

**SOLUTIONS FOR INCOMPETENT DEBTORS IN BANKRUPTCY:
FINANCIAL GUARDIANS, GUARDIANS AD LITEM,
AND OTHER FINANCIAL SUPERVISION**

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CHAPTER 3

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- Preside over arraignments, granting of continuances, conduct trials, enter judgments, grant jail time credit, determine how defendants pay fines and cost, issue failure to appear warrants, grant deferred disposition, grant driving safety courses, grant teen court, and dismiss cases when required by law or upon prosecutorial motion. Assist as Teen Court Judge on City of Houston Teen Court Matters

Adjudication Hearing Officer, City of Houston - December 2010 - February 2012

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Law Office of Dana V. Drexler, December 1995 – present – Houston, Texas

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SOLUTIONS FOR INCOMPETENT DEBTORS IN BANKRUPTCY

FINANCIAL GUARDIANS, GUARDIANS AD LITEM, AND OTHER FINANCIAL SUPERVISION

The Bankruptcy Code does not require a bankruptcy debtor to be competent. *In re Zawisza*, 73 B.R. 929 (Bankr. E.D. Pa. 1987). Although the Bankruptcy Code does not extensively address incompetent debtors, it makes clear that incompetence neither prevents a debtor from initiating a bankruptcy case, nor from continuing a bankruptcy case that began when the debtor was competent. Fed. R. Bankr. P. 1004.1, 1016. Nevertheless, a debtor's incompetence may make it difficult for the debtor to complete a number of duties required of the debtor under the Bankruptcy Code. This paper addresses the indications and difficulties faced by a debtor and debtor's counsel in bankruptcy that may warrant increased financial supervision over the debtor; the types of financial supervision that may be available to help the debtor, including the appointment of a financial guardian or a guardian *ad litem* for the bankruptcy; the background law addressing incompetent debtors in bankruptcy; and other related considerations.¹

I. INDICATIONS THAT A DEBTOR MAY NEED FINANCIAL SUPERVISION IN THE BANKRUPTCY

A number of circumstances may indicate that a debtor requires some degree of financial supervision in order to successfully complete a bankruptcy. In the most extreme circumstances, the debtor may already be confined in a nursing home or other institution, may be unable to communicate at all, or may not understand the concept or fact of a bankruptcy case. *E.g. In re Meyers*, 350 B.R. 760 (Bankr. N.D. Ohio 2006); *In re Benson*, 2010 Bankr. LEXIS 1354, 2010 WL 2016891 (Bankr. N.D. Ga. Apr. 30, 2010).

Another obvious circumstance in which to consider financial supervision in the bankruptcy is when the debtor has already been adjudicated or otherwise found incompetent in a non-bankruptcy context. For example, the debtor may already have an appointed guardian of the person or the debtor may have been appointed a fiduciary under the U.S. Department of Veterans Affairs Fiduciary Program. *See In re Whitehead*, 2005 Bankr. LEXIS 1467 at *5, 2005 WL 1819399 (Bankr. M.D.N.C. Jul. 22, 2005).

Other circumstances may not be so clear. A guardian *ad litem* in a bankruptcy case may be warranted if the debtor has difficulty understanding concepts related to the bankruptcy or has difficulty complying with his or her bankruptcy duties, such as making bankruptcy payments or refraining from incurring new debt during the bankruptcy. If the attorney finds that the debtor is unable to keep the facts of his or her bankruptcy and finances straight or to communicate intelligibly regarding these subjects, the attorney may consider seeking a guardian *ad litem* for the debtor in the bankruptcy case or some lesser degree of financial supervision.

If the debtor is in a reorganization and regularly fails to make his or her bankruptcy payments despite appearing to have sufficient funds to do so, the attorney should look into the reasons for this behavior. It may be that family members and "friends" of the debtor are unduly influencing the debtor to bestow gifts and loans, and even to take out loans on their behalf, thus dissipating the debtor's income. Alternatively, the simple act of making the bankruptcy payment may be out of the ordinary for the debtor and the debtor, by reason of his or her incompetence, is unable to adjust to the new obligation. In either case, the appointment of a guardian *ad litem* over the debtor's finances during the bankruptcy case may enable the debtor to complete the bankruptcy successfully where he or she might not otherwise be able.

It is possible that the debtor may be aware of the need for a degree of financial supervision in order to successfully complete the bankruptcy case. If so, the cooperation of the debtor may make it easier and more likely for the bankruptcy court to order such supervision, including appointment of a guardian *ad litem*.

II. LAW GOVERNING INCOMPETENT DEBTORS IN A BANKRUPTCY CASE

A. Where the Debtor Is Incompetent Prior to Filing

Rule 1004.1 addresses debtors who are incompetent prior to filing the bankruptcy petition and permits a general guardian or other fiduciary to file a voluntary bankruptcy petition on behalf of the incompetent person. *In re Whitehead*, 2005 Bankr. LEXIS 1467 at *5, 2005 WL 1819399 (Bankr. M.D.N.C. Jul. 22, 2005). It performs the same function for bankruptcy cases that Federal Rule of Civil Procedure 17(c) and Federal Rule of Bankruptcy Procedure Rule 7017 perform for federal civil cases and adversary proceedings, respectively.

¹ A financial guardian may also be used as a term in place of guardian *ad litem*. The term financial guardian does not carry the same possible connotations as guardian *ad litem*.

If the debtor already has a court-appointed guardian, Rule 1004.1 should permit the guardian to file a voluntary bankruptcy petition on behalf of a debtor. *E.g. In re Kirschner*, 46 B.R. 583 (Bankr. E.D.N.Y. 1985); *In re Zawisza*, 73 B.R. 929 (Bankr. E.D. Pa. 1987). In the Fifth Circuit, Rule 1004.1 may also permit a debtor's attorney-in-fact to file a voluntary bankruptcy petition on behalf of the debtor under either a general or limited power of attorney.² *United States v. Spurlin*, 664 F.3d 954, 959 (5th Cir. 2011). However, since the process of becoming an attorney-in-fact is not subject to court review, the filing of a voluntary bankruptcy petition by an attorney-in-fact is likely subject to greater oversight; the bankruptcy court must find some evidence that the debtor was informed and believed that the bankruptcy filing was proper. *Id.* at 960; *In re Matthews*, 516 B.R. 99 (Bankr. N.D. Tex. 2014).

If the incompetent debtor does not already have a general guardian or other fiduciary, Rule 1004.1 requires the court to appoint a "next friend" or guardian *ad litem* for the debtor and to make any other order to protect the debtor. The next friend or guardian *ad litem* can then file the bankruptcy petition on behalf of the debtor. *E.g., In re Myers*, 350 B.R. 760 (Bankr. N.D. Ohio 2006). Allowing the next friend or guardian *ad litem* to file the bankruptcy case on behalf of the debtor impliedly charges that person with responsibility for the debtor throughout the administration of the case. *In re Moss*, 239 B.R. 537, 545 (Bankr. W.D. Mo. 1999).

B. Where the Debtor Becomes Incompetent After Filing

Rule 1016 applies where the debtor is competent at the time of filing the bankruptcy petition, but later becomes incompetent at some point during the bankruptcy case. *Whitehead*, 2005 Bankr. LEXIS 1467 at *5. The debtor's incompetency will not abate a liquidation case under chapter 7. Fed. R. Bank. P. 1016. When the debtor becomes incompetent in a chapter 11, 12, or 13 case, however, the proceeding may either be dismissed or may proceed if further administration (1) is possible and (2) is in the best interest of the parties. *Id.*

Regardless of the type of bankruptcy case, unless it is dismissed, the case must proceed "in the same manner, as far as possible, as though the...incompetency had not occurred." Fed. R. Bank. P. 1016. Where the debtor's incompetency would make it impossible for the bankruptcy case to proceed in the same manner as if the debtor's incompetency had not occurred, the bankruptcy court may be justified in taking extraordinary steps—such as appointing a guardian *ad litem*—in order to adequately protect the interests of the debtor in the

bankruptcy case and facilitate judicial economy. *In re Moss*, 239 B.R. at 542. The statutory basis for the bankruptcy court's appointment of a guardian *ad litem* is the court's equitable powers under 11 U.S.C. § 105(a).

The determination of whether or not it is possible for the bankruptcy case to proceed in the same manner as if the debtor's incompetency had not occurred can be based on practical difficulties caused by the debtor's incompetence. In *Moss*, although the court conceded that it was technically possible for the case to proceed without the appointment of a guardian *ad litem*, the debtor's incompetency made it practically very difficult to proceed with the case. *Moss*, 239 B.R. at 542. The practical difficulties cited in that case were that the debtor's mental illness caused her to be uncooperative (to the point of faking her own death) and unlikely to take the actions necessary to avail herself of the benefits of the bankruptcy process. *Id.* at 543.

C. Determining the Debtor's Incompetency

The Bankruptcy Code does not define "incompetency." *Moss*, 239 B.R. at 539. Bankruptcy courts have therefore turned to the state law of the debtor's domicile to define "incompetency" for purposes of the bankruptcy proceeding. *E.g. Moss*, 239 B.R. at 539; *In re Burchell*, 2014 Bankr. LEXIS 1336 at *2-3, 2014 WL 1304635 (Bankr. N.D. Ohio Mar. 31, 2014).

Depending on the perceived degree of the debtor's incompetency, the bankruptcy court may or may not choose to make the determination of incompetency itself. Bankruptcy courts have determined debtors to be incompetent for purposes of the bankruptcy case without recourse to the state courts in cases where the debtor was clearly incompetent. *E.g. In re Benson*, 2010 Bankr. LEXIS 1354, 2010 WL 2016891 (Bankr. N.D. Ga. Apr. 30, 2010)(debtor did not understand that she was a debtor in a bankruptcy case); *In re Myers*, 350 B.R. 760 (Bankr. N.D. Ohio 2006)(debtor was confined to a nursing home and unable to speak or otherwise communicate).

On the other hand, where it is unclear whether a debtor is incompetent, the bankruptcy court may choose to leave the determination to state court. *E.g. In re Petrano*, 2013 Bankr. LEXIS 5255, 2013 WL 6503672 (Bankr. N.D. Fla. Apr. 16, 2013)(where the debtor was alleged to have "severe autism," the bankruptcy case was stayed until incompetency could be determined by state court). Despite the apparent reluctance of some bankruptcy courts to make a determination regarding the debtor's incompetency, the authors have had success in the Southern District of Texas obtaining the appointment of a financial guardian for a debtor in

² The same may not be true in other circuits. *See, e.g., In re Vitagliano*, 303 B.R. 292 (Bankr. W.D.N.Y. 2003).

circumstances less extreme than those in *Benson* or *Myers*. See, *In re: Aaron Ford*, Case Number 10-40095, Docket numbers 118 and 120, in the Southern District of Texas. In the *Ford* case, it was helpful that the debtor involved approved the request for the appointment of a financial guardian for the bankruptcy case.³

III. STRUCTURE OF GUARDIANSHIP IN THE BANKRUPTCY CASE

Although a guardian *ad litem* appointed by the bankruptcy court over the debtor will typically have extensive control over the debtor's finances, the guardianship generally does not encompass the debtor's person. The guardianship should not subject the debtor to involuntary confinement and, if capable, the debtor should remain free to drive, vote, and make other decisions regarding his or her own person. Similarly, the guardianship should end upon the conclusion of the bankruptcy case. If the debtor is unable to make decisions regarding his or her own person or requires a guardian even after the bankruptcy case has concluded, a general guardianship may be sought in state court.

The guardian *ad litem* will generally take charge of all of the debtor's financial accounts, becoming the sole signatory on the accounts, and will become the exclusive person to receive the debtor's income from any source. This control may include social security, veterans, or retirement benefits. The bankruptcy court will typically authorize these payors to communicate with the guardian and prohibit them from making changes (except those required by law) to the method, manner, or place of payments without providing notice to, and receiving specific authorization from, the court.⁴

The guardian *ad litem* should prepare an annual budget for the debtor and make payments on the debtor's behalf, including those required to be made by the debtor under the terms of a bankruptcy plan and the debtor's various living expenses, such as vehicle insurance and utility bills. If the debtor is capable of using the funds, the annual budget will generally include a monthly spending allowance, which the debtor may spend in part on recreation. An incompetent debtor should not be held to a higher standard of austerity than a competent debtor, who is generally permitted to spend a modest amount on recreation, even while in a bankruptcy. If the debtor is capable of paying some living expenses, the guardian may consider permitting the debtor to do so in order to promote the debtor's sense of independence as much as possible. The guardian may also consider establishing a savings account for the

debtor for irregular expenses such as home and car repairs.

In addition to any powers and duties specifically enumerated in an order appointing a financial guardian or guardian *ad litem*, the bankruptcy court may adopt the provisions existing under state law for guardians. The guardian *ad litem* may therefore be subject to the same requirements, obligations, fees, and reporting that a guardian appointed under applicable state law would be. Compensation of the guardian is generally a percentage of the funds coming into and disbursed from the guardianship. Five percent has been used in the Southern District of Texas based upon Texas state laws. The guardian must submit an application to the bankruptcy court and receive approval of the application for payment of his or her fees and expenses.

The guardian *ad litem* should work with bankruptcy counsel for the debtor to make decisions regarding the bankruptcy case. These decisions may relate to budget, payment, and—if the case is a reorganization—plan issues, as well as other matters. Once a guardian has been appointed in a bankruptcy case, both the guardian and the bankruptcy attorney should communicate pro-actively with each other as each party has unique expertise to bring to bear on these decisions.

IV. CONCLUSION

Although more administratively cumbersome, the bankruptcy case of an incompetent debtor can proceed successfully when the debtor is placed under an appropriate degree of financial supervision. Fortunately, the Bankruptcy Code and the equitable powers granted to the bankruptcy courts are sufficiently flexible to make these accommodations. Such cases can be very rewarding as these debtors are frequently the subject of financial abuse. Removing the financial greed of family and friends from around debtors, removing the incentives for improper spending, and removing the ability to mis-spend can greatly assist debtors who simply are not capable of managing their finances. The successful administration and completion of the bankruptcy case can substantially promote the debtor's future financial security and improve the debtor's overall living conditions and environment. The successful administration of a debtor under a financial guardian may well re-establish a debtor in all areas and aspects of life.

³ In the *Ford* case, the court would not permit a new case to be filed for the debtor unless the debtor consented to a financial guardian.

⁴ See the financial guardianship order entered in the *Barber* case, a copy of which is an exhibit at the end of this paper. *In re Carol Ann Barber*, Case No. 15-31754, in the Southern District of Texas, docket number 36.

EXHIBIT A
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re: AARON FORD

Debtor

§

§

§

Case No. 10-40095-H1-13

AARON FORD'S EMERGENCY MOTION FOR APPOINTMENT OF
GUARDIAN OF HIS FINANCIAL ESTATE

THE DEBTOR HAS REQUESTED EMERGENCY CONSIDERATION OF THIS MOTION. ACCORDINGLY, THE COURT MAY ACT EXPEDITIOUSLY ON THE MATTER. IF THE COURT SETS THIS MOTION FOR AN EMERGENCY HEARING, THEN ONLY ATTENDANCE AT THE HEARING IS NECESSARY TO PRESERVE YOUR RIGHTS.

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN TWENTY-ONE (21) DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THIS MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF, OR IF YOU BELIEVE THAT EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COMES NOW, Aaron Ford ("Ford" or "Debtor"), debtor in the above dismissed case, and files this Motion for the Appointment of a Guardian of his Financial Estate and would show this

court as follows:

1. Ford has filed three bankruptcy cases. The first case was filed on January 2, 2003, as case number 03-30077, and dismissed without discharge on May 10, 2006.
2. The second case was filed on June 1, 2006 as case number 06-32280, and dismissed on September 28, 2009. In the second case, the Debtor paid to the trustee \$57,882. The Debtor filed his most recent chapter 13 case on November 2, 2010, as case number 10-40095. The case was dismissed on February 15, 2012. The Debtor paid the trustee the amount of \$9,900 during the most recent case.
3. At the conclusion of the most recent case, this Court entered an order as to future filings by the Debtor. The order provided as follows:
 2. Mr. Ford is barred from filing another bankruptcy petition until such time as his VA benefits (or more) are under the exclusive control of an agent or fiduciary or guardian.
 3. Once Mr. Ford's VA benefits are under the exclusive control of an agent, guardian or fiduciary, then either Mr. Ford or his agent or fiduciary may sign a new bankruptcy petition.
 4. The Court retains jurisdiction over this case for the purpose of rendering assistance in the appointment of an agent, guardian or fiduciary if that is required.
4. The order of dismissal of the prior case provided that this Court retains jurisdiction over the above dismissed case for the purpose of rendering assistance in the appointment of an agent, guardian or fiduciary. Ford believes that a guardian for his financial affairs is necessary. Ford consents to any and all actions of this court in the appointment of a guardian for his financial affairs, including any designation or delegation of powers to a fiduciary or agent as this court determines are or may be necessary or appropriate.
5. Ford has attempted to have his Veterans Administration ("VA") benefits placed under the exclusive control of an agent or fiduciary or guardian.

6. The VA has declined to appoint a fiduciary for Ford.¹ The undersigned counsel believes that the recent fraud problems experienced by the VA involving guardians and fiduciaries has effectively stopped the appointment of fiduciaries and guardians by the VA absent extraordinary circumstances. See the *Houston Chronicle* articles attached hereto as Exhibit A.
7. Ford could seek an appointment of a guardian in state court. However, such process may take an extended period.
8. Ford has been a debtor before this court in three chapter 13 bankruptcy cases. In each case, Ford has been provided with many opportunities to manage his funds and make his trustee payments.
9. Ford has not been able to manage his funds in a chapter 13 plan. This Court has determined in prior cases that Ford could not manage his funds.
10. Ford has sufficient funds being paid to him from the Social Security Administration (“Social Security”), the VA, and the United States Army, as managed by the Defense Finance and Accounting Service (“DFAS”) to pay his chapter 13 trustee payments and have sufficient funds for his other living expenses.
11. Ford has admitted to this court that he has not had the ability to control the expenditure of his funds.
12. Ford believes that he must comply with the dismissal order in his prior case due to his home being in a foreclosure process and his vehicle being subject to repossession. Without another

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Counsel for Mr. Ford learned that on Wednesday, May 30, 2012, a VA Field Examiner visited Mr. Ford at his home. The Field Examiner informed Mr. Ford that he qualified for a fiduciary and that Ms. Drexler would be appointed. Counsel for Mr. Ford had been told the exact opposite recently by counsel for the VA. This motion is filed due to the conflicting statements from the VA.

bankruptcy, Ford believes that his mortgage lender will take steps to foreclose on his home and his car lender will repossess his vehicle.

13. Ford is a disabled veteran. He served in the United States Army in Iraq. He received injuries in Iraq in the Army.
14. This Court has not found Ford to be without capacity to manage himself, drive a vehicle or vote.
15. Ford is not married.
16. Ford has children but all of his children are over the age of 18. Ford is not responsible for the support of any of his children. None of his children require support from him.
17. Since this order involves a core bankruptcy matter, namely the control of funds of a debtor, this court has jurisdiction to enter an order of guardianship of the financial affairs of Ford. In addition, Ford has agreed and consented to the entry of an order of guardianship.
18. Ford requests that this Court appoint as the guardian of his financial estate Dana Perry Drexler ("Drexler"), an attorney licensed in Texas, an attorney licensed in Texas with an address of 1010 Lamar, Suite 1450, Houston, Texas 77002.
19. Ford met with and has approved the appointment of Drexler as his guardian for financial affairs. Ford consents to Drexler receiving all funds from his Social Security, VA benefits and his DFAS benefits. Drexler has practiced in the area of guardianships and probate. She was recommended by the VA.
20. Ford has had a personal account at the First Convenience Bank ("FCB") with the last 4 digits of 5177 (the "Personal Account"). The Debtor voluntarily designated the Personal Account as the account for deposits of his Social Security income ("SS Payments"), his VA payments ("VA Payments"), his retirement income from DFAS and other payments. Social Security,

the VA, and DFAS have been making deposits on a regular basis into the Personal Account based on the voluntary designations by the Debtor.

21. Ford requests that Drexler, as the guardian of the financial affairs of Ford, shall have the following powers as set forth below:
- a. To collect all funds for Ford coming from any agency of the United States, including without limitation, Social Security, the VA and the DFAS;
 - b. To open and maintain in her name as the guardian of Ford such checking or savings accounts at FCB or such other banks or financial institutions as she deems necessary;
 - c. To direct any and all actions as necessary for the accounts maintained by her as the guardian of Ford, including issuance and signing of checks, transfer of funds, deposit of funds, and all other actions as required or necessary to act as guardian of the funds of Ford;
 - d. To be the sole signatory on the Personal Account of Ford at FCB;
 - e. To develop an annual budget with Ford and file the annual budget with this court, such budget subject to review and approval by the Court;
 - f. To pay the monthly payments to the chapter 13 trustee appointed for Ford in a chapter 13 bankruptcy case;
 - g. To have full authority and control over all monies received from Social Security, VA, and DFAS;
 - h. To pay such other expenses such as car insurance, utilities, and other expenses as she deems necessary or appropriate;
 - i. To provide a monthly spending allowance for Ford in amount to be determined by Drexler and included in the annual budget;

- j. To open and make deposits to a savings account for Ford on a monthly basis with the amounts for the savings account to be part of the annual budget; and
 - k. To communicate with Social Security, VA and DFAS for and on behalf of Ford; and
 - l. Such other powers as may be permitted or allowed by this Court.
- 22. For any deviations from the monthly budget, the Court must approve such proposed changes in advance.
 - 23. Ford is not requesting that Drexler be required to post a bond.
 - 24. No appraisal of any assets of the estate of Ford shall be necessary at this time. The Court may order that one or more appraisers be appointed if events occur that necessitate the appointment of appraisers.
 - 25. Ford agrees that he will have no authority or ability to obtain any funds from the accounts controlled by Drexler without an order of the Bankruptcy Court, including the Personal Account.
 - 26. Ford may open another account at FCB for the deposit and spending of his monthly allowance.
 - 27. Drexler has agreed to act as a fiduciary for Ford under the same requirements and with the same obligations, fees and reporting as if a guardianship were in place in Harris County, Texas. The guardianship would be subject to the same laws and rules for guardianships as exist under the Texas Probate Code, Chapter XIII for Guardianships, case law and other applicable statutes and rules in Texas for guardianships.
 - 28. Drexler will provide the same reports and information to the Court at the time periods and in the similar manner as required under Texas probate laws described herein.
 - 29. Drexler would receive a fee of five percent (5%) of all funds coming into the guardianship

and five percent (5%) of all funds disbursed from the guardianship plus normal and customary legal fees and expenses. Prior to any payments to Drexler, she would submit to the court an application for payment of her fees and expenses. The court would then have to approve the payment of her fees and expenses.

30. In addition to the above, Ford requests that his Personal Account at FCB have Drexler designated as the sole signatory and that no funds can be released from the Personal Account without the authorization from Drexler or an order of the Bankruptcy Court. Ford would like his name removed as an authorized signatory on the Personal Account.
31. The entry of an order appointing a guardian is necessary for the compliance with the dismissal order entered on February 15, 2012, in Ford's prior chapter 13 case.
32. The entry of this Order is necessary for the administration of a future chapter 13 case. Without the entry of the order as requested herein, Ford does not believe that he can maintain a chapter 13 case. If another case is started and not maintained, Ford may lose his home.
33. Drexler has agreed to act the capacity and perform the services as set forth in this motion and the proposed order filed with this motion.
34. Ford consents to the entry of an order with the terms and conditions set forth herein. Ford acknowledges that once entered, the guardianship cannot be changed without further order of this court.
35. Ford requests that this Court authorize Social Security, the VA and DFAS to communicate with Drexler on any matters relating to Ford.
36. Ford requests that this Court instruct Social Security, the VA and DFAS to not change the method, manner or place of payment of funds to Ford as set forth in this motion without providing prior written notice to Drexler and filing a notice of change with the court at least

twenty (20) days prior to implementing any change. Changes in the amounts of any payments as required under applicable laws or regulations shall not require any notices. For example and not by way of limitation, if Ford contacts Social Security, the VA or DFAS and requests that funds be paid to him in a check or deposited into another bank account, such change in the method of payment or manner of payment must be noticed to Drexler and this court at least twenty (20) days prior to such change.

37. Ford agrees that he shall not contact the Social Security, the VA or DFAS for any changes in the method, manner or place of payment without prior authorization from this court.
38. If the Bankruptcy Court enters an order appointing Drexler as his guardian of financial affairs, Ford shall file a new chapter 13 case. Ford will request that the order appointing Drexler be immediately entered into and become part of his new chapter 13 case.
39. If the Bankruptcy Court enters an order appointing Drexler as his financial guardian, this court may also enter a separate letter of guardianship with a judicial seal, at the request of Drexler.
40. Ford requests that this motion and order entered pursuant to such motion satisfy the requirements under the dismissal order entered in his prior chapter 13 bankruptcy case.

WHEREFORE, PREMISES CONSIDERED, Aaron Ford requests that this Court enter an order that appoints Dana Drexler as his fiduciary to control all funds received from the Social Security Administration, the United States Army, as managed by the Defense Finance and Accounting Service , and any other source, and grants the power to Dana Drexler to open, maintain, and operate one or more checking and savings accounts for Aaron Ford during any chapter 13 case to be filed, including a reserve or savings fund, restricts withdrawals from his account or accounts at FCB such that only Dana Drexler can withdraw funds, and for such other and further relief as set

forth in this motion or to which the Debtor may be justly entitled

Dated: June 1, 2012

Respectfully submitted,

/s/ Reese W. Baker

Reese W. Baker /Tx Bar No. 01587700

Baker & Associates

5151 Katy Freeway, Suite 200

Houston, Texas 77007

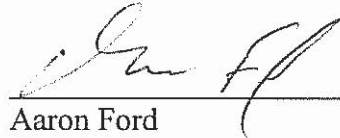
(713) 869-9200

(713) 869-9100 Fax

ATTORNEYS FOR AARON FORD

CERTIFICATE FOR EMERGENCY HEARING

Aaron Ford requests an emergency hearing on the above motion for the appointment of a guardian for his financial estate. The vehicle of Mr. Ford is subject to repossession and his home may be posted for foreclosure in the near future. An emergency hearing is necessary.



Aaron Ford

/s/ Reese W. Baker

Reese W. Baker

5151 Katy Freeway, Suite 200

Houston, Texas 77007

713-869-9200

Attorney for Aaron Ford

CERTIFICATE OF SERVICE

A copy of the AARON FORD'S MOTION FOR APPOINTMENT OF GUARDIAN OF HIS FINANCIAL ESTATE was delivered on June 1, 2012, to all parties listed below in the manner listed below:

David G. Peake
9660 Hillcroft, #430
Houston, TX 77096

By email and electronically by the clerk of the
bankruptcy court

Yvette V. Recio
Tow & Koenig, PLLC
26219 Oak Ridge Drive
The Woodlands, Texas 77380
281-681-9100

By email and electronically by the clerk of the
bankruptcy court

Attorneys for First National Bank Texas and First Convenience Bank

Lisa Cockrill
Codilis & Stawiarski
650 N. Sam Houston Parkway, East #450
Houston, Texas 77060
281-925-5200
Attorneys for Steel Mountain Homes, LLC

By email and electronically by the clerk of the
bankruptcy court

Dinora Gonzalez
9660 Hillcroft, Suite 460
Houston, Texas 77096
713-283-5400
Attorney for David Peake, Chapter 13 Trustee

By email and electronically by the clerk of the
bankruptcy court

Dana Drexler
1010 Lamar Street, Suite 1450
Houston, Texas 77002
State Bar No. 00788189
713-658-8900

By email

Aaron Ford
9911 Tangiers Road
Houston, Texas 77041

By hand delivery

/s/ Reese W. Baker
Reese W. Baker

VERIFICATION OF TRANSMITTAL TO U.S. TRUSTEE

The undersigned attorney, under penalty of perjury, hereby certifies that a copy of the AARON FORD'S MOTION FOR APPOINTMENT OF GUARDIAN OF HIS FINANCIAL ESTATE was delivered to the United States Trustee, 515 Rusk, Suite 3516, Houston, Texas 77002, on June 1, 2012, by electronic delivery by the Clerk of the United States Bankruptcy Court.

/s/ Reese W. Baker

Reese W. Baker



ENTERED
06/04/2012

EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	Case No. 10-40095
AARON BERNARD FORD; fdba AARON	§	Chapter 13
REPAIRS,	§	
Debtor(s).	§	Judge Isgur

ORDER APPOINTING GUARDIAN

1. Dana Perry Drexler (“Drexler”), an attorney licensed in Texas with an address of 1010 Lamar, Suite 1450, Houston, Texas 77002, is appointed guardian of all financial and other assets Aaron Bernard Ford, with the following powers:

- A. To have exclusive dominion and control over all of Ford’s accounts, including without limitation his account at First Convenience Bank with the last four digits 5177 (the “FCB account”).
- B. To be the exclusive person to receive all Social Security Payments, VA payments, DFAS retirement income, and all other amounts payable to Ford from any source.
- C. To collect all funds for Ford coming from any agency of the United States, including without limitation, Social Security, the VA and DFAS.
- D. To open and maintain in her name as the guardian of Ford such checking or savings accounts at FCB or such other banks or financial institutions as she deems necessary.
- E. To direct any and all actions as necessary for the accounts maintained by her as Ford’s guardian, including issuance and signing of checks, transfer of funds, deposit of funds, and all other actions as required or necessary to act as Ford’s guardian.
- F. To be the sole signatory on the FCB account.
- G. To open such other bank accounts at FCB or such other financial institutions as necessary or appropriate for her actions hereunder.
- H. To develop an annual budget with Ford and file the annual budget with this court.
- I. To pay the fees to any chapter 13 trustee appointed for Ford in a chapter 13 bankruptcy case.
- J. To propose a chapter 13 plan for Ford.
- K. To authorize the filing of a chapter 13 bankruptcy case for Ford and to direct counsel in the administration of that case.
- L. To make payments pursuant to any confirmed chapter 13 plan.

- M. To make payments to the chapter 13 trustee prior to plan confirmation.
 - N. To have full authority and control over all monies received from Social Security, Veterans Affairs, and DFAS.
 - O. To pay such other expenses such as car insurance, utilities, and other expenses as she deems necessary or appropriate.
 - P. To provide a monthly spending allowance for Ford in amount to be determined by Drexler and included in the annual budget.
 - Q. To open and make deposits to a savings account or a personal spending account for Ford on a monthly basis with the amounts for the savings account to be part of the annual budget.
 - R. To communicate with Social Security, VA and DFAS for and on behalf of Ford.
 - S. Such exercise other powers as may be permitted or allowed by this Court.
2. Ford has no authority or ability to obtain any funds from the accounts controlled by Drexler.
3. With respect to the administration of the guardianship:
- A. Drexler is hereby appointed as guardian under the same requirements and with the same obligations, fees and reporting as if a guardianship were in effect in Harris County, Texas.
 - B. Drexler will provide the same reports and information to this Court at the time periods and in the similar manner as required under Texas probate laws.
 - C. This Court will utilize the provisions of the Texas Probate Code, Chapter XIII on Guardianships and other applicable statutes and rules.
 - D. Drexler will be compensated in the amount of five percent (5%) of all funds coming into the guardianship and five percent (5%) of all funds disbursed from the guardianship plus normal and customary legal fees and expenses. Prior to any payments to Drexler, she must submit to this court an application for payment of her fees and expenses. The court then must approve the payment of her fees and expenses.
4. All persons are ordered to respect the guardianship established by this Order:
- A. Drexler is to be added as a signatory to the Personal Account of Ford at FCB. FCB shall delete Ford as an authorized signatory on the Personal Account. No funds can be released from the Personal Account without the authorization from Drexler or an order of this Bankruptcy Court. Ford is removed as an authorized signatory on the Personal Account.

B. Social Security, the VA and DFAS are authorized to communicate with Drexler on any matters relating to Ford. This Order authorizes each of these agencies to communicate with Drexler for all matters relating to Ford.

C. Social Security, the VA and DFAS shall not change the method, manner or place of payment of funds to Ford as set forth in this Order without providing prior written notice to Drexler and filing a notice of change with this court at least twenty (20) days prior to implementing any change. Changes in the amounts of any payments as required under applicable laws or regulations shall not require any notices. For example and not by way of limitation, if Ford or any person other than Drexler contacts Social Security, the VA or DFAS and requests that funds be paid to Ford in a check or deposited into another bank account, such change in the method of payment or manner of payment must be noticed to Drexler and this court at least twenty (20) days prior to such change.

D. Neither Ford nor anyone acting at his direction or request shall contact the Social Security, the VA or DFAS for any changes in the method, manner or place of payment without prior authorization from this court. If any such contact is made, Social Security, the VA and DFAS shall not implement any such instructions.

5. Although the Court has appointed Drexler pursuant to the terms of this Order, nothing in this Order:

- A. Terminates Ford's capacity to drive a motor vehicle.
 - B. Limits Ford's capacity to control his own person.
 - C. Restricts Ford's right to vote.
 - D. Subjects Ford to any involuntary period of confinement.
6. This appointment is effective on entry. No bond is required.

7. This Order evidences the guardianship established by this Court and the guardian appointed by this Court.

SIGNED **June 4, 2012.**


Marvin Isgur
UNITED STATES BANKRUPTCY JUDGE



ENTERED
07/14/2015

EXHIBIT C

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	CASE NO. 15-31754-H1-13
	§	
Carol Ann Barber	§	
	§	CHAPTER 13
DEBTOR	§	
	§	

ORDER APPOINTING GUARDIAN

1. Dana Perry Drexler ("Drexler), an attorney licensed in Texas with an address of 1010 Lamar, Suite 1450, Houston, Texas 77002, is appointed guardian of all financial and other assets Carol Ann Barber, (Barber), with the following powers:

A. To have exclusive dominion and control over all of Barber's accounts, including without limitation her account at Gulf Coast Educators Federal Credit Union with the last four digits 0840.

B. To be exclusive person to receive all Social Security and Teacher's Retirement income, and all other amounts payable to Barber from any source.

C. To collect all funds for Barber coming from any agency of the United States, including without limitation, Social Security and Teacher's Retirement.

D. To open and maintain in her name as the Guardian of Barber such checking or savings accounts at Gulf Coast Educators Federal Credit Union or such other banks or financial institutions as she deems necessary.

E. To direct any and all actions as necessary for the accounts maintained by her as Barber's guardian, including issuance and signing checks, transfer of funds, deposit of funds, and all other actions as required or necessary to act as Barber's guardian.

- F. To be the sole signatory on the accounts.
- G. To open such other bank accounts at Gulf Coast Educators Federal Credit Union or such financial institutions as necessary or appropriate for her actions hereunder.
- H. To develop an annual budget with Barber and file the annual budget with the court.
- I. To pay the fees to any chapter 13 trustee appointed for Barber in a chapter 13 bankruptcy case.
- J. To propose a chapter 13 plan for Barber.
- K. To direct to counsel in the administration of that of this.chapter.13 case.
- L. To make payments pursuant to any confirmed chapter 13 plan.
- M. To make payments to the chapter 13 trustee prior to plan confirmation.
- N. To have full authority and control over all monies received from Social Security and Teacher's Retirement.
- O. To pay such other expenses such as car insurance, utilities, and other expenses as she deems necessary or appropriate.
- P. To provide a monthly spending allowance for Barber in amount to be determined by Drexler and included in the annual budget.
- Q. To open and make deposits to a savings account or a personal spending account for Barber on a monthly basis with the amounts for the savings account to be party of the annual budget.
- R. To communicate with Social Security and Teacher's Retirement for and behalf of Barber.

- S. Such exercise other powers as may be permitted or allowed by the Court.
2. Barber has no authority or ability to obtain any funds from the accounts controlled by Drexler.
3. With respect to the administration of the guardianship:
 - A. Drexler is hereby appointed as guardian under the same requirements and with the same obligations, fees and reporting as if a guardianship were in effect in Harris County, Texas.
 - B. Drexler will provide the same reports and information to the Court at the time periods and in similar manner as required under Texas Estates Code and laws.
 - C. The court will utilize the provisions of the Texas Estates Code, Title Three on Guardianships and other applicable statutes and rules.
 - D. Drexler will be compensated in the amount of five percent (5%) of all funds coming into the guardianship and five percent (5%) of all funds disbursed from the guardianship plus normal and customary legal fees and expenses. Prior to any payments to Drexler, she must submit to the court an application for payment of her fees and expenses. The court then must approve the payment of her fees and expenses.
4. All persons are ordered to respect the guardianship established by the Order:
 - A. Drexler is to be added as a signatory to the Personal Account of Barber at Gulf Coast Educators Federal Credit Union. Gulf Coast Educators Federal Credit Union shall delete Barber as an authorized signatory on the Personal Account. No funds can be released from the Personal Account without the authorization from Drexler or an order of the Bankruptcy Court. Barber is removed as an authorized signatory on the Personal Account.

B. Social Security and Teacher's Retirement are authorized to communicate with Drexler on any matters relating to Barber. The Order authorizes each of these agencies to communicate with Drexler for all matters relating to Barber.

C. Social Security and Teacher's Retirement shall not change the method, manner or place of payment of funds to Barber as set forth in the Order without prior written notice to Drexler and filing a notice of change with the court at least twenty (20) days prior to implementing any change. Changes in the amounts of any payments as required under applicable laws or regulations shall not require any notices. For example and not by way of limitation, if Barber or any person other than Drexler contacts Social Security or Teacher's Retirement and requests that funds be paid to Barber in a check or deposited into another bank account, such change in the method of payment or manner of payment must be noticed to Drexler and the court at least twenty (20) days prior to such change.

D. Neither Barber nor anyone acting at her direction or request shall contact the Social Security and Teacher's Retirement for any changes in the method, manner or place of payment without prior authorization from the court. If any such contact is made, Social Security and Teacher's Retirement shall not implement any such instructions.

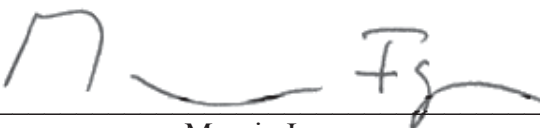
5. Although the Court has appointed Drexler pursuant to the terms of the Order, nothing in the Order:

- A. Terminates Barber's capacity to drive a motor vehicle.
- B. Limit Barbers capacity to control her own person.
- C. Restrict Barber's right to vote.
- D. Subjects Barber to any involuntary period of confinement.

6. The appointment is effective on entry. No bond is required.
7. The Order evidences the guardianship established by The Court and the guardian appointed by the Court.

Signed:

July 14, 2015

A handwritten signature in black ink, appearing to read 'M Isgur', is written over a horizontal line.

Marvin Isgur
United States Bankruptcy Judge