

Instructions for Chapter 13 Form Plan (NDC-1) Required in the Northern District of California

1. GENERAL PRINCIPLES

- a. Adoption by the Northern District of California: The Chapter 13 Form Plan (the “Plan”) was adopted in accordance with Federal Rules of Bankruptcy Procedure (“FRBP”) 3015.1 and is approved by General Order No. 34. All debtors proposing a chapter 13 plan in the Northern District of California are required to use this Plan.
- b. A key element of the Plan and FRBP 3015.1 is that the Plan should not be altered except through additional or nonstandard provisions in section 7 of the Plan.

2. HOW TO DOWNLOAD THE PLAN

The Plan is available as a Microsoft Word Document (.doc) and may be downloaded from the United States Bankruptcy Court, Northern District of California’s website at: <http://www.canb.uscourts.gov/forms/district>
 After downloading the Plan, open the document in your word processing application. Debtor should not change the body text, font type or font size of the Plan.

3. DETAILED SECTION-BY-SECTION INSTRUCTIONS

Section	Instructions
1.01(b)	Check the applicable box if any nonstandard provisions are included in section 7, including a nonstandard provision that proposes to limit the amount of a secured claim based on a valuation of the collateral or proposes to avoid a security interest or lien. Section 7 is the only area of the plan where additional or nonstandard provisions may be incorporated.
1.03	<p>A debtor may value collateral as part of or “through” the Plan, except that claims of governmental units are excluded pursuant to FRBP 3012(c). If the debtor chooses to value collateral and determine the amount of a secured claim as part of the plan, a separate claim objection, motion or adversary proceeding is not required, and the order confirming the plan is binding on the applicable secured creditor.</p> <p>Debtor must check the appropriate boxes in section 1.01(b), list the creditor(s) in Class 2(B) or 2(C), and comply with section 7. A request to value collateral is a nonstandard provision.</p> <p>Requests to value collateral as part of the plan shall be supported by a separate memorandum of points and authorities, and by declarations under penalty of perjury establishing all facts necessary to entitle the debtor to the relief requested. At a minimum, the required declarations must include statements by competent witnesses regarding the value of the collateral and the balance due on the debt(s) secured by each lien relevant to the plan (including the subject lien, senior liens and ad valorem taxes), determined as of the relevant date. See the court’s <i>Guidelines for Valuing Collateral</i>.</p>

	Debtor must serve the plan (and any amended plan) that purports to value collateral pursuant to § 506, and any supporting documents or pleadings, on the affected lienholder in accordance with FRBP 7004. After the period for objecting to confirmation of the plan or any amended plan has expired, and if no affected lienholder has objected to confirmation, the Debtor shall file and serve for each affected lienholder a “Declaration of Compliance and No Opposition,” (Note: To file use specified ECF event code Declaration of Compliance and No Opposition Sec. 506 Valuation) which shall verify service of the operative plan in accordance with FRBP 7004 and shall verify that no affected lienholder has objected to confirmation. Upon the filing and review of this Declaration and of the relevant plan, the court will issue a docket entry indicating whether the plan can be confirmed with respect to its proposed valuation pursuant to § 506. No trustee shall recommend confirmation of a plan that purports to value collateral pursuant to § 506 unless or until the Debtor has filed and served his or her Declaration of Compliance and No Opposition and the court has issued a docket entry indicating that the plan’s valuation provisions can be confirmed.
2.01	Fill in the blank with the initial monthly plan payment. If the monthly payment amount will change over the plan term, the space may be expanded to specify the number and amount of monthly payments over the course of the plan term.
2.02	List the sources and amount of any payments to be made from a source other than future earnings. For example: “Estimated proceeds of \$XXX from the sale of Debtor’s home within XXX months of the petition date.”
2.03	Fill in the blank with the plan term length. This can be modified before or after confirmation pursuant to 11 U.S.C. §§ 1323 and 1329. A confirmed plan may extend 6 months beyond the stated plan term without requiring a motion to modify.
3.05	<ul style="list-style-type: none"> • Fill in the first blank with the amount paid to counsel before the petition date. • Fill in the second blank with the estimated amount of additional fees to be paid through the plan. This information is used for determining feasibility of the plan. • Check the box to identify whether counsel intends to seek approval of fees through the pre-approved fees (General Order 35) <u>or</u> through approval of a fee application (11 U.S.C. §§ 329 and 330). • If neither box is checked, the default is for counsel to file a fee application.
3.06	Fill in the blank with the dollar amount of each monthly plan payment to be paid on account of administrative expenses. The Trustee will distribute this amount each month until the allowed administrative expense is paid in full. Once the administrative expense is satisfied, this amount will then be applied to claims with the next lower priority, as provided in section 5.02 of the plan.
Section 3.C	Each secured claim that is provided for in the Plan should be listed in only one Class (e.g. Class 1, 2(A), 2(B), 2(C), 3 or 4).

	<ul style="list-style-type: none"> • Class 1 includes all delinquent claims secured by real or personal property that mature after completion of the plan term. This includes loans on Debtor’s personal residence that mature after the plan term stated in section 2.03. For example, if there is a pre-petition default due to the holder of Debtor’s home or car loan, and the remaining loan term is longer than the plan term, these claims must be placed in Class 1. • Secured claims that matured before the petition date or during the plan term should be placed in Class 2(A), 2(B), or 2(C) as appropriate, depending on whether the claim is reduced based on the value of the collateral. • Class 2(A) includes claims that Debtor elects not to reduce or that cannot be reduced based on the value of the collateral. This includes the following types of claims: <ul style="list-style-type: none"> ○ a secured creditor with a purchase money security interest in a motor vehicle acquired for personal use by the debtor incurred within 910 days of the petition date; or ○ a secured claim incurred within 1 year of the petition date and secured by anything of value other than a motor vehicle acquired for debtor’s personal use. • Class 2(B) includes claims that are reduced based on the value of collateral to some amount <u>greater than \$0</u>. For example, a claim for a car loan that has been or will be reduced from \$8,000 to \$6,000 based on the value of the car, and that has a remaining loan term shorter than the plan (e.g. 18 months), should be placed in Class 2(B). • Class 2(C) includes claims that are <u>reduced to \$0</u> based on the value to collateral. For example, the claim of a wholly unsecured junior lien that is avoided under 11 U.S.C. § 506(a) or § 522(f) by separate motion or adversary proceeding. These claims should be identified in Class 2(C) but will be paid as a nonpriority unsecured claim in Class 7. • Class 3 includes all secured claims satisfied by the surrender of collateral. For example, claims secured by a car or home that is being surrendered. • Class 4 includes all secured claims paid directly by Debtor or a third party. <ul style="list-style-type: none"> ○ In order for a claim to be included in Class 4 the claim must mature after completion of the plan, not be in default, and not be modified by the plan. For example, if there is no pre-petition default, or a small default that will be brought current by the initial meeting of creditors (e.g., payment sent pre-petition but cleared post-position).
3.07(a)	Provides for cure of pre-petition defaults on secured claims.
3.07(b)	<p>This is the conduit provision. It requires on-going post-petition payments on delinquent, secured claims to be included in the monthly plan payment and distributed by the Trustee to the secured creditor.</p> <ul style="list-style-type: none"> • Subsection (1) addresses determination of the on-going post-petition payment amount. In order to facilitate the Trustee’s distribution, Debtor shall provide the completed “Class 1 Checklist” to the Trustee within 2 weeks of the petition date. • Subsections (2) – (4) address partial payments.

	<ul style="list-style-type: none"> • Subsection (5) provides for the automatic adjustment of plan payments based on a Notice of Payment Change submitted to the Debtor and Trustee. A motion to modify <u>is not</u> required for changes to the plan payment amount based on changes in the amount to be paid for an on-going, post-petition obligation. Upon receipt of a Notice of Payment Change the Trustee will notify Debtor and counsel of the new payment amount, including the applicable Trustee fee. • Subsection (6) <u>does not</u> provide for amounts included in a Notice of Post-Petition Fees, Expenses, and Charges without a plan modification. These payments must be made directly by the Debtor, unless the plan is modified to pay these charges. • Subsection (7) addresses how the creditor is to apply payments received from the Trustee.
<p>Class 1 Table Sec. 3.07</p>	<ul style="list-style-type: none"> • Order of creditors – Claims will be paid in the order they are listed within Class 1. See Section 5.02 of the Plan. • 1st column – Provide creditor’s name and a brief description of the collateral. For example: Wells Fargo Bank, N.A. (1st DOT) 123 Elm Street, San Francisco, CA 94104 • 2nd column – State the estimated amount of arrears for each claim identified. • 3rd column – State the interest rate to be applied to the arrears. The interest rate will be 0% if this column is left blank, as provided in section 3.07(a)(1). • 4th column – “Monthly Arrearage Dividend” means the amount of arrears to be paid each month on each secured claim identified. This column is optional. The Trustee will also calculate the monthly arrearage dividend to ensure feasibility. • 5th column – State the month and year when the Trustee is to start distributing on the Monthly Arrearage Dividend (e.g. December 2017). • 6th column – State the amount of the on-going, post-petition monthly obligation to be paid on this secured claim. <i>This amount will be included in the Debtor’s monthly plan payment and distributed to the creditor by the Trustee.</i> Section 3.07(b)(5) addresses how changes in plan payments will be made when the on-going secured payment amount is changed by the creditor.
<p>Class 2(A) Table Sec. 3.08</p>	<p>Class 2(A) claims are <u>not</u> reduced based on the value of collateral.</p> <ul style="list-style-type: none"> • Order of creditors – Claims will be paid in the order they are listed within in Class 1. See Section 5.02 of the Plan. • 1st column - Provide creditor’s name and a brief description of the collateral. For example: Toyota Motor Credit, 2015 Toyota Corolla. • 2nd column – Does creditor have a purchase money security interest in the personal property collateral? State yes or no. • 3rd column – State the amount claimed by creditor. • 4th column – Not applicable. • 5th column – State the interest rate to be applied to the claim. The interest rate will be 5% if this column is left blank, as provided in Sec. 3.08(a).

<p>Class 2(B) Table Sec. 3.08</p>	<p>Class 2(B) claims are reduced based on the value of collateral to an amount <u>greater than \$0</u>.</p> <ul style="list-style-type: none"> • Order of creditors – Claims will be paid in the order they are listed within in Class 1. See Section 5.02 of the Plan. • 1st column – Provide creditor’s name and a brief description of the collateral. For example: Toyota Motor Credit, 2015 Toyota Corolla. • 2nd column – Does creditor have a purchase money security interest in the personal property collateral? State yes or no. • 3rd column – State the amount claimed by creditor. • 4th column – State the value of creditor’s interest in the collateral as has been or will be determined. • 5th column – State the interest rate to be applied to the claim. The interest rate will be 5% if this column is left blank, as provided in Sec. 3.08(a).
<p>Class 2(C) Table Sec. 3.08</p>	<p>Class 2(C) claims are <u>reduced to \$0</u> based on the value of collateral.</p> <ul style="list-style-type: none"> • 1st column - Provide creditor’s name and a brief description of the collateral. For example: Toyota Motor Credit, 2015 Toyota Corolla. • 2nd column – Does creditor have a purchase money security interest in the personal property collateral? State yes or no. • 3rd column – State the amount claimed by creditor. • 4th column – This amount will be \$0.00. • 5th column – The default rate will be 0.00%.
<p>Class 3 Table Sec. 3.09</p>	<p>Class 3 includes all secured claims satisfied by surrender of the collateral.</p> <ul style="list-style-type: none"> • 1st column - Provide creditor’s name and a brief description of the collateral. For example: Wells Fargo Bank, N.A. (1st DOT) 123 Elm Street, San Francisco, CA 94104 • 2nd column – State the estimated deficiency on the secured claim. For example, if Debtor is surrendering a vehicle with a secured claim of \$10,000, if the estimated amount received after sale of the vehicle at auction is \$6,000, then the unsecured deficiency is \$4,000. • 3rd column – If there is a deficiency, is it a priority claim? State yes or no.
<p>Class 4 Table Sec. 3.10</p>	<p>Class 4 includes all secured claims paid directly by Debtor or a third party. These claims must not be modified by the plan and not be in default, or have a small default that will be brought current by the initial meeting of creditors (e.g., payment sent pre-petition but cleared post-petition).</p> <ul style="list-style-type: none"> • 1st column - Provide creditor’s name and a brief description of the collateral • 2nd column – State the monthly contract installment. • 3rd column – Identify the person making payment.
<p>Section 3.D</p>	<p>Each unsecured claim should be listed in only one Class (e.g. Class 5, 6, or 7).</p> <ul style="list-style-type: none"> • Class 5 includes all priority unsecured claims pursuant to 11 U.S.C. § 507 (e.g., domestic support obligations and taxes).

	<ul style="list-style-type: none"> • Class 6 includes designated nonpriority unsecured claims that will be treated differently from other general unsecured claims (e.g., co-signed unsecured debts). • Class 7 includes all other nonpriority unsecured claims (e.g., credit card, medical debts).
Sec. 3.12	Class 5 - Fill in the blank with the estimated total amount of priority unsecured claims, except where the holder of the priority unsecured claim has agreed to accept less than payment in full or when 11 U.S.C. § 1322(a)(4) is applicable. Any claims within this exception must be addressed by a separate provision in section 7.
Sec. 3.13	Class 6 – Any nonpriority unsecured claims that will be treated differently from Class 7 must be addressed by a separate provision in section 7.
Sec. 3.14	<p>Class 7 – Nonpriority unsecured claims:</p> <ul style="list-style-type: none"> • Fill in the first blank with the estimated total amount of nonpriority unsecured claims. • Choose whether the distribution to nonpriority unsecured creditors will be based on a “Percent Plan” where all creditors will receive no less than the stated percentage of their allowed claim or a “Pot Plan” where all creditors are expected (but not required) to receive the stated percentage of their allowed claim. In either selection, state the estimated percentage. • In most cases, Pot Plan will be selected. • If a plan is required to distribute 100% to nonpriority unsecured claims based on the liquidation value of Debtor’s assets or Debtor’s disposable monthly income, then the plan must be a Percent Plan.
Sec. 4.01	Executory contracts and unexpired leases - Debtor will pay directly to the other contract party the ongoing, monthly payment required by the lease or contract, unless a different treatment is set out in section 7. Pre-petition arrears shall be paid in full through the plan.
Sec. 4.01 Table	<ul style="list-style-type: none"> • 1st column – Provide name of other party to executory contract or unexpired lease. • 2nd column – State the post-petition monthly payment amount. • 3rd column – State the amount of pre-petition arrears. • 4th column - “Monthly Arrearage Dividend” means the amount of arrears to be paid each month on each executory contract or unexpired lease identified.
Sec. 4.02	Any executory contract or unexpired lease listed in the Sec. 4.02 Table, or omitted from either table, is rejected.
Sec. 4.02 Table	<ul style="list-style-type: none"> • 1st column – Provide name of other party to executory contract or unexpired lease. • 2nd column – Provide a brief description of the executory contract or unexpired lease (e.g. lease for commercial property at 456 Oak Street, San Francisco, CA).

Sec. 5.02	This provision directs the Trustee’s distribution of plan payments.
Sec. 6.01	Property of the estate will revert in Debtor upon confirmation, <u>unless</u> Debtor checks the box before “SHALL NOT REVEST.”
Sec. 7	Nonstandard Provisions – All changes to the plan must be set forth in a nonstandard provision and placed in section 7. Several nonstandard provisions have been pre-approved as provided below.
Request to modify loan against Debtor’s residence	<ul style="list-style-type: none"> • Debtor’s seeking to modify a loan secured by their residence may do so through the plan by incorporating the nonstandard provision on the Mortgage Modification Mediation Program. • Debtor’s seeking to modify the loan secured by their residence by an alternate means <u>should not</u> include the claim in the plan. The failure to include a claim in Class 1, 2, 3, or 4 may be cause to terminate the stay but such relief must be separately requested by the claim holder, as provided in section 3.11.

4. APPROVED NON-STANDARD PROVISIONS

Non-Conduit payment provision	<p>A Debtor who has pre-petition arrears on debt secured by real property may propose in his/her Chapter 13 Plan to make their post-petition, monthly payments directly to the secured creditor. Such post-petition payments are Plan payments. It is therefore important for the Chapter 13 Trustee and all other interested parties to monitor such post-petition payments to ensure that the Debtor does not default on his/her Plan payments. Accordingly, a Debtor who proposes to directly pay such post-petition payments shall include the following provisions in § 7 of his/her Plan:</p> <p>“Section 3.07(b) is replaced with the following provision:</p> <p style="padding-left: 40px;">a. Debtor shall make the following post-petition payments to [name of secured creditor] in accordance with the applicable terms of the underlying promissory note or other obligation.</p> <p style="padding-left: 40px;">b. The Chapter 13 Trustee shall not make any such post-petition monthly payments under § 5.02 of the Plan to the above named secured creditors.</p> <p style="padding-left: 40px;">c. After the Plan is confirmed, Debtor shall file with the bankruptcy court quarterly declarations under penalty of perjury stating that Debtor has made his post-petition payments to [name of creditor], and attach to each declaration proper documentary evidence of the payment(s) made. The quarterly declaration for January - March payments shall be filed by April 20th, the quarterly declaration for April - June payments shall be filed by July 20th, the quarterly declaration for July - September payments shall be filed by October 20th, and the quarterly declaration for October - December shall be filed by the following January 20th.”</p> <p>In addition, Debtor shall file with the bankruptcy court (no later than five days before the original and all continued meeting of creditors) a “Declaration of Direct Payment” (Note: To file use specified ECF event code Declaration of Direct Payment) stating</p>
-------------------------------	---

	<p>whether Debtor is current on such post-petition payments. If the bankruptcy court conducts a contested confirmation hearing on Debtor’s Plan, Debtor shall also file such a declaration no later than five days before the hearing date. The bankruptcy court will not confirm a Chapter 13 plan (and may dismiss the Chapter 13 case) if the Debtor is not current on these post-petition payments.</p> <p>Depending on circumstances, the court may (1) require non-conduit plans to be set for a confirmation hearings, i.e., not confirmed by consent or as part of an uncontested confirmation calendar; (2) require additional reporting regarding monthly payments being made directly to creditors, and (3) require, in connection with the issuance of a discharge, proof that all direct payments have been made in accordance with the plan; and (4) require such other and further proof of compliance with these non-conduit provisions as it deems appropriate.</p>		
Interest at federal rate on 100% plans due to excess equity.	Unsecured creditors shall receive interest at the federal judgment interest rate in effect at the time the petition was filed.		
Participation in Mortgage Mediation Modification Program (pre-confirmation provision)	<p>Mortgage Mediation Modification. Debtor has or after filing of the petition will seek entry into the Mortgage Modification Mediation Program (“MMM Program”) established under General Order 29 with respect to the following secured creditor(s) and property:</p>		
	Provisional] Class 1 Creditor’s Name/ Collateral Description	Estimated Amount of Arrears	Post-Petition Monthly Payment
	<p>a. The plan payments set forth in Sections 2.01 and 2.02 include the anticipated monthly installment payment that may be achieved during the MMM Program, which is typically required to be at least thirty one percent (31%) of Debtor’s gross monthly income (exclusive of applicable Trustee’s fees) or such other amount designated by the secured creditor for the real property subject to the MMM Program.</p> <p>b. Trustee shall retain and not distribute each Post-Petition Monthly Payment set forth in the table above until entry of an order by the Court authorizing such distributions.</p> <p>c. A plan payment received by Trustee on or before the deadline set forth in Section 2.01 for a given month shall be deemed as a timely payment made</p>		

pursuant to any trial loan modification agreement or final loan modification agreement for that month, notwithstanding that Trustee may distribute after the applicable deadline established by the secured creditor.

d. In the event Debtor executes a final loan modification agreement and upon entry of an order confirming the plan, the [Provisional] Class 1 claim set forth in Section 7.01 shall automatically be deemed a Class 1 claim provided for in Section 3.07 and shall no longer be a claim provided for in Section 7.01. For purposes of Section 3.07(b)(1), and unless otherwise specified, the rows set forth in the table above shall be appended to the next available row in the table set forth in Section 3.07.

e. Entry of an order confirming the plan shall suspend and revoke any remaining obligations of Trustee to make disbursements pursuant to Paragraph (5) of an Order Granting Motion to Approve Trial Loan Modification Agreement and Authorizing Trustee to Make Distributions Prior to Confirmation (Form ND-MMM-105) or Paragraph (5) of an Order Granting Motion to Approve Loan Modification Agreement After Completion of Mortgage Modification Mediation Program (Form ND-MMM-107) in this case.

f. In the event Debtor is unable to obtain a final loan modification agreement, Debtor shall, within 14 days after the mediator files the Final Report of Mortgage Modification Mediation Program Mediator (Form ND-MMM-202), file and serve an amended plan providing appropriate treatment for all pre-petition and post-petition arrearage claims or surrender of the property specified in the table above.

g. If Debtor fails to file timely and serve an amended plan as required by Section 7.01(f), Debtor shall be deemed to be in material default under this plan and the remedies set forth in Section 6.04 shall be available to Trustee or Creditor.

5. INSERTING ADDITIONAL ROWS TO TABLES. In several tables Debtor may need to insert additional rows to include all creditors for a particular Class. If so, Debtor is authorized to modify the table to insert additional rows where necessary. For example, if a Debtor has more than three creditors to be included in Class 1, the table should be modified to increase the number of rows. The additional Class 1 creditors should not be placed in a section 7 nonstandard provision.
6. CONVERSION TO PDF BEFORE FILING. Once Debtor has completed the Plan, Debtor should convert the file to a Portable Document File (.pdf) before filing.