

## **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.

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**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.

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#### **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.