

**Thomas H. Billingslea, Jr.**  
CHAPTER 13 STANDING TRUSTEE

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## **Case Administration Guidelines**

We recognize that your time is highly valuable and a source of revenue. In order to facilitate the 341(a) meetings and to minimize the need to continue the meetings, please be aware of the following information and guidelines:

### **Guidelines for Pre-Confirmation and Post-Confirmation Chapter 13 Plan Modification Forms**

These forms were implemented in mid March of 1998. They are intended to be used in place of interlineation of a plan. As such, the form should only be used in the same situations where interlineation without notice is appropriate. Notice is not required to change the terms of a plan when the modification benefits all parties. If the proposed modification will adversely affect any party, a new modified plan must be filed and served in accordance with local rules.

#### **Examples when a modification will benefit all parties include but are not limited to:**

(i) increasing the plan payment; (ii) increasing the percentage to be paid on allowed unsecured claims; (iii) providing interest to be paid on all unsecured claims; and, (iv) increasing the interest rate to a secured claim where the percentage to be paid on unsecured claims was (0%) zero.

#### **Examples when a modification will not benefit all parties include but are not limited to:**

(i) decreasing the plan payment or percentage to unsecured claims; (ii) excluding a claim from the plan; (iii) adding a claim to any numbered paragraph of the plan where the plan provides any distribution to one or more unsecured claims; and, (iv) any change which will result in extending the commencement of distributions to any other claims.

### **Policy on Barebone Filings**

When the Chapter 13 Plan is filed concurrently with the Petition, the Chapter 13 Trustees (i) serve the notice to the creditors that a Petition has been filed; (ii) summarize the Plan; (iii) indicate the 341A Hearing date; and (iv) provide a proof of claim form for each creditor.

However, the same is not true when the Petition is filed first and the Plan is filed subsequently. Under those circumstances, the Trustees' offices immediately send notice that a petition has been filed. When the Plan is subsequently filed, it is up to the Debtor or his attorney to insure service of: ( 1 ) a copy of the Plan; (2) Notice of a pending 341 (a) hearing; and (3) a Proof of Claim upon all creditors at least 28 days prior to the scheduled 341 hearing date. A proof of service will need to be submitted to the Trustee's office prior to the 341(a) hearing.

As numerous reported cases have made it clear, the Debtor bears the burden of proof that a plan is being proposed in good faith. A debtor who does not wish to notice a plan to parties in interest is, in both offices' view, not acting in good faith.

### **Calculation of First Payment Date in Barebone Filings**

With respect to a barebones filing, the first payment is due the earlier of (a) 30 days after the plan is filed or (b) forty-five days from the date of the petition. The debtor cannot obtain a grace period by filing the plan late.

### **Pay stubs - Notation of Pay Period**

As you know, a recent paycheck stub is required of all debtors with W-2 incomes. Unless it is clear from the documents, please indicate on the paycheck stub whether the pay period is weekly, bi-weekly, bi-monthly, etc.

Also, when the paycheck stub does not allow for a reasonable year-to-date income calculation, please submit the prior year's W-2 or tax return to the Trustee.

### **Voluntary Deductions (Savings Plans)**

Voluntary deductions in 401(k) savings plans are considered discretionary income.

### **Recreational Expenses in Zero or Nominal Percentage Plans**

Recreational expenses in zero or nominal percentage plans are highly scrutinized.

### **Excluding a Creditor**

If you properly exclude a creditor under Paragraph 12, the Trustee will want a step-up in Plan payment after the obligation to such excluded creditor is paid.

### **Policy on Tax Refunds**

The Chapter 13 Plan provides that the Trustee can receive payments from the debtors "or any entity from whom debtor(s) receive income." Therefore, if a taxing agency sends refunds to the Trustee, debtors should not expect these funds to be refunded to them. Additionally, the receipt and deposit of debtor's tax refund does not substitute for the normal required monthly payments specified in the plan.<sup>1</sup>

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<sup>1</sup>Although the Trustees may apply tax refunds they receive towards the Plan, in general, it is Mr. Billingslea's policy to forward to the debtor any refunds for older cases (Chapter 13 Plans revised prior to January 1995.)

**Tax Questions**

Should you need to contact someone at the IRS to discuss your case, please take note of the following information:

Address:                   Internal Revenue Service  
                              Special Procedures Branch Insolvency Unit 2  
                              880 Front Street  
                              San Diego, CA 92101-8869

Contact Person:       For Last Names beginning with A-F contact Ms. Jan Karns  
                              For Last Names beginning with G-N contact Mr. Ron Adams  
                              For Last Names beginning with O-Z contact Mr. Jim Maloney

Phone Number :       (619) 557-5930  
Fax Number :         (619) 557-5186

**Self-Employed Individuals**

It is the debtor's responsibility to provide adequate proof of income information. A self-employed individual should provide at least a three month Profit and Loss Statement. This Profit and Loss Statement should indicate tax withholdings unless the taxes are listed as a budget expense in Schedule J. The most recently filed federal tax return will usually be required as well. Last year's tax returns and the last estimated tax return will always be required if unpaid taxes are scheduled by debtor. If tax debts are over \$7,500.00 then the last two years of tax returns will be required as well as the last two estimated tax returns.

In certain cases the Trustee may ask extensive questions from business owners including, but not limited to questions asked on the "Questionnaire for Chapter 13 Business Owners." See the following example.

### Questionnaire for Chapter 13 Business Owners

Print Name of Debtor: \_\_\_\_\_ Case No.: \_\_\_\_\_

Print Name of Business: \_\_\_\_\_

List separate Federal Identification Number for business, if applicable: \_\_\_\_\_

1. Do you own your own business as a sole proprietor? \_\_\_\_\_  
Do you have any partners? \_\_\_\_\_

Is your business incorporated? \_\_\_\_\_

2. How many employees do you have? \_\_\_\_\_

3. List any years that you have unfiled federal income tax returns. \_\_\_\_\_  
List any years that you have unfiled state income tax returns. \_\_\_\_\_

List any quarters that you have unfiled payroll tax returns. \_\_\_\_\_

List any periods that you have unfiled sales or used tax returns. \_\_\_\_\_

Did you have payroll tax liability (IRS form 940/941) at the time you filed your  
bankruptcy? \_\_\_\_\_

4. Have you set aside reserve for post petition federal and state estimated tax liabilities including  
federal self-employment tax? bankruptcy? \_\_\_\_\_

Please establish a separate bank account for your post petition tax reserves.

5. Do you have business assets with a gross fair market value in the aggregate over \$100,000? \_\_\_\_\_

If so, do you have a replacement cost property damage policy and liability policy in effect at this  
time? \_\_\_\_\_. List the name of your Worker's Compensation Insurance Carrier \_\_\_\_\_

Have you pledged your receivables, rents, profits or other cash as collateral for any loans? \_\_\_\_\_

What would you estimate the market value of your inventory to be? \$ \_\_\_\_\_

What would you estimate the market value of your accounts receivable to be? \$ \_\_\_\_\_

List the names of the banks where you maintain accounts \_\_\_\_\_

6. List the Licenses necessary to operate your business \_\_\_\_\_

7. During the last three (3) months did a book keeper or an outside accountant prepare  
monthly financial statements? \_\_\_\_\_ (Please check off which of the below apply)

\_\_\_\_\_ Profit and Loss Statement \_\_\_\_\_ Balance Sheets

8. Do you use any hazardous waste or toxic materials in your business? \_\_\_\_\_

**I declare under the penalty of perjury that the foregoing is true and correct.**

Dated: \_\_\_\_\_      \_\_\_\_\_      \_\_\_\_\_  
   Debtor's Signature                      Co-Debtor's Signature