

Rule 2084-6: Adequate Protection Payments

(a) Plan Proposal. A plan shall propose monthly adequate protection payments to creditors secured by depreciating personal property to be included in the plan payments, beginning with month one. Unless the court orders otherwise, the debtor shall not make adequate protection payments directly to any creditor or reduce the amount of the plan payments made to the case trustee for any amount attributable to the adequate protection payments.

(b) Trustee Payment. The ~~case~~ trustee is authorized to make pre-confirmation adequate protection payments to one or more secured creditors if:

(1) The plan provides for payment of the adequate protection payments;

(2) The debtor's Schedule D discloses the debt and describes the collateral;

(3) ~~The creditor has filed~~ A secured proof of claim is filed, with documentation evidencing a perfected security interest, ~~that asserts a purchase money security interest in the personal~~ property;

(4) The debtor or creditor sends a letter request to the ~~case~~ trustee requesting for payment of pre-confirmation adequate protection payments set forth in the plan ~~along with a copy of the secured proof of claim~~; and

(5) As to personal property, the collateral is depreciating and the amount of the adequate protection payments approximates the depreciation, which ~~for motor vehicles~~ is generally in the range of at least 1% of the value of the ~~vehiele~~ property per month.

(c) Payment Without Prejudice. Payment of pre-confirmation adequate protection payments is without prejudice to the secured creditor's right to object to the plan, or seek a determination as to the value of the secured claim or amount necessary to provide adequate protection.

(d) Timing of Payments. The ~~case~~ trustee is entitled to take the percentage fee from all adequate protection payments received or collected. To the extent the ~~case~~ trustee has funds on hand, the ~~case~~ trustee shall begin making pre-confirmation adequate protection payments if the ~~case~~ trustee receives the ~~letter requesting pre-confirmation request~~ more than 14 days before the ~~case~~ trustee's scheduled monthly distribution; otherwise the ~~case~~ trustee will distribute adequate protection payments beginning with the next month's distribution. If the debtor has paid an insufficient amount ~~of money~~ to pay adequate protection payments in full, the ~~case~~ trustee shall pay the creditors in pro rata amounts.

(e) Payment on Confirmation or Dismissal. If the ~~case~~ trustee has not made pre-confirmation adequate protection payments, the ~~case~~ trustee shall promptly disburse the adequate protection payments after the court confirms the plan.

(f) Payment on Pre-Confirmation Dismissal. . If the court dismisses the case before confirmation of a plan, the ~~case~~-trustee will pay the creditor any adequate protection payments due and owing, pursuant to sub-section (b) above or Court Order, from funds received by the ~~case~~-trustee under Bankruptcy Code § 1326(a)(1)(A), less the statutory ~~case~~-trustee's fee, then allowed administrative expenses. If the ~~case~~ trustee is required to pay adequate protection payments to more than one creditor but the ~~case~~ trustee has an insufficient amount of money to pay them in full, the ~~case~~-trustee shall pay the creditors in pro rata amounts.

~~Committee Notes 2009: Time deadlines have been amended to be consistent with amendments to the Federal Rules of Bankruptcy Procedure, effective December 1, 2009.~~