as set forth in the Election by the Debtor upon the filing of the Election by the Debtor.

Use of Tax Refunds

During the life of the plan, and with notice only to the Chapter 13 Trustee, the debtor may file the Debtor's Election to Use Tax Refund for a maximum of thirty percent (30%) of each tax refund per year in a 36 month term case, plus an additional forty percent (40%) of each

additional tax refund per year in a 60 month case. The election can only be used for payment of necessary expenses, or job loss, and must provide in the Debtor's Election to Use Tax Refund the method to replace the estate funds, unless the Debtor's Election states that the plan is and will remain a 100% repayment plan notwithstanding the current and prior abatements. This election does not prohibit the debtor from filing and noticing to all creditors a Motion to Use Tax Refunds for refunds which do not meet the criteria of this plan provision. This Plan provision does not relieve the Debtor of the duty to file and serve tax returns on the Trustee. The Trustee is authorized to adjust the Debtor(s)' pay schedules as set forth in the Election by the Debtor.

SUPPLEMENT TO SCHEDULES I AND/OR J RE: EXPENSES

To help explain extenuating circumstances regarding the debtor's income and/or expenses, [Local Form 13-27](#), *Supplement to Schedules I and/or J Regarding Listed Expenses*, may be filed as a separate document or included as part of the petition.

DEBTOR'S ELECTIONS

To invoke the options to be included in the plan, the debtor would complete and electronically file one of the following documents, as applicable. Specific filing events for each are available in CM/ECF.

Debtor's Election to Abate Plan Payments Pursuant to Confirmed Plan Terms

[Local Form 13-29](#)

Used to make the election to abate plan payments due to the loss of income or previously unscheduled new expenses

Debtor's Election to Use a Portion of Tax Refund Pursuant to Confirmed Plan Terms

[Local Form 13-30](#)

Used to make the election to use a portion of tax refunds due to the loss of income or previously unscheduled new expenses;

MOTION TO DISMISS FOR ACCRUED DELINQUENCIES

In the event delinquencies arise from failure to submit plan payments in full each month, the trustee will file a *Motion to Dismiss for Accrued Delinquency*. The debtor shall have 28 days to respond by filing an *Agreed Motion to Abate Plan Payments to Address Accrued Delinquency* (new Local Form

#13-28). Upon the filing of the agreed motion, the Clerk's Office will generate and send a *Notice of Agreed Motion to Abate Plan Payments* to all creditors and parties in interest, advising they have 21 days to respond. If a response is filed, a hearing will be set. If no response is filed, an *Order Granting Agreed Motion to Abate and Rending Moot the Trustee's Motion to Dismiss*.

Agreed Motion to Abate Plan Payments to Address Accrued Delinquencies

[Local Form 13-28](#)

Notice of Agreed Motion to Abate

- Issued by the Clerk's Office
- Served to all creditors and parties and interest
- Sets a 21 day deadline to respond

See the flow chart on the next page for a visual documentation of the process.

Chapter 13 Trustee's Motion to Dismiss for Accrued Delinquency

(28 day response deadline)

Response in the form of
**Agreed Motion to Abate Plan Payments to
Address Accrued Delinquency**
filed by debtor(s)

OR

No Response
from debtor(s) or response other
than Agreed Motion to Abate

Notice of Agreed Motion to Abate Plan Payments en-
tered by Clerk's Office with service to all
creditors & parties in interest
(21 day response deadline)

Timely filed objection or response by
creditor or party in interest

OR

No Response filed

Set for Hearing
by the Court

Order Granting Agreed Motion to Abate