
NANCY CURRY CHAPTER 13 STANDING TRUSTEE
1000 Wilshire Blvd., STE 870, Los Angeles, CA 90017
Phone (213) 689-3014 Fax 213 689-3055

CHAPTER 13 PRACTICE POINTS

Website www.TRUSTEE13.com

Individual case accounting may be accessed at the website by entering the case number (no dash, no judge initials; format example is 9999999) and the last four digits of the debtor Social Security number.

Many routine questions can be answered by the case information on the website. It shows a list of plan payments received, amounts of the creditor claims received by the Trustee, amounts paid, etc. The website is updated daily.

1. Service

The plan and notice (form F 3015-1) must be served not less than 28 days before the §341(a) meeting of creditors and the proof of service must be provided to the Trustee at least 14 days prior to it, LBR 3015-1(b).

If the plan is not served 28 days or more before the §341(a) the meeting will not be conducted and a continued date will be set.

2. Income

documentation

Tax returns, payment advices and contribution declarations are required to be provided to the Trustee at least 7 days before the §341(a) meeting of creditors. LBR 3015.1(c)(3).

Complete copies of federal and state income tax returns (including W-2s, 1099s, etc.) for the most recently ended calendar year are required. If earlier years are necessary you will be informed at that meeting.

rental income

Documentation of the **actual receipt of rental income** is required. An example of adequate documentation is a bank statement reflecting a deposit in the amount of the scheduled rental income attached to a signed declaration attesting that this amount represents rental income.

3. Business case

If the debtor operates a business (or is otherwise self employed) the required reports, LBR 3015-1(c)(4), must be provided to the Trustee at least 7 days before the §341(a).

The business reporting requirements are specific and include a requirement for monthly income and expense statements. Actual monthly income and expense statements must be provided.

4. Post petition trust deed or mortgage payments

Timeliness of payments is very important. Cases have been dismissed because the payments were not tendered timely, even though the debtor was able to tender them at the very last minute. Courts have deemed that the ability to make payments as required every month is crucial to finding that the debtor will be able to make the payments and comply with the terms of the plan on an ongoing basis as required by §1325(a)(6).

If real property is being surrendered in the plan which has been filed and served – and the creditor and property are properly identified so that notice of the surrender is clear – post petition payments are not required.

when they begin to be required, LBR 3015-1(m)(4)

The required payments begin with the payment that first becomes due following the day the petition was filed. For example, if the first trust deed monthly payment is due on the first of the month, as it often is, and the petition is filed on June 5, the first post petition monthly payment that is required is the July 1 payment – for those instances where the **first trust deed payment is due on the first of the month –**

- petition filed June 5 – first payment due July 1
- petition filed May 31 – first payment due June 1
- petition filed June 1 – first payment due July 1

which are due at confirmation hearing, LBR 3015-1(m)(8)

The court will disregard payments in those instances where the confirmation hearing date is on or before the payment becomes late – where the **first trust deed payment is late after the 15th of the month –**

- petition filed June 5 – confirmation hearing September 13 –
payments required – July 1, August 1
- petition filed May 31 – confirmation hearing September 15 –
payments required – June 1, July 1, August 1
- petition filed June 1 – confirmation hearing September 16 –
payments required – July 1, August 1, September 1

Filed declarations attesting that the required post petition regular monthly payments have been made (form F 3015-1.4) must be brought to each §341(a) meeting or confirmation hearing, LBR 3015-1(m), and are required to be cumulative in form. That is, all prior month post petition payments are enumerated as well as the current month.

5. Plan payments

Plan payments are due each month on the same day of the month that the petition is filed and are to be in the form of cashier's check, certified funds or money order, LBR 3015-1(k). The payments must commence no later than 30 days following the date the petition is filed.

The practice of trustees varies regarding the first plan payment. My preference is that the payment be mailed to my bank lockbox so that it arrives no later than its due date.

I do not accept payments, either at confirmation or §341(a) events, or at my office. **All plan payments are to be mailed to my bank lockbox.** The address to which payments are to be mailed is –

**Nancy Curry, Chapter 13 Trustee
Post Office Box 1403
Memphis, Tennessee 38101**

You can verify that payments have been received by accessing the specific case with the case number and the last four digits of the Social Security number at my web site –

www.TRUSTEE13.com.

6. §341(a) appearance is required

The debtor and attorney must appear at the §341(a) meeting of creditors, LBR 3015-1(c)(2) and (6).

7. Schedules and statements

Incomplete, inaccurate or conflicting papers have resulted in dismissal of cases on many occasions. Some common issues are

- undisclosed creditors, often of a non filing spouse; at times of debt that is 'personal' to the debtor
- undisclosed prior cases
- number of scheduled dependents conflicts with household size in Form 22C and/or tax return
- source of income (or employer) is not disclosed
- budget surplus is less than the plan payment
- contradictory disclosed amounts of attorney fee received
- Statement of Financial Affairs Item Nos. 1, 16 and 18 are blank or inaccurate

8. The plan

The following issues commonly arise

- all scheduled creditors are not provided for
- the monthly payment will not pay off the total plan debt
- Part I. plan percentage conflicts with Part III. comparison with Chapter 7
- Part IV. plan analysis --
 - incorrectly calculated with monthly amounts instead of total amounts to be paid over plan term
 - trustee fee is calculated at other than 11% – the 11% estimate is required even if it is known that the trustee’s fee is actually lower at that time
- Part V, other provisions, incomplete or vague – for example, a lien avoidance intention is set forth; however, the creditor is not identified and the property address is not set forth
- claims are not properly classified – a common mistake is that student loan debt will be set forth as a priority claim rather than as a general unsecured claim

9. Motions to dismiss

When required payments have not been received or there is a material default of the plan terms, the Court will be asked to dismiss the case. Most often this will be done on 14 day notice with an opportunity to oppose.

If the motion to dismiss is opposed, it is the responsibility of the debtor to obtain a hearing date and serve notice of it along with the opposition, LBR 3015-1(w)(3)(A).

10. Debtor motions to modify the confirmed plan

The most common mistakes that occur are failure to –

- serve all parties and give notice of an opportunity to object
- document current income (for the year to date, or the past six months, whichever period is longer) and provide complete copies of the most recently required federal and state tax returns
- provide required tax returns when they are due, LBR 3015-1(o)
- properly calculate the proposed plan payment so that the modified plan will pay the total plan debt (the arithmetic is wrong)

11. Attorney fees

initial fee

Conflicts exist regarding fee amounts agreed and/or paid in –

- Disclosure of Compensation Statement (2016)
- Rights and Responsibilities Agreement (RARA)
- Statement of Financial Affairs (SOFA) No. 9
- debtor testimony

A common error is that a Limited Scope of Appearance (LSA) form (typically filed in a Chapter 7 case) is filed as well as a RARA – the attorney duties in the RARA exceed those set forth in the LSA.

supplemental fee applications

The most common errors are failure to –

- give notice to the debtor of the fee application
- state the hourly rate and delineate services in tenths of an hour as required by LBR 2016-1(a)
- accurately set forth the amount of fees awarded earlier
- name and provide credentials of those other than the attorney providing services

Occasionally fees for clerical or secretarial services are inappropriately included in the application. Also, on a number of occasions fees have been requested for services which have not yet been performed.