

**IN THE UNITED STATES BANKRUPTCY COURT FOR  
THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**STANDING ORDER RELATING TO CHAPTER 13 PRACTICES IN  
THE SAN ANTONIO DIVISION**

This Standing Order supersedes the Amended Standing Order Relating to Chapter 13 Practices in the San Antonio Division dated November 7, 2005 and the Standing Order Relating to Attorney Fees in Chapter 13 Cases in the San Antonio Division dated June 13, 2006; and is applicable in the San Antonio Division only. This Standing Order sets out certain practices and procedures relating to Chapter 13 practice and procedure.

If you are involved in Chapter 13 cases in the Western District of Texas in the San Antonio Division, please review the terms of this Order carefully. The procedures set out herein will directly affect your practice. Please note that the procedures discussed in this Standing Order apply in the San Antonio Division only. The procedures in the Austin, Waco, El Paso and Midland Divisions, may be different and may be subject to other standing orders applicable to those Divisions. Please consult the Clerk of the Court for copies of any other applicable standing orders.

**1. ADOPTION OF CHAPTER 13 PLAN FORMAT<sup>1</sup>**

Attached as "Exhibit A" is a Chapter 13 Plan Form which shall be used by all Chapter 13 debtors in cases where the plan is filed after the effective date of this Order. The form plan may be revised periodically by the Court, including a District wide Model Plan at a future date. Any proposed changes to the Chapter 13 Plan will be sent to active bankruptcy practitioners who will have Thirty (30) days to provide comments to the Judges and the Chapter 13 Trustee. The Clerk shall make available to the public the Chapter 13 Plan Form.

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<sup>1</sup> If a model plan is adopted by the District then the District model plan shall supersede the model plan attached as Exhibit "A" of the Standing Order.

Whether or not the plan is filed with the Chapter 13 petition at the commencement of the case, the debtor shall be responsible for serving the plan on all creditors and parties in interest. A Certificate of Service must be filed with the Clerk of the Court reflecting service of the plan. The Clerk of the Court shall be responsible for serving the Notice of Commencement.

## **2. ATTORNEY FEES FOR DEBTOR'S COUNSEL**

The Court may determine and maintain a standard benchmark fee for routine business and non-business chapter 13 cases. The benchmark fee for routine non-business chapter 13 cases shall be \$3,600 and \$4,900 in a business case.

a) The following services are presumed included in the benchmark fee:

- (1) all pre-confirmation conferences with the debtor;
- (2) pre-confirmation preparation of the petition and its associated forms, schedules, statement of affairs, plan, and amendments to all such documents;
- (3) attendance at all § 341 meetings (including adjourned meetings);
- (4) attendance at confirmation and discharge hearings (including any adjourned hearings);
- (5) requests for trustee approved moratoriums; and
- (6) compliance with the requirements of §521 (excluding subparagraph f)

b) Preparation of routine motions, include the following:

- (1) motions to pay filing fees in installments;
- (2) motions to avoid liens;
- (3) motions for waiver of credit counseling;
- (4) motions for continuation of the stay under §362(c)(3)(B);
- (5) motions to extend filing or other debtor deadlines; and
- (6) any such other matter as the court may deem to be routine.

c) An attorney may, for cause shown, request additional fees for routine services as set out in sub paragraph (b) above. Any such request must be made by motion, on notice and hearing.

d) An attorney may request and obtain an award for fees for additional services rendered, on motion, notice and hearing, or in accordance with subparagraph (g) of this provision. The motion shall state the total of fees requested to date (including the base fee and any other additional fee awards), and the specific basis for the fee request. The attorney must utilize the lodestar method in determining additional fees requested including: accurate time records, hourly rates, and a description of the service provided. The motion must state how the additional fees, if awarded, shall be paid, such as: (1) at a specific amount per month; (2) in an amount necessary to complete payment

within the remaining term of the plan; (3) in full upon entry of the order if funds are available; or (4) directly by the debtor or another party.

- e) The Trustee shall make distribution of the base fee awarded in the confirmation order, from the amount received from debtor, less applicable adequate protection payments and Trustee fee, during the first four months from the date the first payment is due. The remainder of the base fee due the attorney (if any) shall be paid at the rate of \$100 per month (\$200 per month for business cases), or such additional amount as is available after payment of the scheduled monthly distributions on secured claims, until paid in full.
- f) Notwithstanding the foregoing paragraph, an attorney may receive all available funds, less trustee fees, in payment of any outstanding unpaid fee award if no secured creditors or priority creditors remain unpaid.
- g) An attorney may seek approval of additional attorney fees by Stipulation for Allowance of Additional Attorney Fees and Expenses as an Administrative Claim if such fees do not exceed \$1,000. The Stipulation must include an itemization of the fees sought and must be approved by the Chapter 13 Trustee. The Stipulation and an Order must be filed with the Court. Upon entry of the Order the Chapter 13 Trustee shall pay the allowed fees and expenses. [See Bankruptcy Rule 2002(a)(6)]

### **3. PRE-CONFIRMATION PAYMENTS**

Pre-confirmation adequate protection payments under 11 U.S.C §1326(a)(1):

- a) All pre-confirmation payments required by §1326(c) will be made by the Chapter 13 Trustee without further order of the Court. Unless the Court orders otherwise, pursuant to a motion, the monthly installments proposed by the plan will be considered to provide adequate protection to such creditor. A secured creditor may file a Motion for Adequate Protection Payment pursuant to 11 USC §363(e) if the creditor was not provided for in the plan or the creditor objects to the monthly payment proposed in the plan.
- b) To receive adequate protection payments, a secured creditor must timely file a proof of claim with the Clerk of the Court, and shall serve it on the Chapter 13 Trustee, the debtor and the debtor's attorney. The proof of claim must include evidence of its security interest. Upon receipt of the claim and absent an objection to the claim the Chapter 13 Trustee shall disburse pre-confirmation adequate protection payments commencing with the month the claim is filed. Adequate protection payments shall continue to be paid post confirmation until the commencement of the creditor's distribution proposed by the plan.
- c) If the case is dismissed prior to confirmation or converted to another Chapter, any adequate protection payments due shall be disbursed by the Trustee from funds on hand and the

balance of the funds shall be disbursed to the debtor's attorney not to exceed the balance due pursuant to the 2016 Statement and such amount shall not exceed the benchmark fee.

- d) The Trustee shall take the statutory allowed fee pursuant to 28 U.S.C. §586(e)(2) at the time payments are received ("a fee on receipts.")
- e) If the debtor fails to make the required plan payments and funds on hand are not sufficient to pay all pre-confirmation adequate protections due such payments shall be paid on a pro rata basis, with the exception of conduit mortgage payments.

#### **4. VALUATION OF COLLATERAL**

If the plan proposes to pay a secured creditor's claim based on the fair market value of the collateral, the value of collateral as set forth in the plan shall be binding on the debtor and creditor upon confirmation, unless either an objection to confirmation or a motion for valuation is filed pursuant to L. Bankruptcy Rule 3012, by the deadline to object to the confirmation of the plan prescribed by ¶15, *infra*. An objection to valuation must be specifically pled. Any objection to valuation will be heard at the confirmation hearing and no plan will be confirmed until the valuation objection is resolved. Valuation by the Court does not relieve a secured creditor from the duty to file a proof of claim in order to be paid under the plan. If a vehicle is determined to be a "910 Claim" or other personal property purchased within 1 year pursuant to 11 U.S.C. §1325(a) commonly referred to as "the hanging paragraph" the claim shall be paid in full and valuation of the collateral will not be determined at confirmation.

#### **5. OBJECTIONS TO CONFIRMATION**

A creditor objecting to confirmation of the plan must file an objection to the plan within 14 days following the conclusion of the Meeting of Creditors. Failure of a creditor to affirmatively and timely object to a proposed plan constitutes acceptance of the plan, including a secured claim, under 11 U.S.C. §1325(a)(5)(A). Objections to confirmation must be specific and cite legal authority if applicable. If an objection is not timely filed the Trustee may effectuate early confirmation by filing an Order Confirming Plan and the matter will be removed from the confirmation docket.

#### **6. GENERAL PROCEDURES REGARDING AMENDED PLAN**

If the plan is amended prior to confirmation, the debtor shall file the amended plan and shall serve a copy of such amended plan pursuant to Bankruptcy Rules 3015 and 9014; and L. Bankruptcy Rule 3015(b). A party in interest shall have 21 days from the date of filing the amended plan to file an objection to confirmation. Amended Plans must be filed and served at least 28 days prior to the confirmation hearing; however, the Court may consider de minimus, non-substantive amendments to the plan at the confirmation hearing.

## **7. DUTIES OF TRUSTEE**

- a) Provided an objection to confirmation has not been timely filed the submission of an Order Confirming Plan prior to the confirmation hearing shall be deemed a recommendation as to confirmation by the Trustee so as to effectuate early confirmation of the plan.
- b) Notice of Intent to Pay Claims. After the deadline for filing proofs of claims has expired, the Trustee shall file a Notice of Intent to Pay Claims and shall serve a copy on all creditors and parties in interest. If a party in interest believes the Notice of Intent to Pay Claims is incorrect the party must file an objection to the Notice of Intent to Pay Claims within 21 days with a request for hearing.

## **8. GENERAL PROCEDURES REGARDING MOTIONS TO MODIFY PLANS (INCLUDING MOTIONS FOR "MORATORIUM"), MOTIONS TO SELL PROPERTY, AND MOTIONS TO INCUR DEBT**

- a) All post-confirmation Motions to Modify Chapter 13 Plan (other than modifications which increase plan payments without extending the plan term; and modifications in response to a Trustee's Motion to Dismiss), Motions to Sell Property, and Motions to Incur Debt must:
  - (1) comply with Bankruptcy Rule 3015(g), L. Bankruptcy Rules 3015(d) and 9014; and
  - (2) unless a hearing is specifically requested, contain negative notice language affording a party in interest 21 days to file objections to the proposed relief.
- b) If a Motion to Modify Chapter 13 Plan is filed by a debtor: (1) contemporaneously therewith and in accordance with LR 3015(d), the debtor must file amended Schedules I and J; (2) provide proof of current income to the Trustee within 7 days of filing the Motion; and (3) the modified plan must include both the number of months the plan will extend, if at all, from the date of plan confirmation and the month in which the payment is to resume under the modified plan.
- c) Special procedures apply to motions to modify a plan filed in response to a Trustee's Motion to Dismiss. See ¶9, *infra*.

## **9. TRUSTEE'S MOTIONS TO DISMISS CASE ("TMTD") AND DEBTOR'S MOTIONS TO MODIFY IN RESPONSE TO THE TRUSTEE'S MOTION TO DISMISS**

- a) A TMTD shall be filed with 21 day negative notice language. The notice shall provide a hearing date which will be set only if a response or motion to modify in response is timely filed. If neither a response nor motion to modify in response is timely filed the TMTD will be granted.

**TRUSTEE'S MOTION TO DISMISS CASE**

**THE DEBTOR, OR PARTY IN INTEREST, MUST FILE A WRITTEN RESPONSE OR A MOTION TO MODIFY PLAN IN RESPONSE WITHIN TWENTY-ONE (21) DAYS OF THE DATE OF SERVICE OF THIS MOTION. FAILURE TO DO SO WILL RESULT IN THE ENTRY OF AN ORDER TO DISMISS CASE WITHOUT A HEARING. IF A RESPONSE OR A MOTION TO MODIFY PLAN IN RESPONSE IS TIMELY FILED A HEARING WILL BE HELD ON [INSERT DATE, TIME AND LOCATION].**

- b) If a response is filed it must be pled with specificity as to the means of curing the alleged default. Non-responsiveness of the debtor is not a sufficient basis to request a hearing to circumvent a default order as to the TMTD.
- c) A motion to modify in response to a TMTD must comply with ¶18(b), *supra*. A creditor must file a written objection within 21 days from the date of service of the motion. The Trustee is not required to file a written objection in order to preserve her right to object. A motion to modify shall be served pursuant to Bankruptcy Rules 3015(g) and 9014; and L. Bankruptcy Rule 3015(d).

The debtor's motion to modify in response to a TMTD must include the following title and prominent 21 day negative notice language:

**DEBTOR'S MOTION TO MODIFY PLAN IN RESPONSE  
TO TRUSTEE'S MOTION TO DISMISS CASE**

**IF YOU OBJECT TO THIS MOTION TO MODIFY PLAN, YOU MUST FILE A WRITTEN OBJECTION WITH THE CLERK OF THE COURT WITHIN TWENTY-ONE (21) DAYS OF THE DATE OF SERVICE OF THIS MOTION. IF AN OBJECTION IS FILED, THEN A HEARING WILL BE HELD [INSERT DATE OF HEARING ON TMTD] IN CONJUNCTION WITH THE TRUSTEE'S MOTION TO DISMISS. FAILURE TO FILE A TIMELY OBJECTION AND TO APPEAR AT THE HEARING MAY RESULT IN THE COURT'S GRANTING THE RELIEF REQUESTED.**

- d) If a Motion to Modify Plan, in response to a TMTD is timely filed and the modification adversely affects a party in interest, and the TMTD will be heard in less than 21 days then the TMTD hearing shall be adjourned for a period not less than 21 days to allow for possible objections to be filed.
- e) If a Motion to Modify Plan in Response to Trustee's Motion to Dismiss fails to contain the foregoing title, the Court may dismiss the debtor's motion to modify for failure to

comply with these procedures and the Trustee's Motion to Dismiss shall be granted without further hearing.

#### **10. REQUEST FOR FREE MORATORIUM / DEBTOR REFUND**

The Trustee is, by this Order, authorized to approve a one-time moratorium on plan payments or refund of a plan payment(s) for a period not to exceed 60 days. The debtor shall submit a written request to the Trustee setting forth the basis for the request and will provide any supporting documentation. The request shall be submitted directly to the Trustee, and need not be filed with the court or served on creditors, except for a secured creditor receiving pre-confirmation adequate protection payments. No order is required for such a moratorium or refund. If the Trustee denies the request, then the debtor may file an amended plan or a motion to modify plan. The purpose is to assist the debtor in the performance under the plan and to meet emergency situations that may arise during the term of the plan. The plan duration shall be extended to the extent necessary to repay such a moratorium or refund or the debtor shall file an amended plan or a motion to modify the plan but the term may not be extended beyond 60 months from confirmation.

#### **11. TAX RETURNS AND TAX REFUNDS<sup>2</sup>**

The plan or confirmation order shall contain the following language:

If this chapter 13 plan provides for a dividend of less than 100% to allowed unsecured creditors, the debtor is directed to pay into the plan all disposable income, as defined by 11 U.S.C. §1325(b)(1)(B) and (2), for the term of the plan, including income tax refunds received during that period. The debtor is directed to maintain the same number of tax exemptions for withholding as when the case was filed, except as required by a change in dependents allowance(s), marital status, or to prevent post petition income tax liabilities. Should the debtor change the withholding exemptions, the debtor must amend Schedules I and J within 30 days, specifically noting the basis for the amendment. If Schedule I (Statement of Current Income) includes annual tax refunds as 1/12 prorated income, the debtor is directed to pay into the plan any amount that exceeds the annualized amount set forth on Schedule I. The trustee shall have the discretion to increase the percentage dividend to the unsecured creditors as a result of additional payments made under this provision. The trustee shall have the discretion and authority to determine whether tax refunds are disposable income, provided that the debtor submits to the trustee supporting documentation and a Stipulation to Retain Tax Refund, which the debtor shall file with the Court. The debtor reserves the right to file a motion to retain the tax refund.

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<sup>2</sup> If a model plan is adopted by the District and the District model plan includes a provision relating to tax returns and tax refunds the District model plan shall supersede this paragraph of the Standing Order.

## **12. DISCHARGE**

- a) After completion of the Plan and an audit by the Trustee, the Trustee shall file a Motion to Enter Discharge, with 21 day negative notice language. If no objection to the Trustee's motion is filed the discharge hearing may be waived by the Court and a discharge entered.
- b) If, for some reason, the Trustee does not believe that the debtor qualifies for a discharge, a Motion to Deny Discharge or a Motion to Dismiss shall be filed.

## **13. SUMMARY DISMISSAL**

- a) The Court may dismiss a Chapter 13 case upon certification from the Chapter 13 Trustee, of the debtor's failure to appear at the first meeting of creditors, when such nonappearance has not otherwise been excused by an order of this Court.
- b) The Court may dismiss a Chapter 13 upon certification from the Chapter 13 Trustee, of the debtor's failure to file the Plan, Schedules of Assets and Liabilities, Statement of Financial Affairs, and such other documents required to be filed pursuant to §521(a)(1) within the period prescribed by the Bankruptcy Rules or an extension of time by an order of this Court.
- c) The Court may, at the confirmation hearing and upon request of the Chapter 13 Trustee or a party in interest, dismiss a Chapter 13 case for failure of the debtor to obtain confirmation of the Chapter 13 plan.
- d) The Court, may dismiss a Chapter 13 case upon certification from the Clerk of the Court or the Chapter 13 Trustee, with notice to the debtor and/or debtor's attorney and a 10 day opportunity to cure, for the debtor's failure to pay filing fees (including installment filing fees) when due.

**IT IS SO ORDERED**