

**CHAPTER 13 SUGGESTIONS  
MIAMI-DADE DIVISION  
NANCY K. NEIDICH, ESQUIRE  
STANDING CHAPTER 13 TRUSTEE  
(rev. 10/18)**

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 Miami-Dade Division. 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”. 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, 5005-1, 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 or, if a Bankruptcy Petition Preparer, AO 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 (accompanied by 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 \$310.00. 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 B 122C-1 "Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period" and Official Bankruptcy Form B122C-2 "Chapter 13 Calculation of your 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, 5005-1, 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. **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 Local Form "Chapter 13 Plan" (LF-31) approved by the U.S. Bankruptcy Court for the Southern District of Florida pursuant to Local Rule 3015-1(B)(1). A PDF (fillable) version of the local form can be obtained at [www.flsb.uscourts.gov](http://www.flsb.uscourts.gov) under the section Local Forms.

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 should 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 debtor's proposed valuation of collateral contained in a chapter 13 plan and in a motion to value collateral must be filed with the court at least two business days before the date of the hearing on the motion to value collateral. [Local Rule 3015-3(2)] Objections to the motion will be heard at the valuation hearing scheduled in the case. If no written objections are timely raised, the valuation specified in the plan will be binding upon the affected secured creditor. Proposed orders granting motion to value must be submitted using, as applicable, Local Form “Order Granting Motion to Value and Determine Secured Status of Lien on Real Property Held By \_\_\_\_\_” or 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 \$31.00 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 to Debtor for Submission of Initial Creditor Service Matrix and Requirements for Submitting Subsequent Amendments [Local Rules 1007-2 and 1009-1(D)].

### **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".

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 copies of 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)]. 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 filed under section (A) of this Rule, objections to confirmation of the plan must be in writing and filed no later than 14 days prior to the date first scheduled for hearing on confirmation. Any

timely filed objection shall constitute an objection to any amended plan. Should an amended plan be filed changing the treatment of any claim, the affected creditor may raise its objection orally at the hearing to consider confirmation of that amended plan.

The court may not consider a creditor's objection to confirmation unless it is raised in writing and filed no later than 14 days prior to the date first scheduled for hearing on confirmation. [Local Rule 3015-3 (B)]. 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 creditors who have not filed a Proof of Claim. Bankruptcy Rule 3002 (effective 12/1/2017) states that an secured creditor, unsecured creditor, or an equity security holder must file a proof of claim or interest for the claim or interest to be allowed, except as provided in Rules 1019(3). A proof of claim or interest shall be filed in accordance with Rule 5005. In a chapter 13 individual's debt adjustment case, a proof of claim is timely filed if it is filed not later than 70 days after the order for relief under that chapter or the date of the order of conversion from another chapter.

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.

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

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.

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

A meeting of creditors will be scheduled between twenty one and fifty 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.**

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 original 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, 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. 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 re-filed.

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.

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 21 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 secured creditors earlier than 70 days following the entry of the order for relief; [effective 12/1/17].

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)].



## **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 re-filed.

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 K. NEIDICH, TRUSTEE  
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.

If the court approves a waiver of the wage deduction order, the debtor may make payments electronically via TPS billpay at <https://www.tfsbillpay.com>.

## 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) 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.ch13miami.com](http://www.ch13miami.com) may be accessed to obtain current information regarding Chapter 13 issues, local rules and procedures. Case information may also be obtained by debtors, debtors' attorneys and creditors by accessing [www.ndc.org](http://www.ndc.org).

## 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 "Debtor 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). The debtor must also submit Official Bankruptcy Form 23 "Debtor's Certification of Completion of Post-petition 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 Post-petition 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 LOCAL CHAPTER 13 PLAN FORM**

The Local Chapter 13 Plan Form outlines the complete administration of the case. The Clerk of Court will notice the initial plan to all creditors. The plan must conform to the Local Form "Chapter 13 Plan" (LF-31) approved by the U.S. Bankruptcy Court for the Southern District of Florida pursuant to Local Rule 3015-1(B)(1). A PDF (fillable) version of the local form can be obtained at [www.flsb.uscourts.gov](http://www.flsb.uscourts.gov) under the section Local Forms.

The boxes contained within each subsection can be expanded or collapsed as needed.

### **I. NOTICES**

- A. Pursuant to BR 3015.1(c), the debtor(s) is required to indicate whether the plan does or does not:
  - 1. limit the amount of a secured claim based upon a valuation of collateral;
  - 2. avoid a security interest or lien; and/or
  - 3. contain any nonstandard provisions.
- B. The plan will not be confirmed unless all required boxes are properly marked.

### **II. PLAN PAYMENTS, LENGTH OF PLAN AND DEBTOR(S)' ATTORNEY'S FEE**

#### **A. MONTHLY PLAN PAYMENT**

- 1. The plan may not exceed 60 months.
- 2. Calculate an additional 10% to the combined total payment for the Trustee's fee. (Add up all payments to be made to all creditors and divide by .90)
- 3. The plan may not provide less than \$55.00 per month (\$50 for creditors and \$5 for the Trustee's fee) pursuant to 11 U.S.C. § 330©.
- 4. Enter the total monthly amount to be paid through the plan including the 10% Trustee's fee which is taken on the receipt and the number of months it will take to complete each payment level (for example: \$1,100 for months 1-6 reflects \$990 for creditors and \$110 for the Trustee; \$550 for months 7-36 reflects \$495 for creditors and \$55 for the Trustee).

### **III. DEBTOR(S)' ATTORNEY'S FEES**

- 1. Check the Box for "NONE" or "PRO BONO," if applicable.
- 2. Indicate the total amount of attorney's fees to be paid. The plan will not be confirmed if the amount does not match amounts contained within the filed Disclosure of Compensation of Attorney for Debtors pursuant to BR 2016(b).
- 3. Indicate the amount paid to the attorney pre-petition.
- 4. Indicate monthly payments to be paid to the attorney through the plan.
- 5. Itemize fees charged in connection with services listed in the Court's "Guidelines for Chapter 13 Attorney Compensation."
- 6. File a separate application for compensation (LF 69) if the fees exceed amounts allowed in the Court's "Guidelines for Chapter 13 Attorney Compensation".

### **IV. TREATMENT OF SECURED CLAIMS**

- 1. Check the "NONE" box if this section is not applicable.
- 2. Separately list each secured creditor to be paid through the plan accurately for disbursement. Make certain to provide the Trustee with current addresses and account and/or folio numbers for all creditors.

3. Check the appropriate box for the debtor(s)' principal residence, other real property and/or personal property/vehicle.
4. Real Property not being valued (cure and maintain):
  - a. Check the appropriate box for treatment of property taxes and insurance;
  - b. The arrearage is the total amount due to reinstate or cure the debt as of the petition or conversion date;
  - c. The regular payment is the ongoing monthly amount due pursuant to the terms of the note or contract.
  - d. Include the regular payment for each month arrears are paid.
  - e. Debtors are responsible for remitting regular ongoing payments directly to creditors once regular payments are no longer paid through the plan.
  - f. Proofs of Claim must be timely filed for all secured creditors matching amounts in the plan.
5. Valuation of Collateral
  - a. Check the "NONE" box if this section is not applicable.
  - b. This section provides for the valuation of secured claims, which may result in partial payments or no payments to the secured creditors, for liens that are valued at zero.
  - c. Complete the applicable motion to value collateral and serve it upon the creditor pursuant to Bankruptcy Rule 7004 and Local Rule 3015-3.
  - d. List each creditor separately. Make certain to include accurate addresses and account numbers for all creditors.
  - e. Include the value of the collateral, amount of creditor's lien and the payment for each creditor separately.
  - f. Specify terms of payment, including interest rate, total amount to be paid (including interest) and amounts during months the creditor will be paid (e.g. \$100 for months 1-60).
  - g. Designate whether valued collateral includes:
    - ii. Real Property: check the "NONE" box if this section is not applicable or check the appropriate boxes for principal residence and/or other real property as well as for treatment of property taxes and insurance.
    - ii. Vehicles: check the "NONE" box if this section is not applicable or check the box if the vehicle is a "910 vehicle" under 11 U.S.C. § 1325(a) ("hanging paragraph").
    - iii. Other Personal Property: check the "NONE" box if this section is not applicable or check the box indicating whether the debt was incurred within one year of filing pursuant to 11 U.S.C. §1325(a) ("hanging paragraph").
6. Lien avoidance
  - a. Check the "NONE" box if this section is not applicable.
  - b. File separate motions to avoid judicial liens and/or non-possessory, non-purchase money security interests securing claims.

- c. Include the name, address and account number for each creditor separately.
  - d. Describe the collateral against which the judgment attaches.
  - e. List the exemption which is impaired by the judgment.
7. Surrender of collateral
- a. Check the “NONE” box if this section is not applicable.
  - b. Check the box entitling the creditor to in rem relief from the automatic stay or check the box “Other” to indicate alternative treatment.
  - c. Separately list each secured creditor to which the collateral is surrendered.
  - d. Include the name, address and account number for each creditor whose collateral is surrendered, along with a description of the collateral.
8. Direct payments
- a. Check the “NONE” box if this section is not applicable.
  - b. Separately list each secured creditor to be treated directly and not paid through the plan.
  - c. Include the name, address and account number for each creditor along with a description of the collateral.
  - d. Check the box entitling the creditor to in rem relief from the automatic stay.

**V. TREATMENT OF FEES AND PRIORITY CLAIMS**

- 1. Check the “NONE” box in each subsection in which payments are not included.
- 2. List each priority creditor in the appropriate subsection.
- 3. Include the name, address and amount due to each creditor. List the total amount due to cure the claim as of the petition date. Include regular on-going payments with cure amounts, if applicable.

**VI. UNSECURED NONPRIORITY CREDITORS**

- 1. Unsecured nonpriority creditors are paid in a class by themselves. Allowed unsecured nonpriority claims will be paid pro-rata according to the percentage calculated by the Trustee upon review of allowed Proofs of Claim after the bar date. Do not list the total amount to be paid. Include the monthly payment only.
- 2. Check the box if the debtor(s) intends to pay 100% of all allowed unsecured nonpriority claims or if the debtor believes there will be no unsecured nonpriority creditors to be paid.
- 3. Separately Classified Creditors:
- 4. Check the “NONE” box if this section is not applicable.
- 5. The Debtor may separately classify claims, but may not discriminate unfairly against any other unsecured nonpriority creditors in violation of 11 U.S.C. §1322(b)(1).
- 6. File motions to separately classify claims and include the basis for the separate classification and proposed treatment. The motions must be served upon all creditors pursuant to Bankruptcy Rule 7004.
- 7. List the name, address, account number and basis for each separately classified unsecured nonpriority claim in the plan.

**VII. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

1. Check the "NONE" box if this section is not applicable.
2. List the name, collateral and account number for each executory contract and/or unexpired lease.
3. Check the box indicating whether the debtor(s) will assume or reject the executory contract or unexpired lease.

**VIII. INCOME TAX RETURNS AND REFUNDS**

1. Check one box only.
2. If the debtor(s) is required to provide copies of yearly tax returns to the Trustee, check the box corresponding to the Division in which the debtor filed the petition.
3. Only check the second box if the debtor filed the petition in the Fort Lauderdale or West Palm Beach Divisions.
4. Only check the third box if the debtor filed the petition in the Miami Division.

**IX. NON-STANDARD PROVISIONS**

1. Check the "NONE" box if this section is not applicable. This section will collapse if the "NONE" box is checked.
2. The debtor(s) must check the corresponding box in Section I (Notices) if the debtor(s) includes any non-standard provision in this section. If the box in Notices is not checked, the non-standard provisions in this section will be deemed void.
3. The proposed non-standard terms should be described with particularity.
4. Check the appropriate box for Mortgage Modification Mediation and timely file the required motion to refer to mortgage modification mediation in accordance with Administrative Order 14-03. Do not alter the language in this section.

**X. SIGNATURE(S) AND CERTIFICATION**

1. The plan must be signed and dated by the debtor(s) or the attorney for the debtor(s) under penalty of perjury.
2. The attorney for the debtor(s) must receive permission from the debtor(s) before signing the plan.
3. By filing the plan, the debtor(s) or attorney for the debtor(s) certifies the wording and order of the provisions in this plan are identical to those contained in the local plan form (LF 31) and the plan contains no nonstandard provisions other than those set out in the Non-Standard Plan Provision.

**GENERAL INFORMATION**

**CHAPTER 13 TRUSTEE  
(MIAMI-DADE)**

**NANCY K. NEIDICH, 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**

**ELECTRONIC PAYMENTS:  
<https://www.tfsbillpay.com>**

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

**MIAMI-DADE DIVISION**

**HONORABLE LAUREL M. ISICOFF , CHIEF JUDGE  
HONORABLE A. JAY CRISTOL  
HONORABLE ROBERT A. MARK**

**FORT LAUDERDALE DIVISION**

**HONORABLE JOHN K. OLSON  
HONORABLE RAYMOND B. RAY**

**WEST PALM BEACH DIVISION**

**HONORABLE MINDY A. MORA  
HONORABLE ERIK P. KIMBALL  
JUDGE PAUL G. HYMAN (Recall)**

**COURT LOCATIONS**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI-DADE DIVISION  
C. CLYDE ATKINS UNITED STATES COURTHOUSE  
301 NORTH MIAMI AVENUE, ROOM 150  
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 112  
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)

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

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, Trustee, P.O. Box 2258, Memphis, TN, 38101-2258

\_\_\_\_\_ Nancy K. Neidich, Trustee, 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 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 K. NEIDICH  
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 divide by 90% 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 to modify specifically pleads why the debtor is seeking modification, i.e.: 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 if the motion to modify and the proposed modified plan is not timely served upon all interested parties.

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.