

**CHAPTER 13 SUGGESTIONS  
MIAMI-DADE DIVISION  
NANCY N. HERKERT, ESQUIRE  
STANDING CHAPTER 13 TRUSTEE  
(rev. 01/12)**

The following suggestions are provided to assist debtors filing under chapter 13 in the United States Bankruptcy Court for the Southern District of Florida in the Fort Lauderdale and West Palm Beach Divisions. Although these comments are believed to reflect the court's present position, they are not binding upon the judges or the trustee. Debtors are directed to consult their attorneys to make certain all papers are completed accurately and deadlines are timely met.

**ELIGIBILITY**

**DEBTORS MUST OBTAIN CREDIT COUNSELING PRIOR TO FILING A PETITION  
AND FILE A CERTIFICATION OF COMPLETION WITH THE PETITION**

Pursuant to 11 U.S.C. § 109(h), an individual (both husband and wife if joint petition) may not be a debtor unless, during the 180 day period proceeding the date of filing the petition, that individual received a briefing from an approved non-profit budget and credit counseling agency [11 U.S.C. §§ 109 (h)(1) and 521(b)(1)]. Although there are provisions in the Bankruptcy Code which permit a debtor to submit a certification to the court describing exigent circumstances and asking the court to grant a waiver of this requirement, the court has indicated that most debtors will not qualify for such a waiver since credit counseling is readily available in this district. [See 11 U.S.C. § 109(h)(3) and "STOP" warning notice attached to these suggestions.] ***Note: There are exemptions from this requirement available for the mentally ill or disabled or persons on military duty in an active combat zone. See 11 U.S.C. § 109(h)(4), Local Rule 1007-1(E) and "Clerk's Filing Instructions" for more information.***

Debtors must indicate on the petition in the appropriate box the status of completion of the pre filing credit counseling requirement and, as stated in the petition, file Exhibit D with the petition. [See Local Rule 1007-1(E) and "Petition" section below of these suggestions].

**CM/ECF**

Debtors represented by attorneys may file petitions and most other case documents utilizing CM/ECF, the court's electronic filing system. The Local Form "Declaration Under Penalty of Perjury to Accompany Petitions, Schedules and Statements Submitted Electronically" must be submitted as required by this court's Local Rules, including 1002-1(A)(4), 1007-1(D), 1009-1(A)(2) and 9011-4(C). Attorneys may also self calendar certain chapter 13 matters utilizing the court's CM/ECF system. See "Chapter 13 Self-Calendaring Procedures" posted on the court's web page under Case Information/Chapter 13 Information.

**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 [Local Rule 1007-2(A)]; and Exhibit D "Individual Debtor's Statement of Compliance with Credit Counseling Requirement" accompanied by the certification if the counseling was completed. See also "Clerk's Filing Instructions" and the "Clerk's Instructions for Preparing, Submitting and Obtaining Service Matrices". In addition, debtors not represented by an attorney must

provide a current government issued photo identification when a petition is filed in person or by mail or the petition will not be accepted for filing. (See attached clerk's notice "New Photo Identification Requirement for Debtors Filing a Petition without Attorney Representation".) All petitions must comply with the Local Rules including Local Rules 1002-1, 1006-1, 1007-1, 1007-2, 1009-1, 5005-1(C), and 5005-4 (for cases filed electronically). Failure to comply with these Local Rules may result in the dismissal of the case [see Local Rules 1002-1(B)(2), 1006-1(A)(4), 1007-1, 1017-2, and 9011-4(C)].

### **AUTOMATIC STAY**

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request that the court extend or impose a stay. Any motion to extend or impose the automatic stay must be timely filed and heard by the court within the applicable time period in accordance with 11 U.S.C. § 362.

### **RIGHTS AND RESPONSIBILITIES AGREEMENT**

As required by Local Rule 2016-1(B)(2)(a), chapter 13 debtors and attorneys are required to sign this court's Local Form "Rights and Responsibilities Agreement Between Chapter 13 Debtor(s) and Chapter 13 Debtor(s)' Attorney for Cases Filed in the United States Bankruptcy Court, Southern District of Florida". This document explains the duties and responsibilities of the debtor and the debtor's attorney. Both the debtor and the debtor's attorney should maintain a signed copy of this agreement in their records. **DO NOT FILE THE AGREEMENT WITH THE COURT.**

### **FEES**

#### **ATTORNEYS' FEES**

All attorney and non-attorney petition preparer fees must be disclosed. The debtor's attorney or petition preparer must sign the applicable Official Bankruptcy Form "Disclosure Statement" and complete the certification on page two of the petition form [Bankruptcy Rule 2016(b), Local Rule 2016-1, and 11 U.S.C. § 110(h)], or if a Bankruptcy Petition Preparer, Administrative Office of the U.S. Court's Director's Procedural Form B201B, "Certification of Notice to Individual Consumer Debtor(s)". [Bankruptcy Rule 2016(b), Local Rule 2016-1, and 11 U.S.C. § 110(h)].

Attorneys who charge more than the amounts set forth in the "*Guidelines for Compensation for Professional Services or Reimbursement of Expenses by Attorneys for Chapter 13 Debtors Pursuant to Local Rule 2016-1(B)(2)(a)*" shall submit an application to the court in accordance with those Guidelines ["Chapter 13 Fee Guidelines"; Local Rule 2016-1(B)(2)(a)].

All chapter 13 fee applications shall be filed and served on the debtor and the chapter 13 trustee no later than 14 days prior to the confirmation hearing or other applicable hearing and notice shall be provided to all interested parties that the fee application will be heard [Local Rule 2016-1(C)(4)].

If a case is dismissed or converted prior to confirmation and if the retainer agreement so provides, the debtor'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 \$2,500.00 ["Chapter 13 Fee Guidelines"].

Unless such 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 disburse all remaining funds as set forth under Local Rule 1017-2(F).

### CHAPTER 13 FILING FEE

Debtors must pay a filing fee in the amount of \$281.00. Debtors may only pay filing fees by cash, money order or cashier's or "official" checks. All other payments must be in the manner described in Local Rule 5801-1. Non cash payments must be made payable to "Clerk, U.S. Court." Overpayments of \$25 or less will not be refunded by the court. [Local Rule 5081-1(D)].

### PAYMENT OF FILING FEE IN INSTALLMENTS

A request for payment of fees in installments must be submitted using Local Form "Application by Individual Debtor to Pay 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 [see local form application and accompanying form order]. Failure to pay the installment payments in a timely manner will result in a dismissal of the case without further notice of the court [Local Rule 1006-1(A)(4)].

### TRUSTEE'S FEES AND COSTS

The trustee will retain a maximum of ten percent of all payments received under plans 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.

### **DEBTOR'S DUTY**

The debtor shall file all of the documents required under 11 U.S.C. § 521, including a list of creditors, and unless the court orders otherwise, a schedule of assets and liabilities, a schedule of current income and current expenditures, a statement of the debtor's financial affairs, copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition or, if complete payment advices can not be provided, file Local Form "Declaration Regarding Payment Advices" (see Local Rule 1007-1(F), an itemized statement of the debtor's monthly net income and a statement disclosing reasonably anticipated increase in income or expenses [11 U.S.C. § 521]. [See also "Clerk's Filing Instructions".] In addition, the debtor must file Official Bankruptcy Form 22(C) "Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income" and the Local Form "Statement of Social Security Number(s) (or Other Individual Taxpayer-Identification Number(s) (ITIN(s)))". [See also "Clerk's Filing Instructions".]

The failure to comply in a timely manner may result in the case being dismissed [See also 11 U.S.C. § 521(i), 11 U.S.C. § 1307(c), and Local Rules 1002-1(B)(2), 1006-1(A)(4), 1007-1, 1017-2, and 9011-4(C).] 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 [See Local Rules 1007-1(C), 1019-1(A), and 9013-1(C)(2)]. [See also "Amendments" below].

The information provided must be complete and accurate, however the names of minor children shall not be disclosed [11 U.S.C. § 112]. Complete and current addresses of all creditors must be included. The debtor must list all claimed exemptions in the schedules [11 U.S.C. § 522, Bankruptcy Rule 1007(b)]. All social security numbers and other

information protected by the federal judiciary privacy policy and the Bankruptcy Rules shall be redacted prior to the submission of the documents for filing with the clerk. [See Local Rule 5005-1(A)(2)].

Prior to the first scheduled meeting of creditors, the debtor shall provide to the trustee all documents listed in the Trustee's Notice of Required Documents and provide tax returns in accordance with 11 U.S.C. § 521(e) and (f) and § 1308 and Bankruptcy Rule 4002(b). **DO NOT FILE THESE DOCUMENTS OR A CERTIFICATE OF SERVICE OF THESE DOCUMENTS WITH THE COURT, UNLESS ORDERED BY THE COURT TO DO SO.**

## 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 60 months following the petition filing date [11 U.S.C. § 1322 and § 1325].

The plan must conform to the one-page Local Form "Chapter 13 Plan" approved by the U.S. Bankruptcy Court for the Southern District of Florida pursuant to Local Rule 3015-1(B)(1). A copy of the Local Form "Chapter 13 Plan" is attached hereto with the Trustee's Guidelines for Completion.

All required adequate protection payments under 11 U.S.C. § 1326(a)(1) shall be paid to the chapter 13 trustee in accordance with Bankruptcy Rule 3070-1.

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.

If the debtor chooses to classify claims, each claim within a class must be treated equally [11 U.S.C. § 1322(a)(3)]. Unfair discrimination is prohibited [11 U.S.C. § 1322(b)(1)].

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)].

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.

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.

The plan must provide for the continuation of all monthly payments, including all regular mortgage payments, taxes and insurance. If a regular payment is not included in the plan, the debtor must be current and specifically list it as being paid "direct" and is expected to keep current on that debt. If the debtor does not intend to continue making payments on a secured debt, the debtor must specifically list it as being "surrendered" on the plan.

If the plan does not provide for payments to a secured creditor, such creditor is granted in rem stay relief pursuant to the confirmation order 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 and Local Rule 3015-3(A), such determination must be specified by filling in the valuation section of the Local Form "Chapter 13 Plan". Certain property may not be subject to valuation [See 11 U.S.C. § 1325]. In addition, a chapter 13 debtor seeking to value collateral must serve, as applicable, either the Local Form "Motion to Value and Determine Secured Status of Lien on Real Property" or the Local Form "Motion to Value and Determine Secured Status of Lien on Personal Property" on affected parties in accordance with Bankruptcy Rule 7004 at least 21 days prior to the date of the confirmation hearing [Local Rule 3015-3(A)(1)]. Any objections to the valuation of collateral contained in a chapter 13 plan and in a motion to value collateral must be filed with the court and served on the chapter 13 trustee, the debtor and counsel for the debtor, if any, at least two business days before the date of the hearing on the motion to value collateral.

If no timely objections to the proposed valuation are filed, the valuation specified in the plan will be binding upon the affected secured creditor, and the debtor shall submit a proposed order. If the collateral consists of real property, the debtor shall submit a proposed order consistent with the Local Form "Order Granting Motion to Value and Determine Secured Status of Lien on Real Property Held By \_\_\_\_\_." If the collateral consists of personal property, the debtor shall submit a proposed order consistent with the Local Form "Order Granting Motion to Value and Determine Secured Status of Lien on Personal Property Held By \_\_\_\_\_". [Local Rule 3015-3(A)(2)]

### **AMENDMENTS**

There is an additional \$30.00 fee payable at the time of filing to the Clerk, United States Court, to add or delete a creditor from a schedule, list, or creditor service matrix, or to change amounts or classifications of creditors listed on schedules D, E or F. The fee is for each paper filed, not each amendment listed on the paper. Personal checks of the debtor will not be accepted. 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.

If it becomes necessary to file an amendment, the debtor is directed to file an original with the clerk, accompanied by Local Form "Debtor's Notice of Compliance with Requirements for Amending Creditor Information", and furnish a copy to any other party affected by the amendment, including a copy of the notice of the Meeting of Creditors and any subsequent notices amending the information contained in the original notice. If applicable, a supplemental matrix must be filed with the amendment in accordance with the "Clerk's Instructions for Preparing, Submitting and Obtaining Service Matrices" [Local Rules 1007-2 and 1009-1(D)]. A debtor or an attorney for a debtor who has received a bypass notice from the Bankruptcy Noticing Center (BNC) may use the form provided to change a previously submitted creditor address. In those instances, the bypass notice may be filed in lieu of LF-4 to notify the court of a change of creditor address. [See Local Rule 1009-1(D)(1)].

### **PAYMENT UNDER THE PLAN**

The debtor must begin making payments to the trustee under the plan, no later than 30

days following the filing date of the petition or date of conversion [Local Rule 3070-1; 11 U.S.C. § 1326(a)]. If the debtor is not current at the time of the meeting of creditors, the case may be dismissed without further notice [Local Rule 3070-1(C)(1)].

Priority creditors must be paid 100% through the plan [11 U.S.C. §§ 1322(a)(2)]. Ongoing regular support payments must also be included in the plan when curing support arrears unless ongoing payments are paid through the state depository via automatic deduction from the debtor's pay.

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" or 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. Not later than 21 days after the expiration of the claims bar date, the attorney for the debtor shall examine, from records maintained by the clerk, the claims register and all claims filed in the case to determine whether additional action is necessary [Local Rule 2083-1(B)(1)]. A Local Form "Notice of Compliance by Attorney for Debtor with Local Rule 2083-1(B) Claims Review Requirement" must be filed with the court and served on the trustee and the debtor [Local Rule 2083-1(B)(2)]. **Note: This requirement does not apply to debtors not represented by attorneys.**

### **CONFIRMATION**

Prior to confirmation, the debtor shall comply with all bankruptcy code provisions, local rules and administrative orders. The debtor shall also complete, file, and simultaneously submit to the trustee the Local Form "Debtor(s) Certificate of Compliance and Request for Confirmation of Chapter 13 Plan" [Local Rule 3015-3(B)(2)]. If this certificate is filed at or prior to the meeting of creditors and all other requirements for an uncontested confirmation have been met, the plan can be confirmed as uncontested. If the certificate is not filed at or prior to the meeting of creditors, the case will proceed to the scheduled confirmation hearing and the certificate must be filed at or prior to the confirmation hearing [Local Rule 3015-3(B)(2)]. The provisions of a confirmed plan under the confirmation order bind the debtor and each creditor whether or not the claim of the creditor is provided for by the plan and whether or not the creditor has objected to, accepted, or has rejected the plan [11 U.S.C. § 1327].

### **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 notice of delinquency upon the debtor and the debtor's attorney. The debtor will have 45 days from the date of the notice of delinquency to make all payments due under the plan, including any payments that become due within the 45-day period. Debtors seeking to cure the delinquency in a modified plan must file a motion to modify the confirmed plan within 14 days of the date of the notice of delinquency.

If the debtor is not current in the plan payments on the 45th day after the date of the Notice of Delinquency, the trustee may file and serve a report of non-compliance and 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 the entry of the order of

dismissal. The court will not extend these deadlines absent extraordinary circumstances. [See also Local Rule 3070-1(C)(2)].

## **CREDITORS**

Except for objections to confirmation based on valuation of collateral in the plan, a creditor may oppose the plan by objection filed at or before the meeting of creditors with a copy provided to the trustee, debtor and debtor's counsel. [See above section "Plan" for information on valuation of collateral.] The court will not consider a creditor's objection to confirmation unless it is raised at or before the meeting of creditors or, if based upon valuation of collateral provided for in the plan, raised pursuant to Local Rule 3015-3. 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 not filed a proof of claim unless the court orders otherwise. Claims must be filed with the clerk of the court not later than 90 days after the first date set for the meeting of creditors, unless otherwise ordered by the court. [Bankruptcy Rule 3002]. Scheduled creditors will receive a claim form with the "Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, Deadlines & Court's Confirmation Procedures". Creditors should use this form to file their claim. In addition, creditors may electronically file claims via an online fillable Official Bankruptcy "Proof of Claim" form available on the court website [www.flsb.uscourts.gov](http://www.flsb.uscourts.gov) by selecting the link on the home page for electronic filing of claims.

Any creditor whose ongoing regular mortgage payments are paid by the trustee pursuant to the plan must file the Official Bankruptcy Form "Notice of Mortgage Payment Change" regarding any payment changes during the pendency of the case. [See also Local Rule 3070-1(B)(2).]

Any creditor filing a Motion for Relief From Stay must comply with Local Rules 4001-1(B). Motions for relief from stay on negative notice are not permitted in chapter 13 cases. Negative notice is not permitted against any pro se debtor. [See Local Rules 4001-1(C), 6004-1(D), and 9013-1(D)(3) and (D)(4).]

## **MEETING OF CREDITORS AND CONFIRMATION HEARING**

A meeting of creditors will be scheduled between 21 and 50 days after the case is filed pursuant to 11 U.S.C. § 341 and Bankruptcy Rule 2003.

Debtors (both spouses in a joint case) will be required to provide their original, government-issued, picture identification and original proof (not copies) of their social security number (or tax identification number, if applicable) when they appear at the 341 meeting to be questioned under oath about their financial obligations by the trustee and by creditors. This requirement is in addition to the requirement that debtors filing without attorneys provide photo identification at the time of filing a petition.

Permissible forms of identification include a valid state driver's license, government-issued picture identification card, U.S. passport, or legal resident alien card. Proof of the Social Security Number may be provided through documents such as the original Social Security card or payroll check stub.

A confirmation hearing will be held as provided for in the Notice of Commencement provided by the clerk of court. [See also Local Rule 3015-3(B)(1) regarding setting of earlier confirmation hearing date]. Due to noticing requirements, scheduling problems and

the effect of the automatic stay, meetings of creditors are rarely rescheduled by the court [Local Rule 2003-1]. Therefore, the case should not be filed until the debtor is able to be present at the meeting of creditors to answer questions, under oath, regarding income, expenses, assets and debts.

**ANYONE ATTEMPTING TO ENTER A BUILDING WHERE THE COURT IS LOCATED WILL BE REQUIRED TO PROVIDE PROOF OF IDENTITY SUCH AS A VALID STATE DRIVER'S LICENSE, GOVERNMENT ISSUED PICTURE IDENTIFICATION CARD, OR U.S. PASSPORT. YOU MAY NOT BRING CERTAIN ITEMS INTO THE BUILDINGS [SEE LOCAL RULES 5072-2, 5073-1]. ONCE IN THE COURTROOM, PLEASE COMPLY WITH THE REQUIREMENTS FOR COURT DECORUM [SEE LOCAL RULE 2090-2(E)].**

The trustee may submit a proposed order dismissing the case if the debtor does not appear at the meeting of creditors 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 [Local Rules 1017-2(B) and 3070-1(C)(1)]. See also 11 U.S.C. § 362(c)(3) regarding limitations on the automatic stay for certain debtors whose cases were dismissed and refiled.

The trustee will evaluate the debtor's schedules, statement of financial affairs, plan, statement of current monthly income and disposable income calculation and all required documents required by 11 U.S.C. § 521 and other Code and Rule provisions and investigate the debtor's circumstances prior to the meeting of creditors. The trustee will conduct the meeting of creditors and determine if a confirmation hearing is necessary. If no oral or written objection is raised at or before the meeting of creditors, or if all oral and written objections are either withdrawn or settled by the parties at or before the meeting of creditors, the trustee may cancel the previously scheduled confirmation hearing and submit a proposed Local Form "Order Confirming Uncontested Chapter 13 Plan". Any creditor objecting to holding confirmation earlier than twenty days after the meeting of creditors shall object at or before the meeting of creditors [Local Rule 3015-3(B)].

If the plan is amended at or before the meeting of creditors and all oral or written objections timely raised are either withdrawn or settled by the parties at or before the meeting of creditors, 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". [Local Rule 3015-3(B)(2)(a)].

As soon as practicable after receipt of the signed "Order Confirming an Uncontested Chapter 13 Plan and Notice of Opportunity to Object to Amended Plan", the trustee will serve a copy of the amended plan and order on all parties of record. This order and notice shall notify any creditor whose treatment under the amended plan was amended from the plan as originally filed of the right to object within 28 days of entry of the order [Local Rule 3015-3(B)(2)(b)].

If an objection has not been withdrawn or settled at or before the meeting of creditors or the trustee determines the plan is not confirmable, the trustee will announce that the confirmation hearing will be held as scheduled in the Notice of Commencement of Case. No additional notice will be provided.

The trustee will review all objections raised at or before the meeting of creditors which are not withdrawn or settled. Based upon the information provided and the testimony presented at the meeting of creditors, the trustee will make a recommendation at the confirmation hearing as to the debtor's ability to comply with the terms of the proposed plan

[11 U.S.C. §§ 1302(b)]. All amendments must be filed with the court and sent to the trustee not later than 14 days prior to the confirmation hearing to avoid unnecessary delays and potential sanctions [Local Rule 1009-1(D)].

If the court confirms an amended plan that is not filed with the court prior to entry of the confirmation order, the case will be dismissed without any notice or hearing.

### **DISTRIBUTION TO CREDITORS**

The trustee will commence disbursing payments to creditors provided for in a confirmed plan as soon as practicable after receipt of the signed confirmation order. If the court orders payments "vested" to certain creditors prior to confirmation, the trustee will disburse those payments as soon as practicable after receipt of a dismissal, conversion or confirmation order.

The trustee is prohibited from making a distribution to unsecured creditors earlier than 90 days following the meeting of creditors; however during that period, the trustee will make payments on secured claims, cure defaults, pay priority claims and other payments ordered by the court.

It is the responsibility of the debtor's attorney to ensure that payment pursuant to the plan is consistent with proofs of claims 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**

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 [Local Rule 9013-1(D)(4)(h)].

Modified plans must conform to the one-page Local Form "Chapter 13 Plan". See attached Exhibit B "Guidelines for Completing Plan Modifications After Confirmation".

If the claims bar date has passed, the debtor's attorney is expected to have reviewed the claims register and all claims filed before proposing the modification so that the new plan is consistent with the claims filed.

### **DISMISSAL OR CONVERSION**

**The case may be dismissed or converted at the scheduled confirmation hearing if the court denies confirmation of the pending plan under 11 U.S.C. § 1325 and denies a request made for additional time for filing another plan or a modification of a plan.** 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 also 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.

The debtor should be prepared to advise the trustee at the meeting of creditors 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 earlier than 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); see also Local Rules 1017-2 and 1019-1]. See also 11 U.S.C. § 362(c)(3) regarding limitations on the automatic stay for certain debtors whose cases were dismissed and refiled.

Conversion to Chapter 7 does not terminate the automatic stay; however, the debtor must surrender all nonexempt assets [11 U.S.C. §§ 521(4) and 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 1017-2(E); therefore, the trustee will deduct the balance owed prior to returning any remaining funds to the debtor [Local Rule 1017-2(F)(3)].

### **DEBTOR'S PAYMENT**

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 30 days from the filing of the petition, not the plan, in accordance with 11 U.S.C. § 1326 (a)(1).

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:

**NANCY N. HERKERT, ESQUIRE  
STANDING CHAPTER 13 TRUSTEE  
POST OFFICE BOX 2099  
MEMPHIS, TN 38101-2099**

**PERSONAL CHECKS AND CASH WILL NOT BE ACCEPTED.  
PAYROLL DEDUCTION ORDERS ARE STRONGLY ENCOURAGED.**

The debtor's name and case number must be properly listed on all payments. The trustee may 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 motions, objections and orders in a timely fashion in accordance with 11 U.S.C. § 342. Examples of such orders include, but are not limited to, confirmation orders (other than confirmation orders served by the clerk or chapter 13 trustee), orders of confirmed plan modifications, and orders determining the status of a claimant. Unless otherwise directed by the court, the clerk's office will serve copies of the meeting of creditors notice, the plan, the amended plan if the debtor is not represented by counsel, confirmation order, dismissal or conversion order, and discharge of debtor on all parties except those parties added pursuant to Local Rules 1007-2(B) or 1009-1(D). The debtor is still responsible for serving the trustee and all creditors with a copy of any amended plan.

### **DEBTOR'S CONTINUING DUTY**

The debtor is under a continuing duty to file with the court, in writing, of any change of address [Bankruptcy Rule 4002]. The debtor shall also advise their attorney and the trustee in writing of any change of telephone number or any change in employment.

The trustee may immediately move to dismiss the case or file a notice of delinquency if the debtor fails to meet any term of the plan, without first providing a written explanation [11 U.S.C. § 1307(c)(6)].

## **CHAPTER 13 WEBSITE**

The chapter 13 trustee's website at [www.ch13herkert.com](http://www.ch13herkert.com) may be accessed to obtain current information regarding chapter 13 issues, local rules and procedures. Case information may also be obtained by debtors' attorneys and creditors by accessing [www.13network.com](http://www.13network.com) or linked through the trustee's site. Please download an Access Agreement from the website and send the signed original to the trustee. A login and password will be issued as soon as practicable after receipt of the original document. Debtors may access their information by registering at [www.13datacenter.com](http://www.13datacenter.com).

## **DISCHARGE**

Upon completion of the plan payments and other plan terms, the trustee may file a "Chapter 13 Trustee's Notice of Plan Completion" and, if applicable, "Termination of the Employee Wage Deduction Order with the Clerk of the Court". In order to obtain a discharge the debtor must meet all requirements under 11 U.S.C. § 523, 11 U.S.C. § 1328 and file the Local Form "Debtors Certificate of Compliance, Motion for Issuance of Discharge and Notice of Deadline to Object" (including a certification that all domestic support obligations have been paid) or, if applicable, the Local Form "Debtor's Certificate of Compliance, Motion for Issuance of Discharge Before Completion of Plan Payments, and Notice of Deadline to Object". The debtor must also submit Official Bankruptcy Form 23 'Debtor's Certification of Completion of Postpetition Instructional Course Concerning Personal Financial Management' or the U.S. Trustee approved certification document. For additional information about this requirement, please review the clerk's "Notice of Requirement of Chapter 7 & 13 Debtors to Submit Official Bankruptcy Form 23 "Debtor's Certification of Completion of Postpetition Instructional Course Concerning Personal Financial Management" which is attached to these suggestions.

A "Final Report of the Estate" will be filed by the trustee with the clerk of the court after all checks have cleared and no undistributed funds remain.

## GUIDELINES FOR COMPLETING ONE-PAGE PLAN FORM

- ① The one-page plan form outlines the complete administration of the case. The Clerk of the Court will notice the initial summary to all creditors. If more space is needed to list creditors in a particular category, the debtor may list those creditors as a separate attachment to the plan. Note: indicate the version of the plan that is being filed.
- ② Calculate an additional 10% to the combined total debt for the Trustee's fee.
- ③ The plan may not exceed 60 months.
- ④ Enter the total monthly amount to be paid through the Plan including the 10% Trustee's fee and the number of months it will take to complete each payment level. (For example, \$1100 for months 1-6 reflecting \$1000 for creditors and \$100 for trustee; \$550 for months 7-24 reflecting \$500 for creditors and \$50 for trustee.)
  - ⑤a Indicate total amount quoted by attorney for fees.
  - ⑤b List amount paid directly to attorney.
  - ⑤c Indicate total amount to be paid to attorney in the plan.
  - ⑤d Indicate monthly payment amount to attorney in the plan.
- ⑥a List each secured creditor to be paid through the plan as it should be listed on the disbursement check. (Make certain to provide the trustee with accurate addresses and account numbers for creditors and folio numbers for tax accounts.)
- ⑥b The arrearage is the total amount due to reinstate or cure the debt as of the petition or conversion date.
- ⑥c The arrears payment is the amount to be paid toward the total arrearage due for the months indicated. If this payment changes during the course of the plan, add a line and indicate the change. There should be no more than two levels of arrears payments.
- ⑥d The regular payment is the amount which the creditor is due each month pursuant to the terms of the note and which will usually continue past reinstatement. This continuing debt will be paid directly by the debtor to the secured creditor after the cure period.
- ⑥e The months for each of the payment levels, the term of the arrears payment, and the regular payment for one creditor should be the same.
- ⑦ Complete the Local Form Motion to Value Collateral in Plan and Notice of Hearing and serve it on the creditor pursuant to Bankruptcy Rule 7004 and Local Rule 3015-3.
  - ⑧a List each creditor to be paid. (Make certain to provide the trustee with accurate addresses and account numbers for the creditor.)
  - ⑧b The total principal amount due for the pay-off or value of collateral and paid through the Plan is listed in this section and by checking the box.
  - ⑧c Indicate the rate of interest.
  - ⑧d Indicate the monthly payments which will include the interest due.
  - ⑧e Indicate the months of the plan that the creditor will be paid, e.g. months 1 to 36.
  - ⑧f Indicate the total amount including interest that the creditor will receive.

- ⑨a Many types of priority unsecured creditors may be paid after the secured along with general unsecured creditors; however, priority debt in the nature of support (e.g. alimony and child support) should be paid at the same time as the secured. List each priority creditor to be paid. (Make certain to provide the trustee with accurate addresses and account numbers for the creditor)
- ⑨b List the total amount due to cure the debt as of the petition date.
- ⑨c List the amount of the monthly payment.
- ⑨d List the amount of ongoing monthly alimony and child support to be paid through the plan simultaneously with the cure of the support debt.
- ⑩a Unsecured creditors are paid in a class by themselves. They will be paid pursuant to allowed Proofs of Claim. The debtor will be required to pay the total amount provided for even if an early pay-off is allowed.
- ⑩b General unsecured creditors should be paid simultaneously with priority claims.
- ⑩c Allowed unsecured claimants will be paid pro-rata according to the percentage calculated by the trustee upon review of allowed claims after bar date.

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA**

[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

**CHAPTER 13 PLAN (Individual Adjustment of Debts)**

*[Note: Visit the court web site to ensure you are using the most current version of this local court form.]*

- 1**      \_\_\_\_\_ Amended Plan (Indicate 1<sup>st</sup>, 2<sup>nd</sup>, etc. amended, if applicable)  
 \_\_\_\_\_ Modified Plan (Indicate 1<sup>st</sup>, 2<sup>nd</sup>, etc. amended, if applicable)

DEBTOR: \_\_\_\_\_ JOINT DEBTOR: \_\_\_\_\_ CASE NO.: \_\_\_\_\_  
 Last Four Digits of SS# \_\_\_\_\_ Last Four Digits of SS# \_\_\_\_\_

**2 MONTHLY PLAN PAYMENT:** Including trustee's fee of 10% and beginning 30 days from filing/conversion date, Debtor(s) to pay to the trustee for the period of **3** months. In the event the trustee does not collect the full 10%, any portion not collected will be paid to creditors pro-rata under the plan:

- 4**     A.     \$ \_\_\_\_\_ for months \_\_\_\_\_ to \_\_\_\_\_;  
        B.     \$ \_\_\_\_\_ for months \_\_\_\_\_ to \_\_\_\_\_;  
        C.     \$ \_\_\_\_\_ for months \_\_\_\_\_ to \_\_\_\_\_; in order to pay the following creditors:

Administrative: Attorney's Fee - \$ **5a**     TOTAL PAID \$ **5b**  
 Balance Due \$ **5c** payable \$ **5d** /month (Months \_\_\_\_\_ to \_\_\_\_\_)

**Secured Creditors:** [Retain Liens pursuant to 11 U.S.C. §1325 (a)(5)] Mortgage(s)/Liens on Real or Personal Property:

1. **6a** \_\_\_\_\_ Arrearage on Petition Date \$ **6b**  
 Address: \_\_\_\_\_ Arrears Payment \$ **6c** /month (Months **6e** to \_\_\_\_\_)  
 \_\_\_\_\_ Regular Payment \$ **6d** /month (Months **6e** to \_\_\_\_\_)  
 Account No: \_\_\_\_\_
2. \_\_\_\_\_ Arrearage on Petition Date \$ \_\_\_\_\_  
 Address: \_\_\_\_\_ Arrears Payment \$ \_\_\_\_\_ /month (Months \_\_\_\_\_ to \_\_\_\_\_)  
 \_\_\_\_\_ Regular Payment \$ \_\_\_\_\_ /month (Months \_\_\_\_\_ to \_\_\_\_\_)  
 Account No: \_\_\_\_\_
3. \_\_\_\_\_ Arrearage on Petition Date \$ \_\_\_\_\_  
 Address: \_\_\_\_\_ Arrears Payment \$ \_\_\_\_\_ /month (Months \_\_\_\_\_ to \_\_\_\_\_)  
 \_\_\_\_\_ Regular Payment \$ \_\_\_\_\_ /month (Months \_\_\_\_\_ to \_\_\_\_\_)  
 Account No: \_\_\_\_\_

**7 IF YOU ARE A SECURED CREDITOR LISTED BELOW, THE PLAN SEEKS TO VALUE THE COLLATERAL SECURING YOUR CLAIM IN THE AMOUNT INDICATED. A SEPARATE MOTION WILL ALSO BE SERVED ON YOU PURSUANT TO BR 7004 and LR 3015-3.**

Secured Creditor	Description of Collateral and Value of Collateral	Interest Rate	Plan Payments	Months of Payment	Total Plan Payments
<b>8a</b>	\$ <b>8b</b>	<b>8c</b> %	\$ <b>8d</b>	<b>8e</b> To _____	<b>8f</b>
	\$	%	\$	_____ To _____	
	\$	%	\$	_____ To _____	

**Priority Creditors:** [as defined in 11 U.S.C. §507]

1. **9a** \_\_\_\_\_ Total Due \$ **9b**  
 Payable \$ **9c** /month (Months \_\_\_\_\_ to \_\_\_\_\_) Regular Payment \$ **9d**
2. \_\_\_\_\_ Total Due \$ \_\_\_\_\_  
 Payable \$ \_\_\_\_\_ /month (Months \_\_\_\_\_ to \_\_\_\_\_) Regular Payment \$ \_\_\_\_\_

Unsecured Creditors: Pay \$ **10a** /month (Months **10b** to \_\_\_\_\_).  
**10c** Pro rata dividend will be calculated by the Trustee upon review of filed claims after bar date.

Other Provisions Not Included Above:

I declare that the foregoing chapter 13 plan is true and correct under penalty of perjury.

Debtor \_\_\_\_\_ Joint Debtor \_\_\_\_\_  
 Date: \_\_\_\_\_ Date: \_\_\_\_\_

**CHAPTER 13 TRUSTEE  
(FORT LAUDERDALE AND WEST PALM BEACH DIVISIONS)**

NANCY N. HERKERT, ESQUIRE  
STANDING CHAPTER 13 TRUSTEE  
SOUTHERN DISTRICT OF FLORIDA  
TELEPHONE: (954) 443-4402  
FAX: (954) 443-4452

**CORRESPONDENCE ONLY ADDRESS:**  
POST OFFICE BOX 279806  
MIRAMAR, FLORIDA 33027-9806

**PAYMENTS ONLY ADDRESS:**  
POST OFFICE BOX 2099  
MEMPHIS, TN 38101-2099

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**JUDGES  
U.S. BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA**

**MIAMI-DADE DIVISION**

HONORABLE ROBERT A. MARK  
HONORABLE A. JAY CRISTOL  
HONORABLE LAUREL M. ISICOFF

**FORT LAUDERDALE DIVISION**

HONORABLE JOHN K. OLSON  
HONORABLE RAYMOND B. RAY

**WEST PALM BEACH DIVISION**

HONORABLE PAUL G. HYMAN, JR., CHIEF JUDGE  
HONORABLE ERIK P. KIMBALL

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## **COURT LOCATIONS**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
**MIAMI-DADE DIVISION**  
51 SOUTHWEST FIRST AVENUE, ROOM 1510  
MIAMI, FLORIDA 33130  
TELEPHONE: (305) 714-1800  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
**FORT LAUDERDALE DIVISION**  
299 EAST BROWARD BOULEVARD, ROOM 310  
FORT LAUDERDALE, FLORIDA 33301  
TELEPHONE: (954) 769-5700  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
**WEST PALM BEACH DIVISION**  
1515 NORTH FLAGLER DRIVE, ROOM 801  
WEST PALM BEACH, FLORIDA 33401  
TELEPHONE: (561) 514-4100  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

## **LOCATIONS OF 341 MEETINGS**

### **MIAMI-DADE DIVISION**

341 MEETING OF CREDITORS ROOM  
51 S.W. First AVENUE  
ROOM 102  
MIAMI, FL 33130

### **FT. LAUDERDALE DIVISION**

341 MEETING OF CREDITORS ROOM  
299 EAST BROWARD BLVD.  
ROOM 411  
FT. LAUDERDALE, FL 33301

### **WEST PALM BEACH DIVISION**

1515 NORTH FLAGLER DRIVE  
ROOM 870  
WEST PALM BEACH, FLORIDA 33401

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA**  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re:

Case No.  
Chapter 13

\_\_\_\_\_ Debtor \_\_\_\_\_/

**AGREED ORDER TO EMPLOYER TO DEDUCT AND REMIT  
AND FOR RELATED MATTERS**

TO: \_\_\_\_\_ (The Employer)

\_\_\_\_\_

\_\_\_\_\_

The above-named debtor has voluntarily filed a petition and plan under chapter 13 of the United States Bankruptcy Code, seeking to pay, in whole or in part, certain debts under the protection of this court. These debts are to be paid by the chapter 13 trustee from the debtor's future earnings. It is public policy that the employer shall assist in the rehabilitation of the debtor to avoid a chapter 7 liquidation pursuant to 11 U.S.C. § 1325(b). Accordingly, pursuant to Local Rule 3070-1(D), this court orders:

1. The employer immediately shall begin withholding from wages, salary, commission, or other earnings or income of said debtor \$ \_\_\_\_\_ per month and remit this amount by check (with the debtor's name and case number indicated on the check) payable to following assigned chapter 13 trustee: (indicate assigned trustee by checking the applicable box):

\_\_\_\_\_ Robin R. Weiner, P.O. Box 2258, Memphis, TN, 38101-2258

\_\_\_\_\_ Nancy N. Herkert, P.O. Box 2099, Memphis, TN 38101-2099

2. The employer is enjoined and restrained from discharging, terminating, suspending, or discriminating against the debtor for any reason whatsoever in connection with the filing of the chapter 13 petition or this wage-deduction order, the employer is ordered further to notify the trustee of the discharge, termination, suspension, or discriminatory action, and the specific reason(s).

3. If a summons of garnishment concerning the debtor has been served on the employer, this chapter 13 case automatically enjoins and stays the continuation of that garnishment proceeding pursuant to 11 U.S.C. § 362(a); and the employer is enjoined and stayed from making any further deductions from the debtor's earnings on account of the garnishment, and is ordered to remit immediately to the chapter 13 trustee any sums already deducted and not yet paid over to the garnishment court.

4. This order supersedes any previous order of garnishment or other order issued with respect to the debtor's wages, except for income deduction orders regarding child support, alimony and related support arrearages. Such support orders shall remain in full force and effect. Failure to comply with the provisions of this order may result in an order to show cause why said employer should not be found in contempt of this court.

5. The debtor shall mail a copy of this order to any garnishment court with an action against the debtor and any garnishing creditor. The attorney for the debtor or the clerk

of court, if the debtor is pro se, must serve copies on the employer. A certificate of service in accordance with Local Rule 2002-1(F) reflecting service on all required parties must be filed with the court.

6. This order shall be effective immediately upon service on the employer. This order shall remain in full force and effect until modified, suspended or terminated either in writing by the debtor's attorney or by further order of the Court. This order shall also terminate upon dismissal of this bankruptcy case, conversion of this case to chapter 7, or entry of a discharge of the debtor.

**###**

Agreed to by: (Both debtor and attorney for debtor, if any, must sign)

\_\_\_\_\_ (The Debtor)  
Print name, address and telephone number

\_\_\_\_\_ (The Debtor's Attorney)  
Print name, address and telephone number

**Submitted by:**

Exhibit B

**NANCY N. HERKERT  
STANDING CHAPTER 13 TRUSTEE  
MIAMI-DADE DIVISION  
SOUTHERN DISTRICT OF FLORIDA**

**GUIDELINES FOR COMPLETING  
PLAN MODIFICATIONS AFTER CONFIRMATION**

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

**INITIAL PAYMENT**

1. Obtain a modification ledger sheet from the Trustee's website or office. If a ledger is obtained from the website, make certain to provide the trustee with a copy of the ledger with the modified plan.
2. Determine total amount the debtor has paid to trustee.
3. Divide the total amount paid by the number of months that have passed since filing. Please be sure to use the month before modification begins, not the month after.
4. That amount becomes the monthly amount for the initial months.

**MORTGAGE ARREARAGE**

1. The arrearage amount for each creditor remains the same as in the original plan or Proof of Claim.
2. Determine the amount paid by the trustee to each creditor and divide each by the total number of months that have passed since the time of filing.
3. That amount becomes the arrears amount for the initial months.
4. Subtract the total amount paid to date from the original arrearage amount for a new balance due.
5. Divide the new balance by the revised number of months left to cure under the modified plan.
6. That amount is the arrears amount for the modification period.
7. Calculate a new monthly arrears amount for each creditor.

## **REGULAR CONTINUING MONTHLY PAYMENTS**

1. Determine the total number of months under the new cure period according to the modification.
2. Multiply the regular monthly payment by the total cure period.
3. Determine amount paid by the trustee to each creditor and divide by the total number of months that have passed since the time of filing (month before modification begins).
4. That amount becomes the regular payment amount for the initial months.
5. Subtract the total amount paid to date from the new amount for the modification period to get the new balance due.
6. Divide the new balance by the number of months left to cure.
7. That amount becomes the regular payment amount for the modification period.
8. Calculate a new regular payment amount for each creditor.
9. This new calculation does not change the regular monthly debt, it merely increases the original monthly amount by the post-confirmation arrearage during the modification period.

At the end of the cure period, the debtor will resume making the original monthly payment amount directly to the secured creditor.

## **UNSECURED DEBT**

Make certain the percentage paid to all unsecured creditors remains the same as in the originally confirmed plan. The trustee will object to any plan in which unsecured creditors are prejudiced by the modification.

## **TOTAL MONTHLY AMOUNTS**

1. Total each period and multiply by 10% (Trustee's fee) in the same manner as in a regular plan.
2. Make certain all monthly payments in the modified plan fall within 90-100% of the debtor(s)' current disposable income.
3. Make certain the debtor remits the first payment under the modification in a timely manner.
4. File amended Schedules I and J or an affidavit indicating that the debtor's income and expenses have not changed along with the proposed modification.

## **MOTION FOR MODIFICATION**

Make certain the motion contains language to the effect that the debtor has failed to stay current under the confirmed plan and is asking the court to allow the modified plan to cure both the pre-petition arrearage and the post-confirmation delinquency during the modified plan term.

The trustee will object to the modification unless all interested parties are advised of the delinquency and are given an opportunity to appear and be heard at the modification hearing.

The trustee will object to the modification if the debtor is not current under the modified plan before the modification hearing or if the manipulation of the amounts set forth in the modified plan causes the debtor to be "paid ahead".

The trustee will immediately move to dismiss any case in which a debtor becomes delinquent under a modified plan and will not agree to any further continuances or payment arrangements

## SAMPLE MODIFIED PLANS with worksheet and sample ledger

**FACTS:** The Debtor made reduced payments for five months and then proposed to modify the plan beginning with the sixth month. The total amount paid to the trustee during the five initial months is \$3,575.00 <sup>(1)</sup>. The Secured Lender received \$1,000.00 <sup>(3)</sup> towards the arrearage of \$12,000 <sup>(5)</sup> leaving a balance due of \$11,000.00. The Secured Lender received \$2,250.00 <sup>(8)</sup> of regular payments based upon the original monthly payment of \$500.00 <sup>(10)</sup>.

### ORIGINAL PLAN

This plan uses 94% of the Debtor's disposable income (\$875).

- A.        \$ 825 for months 1 to 48
- B.        \$ 374 for months 49 to 55

### SECURED CREDITORS

<u>Lender</u>	Arrearage \$ <u>12,000</u> through <u>filing date</u>
	Arrears Payment \$ <u>250</u> /mo. (Mos. <u>1</u> to <u>48</u> )
	Regular Payment \$ <u>500</u> /mo. (Mos. <u>1</u> to <u>48</u> )

UNSECURED CREDITORS: Pay \$ 340 /mo. (Mos 49 to 55) Pro rata dividend will be calculated by the trustee upon review of filed claims after bar date.

NOTE: The trustee will calculate the estimated percentage prior to the bar date and that amount will be listed in the claim record. In this case there will be an estimated pro rata dividend <u>10</u> % based on claims listed in schedules
---

Date: May 12, 200x

Sample

**MODIFICATION LEDGER**

Debtor(s):	JOHN DEBTOR	Case No.:	02-10000
Petition Filed:	Fri Jan 12, 200x	Attorney Name:	LEGAL EAGLE
Date Confirmed:	Wed Mar 27, 200x	Atty Fee in Plan:	.00
Total Paid In:	3,575.00 <sup>(1)</sup>	Atty Arrears Amt.:	.00
Balance on Hand:	.00	Atty. Paid to Date:	.00
% to Unsecured:	.10		

<u>Creditor Name</u>	<u>Type</u>	<u>Claim Amt.</u>	<u>Prin. Owed</u>	<u>Prin. Paid.</u>	<u>Mo. Pymt.</u>
Lender	R	24,000.00	21,750.00	2,250.00 <sup>(8)</sup>	500.00 <sup>(10)</sup>
Lender	M	12,000.00 <sup>(5)</sup>	11,000.00	1,000.00 <sup>(3)</sup>	250.00
Car Company	D	.00	.00	.00	.00
Unsecured Creditor #1	U	1,565.00	156.50	.00	.00
Unsecured Creditor #2	U	1,815.00	181.50	.00	.00
Unsecured Creditor #3	U	2,395.00	239.50	.00	.00
Unsecured Creditor #4	U	5,932.00	593.20	.00	.00
Unsecured Creditor #5	U	8,256.00	825.60	.00	.00
Unsecured Creditor #6	U	5,725.00	572.50	.00	.00

TYPICAL TYPE CODES USED
-------------------------

R = Regular Payment M = Mortgage Arrears S = Secured U = Unsecured P = Priority
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SAMPLE  
**MODIFIED PLAN I**

This modified plan extends the cure two months. It uses the same 94% of the Debtor's disposable income.

- A.    \$ 715 for months 1 to 5
- B.    \$ 825.02 for months 6 to 50
- C.    \$ 374 for months 51 to 57

**SECURED CREDITORS**

<u>Lender's Name</u>	Arrearage \$ <u>12,000</u> through <u>filing date</u>	
	Arrears Payment \$ <u>200</u> /mo. (Mos. <u>1</u> to <u>5</u> )	(4)
	Regular Payment \$ <u>450</u> /mo. (Mos. <u>1</u> to <u>5</u> )	(9)
	Arrears Payment \$ <u>244.45</u> /mo. (Mos. <u>6</u> to <u>50</u> )	(7)
	Regular Payment \$ <u>505.56</u> /mo. (Mos. <u>6</u> to <u>50</u> )	(11)

UNSECURED CREDITORS remain the same as in the original plan.

The sample modification worksheet used to calculate the numbers is provided on the next page

**MODIFICATION WORKSHEET**  
used with the sample Modified Plan I

TOTAL AMOUNT PAID TO DATE: 3,575.00 (1)

divided by the NUMBER OF MONTHS SINCE FILING: 5

equals the MONTHLY AMOUNT FOR INITIAL MONTHS: 715.00 (2)

**ARREARAGE (calculate for each creditor separately)**

AMOUNT PAID TO DATE TO CREDITOR AS ARREARAGE: 1,000.00 (3)

divided by the NUMBER OF MONTHS SINCE FILING: 5

equals the MONTHLY AMOUNT THE CREDITOR ACTUALLY  
RECEIVED FOR THOSE INITIAL MONTHS: 200.00 (4)

PRE-PETITION ARREARAGE: 12,000.00 (5)

subtract the AMOUNT PAID TO DATE: 1,000.00 (3)

REMAINING AMOUNT DUE FOR ARREARAGE: 11,000.00 (6)

divided by the REVISED REMAINING NUMBER OF  
MONTHS TO CURE: 45

equals the MONTHLY AMOUNT THE CREDITOR WILL  
RECEIVE FOR THE REMAINING CURE PERIOD: 244.44 (7)

**REGULAR PAYMENTS (calculate for each creditor separately)**

AMOUNT CREDITOR PAID TO DATE AS REGULAR PAYMENTS: 2,250.00 (8)

divided by the NUMBER OF MONTHS SINCE FILING: 5

equals the MONTHLY AMOUNT THE CREDITOR ACTUALLY  
RECEIVED FOR INITIAL MONTHS: 450.00 (9)

REGULAR CONTINUING PAYMENT AMOUNT: 500.00 (10)

times REVISED TOTAL NUMBER OF MONTHS TO CURE: 50

equals the TOTAL AMOUNT OF REGULAR PAYMENTS  
DUE TO THE CREDITOR: 25,000.00

subtract AMOUNT CREDITOR PAID TO DATE: 2,250.00 (8)

REMAINING AMOUNT DUE FOR REGULAR PAYMENTS: 22,750.00

divided by the REVISED REMAINING NUMBER  
OF MONTHS TO CURE: 45

equals the MONTHLY AMOUNT THE CREDITOR WILL  
RECEIVE FOR THE REMAINING CURE PERIOD: 505.55 (11)

SAMPLE  
**MODIFIED PLAN II**

This modified plan increases payments without extending the cure period. It uses 96% of the Debtor's disposable income.

- A. \$ 715 for months 1 to 5
- B. \$ 837.80 for months 6 to 48
- C. \$ 374 for months 49 to 55

**SECURED CREDITORS**

<u>Lender</u>	Arrearage \$ <u>12,000</u> through <u>filing date</u>	
	Arrears Payment \$ <u>200</u> /mo. (Mos. <u>1</u> to <u>5</u> )	(4)
	Regular Payment \$ <u>450</u> /mo. (Mos. <u>1</u> to <u>5</u> )	(9)
	Arrears Payment \$ <u>255.82</u> /mo. (Mos. <u>6</u> to <u>48</u> )	(7)
	Regular Payment \$ <u>505.82</u> /mo. (Mos. <u>6</u> to <u>48</u> )	(11)

UNSECURED CREDITORS remain the same as in the original plan.

The sample modification worksheet used to calculate the numbers is provided on the next page

**MODIFICATION WORKSHEET**  
 used with the sample Modified Plan II

TOTAL AMOUNT PAID TO DATE:	<u>3,575.00</u> (1)
divided by the NUMBER OF MONTHS SINCE FILING:	<u>5</u>
equals the MONTHLY AMOUNT FOR INITIAL MONTHS:	<u>715.00</u> (2)
<b>ARREARAGE (calculate for each creditor separately)</b>	
AMOUNT PAID TO DATE TO CREDITOR AS ARREARAGE:	<u>1,000.00</u> (3)
divided by the NUMBER OF MONTHS SINCE FILING:	<u>5</u>
equals the MONTHLY AMOUNT THE CREDITOR ACTUALLY RECEIVED FOR THOSE INITIAL MONTHS:	<u>200.00</u> (4)
PRE-PETITION ARREARAGE:	<u>12,000.00</u> (5)
subtract the AMOUNT PAID TO DATE:	<u>1,000.00</u> (3)
REMAINING AMOUNT DUE FOR ARREARAGE:	<u>11,000.00</u> (6)
divided by the REVISED REMAINING NUMBER OF MONTHS TO CURE:	<u>43</u>
equals the MONTHLY AMOUNT THE CREDITOR WILL RECEIVE FOR THE REMAINING CURE PERIOD:	<u>255.82</u> (7)

**REGULAR PAYMENTS (calculate for each creditor separately)**

AMOUNT CREDITOR PAID TO DATE AS REGULAR PAYMENTS:	<u>2,250.00</u> <sup>(8)</sup>
divided by the NUMBER OF MONTHS SINCE FILING:	<u>5</u>
equals the MONTHLY AMOUNT THE CREDITOR ACTUALLY RECEIVED FOR INITIAL MONTHS:	<u>450.00</u> <sup>(9)</sup>
REGULAR CONTINUING PAYMENT AMOUNT:	<u>500.00</u> <sup>(10)</sup>
times REVISED TOTAL NUMBER OF MONTHS TO CURE:	<u>48</u>
equals the TOTAL AMOUNT OF REGULAR PAYMENTS DUE TO THE CREDITOR:	<u>24,000.00</u>
subtract AMOUNT CREDITOR PAID TO DATE:	<u>2,250.00</u> <sup>(8)</sup>
REMAINING AMOUNT DUE FOR REGULAR PAYMENTS:	<u>21,750.00</u>
divided by the REVISED REMAINING NUMBER OF MONTHS TO CURE:	<u>43</u>
equals the MONTHLY AMOUNT THE CREDITOR WILL RECEIVE FOR THE REMAINING CURE PERIOD:	<u>505.82</u> <sup>(11)</sup>

## MODIFICATION WORKSHEET

TOTAL AMOUNT PAID TO DATE: \_\_\_\_\_

divided by the NUMBER OF MONTHS SINCE FILING: \_\_\_\_\_

equals the MONTHLY AMOUNT FOR INITIAL MONTHS: \_\_\_\_\_

**ARREARAGE (calculate for each creditor separately)**

AMOUNT PAID TO DATE TO CREDITOR AS ARREARAGE: \_\_\_\_\_

divided by the NUMBER OF MONTHS SINCE FILING: \_\_\_\_\_

equals the MONTHLY AMOUNT THE CREDITOR ACTUALLY  
RECEIVED FOR THOSE INITIAL MONTHS: \_\_\_\_\_

PRE-PETITION ARREARAGE: \_\_\_\_\_

subtract the AMOUNT PAID TO DATE: \_\_\_\_\_

REMAINING AMOUNT DUE FOR ARREARAGE: \_\_\_\_\_

divided by the REVISED REMAINING NUMBER OF  
MONTHS TO CURE: \_\_\_\_\_

equals the MONTHLY AMOUNT THE CREDITOR WILL  
RECEIVE FOR THE REMAINING CURE PERIOD: \_\_\_\_\_

**REGULAR PAYMENTS (calculate for each creditor separately)**

AMOUNT CREDITOR PAID TO DATE AS REGULAR PAYMENTS: \_\_\_\_\_

divided by the NUMBER OF MONTHS SINCE FILING: \_\_\_\_\_

equals the MONTHLY AMOUNT THE CREDITOR ACTUALLY  
RECEIVED FOR INITIAL MONTHS: \_\_\_\_\_

REGULAR CONTINUING PAYMENT AMOUNT: \_\_\_\_\_

times REVISED TOTAL NUMBER OF MONTHS TO CURE: \_\_\_\_\_

equals the TOTAL AMOUNT OF REGULAR PAYMENTS  
DUE TO THE CREDITOR: \_\_\_\_\_

subtract AMOUNT CREDITOR PAID TO DATE: \_\_\_\_\_

REMAINING AMOUNT DUE FOR REGULAR PAYMENTS: \_\_\_\_\_

divided by the REVISED REMAINING NUMBER  
OF MONTHS TO CURE: \_\_\_\_\_

equals the MONTHLY AMOUNT THE CREDITOR WILL  
RECEIVE FOR THE REMAINING CURE PERIOD: \_\_\_\_\_

## UNITED STATES BANKRUPTCY COURT, SDFL IMPORTANT INFORMATION FOR CHAPTER 13 DEBTORS

- ◆ You (both spouses if joint petition) must obtain counseling prior to filing bankruptcy unless an exception applies. You must file Exhibit D “*Individual Debtor’s Statement of Compliance with Credit Counseling Requirement*” with your petition. See Local Rule 1007-1(E).
- ◆ You must use this court’s current local plan form to file your plan. See Local Rule 3015-1(B).
- ◆ Within 30 days of **filing** your chapter 13 petition, you must begin making your plan payments to the chapter 13 trustee assigned to your case. (See address below). If you are not current with your payments at the meeting of creditors, your case will be dismissed without further notice or hearing. See Local Rule 3070-1.
- ◆ You must provide the trustee with a copy of your Federal income tax return as required by 11 U.S.C. §521(e) and Bankruptcy Rule 4002(b)(3) or your case may be dismissed. See Local Rules 1017-2(C) and 4002-1.
- ◆ All required schedules, statements, copies of payment advices [see 11 U.S.C. §521(a)(1)(b)(iv), Local Rule 1007-1(F) and Local Form “*Declaration Regarding Payment Advices*”], lists and your plan are due within 14 days of filing your petition (if you didn’t file them when you filed your petition). If you do not timely file these papers, your case will be dismissed without further notice or hearing.
- ◆ You (both spouses, if joint petition) must attend the meeting of creditors scheduled for your case or the case will be dismissed.
- ◆ You (both spouses, if joint petition) must present to the trustee at the meeting of creditors your original government issued photo ID and original (not a copy) proof of your Social Security or Taxpayer ID numbers.
- ◆ You (both spouses, if joint petition) must complete the required financial management course and file the Official Bankruptcy Form “*Debtor’s Certification of Completion of Postpetition Instructional Course Concerning Personal Financial Management*” and the Local Form “*Debtor’s Certificate of Compliance, Motion for Issuance of Discharge and Notice of Deadline to Object*”, or if applicable, the Local Form “*Debtor’s Certificate of Compliance, Motion for Issuance of Discharge Before Completion of Plan Payments, and Notice of Deadline to Object*” as required by Local Rule 4004-3(A)(8), before a discharge will be issued.
- ◆ If you are paying your filing fee in installments and fail to timely make a payment, your case will be dismissed without further notice. See Local Rule 1006-1(A)(4).
- ◆ See Local Rule 3070-1 for information on the status pre-confirmation payments.
- ◆ See Local Rule 3015-3(B) for information on the chapter 13 confirmation process.

**CHAPTER 13 DEBTORS AND ATTORNEYS ARE REQUIRED TO SIGN THIS COURT’S LOCAL FORM “RIGHTS AND RESPONSIBILITIES AGREEMENT”.**  
**(SEE COURT GUIDELINES FOR CHAPTER 13 COMPENSATION and Local Rule 2016-1(B)(2))**

### CHAPTER 13 TRUSTEES’ CONTACT INFORMATION

**DADE AND NORTH DADE DIVISION CODE 5 CASES: NANCY HERKERT, P.O. Box 279806, Miramar, FL 33027; Phone: (954) 443-4402; Web page <http://www.ch13herkert.com>. All chapter 13 plan payments **must** be mailed to a lock box at the following address: NANCY N. HERKERT, CHAPTER 13 TRUSTEE, P.O. BOX 2099, MEMPHIS, TN 38101-2099.**

**BROWARD AND PALM BEACH DIVISION CASES: ROBIN WEINER, P.O. Box 559007, Ft. Lauderdale, FL 33355-9007; Phone: (954) 382-2001; Web page <http://www.ch13weiner.com>. All chapter 13 plan payments **must** be mailed to a lock box at the following address: ROBIN R. WEINER, CHAPTER 13 TRUSTEE, P.O. BOX 2258, MEMPHIS, TN 38101-2258.**



## UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF FLORIDA

[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

### **NOTICE OF REQUIREMENT OF INDIVIDUAL CHAPTER 7, CHAPTER 13, AND CERTAIN CHAPTER 11 DEBTORS TO SUBMIT REQUIRED OFFICIAL BANKRUPTCY FORM 23 “DEBTOR’S CERTIFICATION OF COMPLETION OF POSTPETITION INSTRUCTIONAL COURSE CONCERNING PERSONAL FINANCIAL MANAGEMENT”**

Amendments to the Code under sections 727(a)(11) and 1328(g)(1) require withholding of entry of a discharge in chapter 7 and chapter 13 cases until the individual debtor completes an instructional course concerning personal financial management. The debtor may be denied a discharge in chapter 11 cases in which 11 U.S.C. § 1141(d)(3) applies. This requirement is effective for cases filed on or after October 17, 2005. Excepted from this requirement are persons incapacitated, disabled or on active military duty in a military combat zone as provided under new Code section 109(h)(4). A list of US trustee approved course providers is posted on this court’s web page under the “US Trustee Program” link.

Bankruptcy Rule 1007(b)(7) requires an individual debtor to file the Official Bankruptcy Form 23 “Debtor’s Certification of Completion of Postpetition Instructional Course Concerning Personal Financial Management” to notify the court that the debtor has met this requirement or that the debtor falls under an exception to meeting this requirement. Under Bankruptcy Rule 1007(c), the form must be filed within 45 days after the meeting of creditors in a chapter 7 case and no later than the last payment made by the debtor as required by the plan or the filing of a motion for entry of a hardship discharge under 11 U.S.C. § 1328(b) in a chapter 13 case. In a chapter 11 case the form must be filed no later than the last payment made by the debtor as required by the plan or the filing of a motion for a discharge under 11 U.S.C. § 1141(d)(5)(B).

If the requirement is not timely met, the case will be closed without issuance of a discharge. [See Local Rule 4006-1]

Official Form 23 can be accessed on this court’s website, [www.flsb.uscourts.gov](http://www.flsb.uscourts.gov) via the home page by opening the icon “Local Rules and Forms” and then the link “Official Bankruptcy Forms”. Hard copies of this form can also be obtained from the clerk’s office.



**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA**



**NOTICE TO ALL DEBTORS:  
READ THIS *BEFORE* YOU FILE YOUR CASE**

DID YOU (AND YOUR SPOUSE, IF JOINT PETITION) COMPLETE THE REQUIRED UNITED STATES TRUSTEE APPROVED PRE-FILING BANKRUPTCY CREDIT COUNSELING COURSE?

Exhibit D “*INDIVIDUAL DEBTOR’S STATEMENT OF COMPLIANCE WITH CREDIT COUNSELING REQUIREMENT*” must be filed with your petition.

- ▶ If you completed the counseling and you have the certificate with you confirming you took the course, check box 1 of Exhibit D and file the certificate with your petition.
- ▶ If you completed the counseling and you do NOT have the certificate with you, check box 2 of Exhibit D. **You will have 14 days after your case is filed to file the certificate or your case may be dismissed.**
- ▶ If you did NOT complete the counseling yet, you must check box 3 of Exhibit D, if it applies, and explain WHY you did not receive the counseling. You must get the counseling as soon as possible, but no later than the date ordered by the court, and you must file the certificate. The court will enter an order that will require you to appear in court and explain why you didn’t get counseling before you filed bankruptcy. The court could dismiss your case if the court finds you did not have a good reason to file bankruptcy without taking the course.
- ▶ If you meet the requirements for an exemption from counseling (mentally ill or disabled or persons on military duty in an active combat zone) you must check box 4 of Exhibit D and file a motion for determination by the court. See 11 U.S.C. §109(h)(4), and Local Rule 1007-1(E) and clerk’s filing instructions for more information.

Under the bankruptcy laws, the court can only allow you to complete the course **after filing** if you meet **all** of the following conditions. [See 11 U.S.C. §109(h)(3).]

- 1) You must have tried to get counseling from an approved agency within at least a seven day period before filing and the agency couldn’t provide it; AND
- 2) There are exigent (emergency) circumstances that prevented you from obtaining credit counseling before filing. (Important: The court will determine what qualifies as an emergency circumstance).

**Please be advised that most debtors will not be able to meet these conditions because credit counseling is readily available in this district. The decision to file your petition is up to you but if you file without taking the course, you are risking dismissal of your case. The clerk cannot provide legal advice or predict in advance how a judge will decide your request for an extension to complete this requirement.**

To complete this requirement before filing, obtain from the clerk a list of United States Trustee approved pre- bankruptcy credit counseling agencies or go to this website:

[http://www.usdoj.gov/ust/bapepa/ccde/cc\\_approved.htm](http://www.usdoj.gov/ust/bapepa/ccde/cc_approved.htm)

There is a fee for taking this course. If you are unable to pay the fee, the agency must provide the course for free. See 11 U.S.C. §111(c)(2)(B). A free on-line counseling course is available at this US Trustee approved provider site: <http://www.consumerbankruptcy counseling.info/cbcp/about.html>

You may take the course on a computer. If you don’t have a computer, your public library may allow you to use their public computers.