

AMORTIZATION OF DEBT (Chapter 128)

Milwaukee County Guide, Filing Procedures, and Forms

This guide is designed to help people who cannot afford an attorney to learn more about the amortization of debts process (also known as “a Chapter 128”). Nothing in this guide is intended as legal advice. If you are seeking legal advice or have questions about your specific situation, you should consult with an attorney.

What is an amortization of debt action?

Amortization of debt actions (often called “Chapter 128” action, after the chapter of the Wisconsin Statutes in which it is contained) allow a Wisconsin resident with a steady income (according to the statute this means “[a]ny person whose principal source of income consists of wages or salary”) to pay certain debts in full through monthly payments over a period of 3 years.

What is the different between amortization of debt and bankruptcy?

Unlike a Chapter 7 bankruptcy action, a Chapter 28 amortization of debt does not discharge (or wipe out) debt without payment. All included debts must be paid in full via the amortization plan (payment plan). However, there are many differences between bankruptcy and amortization. To understand the differences and which is best for you, you should consult an attorney.

Does an amortization of debt action protect me from my creditors?

Any creditor included in the court-approved amortization of debt plan cannot garnish your wages, bank accounts, or otherwise try to collect on the debt. The credit CAN still file a lawsuit and obtain a judgment against you in court, however, if they have not already done so.

Additionally, if you do not follow through with making all of the payments and the case is dismissed, or if the included debt is not paid off after the end of the 3 year payment plan, the creditor can resume debt collection efforts. See Wisconsin Statute §128.21.

What types of debts can I include?

Generally, you can include any unsecured debts, such as late rent, past-due utility bills*, payday loans, credit cards, medical bills, accounts in collections, etc. You usually cannot include secured debts, such as a car payment or mortgage, unless the creditor agrees. However, the plan must result in all included debts being paid off in 3 years, so large debts may not be appropriate for amortization.

*Please note: filing a Chapter 128 does not stop a utility company from disconnecting service and it does not require a utility company to reconnect service.

AMORTIZATION OF DEBT (Chapter 128)
Milwaukee County
Page 2

Do I need an attorney?

An attorney can help you determine if amortization of debt is right for you and, if so, what debts should be included. An attorney can handle the paperwork and procedures.

If you are interested in a referral to an attorney who handles these types of cases, contact the Milwaukee Bar Association Lawyer Referral and Information Service at 414-274-6768.

You are not required to have an attorney to file the papers for this type of action.

What is a trustee and how do I find one?

The Trustee is a neutral, third party who oversees the collection of money and makes payments to the creditors. The Trustee is paid a pre-determined percentage of the total debt and the fee is included in the monthly payments.

In Milwaukee County, the Trustee will be randomly assigned by the court when you file your case.

How do I file a Chapter 128 case?

Included in this packet are the forms approved for use in Milwaukee County, as well the instructions on how to complete and file them. You can also find the forms at the Milwaukee County Law Library, Room G-8 (inside Room G-9) at the Milwaukee County Courthouse.

Can I get help with the forms?

Yes, you can! The Marquette Volunteer Legal Clinics can help. Services are provided on a first-come, first-served basis at the clinics. You can find the locations and hours of these clinics by Googling “Marquette Volunteer Legal Clinics” or going to this website: <https://law.marquette.edu/mvlc/services-hours-locations>.

AMORTIZATION OF DEBT (Chapter 128)

Milwaukee County Filing Procedures

FEES:

- \$35 filing fee

FORMS NEEDED:

- Petition to Amortize Debts, Milwaukee County Form CV 5 (*Original and 2 copies*)
- Affidavit of Debts, Milwaukee County Form CV 6 (*Original and 2 copies*)
- Order Appointing Trustee, Milwaukee County Form CV 7 (*Original and 2 copies*)

HOW TO FILE A CH. 128 ACTION

Step 1: Fill out a Petition to Amortize Debts, Form CV 5.

- You must include your name and address as debtor (and your spouse's if you are filing together).
- In paragraph 2, you must list an employer. As this statute applies to people whose principal source of income is wages or salary, petitions that do not list a valid employer are unlikely to be approved.
- In paragraph 5, you must choose either that the court order payment to the Trustee from your employer by pay roll deduction or that the court order that you will pay the trustee directly.
- It must be notarized. Notaries are available in Room 104 of the Courthouse.
- The Trustee is a neutral, third party who oversees the collection of money and makes payments to the creditors. In Milwaukee County, the Trustee will be assigned by the Clerk of Court. The Trustee is paid a pre-determined percentage of the total debt and the fee is included in the monthly payment

Step 2: Fill out an Affidavit of Debts, Form CV 6.

- State the name, address and amount due each creditor to be included in the plan.
- Do not include the account number.
 - Note: Account numbers must be provided to the trustee after filing.
- State the total of all the debts.
- The affidavit must be notarized. Notaries are available in Room 104 of the Courthouse.

Step 3: Fill out an Order Appointing Trustee and Enjoining Creditors, Form CV 7.

- You must choose for the court to order either payment to the Trustee from your employer by payroll deduction or that you will pay the trustee directly.
- You must include a proposed amount to be deducted from your paycheck and paid by your employer to the trustee per paycheck OR a monthly amount to be paid by you directly to the trustee. Trustees only accept cashier's checks or money orders for direct payments.

AMORTIZATION OF DEBT (Chapter 128)

Milwaukee County Filing Procedures, Page 2

Step 3, continued:

- If the payment is going to be made directly, the Trustee fees, by statute will be an additional 10%
 - To calculate the monthly payment:
 - Multiply total debt included in the plan X 1.10 = total estimated plan amount.
 - Divide the total estimate plan amount by 36 months = estimated monthly payment.
- If the payment is going to be made by payroll deduction, the Trustee fees, by statute, will be an additional 7%
 - To calculate the monthly payment:
 - Multiply total debt included in the plan X 1.07 = total estimated plan amount.
 - Divide the total estimate plan amount by 36 months = estimated monthly payment.
- NOTE: Creditors may provide updated data that will raise or lower the total of the claims in the plan. If that happens, the trustee will make adjustments when submitting a plan for court approval.

Step 4: Make 2 copies of all of the forms.

Step 5: Prepare 2 stamped envelopes: 1) Addressed to you; 2) Addressed to the Trustee (The court will give you the information for the envelope.)

Step 6: File the papers, copies, and envelopes in Room 104 and pay the \$35 filing fee.

NEXT STEPS AFTER FILING

- The Clerk will forward the documents to the judge assigned to your case. The judge will review the papers and, if everything meets with their approval, sign the Order Appointing Trustee and Enjoining Creditors. The court clerk will forward copies of the authenticated documents to you and the trustee.
- **IMPORTANT NOTE:** When you receive your copy of the paperwork from the court with the trustee assignment, **contact the trustee with your telephone number and email address, and the account numbers to each of the debts included in the Affidavit of Debts.**
- Start making plan payments to the trustee promptly.

Milwaukee County Form CV 5: Petition to Amortize Debts

STATE OF WISCONSIN

CIRCUIT COURT
CIVIL DIVISION

MILWAUKEE COUNTY

In the Matter of the Voluntary Amortization of Debts of:

_____,
Debtor(s)

Case No. _____

Petition to Amortize Debts under Wis. Stat. §128.21

1. Debtor is an adult resident of Milwaukee County, Wisconsin, residing at _____
_____ (state address).
2. Debtor is employed by _____
_____ (state full name and address of each employer).
3. Debtor is indebted beyond debtor's ability to pay debts as they mature, and the assistance of the court is needed in the amortization of such indebtedness pursuant to Wis. Stat. § 128.21.
4. Debtor believes that unless the assistance of the court is obtained for the amortization of indebtedness pursuant to Wis. Stat. §128.21, creditors will continue to harass debtor by the issuance of garnishment, attachment or execution. Debtor is of the opinion and belief that debtor will be able to make future payments at regular intervals according to a plan of amortization so as to amortize debtor's indebtedness over a period of not more than three (3) years.
5. Debtor requests that (choose one):
 - the court enter an order that a portion of debtor's payroll checks be assigned directly to the trustee in this proceeding in an amount set forth in the proposed order submitted with this petition.
 - debtor pay to the trustee directly an amount set forth in the proposed order submitted with this petition.
6. Debtor requests that _____

(list name, address, telephone and e-mail of the proposed Trustee) be appointed Trustee in this proceeding.
7. Choose one:
 - My attorney certifies below that he/she has contacted the proposed Trustee and the proposed Trustee has consented to act.
 - I have personally spoken with the proposed Trustee and attached is the Trustee's written consent to act as Trustee.
8. Attached is my affidavit of debts to be included in the plan.
9. Debtor requests to be permitted to amortize debts pursuant to Wis. Stat. § 128.21, and that a plan of amortization as may be proposed by the Trustee and submitted to the creditor(s) be approved by the court.

10. Debtor has submitted a proposed Order appointing the Trustee and enjoining the creditors listed in this petition from further collection procedures.

Dated: _____, 20__.

Debtor Name

Debtor Name

Subscribed and sworn to before me

this _____ day of _____, 20__.

Notary Public, State of Wisconsin

My commission expires _____, 20__
or is permanent

The undersigned attorney for debtor certifies that the proposed Trustee has consented to act as Trustee in this proceeding.

Dated: _____, 20__.

Signature

Name, Bar number, address, phone and email address:

Note: Include two (2) stamped envelopes – one addressed to Trustee and one to Debtor’s attorney or, if no attorney, to Debtor

Milwaukee County Form CV 6: Affidavit of Debts

STATE OF WISCONSIN

CIRCUIT COURT
CIVIL DIVISION

MILWAUKEE COUNTY

In the Matter of the Voluntary Amortization of Debts of:

Debtor(s)

Case No. _____

Affidavit of Debts under Wis. Stat. §128.21

State of Wisconsin)
) SS
Milwaukee County)

_____ (Debtor's name), being first duly sworn upon oath, deposes and states:

He/she/they is/are the debtor(s) in the above-entitled proceeding. The following is a true list of the debts debtor desires to be included in the amortization plan to be formulated by the Trustee.

Instructions:

1. List each creditor by name and address and identify any account number you have for that creditor unless there would be an identity theft issue, i.e. the account number is a social security number.
2. List the amount due each creditor.
3. List a total of all debts to be included in the plan.
4. Each debtor must sign and each signature must be notarized.
5. Attach additional sheets if necessary to complete the list.

List of Creditors and Debts:

List of Creditors and Debts, cont'd:

Dated: _____, 20__.

Debtor Name

Debtor Name

Subscribed and sworn to before me

this _____ day of _____, 20__.

Notary Public, State of Wisconsin

My commission expires _____, 20__
or is permanent

Milwaukee County Form CV 7: Order Appointing Trustee

STATE OF WISCONSIN

CIRCUIT COURT
CIVIL DIVISION

MILWAUKEE COUNTY

In the Matter of the Voluntary Amortization of Debts of:

Debtor(s)

Case No. _____

Order Appointing Trustee and Enjoining Creditors

This matter is before the court on petition of the debtor(s) listed above for the amortization of indebtedness pursuant to Wis. Stat. § 128.21.

NOW THEREFORE, IT IS ORDERED, that:

1. The petitioner(s) are allowed to proceed with the amortization of debts pursuant to the provisions of Wis. Stat. § 128.21.

2. _____
_____ (list name, address, phone and email for Trustee)

is appointed Trustee in this proceeding. The Trustee is directed to comply with Wis. Stat. §§ 128.21(3) and (3g).

3. No distributions shall be made before a plan is approved.

4. Upon the filing of this Order and while the case is proceeding, no execution, attachment, activation of wage assignment or garnishment may be initiated or enforced by creditors of the above-named debtor unless such creditor is not included in the plan.

5. Choose one:

As requested by the debtor in the petition filed with the court, debtor's employer, _____
_____ (list employer) or debtor's current employer, shall, until otherwise directed by the Trustee or further order of the court, deduct \$ _____ from each of debtor's payroll checks and mail that sum directly to the Trustee named above.

The debtor shall, until otherwise directed by the Trustee or further order of the court, pay directly to the Trustee, named above, the sum of \$ _____ monthly, on or before the 15th day of each month.

Dated: _____, 20____.

BY THE COURT:

Circuit Court Judge