

Filing an Amortization of Debt (Chapter 128) Case in Milwaukee County

This guide is designed to help people who do not have attorneys who are filing an amortization of debt case in Milwaukee County. Nothing in this document is intended to be taken as legal advice. If you are seeking legal advice, or have questions regarding your specific situation, you should consult with an attorney.

What is an amortization of debt action?

Amortization of debt actions (often called “Chapter 128” actions, after the chapter of the Wisconsin Statutes in which it is contained) allow a Wisconsin resident with a steady income (this statute applies to “[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 not longer than three (3) years.

What is the difference between amortization of debt and bankruptcy?

Unlike a Chapter 7 bankruptcy, an amortization of debt action does not discharge (or wipe out) debt without payment. All included debts must be paid in full via the payment (amortization) plan. The amortization plan is more like a Chapter 13 bankruptcy plan. However, there are many differences between bankruptcy and amortization. To understand the differences and which is best for you, you may wish to seek the advice of an attorney. The Milwaukee Bar Association’s lawyer referral service number is 414-274-6768.

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

Any creditor included in a court-approved amortization of debt order cannot garnish your wages, or bank accounts, or otherwise try to collect on the debt. The creditor CAN, however, still file a lawsuit and obtain a judgment against you in court, if the creditor has not already done so. Additionally, if you do not follow through with making the payments, and the case is dismissed, or if the included debt is not paid off after the end of the three (3) year period, the creditors can resume debt collection efforts. See Wisconsin Statute §128.21.

What types of a debt can I include?

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

Do I need an attorney?

An attorney can help you determine if an amortization of debt is right for you and, if so, what debts can and should be included. An attorney can also handle the paperwork and procedures. Some attorneys will agree to have their fees included as part of the debt that is paid in monthly installments. If you are interested in getting a referral to an attorney who handles these types of cases, call the Milwaukee Bar Association’s lawyer referral service. Their phone number is 414-274-6768. However, you are not required to have an attorney to file an amortization of debts case.



This document was created by the
MILWAUKEE JUSTICE CENTER
March 2016

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. In Milwaukee County, the Trustee will be randomly assigned by the court. The Trustee is paid a pre-determined percentage of the total debt and the fee is included in the monthly payments.

How do I file an amortization of debt action in Milwaukee County?

In this packet are forms approved for use in Milwaukee County, as well as filing directions.

Can I get help filling out the forms?

Scroll down to see the packet of forms for filing a Chapter 128 Amortization of Debts. These forms are also available at the Milwaukee County Law Library in Room G-8 of the Milwaukee County Courthouse.

Assistance filling out the forms is available from the Marquette Volunteer Legal Clinics. Help is provided on a first-come, first-served basis. No appointments are scheduled for help with Chapter 128 paperwork.

Visit <http://law.marquette.edu/mvlc/services-hours-locations> for dates, times, and locations of the Marquette Volunteer Legal Clinics.

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Veteran's Service Office	House of Peace	United Community Center Senior Center	Milwaukee Justice Center, Milwaukee County Courthouse	Milwaukee Justice Center, Milwaukee County Courthouse	Milwaukee Justice Center, Mobile Legal Clinic
6419 W Greenfield Ave. West Allis	1702 W Walnut St. Milwaukee	730 W Washington St. Milwaukee	901 N 9th St. Rm. G9 Milwaukee	901 N 9th St. Rm. G9 Milwaukee	See www. MilwaukeeJusticeCenter.org for dates/times
1st & 3rd Mondays	Every Tuesday	Every Wednesday	Every Thursday	Every Friday	
4pm-6pm	3pm-7pm	5pm-7pm	Sign in at 1:30pm	Sign in at 1:30pm	



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Filing an Amortization of Debt (Chapter 128) Case in Milwaukee County

Checklist

1. Fill out a Petition to Amortize Debts (Form CV 5)
 - A. You must include your name and address as debtor (and your spouse's if you are filing together).
 - B. 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.
 - C. In paragraph 6, you must choose either that the court order payment to the Trustee from your employer by payroll deduction or the court order that you will pay the Trustee directly.
 - D. You must SIGN the document in front of a notary. Notaries are available at the Milwaukee Justice Center in Room G-9 and in Room 104 of the Courthouse.

2. Fill out an Affidavit of Debts (Form CV 6)
 - A. The affidavit *must* list all of the creditors to be included in the plan, by name and address.
 - B. The affidavit *must* include all accurate account numbers.
 - C. It must list the total amount due each creditor.
 - D. It must include a total of all the debts to be included in the plan.
 - E. You must SIGN the document in front of a notary. Notaries are available at the Milwaukee Justice Center in Room G-9 and in Room 104 of the Courthouse.

3. Fill out an Order Appointing Trustee and Enjoining Creditors (Form CV7)
 - A. It must include the requested Trustee information. The court will assign you a Trustee when you file.
 - B. You must choose either that the court order payment to the Trustee from your employer by payroll deduction or that the court order that you will pay the Trustee directly.
 - C. 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. This amount *must* include the appropriate fee: 7% if paid per paycheck, or 10% if paid directly.

4. Make two (2) copies of the Petition to Amortize Debts, two (2) copies of the Affidavit of Debts and two (2) copies of the Order Appointing Trustee and Enjoining Creditors. A copy machine is available in the Milwaukee County Law Library in Room G-8 of the Courthouse, directly across from the Milwaukee Justice Center sign-in desk. Copies cost 25 cents per page.

5. Prepare two (2) stamped envelopes
 - A. One will be addressed to the Trustee, so the court can send the Trustee the petition, affidavit, and order appointing Trustee. You will get the Trustee's address when you file your papers.
 - B. One should be addressed to you, or your attorney, so you can receive a signed order from the court.

6. File your papers in Room 104 and pay the \$35 filing fee. In addition to the fee, make sure you have the following:
 - A. The original and one (1) copy of your Petition to Amortize Debts
 - B. The original and one (1) copy of your Affidavit of Debts
 - C. The original and two (2) copies of the Order Appointing Trustee and Enjoining Creditors
 - D. Your two (2) stamped envelopes, one addressed to you and one addressed to the Trustee.



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. _____
Case Code No. 30304

Petition to Amortize Debts under Wis. Stat. §128.21

1. Debtor(s) is/are an individual married adult resident(s) of Milwaukee County, Wisconsin, residing at _____ (state address).
2. Debtor(s) is/are employed by _____ (state full name and address of each employer).
3. Debtor(s) is/are indebted beyond debtor's(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(s) believe(s) that unless the assistance of the court is obtained for the amortization of indebtedness pursuant to Wis. Stat. §128.21, creditors will continue to seek collection 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(s) request appointment of a trustee in accordance with Milwaukee County Local Rule 3.31.
6. Debtor(s) request(s) that (choose one):
 - the court enter an order that a portion of debtor's(s') weekly bi-weekly monthly bi-monthly other: _____ payroll checks be assigned directly to the trustee in this proceeding in an amount set forth in the proposed order submitted with this petition. The trustee shall be compensated not more than 7% of the creditor claim(s), along with costs for postage/notices/correspondence.
 - debtor(s) pay(s) to the trustee directly an amount set forth in the proposed order submitted with this petition. The trustee shall be compensated not more than 10% of the creditor claim(s), along with costs for postage/notices/correspondence.
7. Attached is/are my/our affidavit of debts (Milwaukee County Circuit Form CV 6) to be included in the plan.
8. Debtor(s) request(s) 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.
9. Debtor(s) has/have submitted a proposed Order (Milwaukee County Circuit Form CV 7) appointing the trustee and enjoining the creditors listed in this petition from further collection procedures.

Dated: _____, 20__.

Debtor 1 Name

Print Name

Subscribed and sworn to before me
this _____ day of _____, 20__.

Notary Public, State of Wisconsin
Print Name: _____
My commission expires _____, 20__
or is permanent

Dated: _____, 20__.

Debtor 2 Name (if any)

Print Name

Subscribed and sworn to before me
this _____ day of _____, 20__.

Notary Public, State of Wisconsin
Print Name: _____
My commission expires _____, 20__
or is permanent

If debtor(s) is/are represented by an attorney, the attorney must complete the following:

Dated: _____, 20__.

Attorney Signature

Print Name: _____

Address: _____

Phone Number: _____

Bar Number: _____

Note: Include two (2) stamped envelopes – one addressed to Trustee (name and address will be filled in by the court) and one to Debtor’s(s’) attorney or, if no attorney, to Debtor(s)

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. _____
Case Code No. 30304

Affidavit of Debts under Wis. Stat. §128.21

State of Wisconsin)
) SS
Milwaukee County)

_____ (Debtor's(s) name(s)), 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(s) desire(s) 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:

Name of Creditor	Address of Creditor (incl. city, state, zip)	Account Number	Amount Due

List of Creditors and Debts, cont'd:

Check box if additional pages attached

TOTAL AMOUNT INCLUDED IN PLAN \$ _____

Dated: _____, 20__.

Debtor 1 Name

Print Name

Subscribed and sworn to before me
this _____ day of _____, 20__.

Notary Public, State of Wisconsin
Print Name: _____
My commission expires _____, 20__
or is permanent

Dated: _____, 20__.

Debtor 2 Name (if any)

Print Name

Subscribed and sworn to before me
this _____ day of _____, 20__.

Notary Public, State of Wisconsin
Print Name: _____
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. _____

Case Code No. 30304

Order Appointing Trustee and Enjoining Creditors

This matter is before the court on the above-listed debtor's(s') petition 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.

is appointed trustee in this proceeding. The trustee is directed to comply with Wis. Stat. §§ 128.21(3) and (3g).
(Clerk will stamp original and copies.)

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 a creditor of the above-named debtor(s) unless such creditor is not included in the plan.

5. Choose one:

As requested by the debtor(s) in the petition filed with the court, debtor's(s') employer(s), _____

_____ (list employer(s)) or debtor's(s') current employer, shall, until otherwise directed by the trustee or further order of the court, deduct \$ _____ from each of debtor's(s') payroll checks and mail that sum directly to the above-named trustee, including a 7% trustee distribution.

The debtor(s) shall, until otherwise directed by the trustee or further order of the court, pay directly to the above-named trustee the sum of \$ _____ monthly, including a 10% trustee distribution, commencing on or before 15 days after the date of this Order.

Dated: _____, 20____.

BY THE COURT:

Circuit Court Judge

Milwaukee County Form CV 8: Report of Trustee

STATE OF WISCONSIN

CIRCUIT COURT
CIVIL DIVISION

MILWAUKEE COUNTY

In the Matter of the Voluntary Amortization of Debts of:

Debtor(s)

Case No. _____
Case Code No. 30304

Report of Trustee

_____, the trustee appointed by the court in this proceeding under Wis. Stat. § 128.21, reports to the court as follows:

1. Notice of these proceedings was mailed to all creditors listed in the Affidavit of Debts that was previously filed with the court with the petition; a copy of the notice to creditors is attached.
2. Pursuant to Wis. Stat. § 128.21, and in accordance with the notice given to creditors, a meeting of creditors was held on _____, 20___. No objections to the plan have been timely filed.
3. This plan is feasible and I recommend it be approved with payments to the trustee in the monthly amount of \$_____ weekly bi-weekly monthly bi-monthly other: _____ by direct payments to the trustee wage assignment.
4. THE PLAN: attached as Exhibit A is a list of creditors with the amounts owing as determined by the trustee. The trustee proposes to make pro-rata payments to all creditors every ninety (90) days or less, except small debts may be paid at the discretion of the trustee in full from initial distributions for the sake of economy and convenience. Debtor's(s') attorney fees do not constitute administrative expenses and if included within the plan shall be paid pro-rata along with all other creditors. All debts will be paid with three (3) years of the date of the Order Approving the Plan.

Dated: _____, 20__.

Trustee Signature

Print Name: _____

Address: _____

Phone Number: _____

E-mail: _____

Milwaukee County Form CV 9: Amortization Plan

STATE OF WISCONSIN

CIRCUIT COURT
CIVIL DIVISION

MILWAUKEE COUNTY

In the Matter of the Voluntary Amortization of Debts of:

Debtor(s)

Case No. _____
Case Code No. 30304

Amortization Plan (Exhibit A)

The list of creditors below states the amounts owing to each creditor as determined by the trustee either from the claims filed by the creditor or, if no claim was filed, then according to the amount set forth in the debtor's(s') Affidavit of Debts.

Additionally, the amount of the debtor's attorney's fees to be included within the plan is listed below. Those attorney fees do not constitute administrative expenses and will be paid pro-rata along with all other creditor claims under the plan.

The administrative expenses for the trustee pursuant to §128.21(4)(a) and (b), Wis. Stats., are also listed below:

Instructions:

1. List creditors, including debtor's(s') attorney's fees, if included in the plan. (Attach additional sheets if necessary.)
2. List trustee expenses – 7% or 10%, whichever applies, plus postage (estimate to be adjusted with each distribution)
3. State total debts and expenses.
4. State how much debtor will pay under the plan, e.g., Debtor will pay to the Trustee the sum of \$ _____, [weekly] [bi-weekly] [monthly] [bi-monthly] [other: _____] by [direct payments to the trustee] [wage assignment].

Dated: _____, 20__.

Trustee Signature

Print Name: _____

Address: _____

Phone Number: _____

E-mail: _____

Milwaukee County Form CV 10: Order Approving Plan

STATE OF WISCONSIN

CIRCUIT COURT
CIVIL DIVISION

MILWAUKEE COUNTY

In the Matter of the Voluntary Amortization of Debts of:

Debtor(s)

Case No. _____
Case Code No. 30304

Order Approving Plan

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

The trustee filed with the court a report showing that: (1) the debtor(s) has/have submitted an Affidavit of Debts; (2) notice of a meeting with the trustee was sent to all scheduled creditors; (3) the meeting was conducted, during which the scheduled creditors were given an opportunity to file claims and consider a plan of amortization; and (4) the trustee recommends the court adopt the plan described in the Report of Trustee filed with the court.

NOW THEREFORE, IT IS ORDERED that the plan set forth in the Report of Trustee is approved, subject to the following conditions:

1. The trustee make pro-rata disbursements to the creditors, including the debtor's(s') attorney fees, every 90 days or less.
2. The debtor's(s') attorney fees do not constitute administrative expenses under the plan and shall be paid pro-rata along with all other creditors without any priority.
3. The trustee make periodic reports of receipts and disbursements to the court, debtor(s) and all creditors, upon request by any of those listed.
4. The injunctive order prohibiting any execution, attachment, activation of wage assignment or garnishment by any creditor included in this plan shall remain in effect for three (3) years from the date of this order or as otherwise ordered by the court.
5. If the debtor(s) fail(s) to make payments for thirty (30) days or more, the trustee shall report the matter to the court with the trustee's recommendations. The debtor(s) shall be given notice of the trustee's report. The court shall either dismiss the proceedings or, if satisfied from the trustee's report that the debtor(s) is/are in good faith and should be able to make good the default, extend the period of grace for not to exceed thirty (30) days. At the end of the grace period, the trustee shall again report to the court and if all defaults have not then been cured the court shall immediately dismiss the proceeding and trustee shall notify all the creditors.
6. If the debtor(s) make(s) preferential payments to creditors during the pendency of the proceedings, or appear(s) for any reason to be abusing the privileges of Wis. Stat. § 128.21, the trustee shall promptly report the matter to the court and the court may dismiss the proceedings.
7. If the claims of all creditors as listed in the plan are satisfied in full, the trustee shall upon completion of the final distribution report to the court and the court shall dismiss the proceeding.
8. The debtor(s) shall make payments to the trustee in accordance with the plan and the debtor(s) may make additional payments from time to time to the trustee. If the trustee is unable to make distribution payments to a creditor due to the creditor's change of address or failure to acknowledge/accept payment, the plan shall be

deemed amended without further order of the court to exclude that creditor from continued payments and these payments shall be distributed proportionally among remaining creditors listed in the plan. A creditor so excluded remains subject to the Order Enjoining Creditors, and may be re-added to the plan upon consent of the trustee under the terms of the original plan. Any funds not distributed under the plan shall be returned to the debtor(s) or deposited with the Clerk of Circuit Court for the debtor's(s') benefit to allow the trustee to finalize the trustee's accounting provided to the court.

9. The trustee shall distribute the payments proportionally among the creditors listed in the plan, less all of the following:
 - a. A deduction for the trustee's compensation in an amount not exceeding 7% of each distribution, if payments are made through an assignment to the trustee of a portion of the debtor's(s') wages or salary, and not exceeding 10% if no such assignment is made; and
 - b. A deduction equal to the amount of postage necessary for the mailing of payments and of the notices of the meeting with creditors and of any correspondence with creditors.
10. Any order for dismissal issued by the court shall be provided to the debtor(s), creditors and any interested party.
11. For statistical purposes, this case is ordered closed, subject to being reopened to enforce or dissolve injunction, administer or dismiss the plan or for the trustee's final report

Dated: _____, 20____.

BY THE COURT:

Circuit Court Judge