

**OFFICE OF THE TRUSTEE  
CHAPTER 13  
600 Vine, Suite 2200  
CINCINNATI, OHIO 45202  
(513) 621-4488  
(513) 621-2643 Facsimile**

**MARGARET A. BURKS  
Ch. 13 Trustee  
mburks@cinn13.org**

**CHAPTER 13 PRACTICE  
AND  
PROCEDURE MANUAL  
for  
CINCINNATI**

**Amended Dec. 2011**

This Manual has been designed to assist Counsel for Debtors and Creditors with their Chapter 13 practice. The Manual will be updated as the practice of Chapter 13 dictates. The information in this Manual cannot be construed as legal advice.

## Contact Information and Websites

### Phone numbers:

(513) 621-4488 – main number

(513) 621-4495 – for attorneys only

(513) 373-0489 – Creditor's meeting room at 36 E. 7<sup>th</sup> Street, Suite 1630, Cincinnati, Ohio 45202.

The Chapter 13 Web Site address is: [www.13network.com](http://www.13network.com)

Local Rules for the Southern District of Ohio can be found at: [www.ohsb.uscourts.gov/LBRFP.htm](http://www.ohsb.uscourts.gov/LBRFP.htm)

Case information is also available at National Data Center, Inc. ("NDC"): [www.13datacenter.com](http://www.13datacenter.com)

### Staff Email addresses:

1. **Julie Wuest** – Financial Analyst and Manager [jwuest@cinn13.org](mailto:jwuest@cinn13.org)
2. **Ethelyn Gover (Cookie)** – Floor Supervisor/ Case Auditor [egover@cinn13.org](mailto:egover@cinn13.org)
3. **Frank Dicesare** – Staff Attorney [fdicesare@cinn13.org](mailto:fdicesare@cinn13.org)
4. **Karolina Perr** – Staff Attorney [kperr@cinn13.org](mailto:kperr@cinn13.org)
5. **Fern Jones** – Computer Analyst/Manager [fjones@cinn13.org](mailto:fjones@cinn13.org)
6. **Allison Atkinson** – Assistant Computer Analyst [aatkinson@cinn13.org](mailto:aatkinson@cinn13.org)
7. **Martin Schneider** – Assistant Paralegal [mshneider@cinn13.org](mailto:mshneider@cinn13.org)
8. **Karen Reed** – Confirmation Clerk/Assistant Floor Supervisor [kreed@cinn13.org](mailto:kreed@cinn13.org)
9. **Celia Martin** – Case Auditor –341 Team [cmartin@cinn13.org](mailto:cmartin@cinn13.org)
10. **Shanna Martin** – Paralegal/Trustee Legal Assistant [smartin@cinn13.org](mailto:smartin@cinn13.org)
11. **Deborah Brassie** – Claims Supervisor [dbrassie@cinn13.org](mailto:dbrassie@cinn13.org)
12. **Linda Hillner** – Paralegal [lhillner@cinn13.org](mailto:lhillner@cinn13.org)
13. **Kathy Hipple** – Dismissals Clerk [khipple@cinn13.org](mailto:khipple@cinn13.org)
14. **Alicia Rieseke** – Case Auditor/Posting Clerk [arieske@cinn13.org](mailto:arieske@cinn13.org)
15. **April Marshall** – 341 Noticing Clerk /Case Review [amarshall@cinn13.org](mailto:amarshall@cinn13.org)
16. **Mandy Meyer** – Assistant Financial Analyst [mmeyer@cinn13.org](mailto:mmeyer@cinn13.org)
17. **Amy Irwin** – Assistant Paralegal [airwin@cinn13.org](mailto:airwin@cinn13.org)
18. **Megan Bailey** – Claims Examiner [mbailey@cinn13.org](mailto:mbailey@cinn13.org)
19. **Tina Hall** – Claims Examiner [thall@cinn13.org](mailto:thall@cinn13.org)
20. **Alex Eddins** – 341 Noticing Clerk/Case Review/Claims Clerk [aeddins@cinn13.org](mailto:aeddins@cinn13.org)
21. **Lia Conrady** – Claims Examiner [lconrady@cinn13.org](mailto:lconrady@cinn13.org)
22. **David Vandiver** – Instructor – Debtor Education Contact Shanna or Amy

## **WHAT'S NEW!**

### **1. ABOVE MEDIAN DEBTORS**

#### **a. Calculating the DMI percentage required to be paid to unsecured creditors.**

##### Prior to confirmation of plan.

Complete means test - Form B22(c). Determine line 59. If line 59. is negative then calculation = \$0

If POSITIVE number multiply line 59. times 60 months = \$X

Divide \$X by unsecured pool of creditors (total of Sch F and unsecured portion of Sch D = \$Y)

\$X divided by \$Y = % percentage to be proposed to be paid to unsecured creditors.

If \$X is greater than \$Y then the plan percentage should be 100%.

If your plan is proposing *less than* this percentage, then you need to allege Lanning circumstances in your Chapter 13 plan and file annual status reports regarding income by April 30<sup>th</sup> each year.

(See no. 16. in the What's New section below). ***Note: Plan length must be 60 months and plan payments must be at least the available disposable income at the bottom of Schedule J. budget with reasonable expenses.***

##### After Confirmation and after claims bar date.

Multiply line 59. times 60 months = \$X

Divide \$X by total amount of unsecured claims "actually filed" by Creditors = \$Z

\$X divided by \$Z = % percentage for DMI calculation **after** claims filed

If DMI calculation percentage is higher than plan percentage and our office is auditing case, you may receive an email request for an agreed order to increase plan percentage or request that you file a Motion to Modify Plan if increased percentage is not feasible for debtor during the 60 months.

### **2. Plan falling under 36 months required by 11 U.S.C. § 1322(d)**

If the plan is determined to be 'under 36 months' the Trustee will serve a notice upon debtor and Counsel and increase the percentage. Our office routinely sends emails to counsel requesting an Agreed Order to increase plan percentage to meet the 36 month requirement. Our office adds tax refunds, bonuses, commissions and any additional funding to the plan to be disbursed to creditors when determining the plan percentage for any below 36 month plan.

Therefore, these payments are considered additional funding to plan up and above the required plan funding and may increase the plan percentage as a result of the total amount of claims filed, disallowed or otherwise not filed by creditors.

*If you do not agree with the percentage increase you should let our office know when email is sent, otherwise the plan percentage will be increased by filed Notice with Court.*

### **3. Debtor Above Median and Plan completing in less than 60 Months - In re: Baud**

If the plan is determined to be above median and 'under 60 months' the Trustee will serve a notice upon debtor and Counsel and increase the percentage. Below is a sample Email to Counsel regarding need to increase percentage and request for counsel to take some action if they do not agree to the increase.

Case Name  
Dear Counsel:

We have reviewed this Case and the plan is currently projected to complete in less than 60 months.

UNLESS we hear otherwise from you- we will file a Notice within 14 days from today adjusting the plan percentage. We plan to increase the plan percentage from 1% to 100%. Please review the large claims that haven't been filed.

We have calculated the plan percentage taking into consideration the following factors:

1. The requirement that at least 60 monthly plan payments must be made;
2. Taking into consideration the total amount paid to date; and
3. Taking into consideration all claims that have been filed to date.

This calculation does not include the following:

- a. Any additional attorney fees which you may request;
- b. Any proofs of claim for deficiency balances or otherwise that may be filed in the future; or
- c. Any objections to claims that have not been filed.

### **4. 11-12017 PHILE decision (J. Buchanan) – DSO Obligation by Adversary.**

Do not include language which proposes a determination that former Divorce obligation is Dischargeable in paragraph 30. of Chapter 13 plan. Dischargeability is to be determined by an Adversary proceeding.

### **5. See Plan Addendum -Paragraph 30. Language attached hereto – DSO removed.**

This is suggested language for clarity when certain situations arise (i.e. avoidance of liens, mortgages, adversary proceedings, Relief from Stay). If Creditors object, then both sides can work out the terms for resolution. If a matter is to be determined post confirmation (i.e. lien avoidance by adversary), case law requires that the matter be reserved for further determination.

### **6. New Federal Rules of Bankruptcy Procedure Effective December 1, 2011**

**Rule 3001** – specifies supporting information required to be filed with a proof of claim

**Rule 3002.1** – Information which Creditor must be provided to Trustee and Debtor regarding cure of arrears and consequences for not providing such information. Notice which Creditor must provide for payment changes, additional post petition charges, fees, etc.

**Amendments to Official Form 10** – Official Form for Notice of payment changes, etc.

**See Forms:** Mortgage Proof of Claim, Notice of Mortgage Payment Change, etc. attached hereto

**7. New Local Bankruptcy Rules Effective December 1, 2011:**

Go to Court's Website for complete copy of redlined version.

Send your suggestions to the following:

[mburks@cinn13.org](mailto:mburks@cinn13.org); [carolyn\\_buffington@ohsb.uscourts.gov](mailto:carolyn_buffington@ohsb.uscourts.gov); [Edward.Boll@lsrlaw.com](mailto:Edward.Boll@lsrlaw.com)

**Applicable portions of New Local Bankruptcy Rules of interest in Chapter 13 are underlined below with Trustee's comments in bold.**

2016-1 COMPENSATION OF PROFESSIONALS

(b) Fees Through Confirmation in Chapter 13 Cases.

(2) Itemization and Hearings.

(A) Hearing and Itemization Not Required. Fee applications or disclosures may be allowed up to \$3,500 ("unitemized fee") without actual hearing or specific itemization for services rendered from initial interview through confirmation of the plan. In addition, the unitemized fee shall include the duties listed below, whether performed preconfirmation or postconfirmation:

(x) preparation and filing of objections to non-real estate and non-tax claims exclusive of any hearings;

**So counsel can now request itemized fees for complicated/evidentiary claims objections.**

3001-1 CLAIMS AND EQUITY SECURITY INTERESTS — GENERAL

(d) Chapter 12 and 13 Cases. Any unsecured creditor and any creditor asserting secured status as to property of the debtor or the estate, shall, in order to receive payments under a confirmed plan, file a proof of claim. A secured creditor's proof of claim shall include appropriate documentation evidencing the creditor's secured status.

(1) Mortgage Claims. If regular monthly payments to a mortgage creditor are to be disbursed by the Trustee, or there is an arrearage as of the petition filing date, the mortgage proof of claim shall include a ~~completed LBR Form 3001-1 as an attachment~~ Official Form B 10 (Attachment A) Mortgage Proof of Claim Attachment. This form is required whether the security interest is in the debtor's principal residence or other parcel of real property.

3015-1 CHAPTER 13 — PLAN

(d) Treatment of Real Estate Mortgages.

(1) Method of Payment. Unless otherwise ordered by the court, regular monthly payments on a real estate mortgage pursuant to § 1322(b)(5) of the Code shall be disbursed by the Trustee if the obligation is in arrears as of the petition filing date.

**If mortgage is in arrears as of the petition filing date, then the regular monthly payment shall be disbursed by the Trustee.**

**Trustee is stressing Conduits as required by Local Rule, especially if you have a mortgage modification. Trustee's records will HOLD UP long after the 13 case is completed.**

**Trustee files a motion to deem current at the end of the case. This protects Debtors and saves attorneys time after the case is over. It also saves on relief from stay hearings and saves homes from default if a good payroll deduction is available.**

**Please object to mortgage claims (arrearage, monthly payments and changes thereto as well as future additional fees and costs) when needed and don't forget our two new helpful Local Rules forms Attached above.**

(2) Mortgage Proof of Claim. If regular monthly payments to a mortgage creditor are to be disbursed by the Trustee, or there is an arrearage as of the petition filing date, the mortgage proof of claim shall include ~~LBR Form 3001-1 as an attachment.~~ Official Form B 10 (Attachment A) Mortgage Proof of Claim Attachment. This form is required whether the security interest is in the debtor's principal residence or other parcel of real property.

(4) Change in Regular Monthly Payments to Mortgage Creditor. If there is any change in the regular monthly payment, the mortgage creditor shall file with the court ~~an amended proof of claim or notice of payment change (LBR Form 3015-1(d)(4))~~ Official Form B 10 (Supplement 1) Notice of Mortgage Payment Change as an attachment to an amended proof of claim, and serve the debtor, debtor's attorney and chapter 13 Trustee no later than ~~thirty (30) twenty-one (21) days~~ prior to the effective date of the change. This form is required whether the security interest is in the debtor's principal residence or other parcel of real property.

3015-2 CHAPTER 13 — AMENDMENTS TO PLAN AND MODIFICATIONS TO PLAN

(a) Preconfirmation Amendments.

(1) An amended plan filed prior to confirmation shall clearly show any changes from the prior plan by reflecting the changes in bold, italics, strikethrough, or otherwise.

3015-3 CHAPTER 13 — CONFIRMATION

(d) Confirmation Orders. The trustee shall prepare the confirmation order. The clerk shall serve a copy of the entered confirmation order on the debtor, the debtor's attorney, the trustee, and the United States trustee, and all creditors and parties in interest.

**8. Mortgage Loan Modifications:**

The U.S. Trustee has promulgated an information sheet which we distribute to Debtor(s) at 341 Meetings.

**Suggested language for paragraph 30. of plan if loan modification is in process at time of bankruptcy filing.**

**Pending Loan Modification:**

Use following language in paragraph 30 for pending Loan Modification:

Debtor(s) have completed and submitted paperwork for a mortgage modification to Creditor (Insert name of Creditor) regarding the real property located at: (insert address or description of property). Trustee will not pay on any mortgage arrearage claim to this Creditor until or unless an amended plan or Motion to Modify plan is filed with the Court directing the Trustee to do so.

Debtor(s) will continue to make the ongoing monthly mortgage payment directly to Creditor OR provide for the Trustee to make the monthly mortgage payment to Creditor through the plan beginning with the month of \_\_\_\_\_, 20\_\_.

Debtor(s) will file a Status Report, Agreed Order and/or submit an Application to Incur Debt to Trustee and file a Motion to Modify Plan no later than **six months** from date of confirmation to indicate the status of the pending loan modification. If the loan modification is successful - the plan continues as confirmed.

**If the loan modification is still in process six months after confirmation, the Status Report shall indicate the status and Trustee will maintain status quo of confirmed plan until or unless a motion to modify plan is filed or other agreed order is entered into between the parties. The status report should indicate a date certain for a follow up status report.**

If the loan modification is not successful, then Debtor must indicate such in the filed Status Report and either file a Motion to Modify plan to incorporate funding for the mortgage arrears directing the Trustee to commence payment on such arrears OR provide for surrender of the real property. Creditor shall have 270 days from the date of the filed Status Report to file any deficiency claim which will be paid as a general unsecured claim, if timely filed. If the deficiency claim is not timely filed, then the claim shall be deemed disallowed and discharged upon completion of Chapter 13 Plan and entry of Discharge Order.

**Trustee requests that you follow this procedure to enter into loan modifications:**

**DEBTOR(S)' COUNSEL:**

- a. Obtain a copy of the written Loan Modification Agreement from Creditor to confirm how the arrears will be treated (either continue to pay through Trustee or pay at end of loan or combination of both.)
  
- b. Submit an Application to Incur Debt with Trustee requesting approval to pay on the new loan along with a copy of the loan modification agreement. Spell out the terms and conditions in the application. "Specifically" state how the plan will be affected or NOT going forward.

c. File a Motion to Modify plan if the terms of the plan are being affected to state how the mortgage payments and/or prepetition/post petition mortgage arrears will be paid going forward and direct Trustee to stop payment on prepetition arrears if the loan modification puts the arrears at the end of the loan. Include the name of the Mortgage Creditor. Include the dollar amount of any postpetition arrearages being added to the plan.

d. File Amended schedules I & J with proposed new mortgage payments and current budget.

CREDITOR(S)' COUNSEL:

a. The Trustee requests that the above procedure be followed rather than a Motion being filed by Creditor with the Court.

b. If the all mortgage arrears are being put to the end of the loan, Mortgage Creditor should NOT amend or withdraw its prepetition mortgage arrearage claim, because the Motion to Modify Plan will give Trustee direction to stop payment on the claim.

c. If post petition mortgage arrears are being added to the Plan, Mortgage Creditor should file a supplemental proof of claim indicating the total amount to be added to the plan with appropriate itemization of payments, fees and costs.

NOTE:

**For trial period/temporary loan modifications lasting a few months (ie. HAMP/HAMF), an Agreed Order may be entered into between Creditor, Debtor and Trustee to outline the terms of the temporary/trial period and direct Debtors' counsel to take the steps outlined above once the trial period is over and permanent loan modification terms are offered by the Creditor.**

See our web site for these forms:

Application to Incur Debt, Motion to Modify Plan, Mortgage Arrearage Breakdown Attachment

**9 . Plan Form and Content:**

a. Please use Plan Form Amended December 2011 and available on Trustee website.

b. Trustee's fee is 3.9 %, but use 5% when calculating amount needed to fund your plan so you leave room for unexpected events.

c. Utilize the reasonable approach:

If a case is above median income, the first step to determining Plan length is to multiply line 59 of the means test times 60 months (disposable income amount).

Case must also meet the liquidation analysis.

Schedule I and J must be reviewed. The plan payment is determined by Schedule J, but case must pay enough to meet both liquidation and disposable income amounts.

Plan length must be 36 months at a minimum for below median case but no longer than 60 months. Plan length must be 60 months for above median case. This applies even if Line 59 is negative. Plan length may be less than 36 months or 60 months only if 100% is being paid to unsecured creditors.

- d. Trustee suggests all mortgage payments be paid through the plan if payments are delinquent at the time of filing.
- e. Unless otherwise ordered by the Court all vehicle payments, whether lease or loan, shall be made by the Trustee. LBR 3015-1(c)(2)
- f. The plan should specify whether executory contracts such as gym memberships, cell phone contracts, timeshare maintenance fees are to be assumed or rejected by the Debtor(s). If a leased vehicle is being assumed the plan should specify the month and year when Trustee will **begin** disbursement on the lease and the month and year when the **last** lease payment is to be paid at the expiration of the lease. If Trustee is to pay the car lease payments prior to confirmation then the plan should provide for Adequate protection payments to the Creditor. Trustee will pay prior to Confirmation, provided Creditor has filed a Proof of Claim.
- g. The plan should specify treatment for payment of student loans by indicating either of the following:
  - Student Loans shall be paid the same plan percentage as other general unsecured creditors,
  - Student Loans are in deferment or forbearance and shall survive the discharge,
  - Student loans are being paid directly outside the plan by nonfiling codebtor,
  - Student loans are to be paid in full to protect nonfiling cosigner with specific interest amount or with no interest.
- h. Paragraph 30 of Plan should contain all provisions which deviate from the Trustee's Plan Form dated December 2011. Trustee also requests that you utilize "suggested language" in paragraph 30, which is attached hereto and available on the Trustee's website when surrendering real or personal property, avoiding mortgages or judgment liens, providing for adversary proceedings and other special provisions.

**10. Documents are frequently missing at 341 Meetings** - See required list at the end of this Manual.

**REMINDER - Requirements for Adjourned 341 Meetings:**

If you only have one or two cases, you do **not** need to attend the adjourned docket, IF YOU FOLLOW THIS PROCEDURE.

Please email the following documents to: (Please do not fax or send regular mail.)

[airwin@cinn13.org](mailto:airwin@cinn13.org), [mburks@cinn13.org](mailto:mburks@cinn13.org), [fdicesare@cinn13.org](mailto:fdicesare@cinn13.org), [kperr@cinn13.org](mailto:kperr@cinn13.org):

A copy of the Trustee's Report in .pdf format with list of requested documents in the body of the email that you send.

A copy of the documents requested in .pdf format.

Any documents that are required to be filed with the Court **MUST** be filed prior to sending Trustee a copy.

**The above must be emailed by the Wednesday before the Monday continued 341 docket and the Monday before the Thursday continued 341 docket.**

We will review and let you know if you must attend.

If you don't hear from us, please follow up by email or phone.

If you get no affirmative response, please appear with the documents on the adjourned date.

If you have more than 2 cases, you should appear at the continued 341 meeting date.

**11. Cases Converted from Chapter 7**

Debtor(s) who convert their cases from Chapter 7 either voluntarily or by Agreed Order with the U.S. Trustee's office should keep in mind the following should occur within thirty (30) days of the date of the conversion and/or entry of Agreed Order to Convert:

- a. Amended Schedules, Chapter 13 plan and Liquidation Analysis must be filed with the Court.
- b. The first plan payment should be tendered to the Trustee's lockbox.

Also CMI Ledger, pay advices and copies of tax returns should be emailed to the following: [GEN.order3@cinn13.org](mailto:GEN.order3@cinn13.org) at least seven(7) days prior to the date for the 341 Meeting pursuant to LBR 4002(1)(b). It is not necessary to file a Certification of Service of pay advices with the Court.

**12. Business Cases**

Schedule a Business meeting with Staff attorney PRIOR to 341 Meeting date.

If Debtor(s) are engaged in any form of self employment (D/B/A, daycare, insurance sales, real estate commissions, LLC., partnership, separate corporation, even former business winding down, etc.) please contact our office to schedule a business meeting PRIOR to the date of the 341 meeting. Email the following person(s): [lhillner@cinn13.org](mailto:lhillner@cinn13.org), Trustee [mburks@cinn13.org](mailto:mburks@cinn13.org), Staff Attorneys [fdicesare@cinn13.org](mailto:fdicesare@cinn13.org) and [kperr@cinn13.org](mailto:kperr@cinn13.org) with your request. You will be given a few dates and times when a Staff Attorney is available to meet with you.

The Debtor(s) MUST attend the meeting and you MUST bring CMI ledger with 6 months of Profit and Loss statements and at least the last 2 years of tax returns.

File Annual Status Reports on Business Status report form.

The Trustee is eliminating the necessity of filing quarterly profit and loss statements and going to an Annual Business Status report, which should be completed and FILED with the Court no later than APRIL 30<sup>th</sup> each year. The form is available on the Trustee's website. Debtor(s) should bring to you a copy of the filed federal tax return and counsel is expected to review the tax return and complete the Business Status Report with assistance from Debtor(s). If the Status Report is not timely filed or additional information requested provided to the Trustee both counsel and Debtor(s) MUST appear at a Business meeting to be held in the Trustee's office each October.

Trustee reserves the right to request additional reporting and/or documentation on less than an annual basis if necessary for administration of the case.

**13. Change in Monthly Mortgage Payments Paid by Trustee:**

If there is a change in the monthly mortgage payment required to be paid by the Trustee, Creditor must file a Notice of Payment Change with the Court. See NEW Federal Form for Notice of Mortgage Payment Change (Official Form 10 Supplement 1). Also See [www.13network.com](http://www.13network.com). Trustee has incorporated this form into paragraph 11. of the Form Plan Amended December 2011.

**14. Domestic Support Obligations (DSO) Child Support:**

The Obligee's name and address must be included on the Plan, Schedule E and mailing matrix. If the Debtor(s) and Counsel are unable to secure the current mailing address for the Obligee after exhausting all available avenues a Motion may be filed with the Court requesting that the Court find that Debtor(s) have complied with 11 USC §1302. (See Form for DSO due diligence). The Motion should state in detail the efforts that were made to locate the Obligee.

The State of Ohio Child Support Payment Center address must be included on Schedule E AND the Mailing Matrix. The current address is:

ODJFS/Office of Child Support  
50 W. Town Street, 5<sup>th</sup> Floor  
Columbus, Ohio 43215

NOTE: Inclusion of the County Agency is NOT sufficient.

If the DSO Obligation originated from a Court Order issued in a State other than the State of Ohio or if the Obligee lives in a State other than the State of Ohio, then the address of that particular State agency must be included on Schedule E and the Mailing Matrix also. (See UST website for addresses of other State Agencies).

**15. Mortgage Claims should include an addendum with the following information:**

A NEW Mortgage claim form has been introduced with the Federal Rule changes effective December 1, 2011. Creditors should be using the new claim form and attachment as required by Rule 3001(Official Form 10 with Attachment A). Also see Trustee's web site for the MORTGAGE PROOF OF CLAIM ATTACHMENT form.

**Debtor(s)' attorneys should routinely review mortgage claims and file appropriate claim objections.**

**16. Reminder for Motions to Dismiss:**

Our Office works diligently to resolve Motions to Dismiss *prior to* the hearing date, so we do not need to appear before the Judge to explain why the Motion has not yet been resolved.

**The following must be approved by the Trustee and/or filed with the Court on or before the date set for hearing:**

- a. Certification of Payment tendered to the Debtor(s)' attorney and to be received by the Trustee (Debtor(s) should bring payment to counsel and counsel certifies payment) should be filed;
- b. Proposed draft of an Agreed Order resolving the motion should be approved; for older cases the Trustee will require that the Agreed Order contain language requiring that the case complete and pay off on or before the 60<sup>th</sup> month from the date of confirmation.
- c. Motion to Modify Plan to bring it within 60 months as required by 11 USC 1322(d) should be filed;
- d. Objection to any Proof of Claim should be filed; and
- e. Motion to Convert to Chapter 7 or other Chapter under the Bankruptcy Code should be filed.

The Trustee is willing to allow additional time for good cause, such as: death in family, illness, problem with payroll, etc. if such special conditions are outlined in the response to the Motion to Dismiss and Counsel proposes a reasonable time frame to resolve the Motion to Dismiss.

**CONDUIT DELINQUENCY:** If the Trustee is paying monthly mortgage payments through the Chapter 13 Plan and the Debtor(s) are delinquent in Trustee payments, the Debtor(s) must make a payment "prior to the hearing date" that is sufficient to cure all delinquent mortgage payments due **plus** the mortgage payments for the month in which the hearing is held.

**YOU MUST APPEAR AT THE HEARING WITH THE DEBTOR(S) UNLESS:**

You have uploaded an Agreed Order resolving the Motion to Dismiss, which has been reviewed and approved by the Trustee **no later than 4:00 p.m. the day before the hearing** AND you have reported to the appropriate Court Clerk that the agreed order has been uploaded and confirmed that the matter has been removed from the docket.

The email addresses to advise the Judges' Court Clerks of settlement are as follows:

J\_Perlman\_Orders@ohsb.uscourts.gov

J\_Buchanan\_Orders@ohsb.uscourts.gov

J\_Hopkins\_Orders@ohsb.uscourts.gov

**17. Reminder for Settling Motions for Relief from Stay:**

**Agreed Order on Relief from Stay**

– The Trustee's office should approve the terms for any agreed order on Motions for Relief from the Automatic Stay PRIOR to the matter being reported settled to the Judge's clerk. Be sure the agreed order on the motion is feasible. Can Debtor(s) afford the cure? The source of funds that Debtor(s) will use to cure the arrearages must be included in any agreed order presented to the Trustee. If the agreed order is proposing a cure inside the Plan, a Motion to Modify the Plan should be prepared and filed by the Debtor(s) and a Supplemental Proof of Claim should be prepared and filed by the Creditor the same day that the matter is reported settled.

LBR 9019-1(b) requires that Settlements shall be reported as promptly as possible to the Chapter 13 Trustee via email.

If the parties have resolved the matter and Trustee declines to sign the proposed agreed order, please report the Trustee's signature as "HAVE SEEN". Please allow the Trustee and Staff Attorneys time to review agreed orders and terms for resolution.

**18. Debtor(s)' Final Certification for Discharge:**

Many BAPCPA cases are coming to a conclusion and the Debtor(s)' Final Certification for Discharge remains unfiled. Counsel must make sure that the following conditions have been met and the form has been filed before Debtor(s) can receive a discharge.

The Chapter 13 Trustee has filed a Certification of Final Payment in this case.

Debtor(s) has completed a financial management instructional course approved by the U.S. Trustee and has filed the certificate with the Court.

That Debtor(s) is either not required to pay any domestic support obligation OR if required to pay has paid all amounts due under any domestic support obligation required by a judicial or administrative order, or by statute.

Debtor(s) has provided the name, address, and telephone number of the State child support enforcement agency for this domestic support obligation.

Debtor(s) has provided his/her/their most recent address.

Debtor(s) has provided the name and address of most recent employer(s).

Debtor(s) has provided the name of each creditor that holds a claim that is not discharged under 11 U.S.C. §523 (a) (2) or (a) (4) or a claim that was reaffirmed under 11 U.S.C. §524(c).

Debtor(s) has certified that he/she/they HAVE NOT received a discharge in a case filed under chapter 7, 11, or 12 of this title during the 4 year period preceding the date of the order for relief under this chapter (See 11 U.S.C. section 1328(f).) OR if such a discharge has been received, Debtor(s) has stated the name of the court, case number, and date of discharge.

Debtor(s) has certified that he/she/they HAVE NOT received a discharge in a case filed under chapter 13 of this title during the 2 year period preceding the date of the order for relief under this chapter. (See 11 U.S.C. sections 1328(f).) OR if such a discharge has been received, Debtor(s) has stated the name of the court, case number, and date of discharge.

Debtor(s) has stated that 11 U.S.C. section 522 (q) (1) is not applicable to his/her/their case and there is not pending any proceeding in which he/she/they may be found guilty of a felony of the kind described in section 522(q) (1) (A) or liable for a debt of the kind described in section 522(q) (1) (B). (See 11 U.S.C. section 1328(h).)

**19. Translators:**

Let the Trustee's office know before the 341 Meeting if you need a translator. The meeting will be conducted on the 20<sup>th</sup> floor through the U.S. Trustee's phone service.

**20. In re:Lanning Circumstances**

The Trustee is aware that circumstances change either right before the case filing or shortly thereafter that may cause Debtor(s)' inability to meet the means test requirement of minimum repayment to unsecured creditors.

The Plan must be for no less than sixty (60) months and Debtor(s)' Counsel must file Status Reports on Income on or before April 30<sup>th</sup> of each year with accompanying amended Schedules I, J and Plan if warranted.

**If Debtor(s) cannot meet the disposable income test, this is what you need to put in the Plan:**

PARAGRAPH ONE OF PLAN:

A. MEDIAN INCOME

CHOOSE ONE:

ABOVE MEDIAN INCOME \_\_\_\_\_X

Current monthly income (CMI) minus means test expenses (IRS amounts) = Disposable income (D/I)

D/I (line 59 of the means test) \$ \_\_\_\_\_ TIMES 60 = \$ \_\_\_\_\_ (fill in the blanks)

**In re: Lanning Circumstance:**

DEBTOR(S) ARE UNABLE TO MEET THE DISPOSABLE INCOME AMOUNT TO UNSECURED CREDITORS BECAUSE ..... (Fill in a reasonable explanation). DEBTOR(S) WILL PROVIDE TAX RETURNS AND PAYSTUBS TO COUNSEL BY APRIL 15 OF EVERY YEAR. COUNSEL WILL FILE A STATUS REPORT ON DEBTORS' INCOME AND STATE WHETHER LANNING CIRCUMSTANCES STILL EXIST BY APRIL 30TH OF EVERY YEAR, AND FILE AMENDED SCHEDULES I, J AND MOTION TO PLAN IF INCOME INCREASES. THIS IS A 60 MONTH PLAN.

**NOTE: This language is meant for initial plans and amended plans Preconfirmation.**

If there is a *change in circumstances* Post Confirmation and Debtor is no longer able to meet DMI, then file a Motion to Modify Plan (pursuant to 11 USC 1329) and state that:

“Debtors are currently unable to meet DMI because ...*give the reason why Debtor is unable to meet DMI at that time (ie. job loss, continued medical illness or injury, death, etc.)* If Debtor(s) income subsequently increases in the future then Amended schedules and motion to modify plan will be filed at that time as warranted by such increase in annual income. “

**21. Release Form for Adversary:**

In order to facilitate the filing of adversary complaints, we are asking Counsel and Debtor(s) to sign an Adversary Agreement at the 341 meeting. See Trustee’s website for form called ADVERSARY RELEASE. Be sure to provide all documentation from closing and/or refinance including the title company information. We are also appointing some Debtor(s)’ Counsel to pursue the adversary because we have so many requests lately. Counsel may be able to pursue an adversary proceeding on behalf of Debtor under certain circumstances (See the decision of *In re: Dickson*, 2010 FED App. 0002P (6<sup>th</sup> Cir. BAP 2010), affirmed Case no. 10-5580 (6<sup>th</sup> Cir. August 26, 2011).

**GENERAL PRACTICE POINTERS**

**Social Security Numbers:** The full Social Security number should not be put on the petition page and other filings.

**Debtor Education:**

We schedule Debtor Education at the same time as 341 meetings.  
Times are from 10:00 am. to 12:00 noon and 1:00 pm. to 3:00 pm.

**Counsel must contact the Trustee’s office to make reservations for Debtor(s) at least two (2) weeks ahead of the scheduled date to assure availability. Please contact Shanna. (Please do not have Debtor(s) call themselves.)**

Please make sure Debtor(s) arrive promptly for class at least 15 minutes before the start time with picture identification.

Debtor(s) should arrange for appropriate daycare prior to the class. No children, food or drinks are permitted in the classroom.

Please make sure Debtor(s) are aware of the parking fees. Please encourage Debtor(s) to park in the building parking garage. If they choose to park at a meter please remind them that they are not going to be able to add money to the meter until after the 341 meeting or Debtor Education class.

Please remind Debtor(s) that there is to be no food or drink in the 341 meeting room or the hallway. Also, please remind Debtor(s) that there is no cell phone use in the 341 meeting room or the hallway.

If Creditor's meeting is in the morning, schedule class in the afternoon.

If Creditor's meeting is in the afternoon, schedule class in the morning.

**Individual Attorney and Staff Training is available:**

Please call or email my Assistant Paralegal, Linda Hillner or Staff Attorneys, Francis DiCesare and Karolina Perr, to arrange date/time.

**Real Estate Appraisals:**

**LBR 3015-3(e)(3)** - the appraisal must be filed with the Court and served upon the Trustee prior to the 341 meeting. Counsel should request the appraisal himself/herself. The appraisal must be for market value per Schedule A. See the appraiser list.

Pursuant to LBR 3015-3(e)(3) the appraisal should be a recent appraisal conducted within one (1) year prior to filing.

If the real estate is being surrendered the Auditor's valuation or County Assessment may be used in lieu of an appraisal. If a Sheriff's sale has been scheduled or completed, the Sheriff's valuation and/or actual sale price may be submitted as an appraisal and evidence of same filed with the Court.

An Auditor's valuation/County Assessment or Sheriff's sale valuation will NOT be accepted if Debtor(s) are retaining the real estate.

**If Creditor is objecting to valuation and conducts its own appraisal:**

**LBR 3012-1(d)(2)** - the Creditor shall file and serve on the Debtor(s), the Debtor(s)' Attorney, the Trustee and the U.S. Trustee a copy of the appraisal within fourteen (14) days after the section 341 meeting.

**Cars and Insurance:**

If the car is "totaled" during the Chapter 13 Plan, per Plan terms, the proceeds must be turned over to the Trustee. If the Debtor(s) desire to keep funds above the amount which will pay off the secured Creditor, a motion to retain such funds must be filed. If Debtor(s) wish to do Substitution of Collateral, please use form on the website; Debtor(s)' Counsel must ensure Creditor's lien appears on title.

**Claim Transfers or Assignments:**

The Chapter 13 Office continually receives claim assignments and transfers. If you represent Creditors, please make sure they file a proper claim transfer or assignment and Notice of Change of Address. The form is available on the Trustee's website.

**Inheritances, Annual Bonuses, Personal Injury or other lawsuit recovery:**

Pursuant to the Confirmation Order, if Debtor(s) wish to retain any portion of the items listed above,

the appropriate Motion to Retain must be filed with the Court.

**Retention of Tax Refunds:**

*Debtor(s) should not spend their tax refund.*

The Confirmation Order provides that Debtor(s) may retain \$800 as an individual and \$1,600 as a married couple. The Debtor(s) may also retain any Earned Income Tax Credit and/or Child Tax Credit. Any funds above these amounts must be turned over to the Trustee, unless Debtor(s)' Counsel has filed the appropriate Motion to Retain and obtained an Order from the Court to retain such amounts.

Please use the following formula when deciding whether or not to file a Motion to Retain Tax Refund:

Exempted amount \$800 joint / \$1600 joint + earned income credit + child tax credit = **amount** that debtors may keep without filing a motion to retain.

Take amount of the total of refunds Federal + State (if received) + Local (if received) = **Refunds**

**Refunds** minus **amount** Debtors may keep = **negative** number - No Motion to Retain needs to be filed.

**Refunds** minus **amount** Debtors may keep = **positive** number - A Motion to Retain **MUST** be filed.

NOTE: If the Debtors owe any amount of either Federal, State or Local taxes, then the **positive** number above may be offset by the amount of taxes owed.

If the Tax refunds for State, Federal and Local Income taxes are **in excess of the amount** that may be retained, then a Motion to Retain must be filed to account for the **entire amount** to be retained.

Ask Debtors to provide copies of Federal, State and local tax return (if required).

Review the returns, fill in the blanks above and make a recommendation to the Debtors.

**Trustee's Objection to Balance of Creditor's Claim :**

The Trustee's office files these objections under the following circumstances:

The Trustee receives notice that the balance of the claim has been paid or should not be paid.

The Trustee receives a returned check indicating that the address is changed or is not accurate.

**Local Rules:**

The Local Bankruptcy Rules were effective December 1, 2011. The Chapter 13 Local Bankruptcy Rules for Cincinnati, Dayton and Columbus are uniform. Please read the Rules in tandem with this Manual. Local Bankruptcy Rules are available on the Clerk's website: [www.ohsb.uscourts.gov](http://www.ohsb.uscourts.gov).

**FORMS:**

**YOU SHOULD USE THE FORMS PROVIDED BY THE CHAPTER 13 TRUSTEE.**

You can obtain a packet from the Trustee's Office or access the website at [www.13network.com](http://www.13network.com).

The latest forms are dated 2012 and replace all previous versions.

You should only use forms which say **2012** at the top of the form.

Note: The Local Rules do **not** provide Chapter 13 forms.

The Chapter 13 Staff is trained to understand and use the forms.

The use of these forms reduces errors.

Please proofread what you file and *explain* in **detail** what you are requesting for the Debtor(s).

FILL IN THE BLANKS and ANSWER ALL questions.

**ORDERS SHOULD BE SUBMITTED WHEN THE TIME TO RESPOND TO THE MOTION HAS EXPIRED. ALL INFORMATION SHOULD BE IN MOTION AND ORDERS ARE GENERIC.**

**Return Phone Calls and Emails:**

Please return phone calls or emails from the Staff of the Office of the Chapter 13 Trustee within 24 hours, if possible.

If you are unable to respond in that time frame, please call or e mail with an estimated time you will be able to respond.

You can assume the Trustee has asked the Staff member to call or e mail and that a return call or e mail is necessary.

**Notice of Intention to Pay Claims:**

When the Notice of Intention To Pay Claims is filed, if you do not agree with the listed claim and/or amount, Counsel must object to the *actual* claim, not to any Notice from the Chapter 13 Office.

**Trustee Printouts:**

Access the Trustee web site at [www.13network.com](http://www.13network.com)

Choose the case you wish to access.

Choose "Print Inquiry" from Menu on the right of the screen.

Choose the Status Report parameters (i.e. date, claims, payment history, etc.) or

Do not choose parameters and you get all information on the case that is available in the Report.

Click on "Submit" and print from your computer.

**Trustee Status Reports:**

Trustee status reports are mailed to Debtor(s) and Counsel annually; usually in the month of February.

**Form 1015-2:**

Prior Petitions - If the Debtor(s) has filed bankruptcy within the last eight (8) years, it must be noted on the petition, page 2 and Form 1015-2. Form 1015-2 **must** be filed in every case.

See LBR 1015-2(b) and Form 1015-2.

Cases of spouses, either prior or ongoing, should be listed on this form.

**Time Schedule on Chapter 13 Cases:**

The 341 Meeting of Creditors is scheduled not less than 20 days and not more than 50 days after the date of filing.

**Filing the Chapter 13 Plan:**

**USE THE PLAN PROVIDED BY THE TRUSTEE**

All payments, except the current mortgage payment should be paid through the Plan. Mortgages can be paid by the Chapter 13 Plan if Debtor(s) wish.

Automobile payments should be **paid through** the Plan. It is the Trustee's policy that secured car payments should be paid by the Trustee's office. This reduces the filing of Relief from Automatic Stay Motions by Creditors.

Car leases should be **paid through** the Plan. The Plan should specify the monthly payment amount, the month the Trustee's regular monthly payment to the Lessee should begin and the month and year when the lease expires. The Plan should state that the Debtor(s) will continue regular payments directly to the Creditor until the 341 meeting.

Student loans should be **paid through** the Plan at the same percentage as other unsecured claims. The balance of the loan will survive the Discharge if the plan percentage is less than 100%.

Please add a provision to paragraph 30 of the Plan if the balance of any debt will survive the Plan. (i.e. priority taxes) which may affect the feasibility of the Plan.

**Attorney Fees:**

See LBR 2016-1(b)(2) for itemization of services included in the \$3,500.00 unitemized fee. If attorney fees are above \$3,500, the attorney must file a separate fee application which itemizes the entire fee in tenths of hours. The Court may require itemization even when fees are below \$3,500. Attorney fees are approved in the Confirmation Order unless they are over \$3,500. Counsel must file a Fee Application in every case. (Use LBR Form 2016-1(b) for initial Fee Application)

**Post Confirmation attorney fees** are paid by the Chapter 13 Office.

File an Application for Fees and Order at the **same time** you file the substantive motion. Always provide dates of service itemized in tenths of hours and an explanation.

**Liquidation Analysis:**

Use the Liquidation Analysis form on the website. Please include automobiles, stock, etc. in your liquidation analysis incorporating these items into the formula on the form. ALWAYS COMPLETE the math equation at the bottom of the form to show a resulting percentage .

**Plan Payments:**

**11 U.S.C. 1326 (a)(1)(A)** – Unless the Court orders otherwise, the Debtor(s) shall commence making payments not later than **30 days after** the date of the filing of the Plan or the Order for Relief, whichever is earlier, in the amount proposed by the Plan to the Trustee; Payments shall be by money order or certified check. Trustee will verify that the Debtor(s) have made the first payment at the 341 meeting. Counsel should upload the Payroll Deduction Order when the petition is filed. If this is not possible prior to the 341 meeting because of Debtor(s)' current employment status or there are changes during the life of the Plan, Trustee will request that Counsel upload the Payroll Order at such later time following the 341 meeting.

**The Plan payment must be made through a payroll deduction** unless there are extenuating circumstances. The success of self-pay Plans is not as high as payroll deduction Plans.

The Plan payment must cover all priority payments and the Trustee fee.

The Trustee fee for the 2011/2012 fiscal year is currently 3.9%. Leave a cushion of 5% to 6% in your Plan in case the Trustee fee increases. The Trustee fee is derived from our budget which is approved by the U.S. Trustee on a yearly basis. The Trustee fee is based upon the amount **disbursed**.

Example based upon 5% Trustee fee:

Priority payment of	\$ 80.00 (car loan)
Priority payment of	50.00 (mortgage arrears)
Priority payment of	50.00 (Attorney Fee)
Conduit Mortgage	<u>\$900.00</u>
	1,080.00
5% of \$1,080.00	<u>\$ 54.00</u>

**TOTAL payment: \$1,134.00** (also calculated  $\$1,080.00 \times 1.05 = \$1,134.00$ )

If you contact our office we will send you a Plan calculation on problem cases. Priority payments **must** at least cover the interest portion of the proposed priority payment. If not, the debt may never be paid.

**Interest rate on secured claims:**

Interest is calculated per the In re: Till decision. This is the prime rate plus a risk factor. Interest rates should be specifically listed in the Plan. If you are providing different interest rates for different Creditors specifically state that in the Plan.

**Large Checks:**

If the Debtor(s) send in a **large certified check or money order** (other than the Plan payment) please have them specify the source. Provide an order determining how to disburse these proceeds to a specific creditor or creditors, otherwise the funds will be disbursed pursuant to the Plan.

**Filing Fees in Installments:**

If an application to pay filing fees in installments is filed, the fees **must be paid** within 120 days. A 60 day extension can be requested at the Clerk's office.

**Schedule I (Income):**

Itemize deductions. Do not lump everything together into one sum.

Itemize deductions for health insurance, child support, union dues, etc. Schedule I allows for individual listings.

401(k) loan deductions should be itemized and the date that the loan is expected to be paid off should be specified. When the loan is paid, the monthly plan payment should increase. Do a Step Plan.

Business Debtor(s) should specify “gross” monthly income on Schedule I (not the net income).

**Schedule J (Budget):**

Insurance - Unless health insurance is payroll deducted, include an amount for health insurance in your budget. You should also include auto insurance, homeowners insurance, etc. Always allow enough money for food; \$200 to \$300 per person per month. The food amount includes toiletries.  
Real Estate taxes – If taxes are not escrowed in the monthly mortgage payment, they should be in your budget.

Business Debtor(s) must state “gross” income on Schedule I. Business expenses should be identified and itemized, (including expected income taxes) on a separate sheet or identified as a line item on Schedule J or attach most recent profit and loss statement.

Advise Debtor(s) to watch their budget - Items on the budget must be paid (i.e., Duke Energy, Cincinnati Bell, etc.) Budget Billing - Tell the Debtor(s) to fill out the application or to request budget billing online [www.duke-energy.com](http://www.duke-energy.com) with Duke Energy so they know exactly what their expenses are each month. Call Duke Energy for the Budget Billing amount **as you prepare the schedules**. We have Budget Billing information available at the 341 meetings.

**See budgeting form at the end of the manual for break down of normal monthly expenses.**

**341 Meeting of Creditors:**

The 341 meeting of Creditors is scheduled within 20 to 50 days of the Plan filing. If you have a complicated case and need more time for a 341 hearing, contact Celia in our office so that a time can be set aside for your client. Arrange a business meeting with a Staff Attorney prior to the scheduled 341 meeting date. All meetings are held in downtown Cincinnati, Ohio, except for some Debtor(s) who live in Adams, Lawrence or Scioto counties whose meetings will be held at Shawnee State University in Portsmouth, Ohio. 341 Meetings are conducted in Portsmouth every six weeks or so as the Trustee’s schedule permits. However, those cases requiring 341 meetings between Trustee’s schedules dockets may be noticed for a Meeting in Cincinnati as opposed to Portsmouth.

**PRIOR TO THE 341 Meeting:**

Email [CMI.Ledger](mailto:CMI.Ledger), pay advices and copies of tax returns to the following: [GEN.order3@cinn13.org](mailto:GEN.order3@cinn13.org) at least seven(7) days prior to the date for the 341 Meeting pursuant to LBR 4002(1)(b). It is not necessary to file a Certification of Service of pay advices with the Court.

Advise the Debtor(s) that they must bring **ALL** required items listed on the memorandum at the end of this Manual to the 341 meeting.

**Attorneys should bring copies of any documents, amended schedules/Plan, etc. that have been filed since the initial petition to the 341 meeting.**

Advise the Debtor(s) of their rights and responsibilities under the Chapter 13 plan.

Request a copy of the Chapter 13 Pamphlet which is distributed at 341 meetings.

**Advise Debtor(s) of the importance of regular payments to the Trustee.**

**Change of Address and other Changes:**

If there is any change, (such as change of address, job change, separation or divorce), please advise the Chapter 13 Office in writing immediately, file the Notice of Address Change with the Court and serve per the Local Rules. In the case of divorce or separation, ascertain who is now responsible for the Chapter 13. These changes are necessary for the Chapter 13 Office to administer Debtor(s)' case.

**Suspensions:**

Let the Debtor(s) know how suspensions work. Debtor(s)' Counsel must notify the employer when the suspension begins and when it ends. Put the exact dates in the Motion and Order and make sure the case is not over 60 months and there is no conduit being paid by the Trustee.

See Local Bankruptcy Rule 3015-2(e).

If the Trustee is paying mortgage payments or car lease payments through the plan, then plan payments should only be partially suspended to allow Trustee to continue to make such payments to Creditors. The Motion to partially suspend should specify the amount being suspended and should state that Debtor will continue to pay the mortgage and/or lease car payment plus Trustee fee during the suspension period.

**Trustee's Report and Objection to Confirmation:**

After the 341 meeting of Creditors, a Trustee's Report is filed. The Trustee will serve the Trustee's Report and any Trustee's Objection upon Debtor(s)' Counsel, Debtor(s), the U.S. Trustee, and any objecting Creditor's Counsel.

**The Confirmation Hearing** is held only if the Trustee or Creditor objects to the Plan or if the Judge sets the case for hearing. Otherwise the case may be confirmed without a hearing being conducted.

Objections to Confirmation should be settled at least three (3) days prior to the Confirmation hearing date so that all parties, including the Trustee, may review the terms of settlement, proposed Agreed Orders and any required amendments to plan or schedules. However when the Court posts the Confirmation docket on the Court's website [www.ohsb.uscourts.gov](http://www.ohsb.uscourts.gov) the parties must appear in person at the scheduled Confirmation hearing time to report any settlements entered into after the docket is posted.

**The Notice of Intention to Pay Claims** is mailed approximately eight (8) months after the case is filed. Counsel should check to make sure secured creditors filed their claims. See Federal Rule of Bankruptcy Procedure 3002(c). See Rule 3004, which allows Debtor(s) or Trustee an additional thirty (30) days to file a claim on behalf of Creditor if Creditor fails to file its own claim. **OBJECT to the claim itself** and not to the Notice of Intention to Pay Claims.

Disbursement of funds to creditors is usually mailed during the 3rd week of each month.

**After the Case is Filed:**

Please make yourself available to the Debtor(s) AFTER the case is filed and after the 341 meeting of Creditors for questions. This is a traumatic time for most Debtor(s). When they arrive home after their meeting with Counsel, or after the 341 meeting, most Debtor(s) have many questions. You should be available for questions during the entire duration of the Plan and beyond if questions arise.

Let your clients know there will be attorney fees which must be paid through the Chapter 13 Plan if post confirmation work is performed. Attorney fees must be itemized and fees must be paid through the Chapter 13 Trustee.

**Motions to Modify Plan Post Confirmation:**

Use the form provided by the Trustee. The form is on the Trustee website.

If you are reducing the Plan percentage review the Trustee's website and make sure that the Trustee has not disbursed more than your proposed percentage to unsecured creditors, otherwise the modification may not be approved. Complete the form at bottom choosing what plan percentage was required of Debtor(s) at time of filing. The Plan percentage may not fall below the liquidation analysis, the plan percentage required for a 36 month plan if below median OR the plan percentage required for a 60 month plan if above median. Always round up to the next higher percentage, do NOT utilize partial percentages, unless otherwise agreed upon by the Trustee. If Debtor(s) were above median at the time of filing be sure to state whether Debtor(s) are still able to meet the DMI calculation requirements and if not, explain in detail any change in circumstances since filing (i.e. reduction in income) If Debtor(s) have experienced job loss or other temporary change in circumstances, explore plan suspension and/or be prepared to submit annual status reports in April of each remaining year of the plan should circumstances improve or change.

When filing a Motion to Modify **always attach** new Schedules I and J to show change in income.

**Sale of Real Estate:**

*All Motions to Sell Real Estate **must be** filed with the Court.*

Be sure to review the closing statement yourself to ascertain that all secured Creditors have been paid at the closing or by the Chapter 13 Office.

**Application to Incur Debt:**

If the Debtor(s) wish to obtain credit (including a mortgage refinance or loan modification), Counsel must submit an Application to Incur Debt to the Trustee and obtain a Trustee's Approval. Email the completed application and supporting documents to [kperr@cinn13.org](mailto:kperr@cinn13.org) and [smartin@cinn13.org](mailto:smartin@cinn13.org). Email the approval form in Word format and the application in PDF format. The form approval should be completely filled out except for the date. **SERVE the application on ALL Creditors and their respective Counsel, if known**, at same time the application is submitted to the Trustee.

Remember to attach a copy of the loan agreement, good faith estimate or other loan documentation as separate PDF documents. Advise how the Debtor(s) will be able to fit the new debt payment into the budget. Submit amended Schedules I and J, if necessary. You must file the application even if the Debtor(s) are using the funds to pay off the Chapter 13. Be sure to go over the cost of any refinancing with the Debtor(s). Costs, such as points to refinance, can really add up.

If Debtor(s) are refinancing real estate to pay off the Plan, make sure to utilize the Trustee's form approval which has specific conditions and requirements for the real estate closing to be completed.

**Motion for Relief from Automatic Stay:**

The Chapter 13 Office will discontinue payments to the Creditor once the Order Granting the Motion for Relief is entered pursuant to the Local Bankruptcy Rules.

Divorce - You should obtain relief from the automatic stay or modification of the automatic stay to proceed or continue with any divorce action.

Agreed Order on Relief from Stay – The Trustee's Office must approve any agreed order on Motions for Relief from the Automatic Stay, unless otherwise Ordered by the Court. Any settlement between the parties should be reported to the Trustee at least one day prior to hearing.

If relief from stay is granted Trustee will no longer pay on Creditor's claim. Be sure to object to the claim on any 2<sup>nd</sup> mortgage or other claim which you no longer wish for the Trustee to pay. Otherwise funds may be directed to pay a claim for real estate or personal property which Debtor(s) wish to surrender.

**Objections to the Plan:**

Pursuant to the Local Rules you have fourteen (14) days to object after the 341 meeting is concluded. The objection must be filed in writing and served on the Debtor(s), Debtor(s)' Counsel, and the Chapter 13 Trustee. See L.B.R. 3015-3 and 3012-1.

Try to file your objection as early as possible.

If the objection is late, file a Motion to Allow the Objection Out of Time at the same time as you file the objection, and email Trustee and Debtor(s)' Counsel.

**Appraisals:**

LBR 3012-1(d) requires that a mutually agreeable time for appraisal of the property shall be established prior to the conclusion of the 341 meeting of Creditors. Therefore, Creditor must attend the 341 meeting in order to schedule an appraisal.

Settlements should be reported to Court prior to date of Confirmation as indicated below.

**Reporting Settlements to the Court Prior to Hearing:**

The terms of settlement should be agreed upon by ALL parties, **prior to** hearing date, and proposed agreed orders should be uploaded with the Court **prior to** hearing date.

Email notice of any settlement to the appropriate Judge PRIOR TO hearing at the following addresses:

J\_Buchanan\_Orders@ohsb.uscourts.gov

J\_Hopkins\_Orders@ohsb.uscourts.gov

J\_Perlman\_Orders@ohsb.uscourts.gov

**Include the terms of the settlement and when the Order will be submitted.**

**Copy the Trustee with the e mail.**

**Claims:**

In order to have a claim allowed and participate in the distribution of any dividend, a non-governmental Creditor must file a proof of claim within 90 days after the first date set for the 341 meeting of Creditors. You are encouraged to file your claim electronically.

Governmental units have 180 days from the date the petition was filed to file a claim. These dates are printed on the 341 meeting notice.

If the secured Creditor has not filed a proof of claim – Debtor(s) may file a claim on behalf of the Creditor pursuant to Federal Rule of Bankruptcy Procedure 3004. This Rule allows Debtor(s) an additional thirty (30) days within which to file the claim. Check Pacer after the 90 or 180 days has run. **Do not file a claim for a Creditor until the Creditor's time has expired.**

When filing claims which include multiple account numbers - please state the claim amounts for each account number. Individually list the dates and amount of each debt, and state whether they should be grouped as one debt, and the nature of the debt. Please provide account numbers for all debts listed when filing the claim. **Always attach supporting documents such as a Financing Statement, car titles, etc.**

**Disputed Claims:**

If a claim is listed as disputed and a claim is filed, the Chapter 13 Office will file a Notice of Disputed Claim which requires that Debtor(s)' Counsel file an objection within thirty (30) days or the claim will be paid as filed. The Trustee instituted this procedure so that disputed claims would not languish until the end of the case.

### **Closing of Cases:**

When a Plan has been completed, a final audit is performed. If all claims have been properly docketed and paid according to the Plan, the case is closed in the Chapter 13 Office. A Notice of Termination of Payroll Deduction Order is sent to Debtor(s)' employer, and a Trustee's Final Certification is filed with the Court. A Final Discharge Order is then issued by the Court. After all checks have cleared the bank, the Trustee files a Final Report.

When a case is completed a letter is sent to the Debtor(s) encouraging them to contact a credit reporting agency to make sure the credit report is accurate. Names and addresses of the credit agencies are provided.

If the Trustee has disbursed contractual payments towards long term debt (ordinarily ongoing mortgage payments), the Trustee may file a motion to deem the mortgage current when the Plan completes and instruct Debtor(s) to resume current payments.

**THE DEBTOR(S)' ATTORNEY MUST ALSO FILE A CERTIFICATION IN ORDER FOR DEBTOR(S) TO RECEIVE A DISCHARGE. THE FORM IS AVAILABLE ON THE TRUSTEE'S WEBSITE AND IS TITLED DEBTOR(S)' CERTIFICATION REGARDING ISSUANCE OF DISCHARGE ORDER.**

### **Cases Over Five Years or Under 36 Months:**

Cases should not go beyond five (5) years, or under thirty six (36) months. If a case is going to run long or short, the Chapter 13 Office sends a letter or email which states your options to bring the Plan within the time frame, along with a Plan percentage calculation and/or a proposed agreed order to resolve the length of the Plan.

### **Conversion from Chapter 13 to Chapter 7, Voluntary Dismissal or Hardship Discharge:**

If you are converting from a Chapter 13 to a Chapter 7 case, filing a voluntary dismissal, or a motion for a finding of hardship discharge, have your secretary or paralegal follow up with the Chapter 13 Office to make sure that the notice has been received. A conversion can be done by notice, but a voluntary dismissal requires a motion. See available forms on the Trustee's website: Notice to Proceed under Chapter 7, Motion for Voluntary Dismissal and Motion for Finding of Hardship. The Motion for Finding of Hardship should be filed with supporting amended schedules I and J to demonstrate Debtor(s)' budget at the time the motion is filed.

### **Delinquent Payments:**

If payments to the Chapter 13 Office become delinquent, either an email will be sent to the Debtor(s)' attorney or a Motion to Dismiss will be filed by the Trustee. Motions to Dismiss for nonpayment are filed every month. Motions to Dismiss for Nonpayment may also be filed by the Trustee because payments are short or being made in partial amounts. Partial payments may be caused by insufficient amounts being deducted by the Employer and/or Debtor(s)' failure to cover the short payments. Check the "Pay Schedules" tab on the Trustee's website to review Debtor(s)' payments and amount of delinquency when responding to a Motion to Dismiss.

**Vacate Order of Dismissal:**

Serve the Trustee with any Motion to Vacate Order of Dismissal. Make sure the Debtor(s) begin making payments immediately. Call the Clerk's office to ascertain if the Motion to Dismiss has been granted. If the case is also closed by the Court, you must also file a Motion to Reopen the case and give all affected parties/Creditors notice.

**Tax Returns:**

Pursuant to 11 U.S.C. § 1308 – the Debtor(s) must have filed all tax returns for the four (4) tax years preceding the date of the bankruptcy filing, no later than the day before the first date set for the meeting of Creditors.

If the returns are not filed, the Trustee may file a Motion to Dismiss the case, because the Trustee cannot determine the feasibility of the Plan.

Future income tax returns must be filed by April 15<sup>th</sup> of each calendar year and must be kept current.

**Interest on Real Estate Arrearage:**

Effective October 22, 1994, the Bankruptcy Reform Act of 1994 added the following language to the Code:

11 U.S.C. Section 1322(e) - Notwithstanding subsection (b)(2) of this section and 506(b) and 1325(a)(5) of this title, if it is proposed in a Plan to cure a default, the amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.

This section only applies to agreements entered into after the date of the enactment of the Act and should remove the necessity to pay interest as part of the cure of a mortgage arrearage.

**Web site and Printouts:**

The website address is [www.13network.com](http://www.13network.com). The website is similar to the printouts you receive via fax or mail and is updated daily. A Plan calculation form is available on the website as well.

**Disbursement/Refund Checks:**

All stale outstanding disbursement/refund checks must be cancelled/voided or reissued within 90 days of the issue date pursuant to the Handbook for Chapter 13 Standing Trustees. If the case is active, the funds will be distributed pursuant to the Plan. If the case is inactive, the funds are sent to the Registry Fund.

**Payments Should be Sent to the Trustee Lockbox:**

The Chapter 13 Trustee does not accept payments in person. Please ask Debtor(s) to mail their cashier's checks or money orders to:

Office of the Trustee

P.O. Box 290

Memphis, TN 38101-0290

(Include Debtor(s)' name(s) and case number and address)

**Mortgages:**

If your Plan provides that the Chapter 13 Office pays the regular mortgage payment, be sure your Plan provides the date which payments are to begin. Trustee suggests that the mortgage (or lease) be paid directly until the 341 meeting. If Debtor(s) must suspend payments, you cannot suspend payments for the mortgage.

**Thank you for taking the time to read this Manual.**

**Please telephone or email the office should you have any questions.**

**2012**

OFFICE OF THE TRUSTEE  
CHAPTER 13  
600 Vine Street, Suite 2200  
Cincinnati, Ohio 45202  
(513) 621-4488  
(513) 621-2643 Fax

MARGARET A. BURKS, ESQ  
TRUSTEE

Re: 341 hearing documents

Please provide the following documents at the 341 meeting:

- Driver's license or picture identification
- Verification of social security number – SSN on Driver's License or Social Security card.
- Car titles, Memoranda of Title and Lease Agreements for automobiles
- Copies of Recorded Mortgages and Deeds
- Three years of FILED Income Tax returns, including AMENDED Tax returns.
- Attorney fee application (filed copy)
- Two most recent paystubs for the month that the 341 meeting is being held
- LBR Form 1015- 2
- A Motion to Retain Income tax refund, if income taxes have been spent
- First payment in money order form or cashier's check mailed within 30 days of bankruptcy filing
- Appraisal of real property
- Liquidation analysis
- CMI Ledger
- Bank statements – showing balance as of the date of the bankruptcy filing.  
(Bring six months if U.S.T. audit)
- Copies of any amended schedules, Plans or other documents filed with court after initial petition filed
- Anything else which is pertinent to Debtor(s)' life –  
Divorce Decree, Separation Agreement, Land Contract, Probate/Inheritance documents, etc.

OFFICE OF THE CHAPTER 13 TRUSTEE  
600 VINE STREET, SUITE 2200  
CINCINNATI, OHIO 45202  
TELEPHONE: (513)621-4488  
FACSIMILE: (513)621-2643

MARGARET A. BURKS, CHAPTER 13 TRUSTEE

DEBTOR(S)' EXPENSES

1. Keep a list of Daily Expenses.
2. Keep a list of Weekly Expenses.
3. Then make a list of Monthly Expenses.

<i>EXPENSES</i>	<i>DAILY</i>	<i>WEEKLY</i>	<i>MONTHLY TOTAL</i>
Rent or Mortgage Payments	\$	\$	\$
Property Tax	\$	\$	\$
Property Insurance	\$	\$	\$
Home Maintenance	\$	\$	\$
Utilities (Gas, Electric, Propane)	\$	\$	\$
Water	\$	\$	\$
Telephone	\$	\$	\$
Cell Phones	\$	\$	\$
Cable – Basic Only	\$	\$	\$
Internet – Basic Only	\$	\$	\$
Food	\$	\$	\$
Meals Outside Home	\$	\$	\$
Clothing	\$	\$	\$
Laundry/Dry Cleaning	\$	\$	\$
Medical and Drug Expenses	\$	\$	\$
Medical Insurance	\$	\$	\$
Transportation (Gas, Maintenance, etc.)	\$	\$	\$
Recreation	\$	\$	\$
Charitable Contributions	\$	\$	\$
Insurance (Not Paid By Employer Life & Medical)	\$	\$	\$
Alimony, Maintenance, or Support	\$	\$	\$
School Expenses and Activities	\$	\$	\$
Cigarettes (\$40 Max Per Month If Applicable)	\$	\$	\$
Pet Expenses (\$20 Max Per Month or Receipt Proof)	\$	\$	\$
Daycare	\$	\$	\$
Hair Care	\$	\$	\$
Tuition	\$	\$	\$
Miscellaneous (During Chapter 13)	\$	\$	\$
Miscellaneous (After Chapter 13 Completed)	\$	\$	\$
Student Loan Payments	\$	\$	\$
Hobbies	\$	\$	\$
Savings	\$	\$	\$
Vacation	\$	\$	\$

**Oct. 2011**

**PLAN ADDENDUM – PARAGRAPH 30 Language and Lanning at PARAGRAPH 1.**

1) Use this language in paragraph 30. of the plan for each affected creditor and specify what section of the Bankruptcy Code applies:

**Avoiding mortgages, judgments and liens**

Debtor(s) are filing a Motion to Avoid the mortgage/judgment/lien of creditor (name of creditor). Trustee suggests that counsel file the motion at time of 341 meeting or before Confirmation hearing. Creditor shall be classified as a general unsecured claim. Creditor's judgment lien/tax lien/mortgage lien does not attach to equity in Debtor(s)' real property pursuant to 11 U.S.C. 506(a) OR Creditor's judgment lien/tax lien/mortgage lien impairs Debtor(s)' exemption and Debtor(s) are avoiding same pursuant to 11 U.S.C. 522(f).

**2) Surrender language for Real Estate**

Use this language in paragraph 30. of the plan for each affected creditor:

Debtor(s) hereby surrender the real property located at (insert description). Trustee will not pay on the claims of (insert names of Creditor) for any filed mortgage claims until Creditor files a deficiency claim. The deficiency claim (secured or unsecured) shall be filed no later than 270 days from the date that the within Plan is confirmed/approved by the Court. If the deficiency claim is filed more than 270 days after the date the Plan is confirmed/approved, then it shall be deemed disallowed and shall be discharged upon completion of the Plan and entry of Discharge Order. In addition, the Trustee shall not make further payments on any real estate tax claim as the debt will be satisfied upon sale of the real property.

**3) Surrender language for Personal Property**

Use this language in paragraph 30. of the plan for each affected creditor:

Debtor(s) hereby surrender(s) the following personal property/vehicle (add description). Trustee will not pay on the claims of (insert names of Creditor) for any lien on the motor vehicle/personal property to be surrendered until Creditor files a deficiency claim. The deficiency claim shall be filed no later than 90 days from the date that the within Plan is confirmed/approved by the Court. If the deficiency claim is filed more than 90 days after the date the Plan is confirmed/approved, then it shall be deemed disallowed and shall be discharged upon completion of the Chapter 13 Plan and entry of Discharge Order.

**4) Pending Loan Modification:**

New paragraph 30 for Loan Modification:

Debtor(s) have completed and submitted paperwork for a mortgage modification to Creditor (Insert name of Creditor) regarding the real property located at: (insert address or description of property). Trustee will not pay on any mortgage arrearage claim to this Creditor until or unless an amended plan or Motion to Modify plan is filed with the Court directing the Trustee to do so.

Debtor(s) will continue to make the ongoing monthly mortgage payment directly to Creditor OR provide for the Trustee to make the monthly mortgage payment to Creditor through the plan beginning with the month of \_\_\_\_\_, 20\_\_.

Debtor(s) will file a Status Report, Agreed Order and/or submit an Application to Incur Debt to Trustee and file a Motion to Modify Plan no later than **six months** from date of confirmation to indicate the status of the pending loan modification. If the loan modification is successful - the plan continues as confirmed.

**If the loan modification is still in process six months after confirmation, the Status Report shall indicate the status and Trustee will maintain status quo of confirmed plan until or unless a motion to modify plan is filed or other agreed order is entered into between the parties. The status report should indicate a date certain for a follow up status report.**

If the loan modification is not successful, then Debtor must indicate such in the filed Status Report and either file a Motion to Modify plan to incorporate funding for the mortgage arrears directing the Trustee to commence payment on such arrears OR provide for surrender of the real property. Creditor shall have 270 days from the date of the filed Status Report to file any deficiency claim which will be paid as a general unsecured claim, if timely filed. If the deficiency claim is not timely filed, then the claim shall be deemed disallowed and discharged upon completion of Chapter 13 Plan and entry of Discharge Order.

**5) Future Relief from Stay language:**

If at any time during this plan a mortgage holder obtains relief from stay on the real estate located at (insert property address or description), the Chapter 13 Trustee shall discontinue all payments to movant and all other lienholders on their claims under the Chapter 13 plan filed by Debtor(s). Movant is directed to file a report of sale promptly following liquidation of the subject property if any excess proceeds are received. Should movant or any other lienholder seek to file any unsecured deficiency claim, it shall do so no later than \_\_\_\_\_ (270) days after the order on relief is entered. Said claims shall then be considered “provided for by the plan” per 11 USC 1328. If no deficiency claim is timely filed as specified above, then the balance is deemed discharged upon completion of the Chapter 13 plan and entry of Discharge Order.

**6) Lanning Special Circumstances language**

**(Put this in Paragraph 1. of the plan.)**

Amend plan Paragraph 1. Use Lanning special circumstances language below because DMI  
\$ \_\_\_\_ x 60 = \$ \_\_\_\_\_ and debtor unable to meet DMI.

**If Debtor(s) cannot meet the disposable income test, this is what you need to put in the Plan:**

PARAGRAPH ONE OF PLAN:

A. MEDIAN INCOME

CHOOSE ONE:

ABOVE MEDIAN INCOME

Current monthly income (CMI) minus means test expenses (IRS amounts) = Disposable income (D/I)  
D/I (line 59 of the means test) \$ \_\_\_\_\_ TIMES 60 = \$ \_\_\_\_\_ (fill in the blanks)

PARAGRAPH ONE OF PLAN:

**In re: Lanning, 560 U.S. -, 130 S.Ct. 2464, 177 L.Ed.2d 23 (2010) Circumstances:**

Debtor(s) are unable to meet the disposable income amount to unsecured creditors because ..... *(fill in a reasonable explanation)*. Debtor(s) will provide tax returns and paystubs to counsel by April 15th of every year. Counsel will file a Status Report on Debtor(s)' income and state whether Lanning circumstances still exist by April 30th of every year, and file amended schedules I, J and Motion to Modify Plan if income increases. This is a 60 month plan.

**7) Trustee to Pursue Adversary:**

Debtor(s) propose that within two (2) years of the date of the filing of the petition that the Trustee initiate an avoidance and/or preference adversary proceeding as to the (Mortgage / Judgment / Improper or Untimely Lien) of Creditor *(insert name of Creditor)* pursuant to *(insert applicable Code Section 11 USC § 544 or 547)* as the (Mortgage / Judgment / Improper or Untimely Lien) is not effective against the estate due to (describe lack of perfection, untimely perfection or improper perfection or other basis for avoidance). The liquidation analysis proffered by Debtor(s) and resulting in the proposed plan percentage reflect the successful avoidance of the (Mortgage / Judgment / Lien) by the Trustee. Debtor(s) have executed or will execute a release allowing the Trustee discretion to settle, dismiss or elect not to bring such an adversary proceeding as warranted by the facts discovered prior to or during the proposed adversary proceeding. If the outcome of the adversary proceeding does not result in the avoidance of the (Mortgage / Judgment / Lien), then upon notice by the Trustee to the Debtor(s), Debtor will move to modify the Plan accordingly. The Trustee is authorized to begin disbursements on Creditor's claim, pending filing and completion of the adversary proceeding, as though the claim were determined to be unsecured.