

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 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.

What types of a debt can I include?

Generally, you can include any unsecured debt, such as late rent, past due utility bills, 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.

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, you must find a trustee and get their written agreement to serve before you file. The trustee must then be approved by the court. The trustee is paid a pre-determined percentage of the total debt and the fee is included in the monthly payments. At the present time, neither the courts nor the Milwaukee Justice Center maintain a list of trustees. Therefore, you must find a trustee on your own before filing your Chapter 128 action.

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?

The Milwaukee Justice Center Self Help Services, located in Room G-9 of the Courthouse, can provide packets of forms and instructions, as well as provide help filling out the forms. You can obtain the packets from 8-5, Monday through Friday. However, you can get help filling out the forms **by appointment only**. You can make an appointment by calling 278-2912, stopping in Room 104P of the Courthouse, or emailing ctimail@wicourts.gov. **Please note that the MJC Self Help Services cannot provide legal advice, which includes helping individuals determine what debts they can or should include in their case.**

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

1. **Fill out a Petition to Amortize Debts**
 - A. You must include your name and address as debtor (and your spouse's if you are filing together).
 - B. In paragraph 4, 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. In paragraph 5, you must include the required Trustee information, indicating that you have talked to the proposed Trustee.

2. **Fill out an Affidavit of Debts**
 - A. The affidavit must list all of the creditors to be included in the plan.
 - B. It must list the total amount due each creditor.
 - C. It must include a total of all the debts to be included in the plan.
 - D. It must be notarized. **Notaries are available in Room 104 of the Courthouse.**

3. **Fill out a Proposed Order Appointing Trustee and Enjoining Creditors and a Consent to Act**
 - A. The Order must be in the form approved by the Civil Division (an approved form is included in the packet)
 - B. It must include the requested trustee information.
 - C. 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.
 - D. 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.
 - E. Fill out your name of the Consent to Act

4. **Obtain the Written Consent of a Trustee to act in your case.**

Forward the copy of your Petition, Affidavit of Debts, Proposed Order to the Trustee and the original and one copy of a Consent to Act with a self-addressed, stamped envelope. The Trustee will return the Consent to Act to you, or decline to act, in which case, you must find a different Trustee.

5. **Make 2 copies of the Petition to Amortize Debts, the Affidavit of Debts and the Proposed Order Appointing Trustee and Enjoining Creditors.** A copy machine is available in Room 307A of the Courthouse (Legal Resource Center) for 20 cents a page.
6. **Prepare two (2) stamped envelopes**
 - A. One should be addressed to the Trustee, so the court can send the Trustee the petition, affidavit, and order appointing trustee.
 - B. One should be addressed to you, so you can receive a signed order from the court.
7. **File your papers in Room 104 and pay the \$25 filing fee.** In addition to the fee, make sure you have the following:
 - A. **The original and two copies of your Petition to Amortize Debts**
 - B. **The original and two copies of your Affidavit of Debts**
 - C. **The original and two copies of Proposed Order Appointing Trustee and Enjoining Creditors**
 - D. **The Written Consent to Act signed by the proposed Trustee.**
 - E. **Your two stamped envelopes, one addressed to you and one addressed to the trustee.**

The Milwaukee Justice Center Self Help Services, located in Room G-9 of the Courthouse, can provide help filling out the forms **by appointment only**. You can make an appointment by calling 278-2912, stopping in Room 104P of the Courthouse, or emailing ctimail@wicourts.gov. Please note that the MJC Self Help Services cannot provide legal advice, which includes helping individuals determine what debts they can or should include in their case.

In the Matter of the Voluntary Amortization of Debts of:

_____,
Debtor(s)

Case No.
Case Code 30304

Petition to Amortize Debts - §128.21, Wis. Stats.

Debtor(s) _____ petition(s) the court as follows:

1. Debtor(s) is/are a(n) adult resident(s) of Milwaukee County, Wisconsin, residing at _____. (state full address)
2. Debtor(s) is/are 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 §128.21, Wis. Stats.
3. Debtor(s) believe that unless the assistance of the court is obtained for the amortization of indebtedness pursuant to §128.21, Wis. Stats., creditors will continue to harass debtor(s) by the issuance of garnishment, attachment or execution. Debtor(s) is/are of the opinion and belief that debtor(s) 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.
4. Debtor(s) request(s) [that the court enter an order that a portion of debtor(s) payroll checks be assigned directly to the trustee in this proceeding] or [that debtor pay to the trustee directly] (Choose one) in an amount set-forth in the proposed order submitted with this petition.
5. Debtor(s) request(s) that _____

(list name, address, telephone and e-mail of the proposed Trustee) be appointed Trustee in this proceeding. [My/our attorney certifies below that he/she has contacted the proposed Trustee and the proposed Trustee has consented to act] or [I/we have personally spoken with the proposed Trustee and attached is the Trustee's written consent to act as Trustee.] (Choose one)

6. Attached is my/our affidavit of debts to be included in the plan.
7. Debtor(s) request(s) that he/she/they be permitted to amortize debtor(s) debts, pursuant to §128.21, Wis. Stats., and that a plan of amortization, as may be proposed by the Trustee, and submitted to the creditor(s), be approved by the court.
8. Debtor(s) has/have submitted a proposed Order appointing the Trustee and enjoining the creditors listed in this petition from further collection procedures.

STOP!! This document must be signed in front of a notary.

Dated: _____ 20__.

Debtor Signature

Debtor Signature

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(s) certifies that the proposed Trustee has consented to act as Trustee in this proceeding.

Dated: _____, 20__.

Signature

Name, Bar #, address, phone and email address

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

Debtor Signature

Subscribed and sworn to before me

This _____ day of _____, 20__.

Notary Public, State of Wisconsin

My commission expires _____, 20__ or is permanent

Debtor Signature

Subscribed and sworn to before me

This _____ day of _____, 20__.

Notary Public, State of Wisconsin

My commission expires _____, 20__ or is permanent

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 30304

CONSENT TO ACT

I, _____, do hereby consent to act as trustee in the above matter.

Dated this _____ day of _____, 20__.

_____, Trustee
State Bar No. _____

P.O. Address of Trustee:

Phone: _____

In the Matter of the Voluntary Amortization of Debts of:

_____,
Debtor(s)

Case No.
Case Code 30304

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 §128.21, Wis. Stats;

NOW THEREFORE, IT IS ORDERED, that:

1. The petitioner(s) are allowed to proceed with the amortization of debts pursuant to the provisions of §128.21, Wis. Stats.;
2. _____
(List name, address, phone and e-mail for Trustee) is appointed Trustee in this proceeding. The Trustee is directed to comply with §128.21(3) and (3g), Wis. Stats.;
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(s) unless such creditor is not included in the plan;

5. [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] or [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.] (Choose one).

Dated this _____ day of _____, 20__

BY THE COURT

CIRCUIT COURT JUDGE
BRANCH _____