

I. Suggestions for Chapter 13 Debtors

The following suggestions are provided to assist debtors filing for Chapter 13 in the United States Bankruptcy Court for the Middle District of Florida, Orlando Division, covering the following counties: Orange, Seminole, Osceola, Lake and Brevard. Although, these comments are believed to reflect the court's present position, they are not binding upon the judges, and are not intended to be legal advice. Debtors are directed to consult their attorneys to make certain all papers are completed accurately and deadlines are timely met.

PETITION

A joint petition may be filed by a husband and wife (11 U.S.C. ' 302). Petitions must be accompanied by a service matrix listing all of the debtor's creditors. All petitions filed by attorneys must be filed electronically.

FEES

ATTORNEYS' FEES

All attorney and non-attorney petition preparer fees must be disclosed. The debtor's attorney or petition preparer must sign a disclosure statement and complete the certification on page two of the petition form (Bankruptcy Rule 2016(b) and 11 U.S.C. ' 110(h)).

Attorneys who charge more than \$2,500.00 for a case, more than \$500.00 for each modification of a plan after confirmation, or more than \$75.00 in estimated expenses shall submit an application to the court in accordance with the "Guidelines for Compensation for Professional Services or Reimbursement of Expenses by Attorneys for Chapter 13 Debtors" ("Chapter 13 Fee Guidelines").

All Chapter 13 Fee applications shall be filed and served on the debtor and the Chapter 13 Trustee no later than 10 days prior to the confirmation hearing and notice shall be provided to all interested parties that the fee application will be heard at the confirmation hearing set in the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, Deadlines & Court= Confirmation Procedures.

If a case is dismissed or converted prior to confirmation, and if the retainer agreement so provides, debtor(s)'s attorney may request and receive fees from monies paid to the Chapter 13 Trustee, without separate application to the court, but the total fee, including any fees previously paid, may not exceed \$2,000.00. ("Chapter 13 Fee Guidelines").

Unless a request for fees is made upon the Chapter 13 Trustee along with a copy of the retainer agreement, or a formal application to the court for fees is set for hearing on the confirmation calendar, the Trustee will return all remaining funds in the debtor's account

directly to the debtor immediately following the dismissal or conversion of a Chapter 13 case.

CHAPTER 13 FILING FEE

The debtor must pay a filing fee in the amount of \$194.00, **PAYABLE TO THE U.S. BANKRUPTCY COURT**, which includes a \$30.00 miscellaneous noticing fee.

PAYMENT OF FILING FEE IN INSTALLMENTS

If the court permits the debtor to pay the filing fee in installments, the entire filing fee must be paid in full before the proposed plan can be confirmed. Failure to pay the installment payments in a timely manner will result in a dismissal of the case without further notice of the court. No fees may be paid to a professional in connection with the case if applying to pay filing fees in installments.

TRUSTEE'S FEES AND COSTS

The Trustee will retain a maximum of ten percent of all payments made under the confirmed plan pursuant to 28 U.S.C. ' 586(e). Therefore, the debtor must provide an additional ten percent as and for the Trustee's fee over all proposed payments to creditors under the plan.

SCHEDULES AND STATEMENT OF FINANCIAL AFFAIRS

The debtor may file completed schedules and a statement of financial affairs with the petition, or if a list of all creditors and their addresses is filed with the petition, within 15 days following the filing of the petition (Bankruptcy Rule 1007(c)). The failure to comply in a timely manner will result in the case being dismissed (11 U.S.C. ' 1307(c)(1)). If the debtor is unable to meet this deadline and requests an extension of time in which to file from the court, a copy must be forwarded to the Trustee and all parties who have requested notice.

The information provided must be complete and accurate. Complete and current addresses of all creditors must be included. The debtor is not protected against a creditor who is not listed properly in the schedules, absent that creditor's actual knowledge that the debtor has filed for bankruptcy (11 U.S.C. ' 523(a)(3)).

The debtor must list all claimed exemptions in the schedules (Bankruptcy Rule 1007(b)) and report all income. All expenses must be listed in either the form of payroll deductions or as part of the debtor's estimated budget. The Trustee will examine those expenses to determine whether they are reasonable and necessary and the debtor must be prepared to justify each provision with supporting documentation.

THE PLAN

The plan must provide for the submission of all or an adequate portion of the debtor's future earnings or other income to the Trustee for its execution and must be completed no later than sixty (60) months following the petition filing date (11 U.S.C. ' 1322, 1325).

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The debtor must report all delinquent taxes along with all other priority claims and provide for their full payment. It is strongly suggested that the debtor contact the appropriate taxing authority, prior to filing, to determine whether or not taxes are due and owing, and provide for them accordingly in the plan. Failure to do so will result in an unnecessary delay and a possible dismissal of the case.

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A plan may provide for the curing of a default while the case is pending provided regular payments are maintained through the plan and the last payment is due after the date on which the final payment under the plan is due (11 U.S.C. '1322 (b)(5)).

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If the plan proposes to cure a mortgage default pursuant to 11 U.S.C. ' 1322(b)(5), the debtor must provide for payment of property taxes and insurance not paid by the secured creditor in the budget as monthly expenses.

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Further, the plan must clearly state the arrearage amount claimed by the creditor and include any costs and attorneys' fees incurred as a result of state court or other proceedings, along with the proposed arrearage payment schedule. It is strongly suggested that the debtor's attorney contact secured creditors, prior to filing, to determine the total amount due.

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The plan must provide for the continuation of all monthly payments, including all regular mortgage payments, taxes and insurance.

If the plan does not provide for payments to a secured creditor, such creditor is granted in rem stay relief to pursue available state court remedies against any property which secures the creditor's claim, whether the claim is listed as direct or surrendered.

If the debtor seeks determination of valuation pursuant to 11 U.S.C. ' 506(a) and Bankruptcy Rule 3012, such determination must be specified by checking off the valuation section of the Local Plan Form. Any oral or written objections to such determination must be raised at or before the 341 meeting of creditors. If no oral or written objections are timely raised, the valuation specified in the plan will be binding upon the effected creditor.

AMENDMENTS

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There is an additional \$26.00 filing fee, payable to the U.S. Courts, for each amendment to Schedules D, E, or F if creditors are being added or deleted, or classification or amount is

being changed. Therefore, it is important that the debtor carefully review the schedules, prior to filing, to make certain all listed debt amounts are accurate and all information provided is correct.

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If it becomes necessary to file an amendment, the debtor is directed to file an original with the Clerk and furnish a copy to the Chapter 13 Trustee, the U.S. Trustee and any other party affected by the amendment. A supplemental matrix must be filed with the amendment in accordance with the Clerk's Instructions for Filing or Modifying Schedules

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PAYMENT UNDER THE PLAN

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The debtor must begin making payments to the Trustee under the plan in accordance with the Order Establishing Deadline for Making Payments, which will be NO LATER than 30 days following the filing date of the plan. If the debtor is not current at the time of the meeting of creditors, the case may be dismissed without further notice.

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It is a good idea for Debtor(s) who are not self-employed to submit to a Wage Deduction Order to the court prior to the 341 meeting of creditors.

The proposed monthly payment must be made in "good faith", representing the maximum amount the debtor is able to afford based upon disposable income. Disposable income is calculated by subtracting monthly expenses from monthly income. If the debtor's income or expenses fluctuate from month to month, the debtor should determine disposable income based upon yearly averages and list them accordingly in Schedules I and J.

An additional 10% must be provided as the Trustee's fee and cost allowance over all proposed payments to creditors under the plan (See 11 U.S.C. ' 1326(b)(2)). For example, if the plan indicates the combined payment to all secured creditors is \$1000.00 per month, the debtor must add an additional 10% for the Trustee's fee, or \$100.00, for a total monthly payment of \$1100.00.

Secured creditors must be provided for in the plan unless a motion to pay outside the plan is filed and granted, followed by priority and unsecured claimants. Once arrearage payments to secured creditors have been cured through the plan, regular monthly payments will continue to be paid to the secured creditors under the plan unless the Court previously agreed to allow the payment outside of the plan.

Priority creditors must be paid 100% through the plan (U.S.C. ' 1322(a)(2)). Non-dischargeable debts, such as support payments which are in default, must also be paid in full through the plan (11 U.S.C. ' 1328(a)). Other non-dischargeable unsecured debts, such as guaranteed student loans, are paid under the same pro rata basis as other unsecured creditors. Any unpaid balance on the non-dischargeable debts will survive the plan and will remain the debtor's post bankruptcy obligation.

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Allowed unsecured creditors will be paid in full or pro rata, as permitted by the court, depending upon the payment amount and term of the plan. All plans will provide for pro rata distributions to allowed unsecured claimants. The minimum payment to priority and allowed unsecured claimants cannot be less than the value of the debtor's non-exempt property (11 U.S.C. ' 1325(a)(4)). The Trustee will object to any plan which does not meet the "Chapter 7 liquidation test" and is for a period of less than 36 months (11 U.S.C. ' 1325(b)(1)).

Until a claim is denied or reduced by the court, a plan must provide for the amount as claimed by the creditor. The debtor's attorney must examine all claims to determine their accuracy and object to any claims that should not be paid.

DELINQUENCY AFTER CONFIRMATION OF PLAN

If the debtor fails to timely make any plan payment to the Chapter 13 Trustee, the Trustee may serve a Motion to Dismiss upon the debtor and the debtor's attorney. The debtor will have 21 days from the date of the Motion to make all payments then due under the plan, including any payments that become due within the 21-day period. Debtor(s) seeking to cure the delinquency must file a motion to modify the confirmed plan within 21 days of the date of the Motion to Dismiss, or make sufficient payments to be brought current.

If the debtor is not current in the plan payments on the 21st day after the date of the Motion to Dismiss for Non-Payment, the Trustee will submit to the Court a Proposed Order Dismissing Case and the case will be dismissed without further notice or hearing. Dismissal will be with prejudice to the debtor filing any bankruptcy case for a period of 180 days from the entry of the order of dismissal. The court will not extend these deadlines absent extraordinary circumstances.

CREDITORS

A creditor may oppose the plan by objection, with a copy provided to the Trustee, debtor and debtor's counsel. The court has the discretion to confirm the plan without the acceptance of the unsecured creditors if the plan meets the requirements of 11 U.S.C. ' 1325.

The Trustee will not make a distribution to unsecured creditors who have filed a claim until the Order Confirming Plan is entered by the Court. Scheduled creditors will receive claim forms in the mail and additional forms are available at the Clerk's office.

MEETING OF CREDITORS AND CONFIRMATION HEARING

A 341 meeting of creditors will be scheduled between twenty and forty days after the case is filed pursuant to 11 U.S.C. ' 341 and Bankruptcy Rule 2003. A confirmation hearing will be held

within two (2) months after the Bar Date for filing Proofs of Claims.

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The Trustee may submit a proposed order dismissing the case if the debtor does not appear at the 341 meeting or is not current in plan payments under the plan as originally filed. The case may be dismissed without further notice or hearing. Dismissal will be with prejudice to the debtor filing any bankruptcy case for a period of 180 days from entry of the Order of Dismissal.

The Trustee will evaluate the debtor's schedules, statement of financial affairs and plan and investigate the debtor's circumstances prior to the 341 meeting. Therefore, it is strongly suggested all amendments be filed and sent to the Trustee in a timely fashion to avoid unnecessary delays and potential sanctions.

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A plan is not proposed in good faith if only nominal payments are proposed, or if the proposed payments do not represent the debtor's reasonable best effort considering income and essential expenses. It is also not in good faith to propose a plan payment which is beyond the debtor's ability to pay.

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If the plan, or Amended plan is ready to be confirmed and all oral or written objections timely raised are either withdrawn or settled by the parties, the Trustee may cancel the confirmation hearing and submit a proposed Local Form "Order Confirming Uncontested Chapter 13 Plan and Notice of Opportunity to Object to Amended Plan".

DISTRIBUTION TO CREDITORS

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The Trustee will commence disbursing payments to creditors provided for in the plan if the following conditions are met: (1) The Debt is a regular monthly mortgage payment or secured plan payment. Secured arrearages and priority claims are NOT paid until after the Order Confirming Plan is entered. (2) Creditors have filed their Proof of Claims directly with the Clerk of the Bankruptcy Court and have mailed a copy to the Chapter 13 Trustee. (3) The Debtor has provided for payment of the secured debt in the current Chapter 13 Plan, and has made the first two payments due under the plan.

The Trustee is prohibited from making a distribution to unsecured creditors earlier than the entry of the confirmation order.

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It is the responsibility of the debtor's attorney to ensure that payment pursuant to the plan is consistent with Proofs of Claim filed by creditors. In the event a filed claim conflicts with the confirmed plan, the plan must either be modified to reflect the claim amount or an objection to the claim must be made and sustained.

PLAN MODIFICATION

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Occasionally, modification of the confirmed plan will become necessary. A modification must

be proposed in accordance with 11 U.S.C. ' 1329. The debtor must move to modify the plan upon notice and hearing.

Modifications are not required to accommodate adjustable rate note payments. Changes in regular monthly payments, including the new payment amount and its effective date, must be noticed to the Trustee, in writing, by the affected creditor. If the payment has increased, the debtor must remit the difference to the Trustee plus the 10% Trustee fee. If the payment has decreased, the plan payment remains the same. The difference will be applied toward curing the arrearage in a shorter period of time.

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DISMISSAL OR CONVERSION

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The debtor may file a voluntary notice to dismiss at any time if the case had not been previously converted to Chapter 13 (11 U.S.C. ' 1307(b), or convert the case to a Chapter 7 at any time (11 U.S.C. ' 1307(a); See also Local Rule 1019-1). The Trustee or any creditor may request dismissal of the case or conversion to Chapter 7 orally at the confirmation hearing or by written motion at any time (11 U.S.C. ' 1307(c)). The debtor's failure to file required papers timely, failure to appear at a court hearing, denial of confirmation, or default in payments pursuant to the Plan will normally require either dismissal or conversion.

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The debtor should be prepared to advise the Trustee at the 341 meeting or the court at the confirmation hearing whether conversion or dismissal is preferred in the event confirmation is denied. Dismissal will usually be with prejudice to the filing of another bankruptcy petition until 180 days following entry of the order of dismissal. A dismissal will automatically terminate the stay, permitting creditors to proceed under state law (11 U.S.C. ' 362(c)(2)(B).

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Conversion to Chapter 7 does not terminate the automatic stay; however, the debtor may be required to surrender all nonexempt assets (11 U.S.C. ' 521(4); 1306(b)). If the case is converted, the debtor must file all required reports pursuant to Bankruptcy Rule 1019 and Local Rule 1019-1, and comply with the instructions of the Chapter 7 Trustee assigned to the case. Any remaining filing fee installment payments or Clerk's fees are due upon dismissal pursuant to Local Rule and the fee must be paid by the Debtor.

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DEBTOR'S PAYMENT

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The debtor's attorney is directed to advise the debtor that the initial proposed plan payment must be remitted to the Trustee no later than thirty days from the filing of the petition, not the plan.

The Trustee will hold all plan payments prior to confirmation unless otherwise directed by the court. All payments must be made by payroll deduction, cashier's check or money order to:

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LAURIE K. WEATHERFORD, Trustee

POST OFFICE BOX 1103
MEMPHIS TN 38101-1103

PERSONAL CHECKS AND CASH WILL NOT BE ACCEPTED.

ALL PAYMENTS IN THE FORM OF CASHIER'S CHECK OR MONEY ORDERS
PAYROLL DEDUCTION ORDERS ARE STRONGLY ENCOURAGED.

The debtor's name and case number must be properly listed on all payments. The Trustee will return any payment that does not comply with the above-mentioned requirements and the debtor will not be credited for that payment.

NOTICES

The debtor's attorney is required to provide notice of Chapter 13 orders to all creditors. Examples of such orders include but are not limited to orders on any motion filed by the Debtor and orders of confirmed plan modifications.

DEBTOR'S CONTINUING DUTY

The debtor is under a continuing duty to advise the Trustee, in writing, of any changes of address, telephone number, or employment, and any emergency that would delay payment to the Trustee (11 U.S.C. ' 521(3)).

The Trustee will immediately move to dismiss the case if the debtor fails to meet any term of the plan, without written explanation (11 U.S.C. ' 1307(c)(6)).

CHAPTER 13 WEBSITE

The Chapter 13 Trustee's website at www.ch13orl.com is provided as a courtesy and is not to be construed as giving or attempting to give legal advice.

DISCHARGE

The Trustee will file a final report with the Clerk of the Court and a discharge will be issued to the debtor BY THE CLERK OF THE BANKRUPTCY COURT in due course upon completion of the plan.

LAURIE K. WEATHERFORD

STANDING CHAPTER 13 TRUSTEE
MIDDLE DISTRICT OF FLORIDA
POST OFFICE BOX 3450
WINTER PARK, FLORIDA 32790

TELEPHONE: (407) 648-8841 FAX: (407) 648-2665

HONORABLE ARTHUR B. BRISKMAN

HONORABLE KAREN S. JENNEMAN

UNITED STATES BANKRUPTCY COURT
135 WEST CENTRAL BOULEVARD, SUITE 950
ORLANDO, FLORIDA 32801

TELEPHONE: (407) 648-6365

II. Guidelines for Plan Modifications After Confirmation

Please adhere to the following procedure when calculating a plan modification after confirmation:

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INITIAL PAYMENT

1. Obtain a ledger sheet from this office. 2. Determine total amount the debtor has paid to Trustee. 3. The Court has determined that the maximum number of payments which can be skipped is three (3) months. 4. These skipped payments **MUST** be cured within a twelve month period.
5. UNSECURED CREDITORS remain the same as in the original plan.
6. PLEASE NOTE THAT THE TRUSTEE **CANNOT** DISBURSE TO CREDITORS WHEN THE PLAN IS UNDERGOING MODIFICATION. PLEASE DO NOT ASK THE TRUSTEE TO DO SO.
7. If a modification has been approved by the Court and an order has been entered, the Trustee's office will disburse the funds during the **NEXT** MONTHLY DISBURSEMENT CYCLE after the Order has become final. If this office has not disbursed funds in accordance with this paragraph, please contact our office to inquire as to the reason for the delay in distribution.

8. It is the responsibility of the MOVING PARTY to submit to the Bankruptcy Court the proposed order on modification.

Revised 7/6/05

