

Form 14 Chapter 13 Debtor's Motion to Assume Lease⁵⁸

[Caption: Official Form 16A]

Debtor's Motion to Assume Lease

The Debtor, by her counsel, hereby moves to assume the lease for the rental premises at [address]. In support of this motion she avers:

1. The Debtor is a tenant in the premises at [address]. A copy of the Debtor's lease is attached hereto as Exhibit A [omitted].
2. As a chapter 13 debtor, she is entitled to assume the lease pursuant to 11 U.S.C. §§ 365, 1322(b)(7).⁵⁹
3. Her chapter 13 plan provides for assumption of the lease and cure of any delinquent rent pursuant to the lease.

WHEREFORE, Debtor prays that her Motion to Assume the Lease be granted.

Date: _____ [signature]
Attorney for the Debtor

Form 15 Chapter 13 Bankruptcy Checklist from Debtor's Attorney to Debtor⁶⁰

Re: Bankruptcy No. [number]

Dear [name]:

On [date] our office filed a chapter 13 bankruptcy petition on your behalf. The court number of your bankruptcy case is [number]; please make a careful note of it and include it on all payments made to the bankruptcy trustee and the clerk of the bankruptcy court.

58 Where a chapter 13 debtor intends to cure a default under a lease, some courts may require a motion even though 11 U.S.C. § 1322(b)(7) and Fed. R. Bankr. P. 6006 appear to allow assumption of an executory contract to occur by plan provision. Where a motion is desired or required, a motion in the form here should suffice. Generally, the motion will have to be made in conjunction with a plan to make the payments necessary to cure the defaults under the lease to be assumed. However, occasionally the debtor may be current on the lease or may have funds which do not belong to the estate which can be used to cure the default. In that event, the motion should so state. See § 12.9, *supra*.

59 See § 12.9, *supra*. In a chapter 13 case, the debtor may generally assume a lease at any time up to plan confirmation. 11 U.S.C. § 365(d)(2).

60 This letter serves to confirm and clarify for the debtor in a chapter 13 case the various payments that must be made. It can be adapted as circumstances of different cases require. Debtors are understandably confused by all of the payments they must make to different places. Payments in the wrong form or to the wrong party are not uncommon. A letter such as this one, to which the debtor can always refer, eliminates most problems. A similar, but much shorter letter can also be sent in chapter 7 cases. See Form 16, *infra*. This form is adapted from one created by Eric Frank, Esquire, Philadelphia, PA.

As we have explained to you, the filing of this bankruptcy places an automatic stay upon the attempts of your creditors to collect debts owed by you. In order that you get the maximum benefit from your bankruptcy, I am writing to make sure you understand exactly what is required by you during the months ahead.

Mortgage Payments

According to your chapter 13 plan, you must pay your current monthly mortgage payments directly to your mortgage company as they become due each month. Payments to your mortgage company should begin in [month].

Do not pay any past due amounts as that delinquency is being cured by your payments to the bankruptcy trustee.

Payments to the Chapter 13 Trustee

You must also make monthly payments to the bankruptcy trustee of:

\$[amount]/month from [date] to [date]

\$[amount]/month from [date] to [date]

These payments must be in the form of a money order made payable to:

[trustee]

[address]

Always place your name, address and bankruptcy number on each payment and keep a receipt for every payment you make in case any disputes arise.

Court Costs

The cost of filing a bankruptcy petition is \$185.00. This fee cannot be waived. However, you have been allowed to pay this cost in four installments. These installments are due as follows:

\$50.00 is due on [date];

\$45.00 is due on [date];

\$45.00 is due on [date];

\$45.00 is due on [date].

Make all payments for court costs in the form of a money order made payable to "Clerk, U.S. Bankruptcy Court," and mail them to:

Clerk, U.S. Bankruptcy Court
U.S. Courthouse, Room [number]
[address]

Always place your name, address and bankruptcy number on each money order and remember to keep a receipt of each payment in a safe place in case any disputes arise.

If you do not make all of the payments described above, your bankruptcy case may be dismissed or your mortgage company may be allowed to foreclose on its mortgage. Therefore, if you are unable to keep up with payments you should call me so I can advise you on whether there are any ways to deal with your problem.