

**OFFICE OF THE TRUSTEE  
CHAPTER 13  
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Ch. 13 Trustee  
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**CHAPTER 13 PRACTICE  
AND  
PROCEDURE MANUAL  
for  
CINCINNATI**

**Updated November 2020**

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.

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## **Contact Information and Websites**

(513) 621-4488 – main number / (513) 621-4495 – attorneys only

Creditor's meeting room – Suite 106, 600 Vine Street, Cincinnati, Ohio 45202

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

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

Case information through National Data Center, Inc. ("NDC"): [www.ndc.org](http://www.ndc.org)

Upload CMI Ledger, pay advices and tax returns through 13Documents: [www.13documents.com](http://www.13documents.com)

TFS [www.tfsbillpay.com](http://www.tfsbillpay.com) Please refer to page 14 for more information.

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16.	<b>Michelle Cranfield</b> – Paralegal	<a href="mailto:mcranfield@cinn13.org">mcranfield@cinn13.org</a>
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## **WHAT'S NEW**

### **COVID-19 Pandemic Disclaimer**

Given the concerns surrounding COVID-19 (Coronavirus), some of the information and procedures described below may be altered or revised. Please subscribe to the Trustee's Cinn List Serve emails and review the Southern District of Ohio, Bankruptcy Court's website for the latest developments as we continue to navigate this pandemic.

### **Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") effective March 27, 2020.**

The Act added the following provision to plan modifications under 1329:

(d)

- (1) Subject to paragraph (3), for a plan confirmed prior to the date of enactment of this subsection, the plan may be modified upon the request of the debtor if—
  - (A) the debtor is experiencing or has experienced a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID-19) pandemic; and
  - (B) the modification is approved after notice and a hearing.
- (2) A plan modified under paragraph (1) **may not provide for payments over a period that expires more than 7 years after the time that the first payment under the original confirmed plan was due.**
- (3) Sections 1322(a), 1322(b), 1323(c), and the requirements of section 1325(a) shall apply to any modification under paragraph (1).

#### **1. New Plan Provides Tax Returns Turned Over on All Cases**

The Trustee will no longer request Agreed Orders to turnover tax returns on cases filed after October 1, 2020.

##### **8.1 Federal Income Tax Returns**

The Debtor shall provide the Trustee with a copy of each federal income tax return by April 30 of each year, unless otherwise ordered by the Court.

#### **2. Mortgage Modification Mediation Program**

If the debtor(s) is/are intending to prevail themselves to the Court's newly implemented Mortgage Modification Mediation Program, please include the following language in Paragraph 13 of the Plan.

**The Debtor intends to seek Mortgage Modification Mediation (“MMM”) for the real property/properties listed below. Pending the resolution of the MMM request, the Debtor shall provide for monthly adequate protection payments for the Creditor(s) listed below.**

**For homestead properties, the Debtor shall pay the lesser of 31% of the Debtor’s and the Debtor’s non-filing spouse, if any, gross monthly income, after deducting homeowner association fees, or the normal monthly contractual payment.**

**For non-homestead income producing property, the Debtor shall pay 75% of the gross rental income generated by the property.**

**The Trustee shall hold these adequate protection payments pending further order of the Court or joint stipulation of the parties for disbursement in accordance with Section X.C.3 of the Court’s Mortgage Modification Mediation Program and Procedures, which is available on the Court’s website at ([www.ohsb.uscourts.gov](http://www.ohsb.uscourts.gov)).**

More information on the Mortgage Modification Mediation Program can be found on the Court’s website.

<https://www.ohsb.uscourts.gov/mortgage-modification-mediation-program>

Please review the court website above for the following information:

1. MMM Program Procedures
2. MMM Program Mandatory Forms
3. MMM Timeline
4. Facilitator Registry
5. Application to Become a Facilitator
6. MMM Portal

### **3. Student Loan – IBR Language**

If the debtor(s) is/are in an IBR/IDR program with the Department of Education, please include the following language in Paragraph 13 of the Plan.

**The Debtor currently has student loans with [Creditor and address] in the approximate amount of [\$XX.XX]. The Debtor has entered into an Income-Driven Repayment (option: IBR-income based repayment) plan with [Creditor]. The Debtor currently has a payment of \$X.XX, and Debtor is current on his/her payment which is due to be updated [MM/DD/YYYY] and at approximately the same time each year thereafter. The Debtor shall continue with the IDR[IBR] and provide the necessary information to adjust the monthly payment based upon current income. Debtor will file status reports and amended Schedules I and J when such adjustments are determined. Debtor shall pay the monthly**

**IDR [IBR] monthly payment until plan confirmation; thereafter, the Chapter 13 Trustee shall pay the monthly IDR [IBR] payment.**

Debtor's Counsel must also pursue a formal Agreed Order with the U.S. Attorney's office to keep the IBR/IDR in place.

#### **4. Adding Creditors – Prepetition Creditors vs. Postpetition creditors**

- a. Can you add pre-petition creditors late in the case?

Case No. 16-10507 In re: Bailey (decided 9/6/18 by Judge Hopkins) - says NO.

Text of the Decision is below.

See also LBR 1007-1

#### **ORDER DENYING MOTION TO ADD CREDITOR**

Before the Court is Scott E. Bailey's (the "Debtor") Motion to Add Additional Creditor (the "Motion"). (Doc. 64). DirecTV (the "Creditor") holds a pre-petition claim against the Debtor for utility services in the amount of \$435.00. (Doc. 56, Sch. E/F, ¶ 4.1; Doc. 64). The Motion seeks (1) an order binding the Creditor "to the treatment of the Plan" and (2) an order requiring the Creditor "to file a claim with sixty (60) days" of the entry of such an order. If the Creditor were to file a proof of claim within that sixty day period, Margaret A. Burks, the chapter 13 trustee (the "Trustee") would be "ordered to administer such claim(s) as provided under the Plan."

The Motion is an apparent attempt by the Debtor to modify the confirmed chapter 13 plan (Doc. 35) (the "Plan") pursuant to 11 U.S.C. § 1329(a).1 The Debtor seeks to change the terms of the Plan so that it will "provide for" the Creditor's pre-petition claim, presumably to allow the Debtor to be discharged of that debt. *See* 11 U.S.C. § 1328(a).

"Congress intended to circumscribe a party's ability to amend a post-confirmation plan to only those modifications specifically described in [§ 1329(a)]." *In re Moore*, 247 B.R. 677, 683 (Bankr. W.D. Mich. 2000). "[T]he Bankruptcy Code does not permit postconfirmation amendments to Chapter 13 plans to add omitted creditors." *In re Plummer*, 378 B.R. 569, 575 (Bankr. C.D. Ill. 2007); *see also Moore*, 247 B.R. at 683 ("this court is unable to find within the clear language of Section 1329(a)(1) even a weak implication that creditors may be added to a plan post-confirmation."). As such, this Court cannot grant the relief requested. WHEREFORE, the Motion is **DENIED**.

- b. And See 11 USC Section 1305 for post petition debts.

## **5. Special Circumstances - Lanning language.**

Attached and below - please find the 'old' Lanning Paragraph which used to be in the Cinn plan prior to Dec. 2016. It was removed when we went to the Uniform plan but is now included in the Trustee Report.

We think it's a good idea to add it to paragraph 13 of the plan so the Court can see your analysis and special circumstance reasons.

### **Lanning Special Circumstances:**

#### **ABOVE MEDIAN INCOME**

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

**D/I (line 45 of the means test) \$ \_\_\_\_\_ TIMES 60 = \$ \_\_\_\_\_ (fill in the blanks)**

#### **In re: Lanning 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.**

## **6. Motions to Pay off Case Early – Judge Hopkins said NO unless 100% case.**

Case No. 14-10622 In re: Moreland (decided 11/29/18 by Judge Hopkins).

Case No. 15-12184 In re: Underwood (decided 11/30/18 by Judge Hopkins)

If you file a motion to pay off early - include the reasons and please 'do the math' to show you have made or are going to make 36/60 payments.

My office always checks the math for 36/60 payments, but it's a good idea to let the Court know too.

As always - include caselaw.

Is this a Section 1329 mod?

We used to have a 'pay off early' section in our Cinn plan prior to Dec 2016. Of course one had to meet the 36/60 payment analysis.

We want to use this sparingly for special situations (home sale; cash gift) and close to the case's end - in my opinion.

### **Consider Motion to Modify Plan**

### **Consider Hardship Discharge**

## **7. The Matter Calendar has been added to our 13network website**

At this time, this is only a reference. Please still rely on the Calendar from Court.

We will only populate the Calendar Matters. We will not modify the Matters. For example: When a Motion to Dismiss is resolved, we will not remove the matter. When a response has not been filed on a Motion for Relief, we will not remove the matter.

To use the Matter Calendar on 13network:

Sign onto my website.

Click on the “Matter Calendar” link in the top right tool bar.

Click on a calendar date on the right to populate the Calendar date field on the left.

Select more options or leave them as default.

Click on “Display Case list”

You may need to move the bottom line to resize the window so you can see more cases and less calendar.

## **8. Reminders**

### **Regarding Status Reports and Annual Tax Returns**

- a. They are due April 30.
- b. Please provide tax returns and LET US Know when uploaded to 13documents
- c. Amend I, J and plan (MTM) if needed
- d. File motion to retain if needed
- e. For business cases -

Let us know if tax deposits have been made.

If not - why not? And how will they be made up?

### **Status Reports for Home Repair Cases**

- a. These are due semi-annually. Dates vary depending on when case was confirmed.
- b. Please file Status Report and attach Special Purpose Bank Account Ledger. This helps to easily identify debits and credits.
- c. Attach monthly bank statements with bill/receipts to the Status Report.

**DO NOT SEND TAX RETURNS BY MAIL, FAX OR REGULAR EMAIL.  
THEY MUST BE SENT THROUGH 13DOCUMENTS WITH ALL PII  
INFORMATION REDACTED.**

### **Regarding Motions to Retain**

Please HOLD funds going to my office in your account so you can send upon order being granted. If your request is ‘iffy’ - hold All of the funds until order goes on.

It is a good idea to check with your clients on the status of any Tax Refunds over \$3,000 total, Inheritance, Insurance Claim, Bonuses, Commissions, Personal Injury, Worker’s Comp and Social Security claims and REMIND them NOT to spend the funds absent Court order.

ALSO remind Debtors NOT to withdraw from 401(k) or Borrow from 401(k) without prior Court approval.

**TAX REFUNDS for Older cases** -The old \$800/\$1600 amount pertains to tax refunds prior to Dec. 2016.

**Debtor(s) must now attest to the use of funds through a verified motion or affidavit.**

**Regarding Plan Payments:**

Attorneys can sign up for your free TFS Attorney Portal at <http://attorney.tfsbillpay.com>

The Portal will give you access to your client's accounts, allow you to send a MoneyGram card to clients for emergency payments, and even give you the option to help your clients create a TFS account at the petition signing before the case is filed. The Portal is also needed to create an eWage account.

Questions may be directed to Jen at email and phone no below.

Jennifer Reda

Vice President, Business Development

TFS Bill Pay

500 North Broadway, Suite 240, Jericho, NY 11753

P: (516) 858-2595 | E: [jen@tfsbillpay.com](mailto:jen@tfsbillpay.com)

***We always prefer a payroll order but TFS is working well.***

If debtors are funding via the Epay system and case is near completion, please advise debtors to discontinue making their payments via Epay and recommend TFS, money order or cashier's checks. This will eliminate a delay on any possible refunds.

**9. New Court Practice and Procedures for Confirmation and Mega Dockets:**

Chapter 13 Confirmation and Mega Docket Policy and Procedure:

This Court actively encourages parties to seek alternative resolutions to their disputes rather than resorting to this Court's judgment. In that spirit, the Court has instituted the following procedure for pre-marking matters that have been resolved prior to hearing.

Preliminary hearing dockets will be posted to the Court's website by 4:00 PM on the day before the Confirmation or Mega Docket.

Agreed orders, settlements and withdrawals will be accepted up to 10:00 AM the day of the scheduled hearing for the Chapter 13.

Confirmation and Mega dockets.

I. Agreed Orders, Settlements and Withdrawals:

Parties who have agreed to the entry of an order to a matter on the Confirmation or Mega Docket may report such agreement to chambers by uploading the agreed order and reporting it via e-mail by 10:00 AM on the day of the scheduled hearing. Withdrawals will also be accepted until 10:00 AM. All agreed orders and settlements will be reviewed by the court prior to 10:00 AM at which time the final docket will be posted.

Withdrawals will be processed and the hearing cancelled prior to the final docket being posted. Compliance with this procedure shall excuse attorneys from attendance during the Confirmation or Mega Docket. However, any such submission presented to chambers after 10:00 AM will still appear on the docket for the day, and attorneys' attendance shall not be excused. Attorneys are responsible for checking the final docket.

The Confirmation and Mega Dockets will begin promptly at 2:00 PM, irrespective of ongoing discussions between the Chapter 13 Trustee and counsel.

Any requests to adjourn or continue a matter on the Confirmation or Mega Docket must be filed via Motion or Agreed Order **three business days** prior to the hearing date.

**PLEASE LET THE TRUSTEE'S OFFICE KNOW IF (AND WHY) AN ADJOURNMENT IS NEEDED.**

**10. Filing Fee Applications for Personal Injury, Worker's Comp, Social Security Attorneys and other employed attorneys**

“An application for attorney fees must be filed and approved before such compensation can be received or paid.”

**11. No Longer Sending Baud Agreed Orders Increasing Plan Percentage**

The Trustee is no longer sending AOs increasing plan percentages. Instead, the Trustee will send an email with a request to increase percent if case is projecting to complete with less than 36 or 60 payments. If no response within 2 business days, the Trustee will upload a Notice Increasing Percent.

**12. Claims:**

**a. Filing Proofs of claims for Creditors:**

The Court has sent materials which I have included on the attorney list serve.

See attorney list serve of November 13, 2018.

**13. Mortgage Statements:**

As you may be aware, on April 19, 2018, mortgage servicers will be required to send monthly statements to Ch 13 debtors who have a mortgage. These statements are being sent to the DEBTOR, not to the TRUSTEE.

Encourage your debtors to get on the NDC website as my records and the mortgage company's records may not always be the same.

I am adding additional coding to my Computer so that the servicers can properly post the payments sent to them by my office.

#### **14. Motions to Sell Real Estate and Applications to Incur Debt for purchase of real estate.**

Trustee wants to confirm that sales of real estate have taken place. Therefore, any Order or Agreed Order on Motion to Sell should include the following language:

*Within 45 days of the filing of the within Agreed Order /Order, counsel shall file a report to Court as to the Status of the closing on sale of the real property.*

Trustee wants to confirm that Debtors have closed on purchase of home and/or home refinance. Therefore, any Approval of Application to Incur Debt for these purposes will include the following language: Within 45 days of the filing of the within approval, counsel shall file a report to Court as to the status of the home purchase or closing on refinance. Should the purchase/closing not occur within that 45 days, then this approval shall be deemed VOID and a new application to incur debt should be submitted.

Remember that **ALL** closing statements, whether for a purchase or sale, must be sent to the Trustee at least 1 business day before closing directly from the closing agent.

The Trustee's form has been updated and is included on her website.

#### **15. Motions to Dismiss now include payment information and hearing date set**

The Motion to Dismiss includes an attachment with the previous six (6) months of payments. However, check the website for most recent receipts of payments applied to the case.

Our office sets the hearing date at the time of filing of the Motion to Dismiss. The Court will keep the hearing on the docket awaiting the response deadline. If you do not respond to the Motion to Dismiss, please check the Court docket to make sure the hearing has been vacated. Otherwise, you may need to inform the Court that there is no opposition to the motion, so that the hearing can be removed from the docket.

When resolving a pending motion to dismiss, please answer the 'standard questions' and let us know what caused the debtor(s) to get behind in payments.

## **GENERAL PRACTICE POINTERS**

- **Social Security Numbers:**

Debtor(s)' full Social Security number should not be put on the petition page or other court filings.

- **Debtor Education:**

Our office no longer provides a “live” 2-hour program, but the Trustee will carry the cost, if debtor wishes to take TEN program course offered by a number of Chapter 13 Trustees.

### **REGISTRATION INFORMATION**

This is the information necessary for registering:

- 1) The website is [www.13class.com](http://www.13class.com)
- 2) Trustee Identifier Number (for cases assigned to **Margaret Burks**, enter **016** after **TEN13** which is already printed in the box)
- 3) name as it appears **exactly** on the bankruptcy petition,
- 4) case number,
- 5) an email address,
- 6) last four of the Social Security number. (This number is used for identity verification so it must be typed in again sometime during the course.)
- 7) Must choose “Yes” for certificate needed (TEN will file the certificate with the Court.)
- 8) Must create a Username and Password. (Write this down as you will need it to log-in.)
- 9) Must accept Terms and Conditions.
- 10) Attorney last name and email address can be provided. You may want to have your bankruptcy paperwork nearby as the course refers to some of the Schedules. (optional)
- 11) After registering, a message containing a link will be sent to the email address provided. The link must be clicked which confirms the registration.

There are video tutorials including one for registration which may be helpful. Please complete an evaluation at the end of the program.

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

Please call or email my Paralegal, Tonya Shorten or Staff Attorneys, Frank DiCesare and Tammy Stickley, to arrange date/time.

- **Real Estate Appraisals:**

**LBR 3015-3(d)(2) Appraisals of Real Property.** Unless otherwise ordered by the court, an appraisal performed within the preceding twelve (12) months must be filed and served on the trustee on or before the § 341 meeting of creditors for each parcel of real property in which the debtor has a legal, equitable, or beneficial interest. An auditor’s valuation is an acceptable appraisal unless the property is subject to lien avoidance, cramdown, or bifurcation.

- **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 seek substitution of collateral, please use form on our website; Debtor(s)'Counsel must shepherd funds and ensure that Creditor's lien appears on the title of the substituted collateral.

If your client has notified you that there was a car accident or other claim for insurance proceeds, please provide our office the following information regarding the totaled vehicle and/or other claim for loss:

- Date of loss
- The insurance agents contact information - name/email/phone number
- Lienholder
- Vehicle make/model/year
- Insurance claim number
- The amount of insurance funds our office will be receiving including GAP insurance

- **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 applicable Motion to Retain must be filed with the Court.

Applications to Employ Professionals and Applications to Approve Fees for Personal Injury, Social Security, Worker's Compensation, etc. Attorneys

You need to file an Attorney Fee application for work done by a social security, workers comp, personal injury lawyer, etc., before that attorney may be paid.

The Application to Employ Professional was updated with regard to Rule 2016 as follows:  
"An application for attorney fees must be filed and approved before such compensation can be received or paid."

It is a good idea to check with your clients on the status of these claims and REMIND them NOT to spend the funds absent Court order.

- **Retention of Tax Refunds:**

***Debtor(s) should not spend their tax refund.*** Ask Debtors to provide copies of Federal, State and local tax return (if required). Review the returns and make a recommendation to the Debtors.

The District Wide Chapter 13 Plan provides:

Notwithstanding single/joint tax filing status, the Debtor may annually retain the greater of (1) any earned income tax credit and/or additional child tax credit or (2) \$3,000 of any federal income tax refund for maintenance and support pursuant to § 1325(b)(2) and, unless otherwise ordered by the Court, and shall turn over any balance in excess of such amount to the Trustee by June 1 of each year. Unless otherwise ordered by the Court, tax refunds turned over to the Trustee shall be distributed by the Trustee for the benefit of creditors. Any motion to retain a tax refund in excess of the amount set forth above shall be filed and served pursuant to LBR 9013-3(b).

**NOTE:** If the Debtors owe any amount of Federal, State or Local taxes, any portion beyond the above-cited threshold may be offset by the amount of taxes owed.

If a Motion to Retain is filed, it must account for the **ENTIRE AMOUNT** to be retained (including the greater of the EIC/additional CTC or \$3,000, as applicable).

Remember, **all** motions to retain must be accompanied with a verified statement or affidavit-Confirming funds will be spent as stated in the motion.

- **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.
- Under the New Plan, effective October 1, 2020, the Trustee may file a Notice of Claim Satisfaction and will no longer file objections.

- **Local Rules:**

The Local Bankruptcy Rules are effective October 1, 2020. The Chapter 13 Local Bankruptcy Rules for Cincinnati, Dayton and Columbus are uniform. Please read the Rules in tandem with this Attorney Manual. Local Bankruptcy Rules are available on the Clerk's website: [www.ohsb.uscourts.gov](http://www.ohsb.uscourts.gov).

- **Large certified checks/money orders:**

If your client is going to send a large certified check or money order to the Trustee's lockbox (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.

- **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 non-bankruptcy 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. Please contact Brad Fortuna to obtain an access agreement.

- **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 Trustee has filed her Final Certification, 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), case number and address)

**If debtor is unable to have a payroll deduction, then Electronic Payments can be made through TFS bill pay:**

The Chapter 13 office has transitioned electronic payments from e-pay to the TFS bill pay program. We have handouts at the 341 meeting room to distribute to debtors.

**If your case was filed after August 2017 please sign up for TFS and not e-pay.**

If your client is having difficulty with e-pay for an older case then he or she can transition to the TFS program.

Website information for individuals and attorneys as well as phone number are below.

TFSbillpay.com  
Attorney.tfsbillpay.com  
888-729-2413

## **WORKING WITH THE CHAPTER 13 OFFICE**

- **Please use the Trustee's standard forms** (available at [www.13network.com](http://www.13network.com), not in the LBR)

WHY: The Chapter 13 Staff is trained to understand and use the forms. Using these forms reduces errors. HOW: Ensure that you are using the latest forms, dated 2021. 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**

The Trustee's forms generally include orders. Orders should be generic, and uploaded only after the expiration of the applicable response time.

- **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 email with an estimated time you will be able to respond.

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

Do not email the Trustee's "Cincinnati" email address. This address is reserved for ECF notices, and is routed to our IT department to hand-sort. Emails sent to this address will be delayed in reaching us.

- **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 claim, not to any Notice from the Chapter 13 Office.

- **Obtaining Trustee's Website Printouts:**

1. Access the Trustee web site at [www.13network.com](http://www.13network.com)
2. Choose the case you wish to access.
3. Choose "Print Inquiry" from Menu on the right of the screen.
4. 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.
5. Click on "Submit" and print from your computer.

- **Trustee Annual Reports:**

Trustee annual reports are mailed to Debtor(s) and Counsel annually (generally in February).

## **PRECONFIRMATION CONSIDERATIONS**

- **Form 1015-2:**

If the Debtor(s) has filed bankruptcy within the last eight (8) years, it must be noted on the petition and Form 1015-2. Form 1015-2 **must** be filed in every case. See LBR 1015-2(b) and Form 1015-2 for a list of all prior and/or related cases that must be included.

- **Application to pay filing fee 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. The fees must be paid prior to confirmation.

LBR 1006-1(c) **Payment of Unpaid Filing Fee Upon Dismissal.** If a chapter 7 bankruptcy case is dismissed or a chapter 12 or 13 bankruptcy case is dismissed prior to confirmation with any portion of the filing fee remaining unpaid and there are estate assets to be administered by the trustee, prior to distribution of the assets to the debtor, the trustee shall pay the filing fee from the assets of the estate without further order of the court in accordance with 507(a)(2) of the Code.

- **LBR 3015-1(b)**

(b) Service of Plan. The debtor shall serve the chapter 13 plan on the trustee and all creditors and parties in interest. The debtor shall file a certificate of service evidencing compliance. The certificate of service shall specify the method of service as to each entity served.

**As a reminder, the certificate of service should comply with the following:**

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing (specific name of filing) was served electronically on the date of filing through the Court's ECF System on all ECF participants registered in this case at the email address registered with the court and

by **first class mail** on (month), (day), (year) addressed to:

(Name and mailing address)

*[For parties served other than by first class mail add the following language.]*

by *certified mail or any other method of service* on [(month) (day), (year)] addressed to:  
(Name and mailing address, or, if service is made on an individual personally, state "(Personally Served)" or (Hand Delivered)")

*[For parties served using a Third-Party Notice Provider approved by the Administrative office of the United States Courts pursuant to Federal Rules of Bankruptcy Procedure 9001(9) and 2002(g)(4), add the following language.]*

And the creditors and parties in interest as shown on the \_\_\_\_\_ attached or separately filed\_\_\_\_\_

Declaration of Mailing and Certificate of Service on [(month) (day), (year)].

- **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.

*If you must reschedule 341:*

1. Contact the Trustee's office by emailing Trustee, Staff Attorneys and paralegals as soon as you become aware that you cannot attend 341 Meeting set and noticed by the Clerk's service. You need to have a good reason.
2. Staff attorney will contact counsel with a continued date/time.
3. Counsel prepares the Joint Notice of Re-Set 341 Meeting, which must include a signature line for debtor's counsel and Trustee/Trustee's Counsel. Certificate of Service, however, is signed only by debtor's counsel.
4. Debtor's Counsel files the Joint Notice on ECF using the "Notice" category of ECF functions. Counsel must also:
  - a. serve same via ordinary mail to all parties not receiving ECF notice, and
  - b. ADVISE TRUSTEE AND HER COUNSEL VIA EMAIL that this was done.
5. Trustee's staff will re-file using the Trustee's ECF function for re-calendaring 341 Meetings.
6. If there is insufficient time to properly notice a rescheduling of the 341 Meeting, you should plan to appear and request an adjournment on behalf of your client or engage substitute counsel on your behalf for this purpose. Notify debtor(s) and any creditors expected to attend that the 341 Meeting will be called, but not conducted on the originally scheduled date.

- **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, email Alex Eddins and copy the Trustee and Staff Attorneys so that a time can be set aside for your client. All meetings are held in downtown Cincinnati, Ohio.

#### PRIOR TO THE 341 MEETING

- Submit **CMI Ledger, pay advices and copies of tax returns** via 13Documents at least seven (7) days prior to the date for the 341 Meeting pursuant to LBR 4002(1)(b) (see pg. 19 of this Manual for further information on 13Documents). 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.

- 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.**
- **Attorneys should bring copies of any documents, amended schedules/Plan, etc. that have been filed since the initial petition to the 341 meeting.** Nevertheless, documents are frequently missing at the 341 meeting. Please refer to the end of this manual for a list of required documents.
- **Translator Needed** - let the Trustee's office know at the time that the petition is filed, that your client requires a translator. The Trustee can then make the necessary arrangement to have the 341 meeting conducted through the U.S. Trustee's phone service.
- **If one of your clients needs to be excused from the 341 meeting for a medical reason or other extenuating circumstance**, you must file a motion to excuse your client's attendance with the Court, and should attach documentation in support of the request. Trustee will seek confirmation that you have met with your client, not only debtor(s)' spouse or POA, if such a motion is filed. Absent extraordinary circumstances, debtor(s) should appear.

## 13DOCUMENTS

We have a service called 13Documents to accept tax returns and pay advices in a more secure manner. Documents will be uploaded to this secure site. Documents will no longer need to be encrypted prior to upload.

Prior to the initial 341 Meeting, the following documents only should be tendered to 13Documents:

1. Tax Returns in **PDF** format (Adobe);
2. CMI in **PDF** format (Adobe); and
3. Pay Advices in **PDF** format (Adobe)

After the initial 341 Meeting, please continue to use 13Documents to tender Tax Returns, and any documents that contain personal identifiers (including and especially social security numbers).

For any other documents tendered after the initial 341 Meeting, please simply email the document to the following email addresses:

[mburks@cinn13.org](mailto:mburks@cinn13.org), [tstickley@cinn.13.org](mailto:tstickley@cinn.13.org), [fdicesare@cinn13.org](mailto:fdicesare@cinn13.org), and the 341 team (see pg. 3)

Please continue to email all other documents to the regular email addresses as you have done in the past.

## BUSINESS CASES

- 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): [tshorten@cinn13.org](mailto:tshorten@cinn13.org), Trustee [mburks@cinn13.org](mailto:mburks@cinn13.org), Staff Attorneys

[fdicesare@cinn13.org](mailto:fdicesare@cinn13.org) and [tstickley@cinn13.org](mailto:tstickley@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 3 years of tax returns.
- The Trustee requires annual status reports on the Business Status report form for all business cases. This replaces the requirement to file quarterly profit and loss statements. This report must 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). It must indicate whether taxes are owed. If reports are not filed by June, the Trustee will move to dismiss under 11 U.S.C. §§ 1304 and 1307(c)(1).
- Trustee reserves the right to request additional reporting and/or documentation on less than an annual basis if necessary for her administration of the case.

#### ADJOURNED 341 MEETINGS

If you do not want to attend the adjourned docket, **you must follow the procedure, below:**

- Email (do not fax or send by regular mail) all of the following to: [mcranfield@cinn13.org](mailto:mcranfield@cinn13.org), [tshorten@cinn13.org](mailto:tshorten@cinn13.org), [smartin@cinn13.org](mailto:smartin@cinn13.org), [mburks@cinn13.org](mailto:mburks@cinn13.org), [fdicesare@cinn13.org](mailto:fdicesare@cinn13.org), and [tstickley@cinn13.org](mailto:tstickley@cinn13.org).
  1. A copy of the Trustee's Report in .pdf format **with list of requested documents in the body of the email that you send.**
  2. A copy of the documents requested in .pdf format. Send file-stamped copies of documents that are required to be filed with the Court.
- **The items above must be emailed the Wednesday before the Monday continued 341 docket or at least 3 business days prior to any other date of 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.

- **Debtor(s)' budget (Schedules I & J)**

#### INCOME (SCHEDULE I)

- *Itemize deductions.* Do not lump everything together into one sum. For example, itemize deductions for health insurance, child support, union dues, etc. Schedule I provides space for individual listing.

- *401(k) loan deductions* break out individual loans and specify the date that the loan is expected to be paid off. When the loan is paid, the monthly plan payment should increase (i.e., a step plan).
- *Business income* – Although Schedule I provides a line for net business income, business debtor(s) must complete a supplemental statement showing gross income less identified and itemized expenses (including expected income taxes).

## EXPENSES (SCHEDULE J)

- *Insurance* – Unless health insurance is payroll deducted, include an amount for health insurance in Debtor(s)' budget. Debtor(s) should also include auto insurance, homeowners insurance, etc.
- *Food* – Always allow enough money for food: \$200 to \$300 per person per month. **This amount includes toiletries.**
- *Real estate taxes* – If taxes are not escrowed in the monthly mortgage payment, they must be in Debtor(s)' budget.
- *Budget Billing* – Tell 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. We have Budget Billing information available at the 341 meetings, but ask that you Call Duke Energy for the Budget Billing amount **as you prepare the schedules.**

**Advise Debtor(s) to watch their budget** – items on the budget must be paid (i.e., Duke Energy, Cincinnati Bell, etc.)

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

- **Adversary release form**

To facilitate the filing of adversary complaints, the Trustee will ask 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 any closing and/or refinance including the title company information.

→NOTE – If Trustee asks Debtor to pursue the adversary proceeding:

- a. Debtor(s)' counsel should obtain Agreed Judgment in Lieu of Adversary as possible.
- b. The Trustee's proffered plan paragraph 13 language regarding avoidance of a lien secured by a motor vehicle is available on the Trustee's website.

- **Domestic Support Obligations (DSO) (child/spousal 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 U.S.C. § 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  
P. O. Box 183203  
Columbus, OH 43218-3203

→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, as well. (See UST website for addresses of other State Agencies).

*DO NOT PROPOSE LANGUAGE IN PARAGRAPH 13 THAT COULD BE CONSTRUED AS A DETERMINATION OF A DIVORCE OBLIGATION'S DISCHARGEABILITY. See In re Phile, Buchanan, J., 11-12017.*

- **Attorney fees**

LBR 2016-1(b)(2) itemizes services included in the \$3,700.00 “no-look” fee.

If attorney fees are above \$3,700, 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 \$3,700.

Attorney fees are approved in the Confirmation Order, unless over \$3,700.

Counsel must file an *initial fee disclosure* in every case, using LBR Form 2016-1(b).

- **Liquidation analysis**

Use the Liquidation Analysis form on the Trustee’s 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.

The District Wide Plan no longer recites the liquidation analysis. This form must be filed in every case.

- **Tax Returns**

Pursuant to 11 U.S.C. § 1308(a) – 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.

- **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.

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, UST, and the Chapter 13 Trustee. See L.B.R. 3015-3.

➔ *Note on Appraisals:* LBR 3012-1(c) states that creditor's attorney and debtor's attorney *shall* hold a settlement conference to arrange a timely appraisal. Failure by the parties to cooperate may result in sanctions. Attendance at the § 341 meeting is strongly encouraged.

Try to file your objection as early as possible. If the objection is late, you must 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.

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. Once the Court posts the final Confirmation docket on the Court's website www.ohsb.uscourts.gov (under each Judge's "hearing schedules"), the parties must appear in person at the scheduled Confirmation hearing time to report any settlements entered into after the docket is posted.

## **PLAN FORM AND CONTENT**

### **1. Mandatory District Wide Chapter 13 Plan**

The new plan is effective October 1, 2020. Updated forms are on the Court's website. Check periodically to make sure you have the latest form.

Updated non-standard provisions (paragraph 13) are available on the Trustee's website.

Of particular note to Cincinnati Practitioners:

- Claims are organized/paid according to a class system. See page 3 of plan.
- Plan defaults to conduit mortgage payments beginning month after petition and clarifies that projected escrow shortages are excluded from conduit requirements. See para. 5.1.1.
- Motions to avoid must be filed on or before the § 341 Meeting and must be served pursuant to Rule 7004. Counsel can also avoid liens by plan terms. See para. 5.4.1. But see Rule 3012(c) for governmental agencies.
- For § 544 avoidance actions not pursued by the Trustee, derivative standing motion not required, provided "colorable claim exists that would benefit the estate." See para. 5.4.4.
- Debtor(s) may annually retain the greater of the EIC/additional CTC or \$3,000 of any federal income tax refund. See para. 8.2.
- Tax returns are required to be provided to the Trustee by April 30 of each year. See para. 8.1
- All real/personal property insurance information must be set forth in the plan. See para. 10.
- Plan defaults to vesting in Debtor upon discharge. See para. 12.
- Language in para 4 is new Re: Treatment, Timing and Service requirements
- Language in para 5 is new Re: Trustee may file a Notice of Deemed Satisfaction of Claim with the Court if written notice is received from a creditor that a claim has been paid in full, released, waived or otherwise deemed satisfied.
- Paragraphs 5.1.2 and 5.1.4 added (A) and (B) sections. Use 5.1.2(A) if cramming down a real property lien. Use 5.1.2(B) if proposing to pay real property lien in full because over secured. Use 5.1.4(A) if cramming down a personal property lien. Use 5.1.4(B) if proposing to pay personal property lien in full because over secured.
- Paragraph 5.2.1 was amended to include an interest rate.

### **2. Local Bankruptcy Rules – Amended Effective October 1, 2020**

**See General Order No. 22-3 on the Bankruptcy Court's website with following:**

Effective October 1, 2020, certain amendments to the Form Plan are hereby adopted. Any chapter 13 plan or amended plan filed in this District must conform to the Form Plan, as amended. Provided, if an initial chapter 13 plan was filed before October 1, 2020, and it is necessary to amend that chapter 13 plan, then the most recent prior version of the Form Plan (Revised 01/22/2018) shall be used. The Form Plan is available on the Court's website at [www.ohsb.uscourts.gov](http://www.ohsb.uscourts.gov).

LBR 2016-1(b)(2)(A)(iv) and LBR Form 2016-1(b) (Section II.5.d) are amended in their

entirety to state as follows:

Preparation and filing of the chapter 13 plan and any preconfirmation amendments thereto that may be required; provided, legal services performed relative to avoidance of wholly unsecured mortgages/liens, avoidance of judicial liens impairing an exemption in real property, or avoidance of nonpossessory, nonpurchase-money security interests in exempt property within a chapter 13 plan are not covered by the no-look fee and may be compensated through a separate application for fees; however, in such event, no additional compensation will be allowed for the preparation and filing of a motion pursuant to Rule 5009(d).

LBR 2016-1(b)(5)&(6)

Fee applications sought in a preconfirmation dismissed case or when attorney does not continue to represent debtor shall be filed no later than twenty-one (21) days after the entry of the order of dismissal or legal representation has discontinued.

LBR 3007-1(f) is amended in its entirety to state as follows:

Service of Certain Claim Objections in Chapter 13 Cases. An objection to a proof of claim that seeks to modify a mortgage or lien secured by real property, modify a claim secured by personal property, or avoid a wholly unsecured mortgage or lien in connection with confirmation of a chapter 13 plan shall be served pursuant to Rule 7004.

### **3. Federal Rules – Amended Effective December 1, 2017**

REMINDER – Regarding Filing Fees in Installments and Attorney Fees:

**Federal Rule 1006 (b)(3)- if you pay the filing fee in installments you must postpone payment of attorney fees:**

(3) Postponement of Attorney's Fees. All installments of the filing fee must be paid in full before the debtor or chapter 13 trustee may make further payments to an attorney or any person who renders services to the debtors in connection with the case.

**Federal Rule 3002 (c) Time for Filing a Proof of Claim:**

Reduced to 70 days from date of the Order for Relief or the date of the order of conversion to a case under Chapter 13.

**Service of Plan, Objections and Motions by Fed.R.Bankr.P. 3007(a)(2) & 7004(b) & (h)**

*See attached Flow Chart for service on FDIC and Corporations.*

**YOU MUST USE** the District Wide Chapter 13 Plan effective October 1, 2020 and any updates thereafter. **See** LBR 3015-1(a).

#### **4. Payments by the Trustee**

In addition to the Local Rules cited below, it is the Trustee's policy that all **mortgage** and **vehicle** payments be paid through the plan, as this greatly reduces the filing of motions for relief from the automatic stay.

- Unless otherwise ordered by the court, **ongoing mortgage payments** should be paid through the Plan if monthly payments are in arrears as of the petition filing date. See LBR 3015-1(d).
- Unless otherwise ordered by the court, **all vehicle payments, whether lease or loan**, shall be made by the Trustee. See LBR 3015-1(c).

**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%.

Student loans paid under the IBR/IDR program should be administered through the Plan.

Effective May 1, 2020, the Trustee's fee is **10 %**. Use 10% when calculating amount needed to fund your plan so you leave room for unexpected events. (Trustee fee may change per budget and approval with U.S. Trustee.)

#### **5. Above Median Debtors**

STEP 1: Calculate disposable monthly income ("DMI")

If Debtor is above median income (calculated by completing Form 22C-1), complete the means test (Form 22C-2). Determine line 45.

- If line 45 is negative, then DMI = the negative number (this allows us to determine whether a change in a means test deduction is material).
- If line 45 is positive, multiply line 45 times 60 months = X

STEP 2: Calculate DMI percentage

Divide \$X by unsecured pool of creditors (\$Y)

- Y = total on Schedule F + unsec'd portion of Schedule D

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

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

*→Note: If debtor(s) cannot meet the DMI required plan percent, the Trustee will require annual reporting on debtor(s)' income with copies of annual tax returns and amended I & J/modified plan, if warranted.*

## **6. All Debtors (Above or Below Median)**

### **PLAN PAYMENT**

Schedule I and J must be reviewed (See I & J preparation guidance, below). The plan payment is determined by Schedule J, but case must pay enough to meet the liquidation minimum. Round up, and avoid partial percentages (e.g., 3.57%).

*When due:* 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 . . .”

*How made:* Payments shall be by employer deduction, money order, certified check or TFS. 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. Payroll deduction plans are more successful than self-pay plans. See LBR 3015-1(e).

*How much:* The Plan payment must cover all priority payments and the Trustee fee. The Trustee fee for the 2019-2020 fiscal year is 10%. 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 receipts.

*Example (based upon 10% Trustee fee):*

TOTAL PAYMENT:	\$1,092.00
----------------	------------

10% of \$1,092.00	\$109.20
Conduit Mortgage:	\$900.00
Priority payment:	\$40.00 (car loan)
Priority payment:	\$42.80 (Attorney Fee)

\*subtract 10% Trustee’s Fee first because fee is paid on receipts.

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.

### **PLAN LENGTH**

Plan length must be 36 months at a minimum for below median cases but no longer than 60 months. Plan length must be 60 months for above median cases. This applies even if Line 45 is negative. Plan length may be less than 36 months or 60 months only if 100% is being paid to unsecured creditors.

## **EXECUTORY CONTRACTS**

The plan requires specific designation regarding whether executory contracts such as gym memberships, cell phone contracts, and timeshare maintenance fees are assumed or rejected by the Debtor(s).

## **ADEQUATE PROTECTION**

If Trustee is to pay the car lease payments prior to confirmation, 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.

## **STUDENT LOANS**

The Mandatory District Wide Plan does not contain a provision regarding student loans. If different treatment is proposed, it must be set forth in para. 5.5, 5.6 or para. 13. Any treatment must comply with 11 U.S.C. § 1322(b)(1). Payment of student loans direct by debtor through income driven repayment plans or other repayment and debt forgiveness plans should be explicitly stated in paragraph 5.6, schedule J expenses and a detailed explanation outlined in paragraph 13 as to why other general unsecured creditors are not unfairly discriminated against by this direct payment with bold and capital print, so as to give other unsecured creditors appropriate notice to object.

If debtors' proposed plan incorporates an income based or income driven treatment of student loan(s), the Trustee asks that debtors' counsel utilize the agreed order form, and paragraph 13 language proffered by Plan Addendum Form on the Trustee's Website.

## **INTEREST RATE ON SECURED CLAIMS**

Interest is calculated per the Supreme Court's decision in Till v. SCS Credit, 541 U.S. 465 (2004). 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.

## **SPECIAL/ADDITIONAL PROVISIONS**

Use **paragraph 13** of Plan for all provisions that deviate from the mandatory form plan. The Trustee requests that you use "suggested language" in paragraph 13, which is available on the Trustee's website, when:

- surrendering real or personal property,
- providing for adversary proceedings,
- regarding treatment of student loans,
- mortgage modification mediation program,
- providing for the balance of any debt to survive discharge,
- *Lanning*, and
- any other special provisions.

This is suggested language for clarity when certain situations arise. 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.

## **DURING THE CHAPTER 13 CASE**

- **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. This information is necessary for the Chapter 13 Office to administer Debtor(s)' case. See District Wide Plan para. 9.

- **Postconfirmation Attorney Fees**

Postconfirmation attorney fees are paid by the Chapter 13 Office. You should file an application for fees immediately after you resolve the substantive motion. Always provide dates of service itemized in tenths of hours and an explanation. See LBR 2016-1(b)(3).

Although the local rule allows fee applications to be submitted within 6 months of the date that the work was performed, please file your fee applications as soon as possible. *Particularly* if it is nearing the end of the case, we ask that you file immediately and email the Trustee and Staff Attorneys a courtesy copy of your application.

- **Suspensions/ Temporary Motion of Modification of Plan**

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 LBR 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 payments plus Trustee fee during the suspension period.

- **The Notice of Intention to Pay Claims**

This document 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 usually occurs the 3rd week of each month.

- **Communication with your Clients Post-Filing**

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. PLEASE REMIND YOUR CLIENTS THAT THE TRUSTEE'S OFFICE CANNOT GIVE LEGAL ADVICE.

Let your clients know there may 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.

- **Postconfirmation Plan Adjustments**

#### **PLAN FALLING UNDER 36 MONTHS REQUIRED BY 11 U.S.C. § 1322(d)**

If the plan is determined to be projecting under 36 months, the Trustee will serve a notice upon debtor and Counsel and increase the percentage. Our office adds tax refunds, bonuses, commissions, insurance proceeds, inheritances 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 funds 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 filing Notice with Court.*

#### **DISPOSABLE MONTHLY INCOME TEST (ABOVE MEDIAN DEBTORS)**

After Confirmation and after claims bar date, use the following formula to determine whether your plan meets the DMI calculation:

Multiply line 45 of the means test 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.

#### **SIXTY MONTHS OF FUNDING (BAUD) (ABOVE MEDIAN DEBTORS)**

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. Our office adds tax refunds, bonuses, commissions, insurance proceeds, inheritances and any additional funding to the plan to be disbursed to creditors when determining the plan percentage for a 60-month plan. Below is a sample email to Counsel.

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 2 business 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. The total amount paid to date.
3. 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.
- c. Any objections to claims that have not been filed.

- **Motions to Modify**

- **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.
  - If Debtor(s) are below median, the Plan percentage may not fall below the greater of the following; the plan percentage already disbursed by the Trustee, the liquidation analysis percentage or the plan percentage required for a 36-month plan.
  - If Debtor(s) are above median, the Plan percentage may not fall below the greater of the following; the plan percentage already disbursed by the Trustee, the liquidation analysis percentage or the plan percentage required for a 60-month plan.
- 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 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 U.S.C. § 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 (i.e. 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."

- If there is a **temporary change in circumstances**, such as a job loss, 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 any change in income and/or expenses.
- Please address Trustee's objection to Motion to Modify when proposing an Agreed Order, and complete all relevant information requested on the suggested form. (i.e. fill in paragraph d. with additional terms and conditions). Copy the Trustee, both Staff Attorneys, and Tonya Shorten.

- **Motions to Dismiss**

- We ask that you do the following when presenting resolutions to the Trustee, to help us respond more quickly:
  - a. Send proposed Agreed Order resolving to the Trustee, both Staff Attorneys, and Kathy Hipple, using the Trustee's suggested form.
  - b. Answer the following questions in your email:

How many payments have been missed? \_\_\_\_\_.

What is the monthly payment? \$\_\_\_\_\_.

What caused the debtor(s) to miss payments? \_\_\_\_\_

Payroll or direct pay? Can we do a payroll? If not, why? \_\_\_\_\_.

Is there a conduit in place? \_\_\_\_\_.

Is the case above or below median? \_\_\_\_\_.

What is the plan's current length? \_\_\_\_\_ months.

Was a recent motion to modify filed? \_\_\_\_\_.

If case is projecting over 60, is a motion to modify (and amended I&J) necessary? \_\_\_\_\_.

If case is projecting over 60, can we increase monthly plan payment by up to approximately \$100.00 per month by Agreed Order to bring within 60 by adjusting budget to accommodate the minimal increase in plan payment?

With respect to the last question, we suggest the following Agreed Order language to modify plan in conjunction with resolving motion to dismiss with the following language if amount necessary is approximately \$100.00/month or less:

The parties further agree that Debtor(s)' plan is hereby modified to increase plan payments to \$\_\_\_\_\_ per month beginning with the plan payment due for \_\_\_\_\_ 20\_\_\_\_\_, so that the plan may complete within 60 months in compliance with 11 U.S.C. 1322 (d). Debtors will adjust monthly expenses to accommodate this \$\_\_\_\_\_/per month plan increase or has filed Amended Schedules I & J in conjunction with this agreed order demonstrating Debtor(s) current budget. Trustee will increase monthly payments to remaining unpaid creditors per the confirmed plan. No other creditor or party in interest is adversely affected by this plan modification.

THE TRUSTEE RESERVES THE RIGHT TO ASK FOR AN AMENDED BUDGET ON A CASE BY CASE BASIS, AND COUNSEL SHOULD HAVE AMENDED SCHEDULES PREPARED FOR ANY CASE THAT HAS NOT UPDATED THE BUDGET IN OVER 1 YEAR.

- **Selling Real Estate**

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

*Include whether Debtor will retain any proceeds and what for and Attach Purchase Agreement.*

*File Application to Employ Realtor with Affidavit of Realtor and copy of listing contract.*

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.

- **Sale of Personal Property**

Filed by application to the Trustee via email, as opposed to motion, per LBR 6004, unless the property is encumbered.

- **Incurring Debt**

If the Debtor(s) wish to obtain credit (including a mortgage refinance), Counsel must submit an Application to Incur Debt to the Trustee and obtain the Trustee's Approval. Email the completed application and supporting documents to mburks@cinn13.org, tstickley@cinn13.org, smartin@cinn13.org, and tshorten@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 the 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. 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.

- **Court Proffered Motions to Avoid**

The Court has proffered three forms/orders, which are available on the Court's, as well as, the Trustee's website:

- Motion for Determination that Mortgage/Lien is Wholly Unsecured and Void
- Motion to Avoid Judicial Lien on Real Property Pursuant to 11 U.S.C. § 522(f)(1)(A)
- Motion to Avoid Nonpossessory, Nonpurchase-Money Security Interest in Exempt Property of Debtor Pursuant to 11 U.S.C. § 522(f)(1)(B)

Note that further form motions may be coming. Stay tuned, and monitor the Court's website. Also note: that lien avoidance can be accomplished by plan provision effective 12/1/2017.

- **Loan Modifications**

If Debtor(s) is in the loan modification process at the time of the bankruptcy filing, the Trustee suggests the following language in paragraph 13:

**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 and/or file a Motion to Approve Trial/Permanent Mortgage Loan Modification (and Motion to Modify Plan, if applicable) 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.

**Chapter 13 Cases—Mortgage Loan Modification.** Any party seeking court approval of a trial mortgage loan modification or a permanent mortgage loan modification may file a

motion directed to the court. Any such motion shall state whether the trustee should continue or cease distributions on any arrearage. If applicable, a motion to modify the plan shall be filed pursuant to LBR 3015-2.

Please note the following when filing the appropriate Motions:

1. The updated forms are located on the Trustee's website: [www.13.network.com](http://www.13.network.com).
2. Amended Schedules I and J reflecting updated income should be filed with the
3. Motion to Approve Trial Mortgage Loan Modification, but must be filed no later than with the Motion to Approve Permanent Mortgage Loan Modification.
4. Per LBR 2083-1, the Motion *shall* direct the Trustee whether to continue disbursements on any arrearage pre petition or post petition. If there are post-petition arrearages, specify how the Trustee should handle.
5. File all documentation of the trial or permanent mortgage loan modification as an attachment to the Motion to Approve. Attachments should show monthly payment breakdown with Principal and Interest and amount for escrow of taxes and insurance.
6. Counsel must upload an Order Approving the Motion within 25 days of the filed Motion.
7. Trustee will not authorize an early disbursement without an Order. A Motion to Shorten Time must be filed along with the Motion.
8. Serve all affected Creditors.
9. The Trustee asks that you review the following in connection with these Motions:
  - Review changes being made to the mortgage amount, mortgage payment, interest rate, and mortgage arrearage. Compare old terms to the new terms and see what changes are being made.
  - Is the mortgage payment a conduit or direct pay?
  - Will the Trustee continue or discontinue the conduit payment?
  - Is the Trustee paying the Mortgage arrearages? If so, check to see whether they need to be stopped.
  - Review case status: Below Median or Above Median? Is case below 36 or 60 months, as applicable? Is case funding regularly?
  - Does the mortgage payment include taxes and insurance?

- **Mortgage Modification Mediation Program (“MMM”)**

**See General Order No. 46-1 on the Bankruptcy Court's website with following:**

Effective October 1, 2020, in accordance with 11 U.S.C. 105(a), a Mortgage Modification Program (the “MMM Program”) is hereby adopted. The MMM Program shall be implemented by the Mortgage Modification Procedures (the “MMM Procedures”) posted on the Court’s website. The MMM Procedures shall include the Mortgage Modification Mediation Forms (the “MMM Forms”).

The MMM Program shall be available for all open and active bankruptcy cases currently pending in this District as of October 1, 2020.

Compensation and costs allowed for participants in the MMM Program shall be set for in the MMM Procedures.

The Court may modify the MMM Procedures and the MMM Forms from time to time without prior notice.

- **Motions for Relief from 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 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. Email to the Court should indicate that Trustee and all parties have signed off. Please submit your AO to the Trustee with answers to the following questions:

- How will Debtors cure the arrearage?
- The Trustee expects any motion to modify the plan to accommodate the arrearage and any Supplemental Proof of Claim be prepared and ready to file when the AO is presented. Are these prepared?
- If cure is direct, which is **not** the Trustee's preference, does the AO recite the source of funds used for the cure?
- If the mortgage fell behind while debtor(s) paid directly, will case create a conduit going forward? The Trustee's staff must obtain her express permission to allow direct payment to resume under these circumstances.

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.

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.

- **Claims**

**Pursuant to Federal Rule 3002 (c)**

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 70 days from filing of petition. 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. The Trustee will schedule all IRS and State of Ohio claims as filed (unless filed after the governmental bar date), notwithstanding the Plan treatment, unless an objection to claim is also filed.

If the secured Creditor has not filed a proof of claim – Debtor(s) or Trustee may file a claim on behalf of the Creditor pursuant to Federal Rule of Bankruptcy Procedure 3004. This Rule allows Debtor(s) or Trustee an additional thirty (30) days within which to file the claim. Check Pacer after the 70 or 180 days has run. **Do not file a claim for a Creditor until the Creditor's time has expired. See also Federal Rule 3002 (c) (6) & (7) for extensions to file under certain circumstances and additional time to supplement certain claims. If unsure as to what disbursement address to use for a creditor, please email the Trustee, Staff Attorneys, Karen Reed and Tina Hall.**

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.

Mortgage Claims should include an addendum with the following information:

Creditors should be using the 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.**

**NOTICE OF MORTGAGE PAYMENT CHANGE**

- Creditor(s)' counsel - file Notice as required by Official Form B10 (supplement 1) as updated December 2011 and relate to the outstanding claim (See Fed. R. Bankr. P. 3002.1 (b) and [http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/BK\\_Forms\\_Current/B\\_010S1.pdf](http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/BK_Forms_Current/B_010S1.pdf)).
- Debtor(s)' counsel – if you do not agree with Notice of Payment change file an objection to the Notice and request a hearing to Determine current payment amount. Many counsel have recently filed responses based on escrowed analysis and/or post-petition defaults.

- Conduit cases over 60 - The Trustee will notify counsel if such new payment causes the plan to exceed sixty (60) months and request a resolution between the parties and/or plan modification to address the over 60 month issue. Trustee will maintain status quo on last notice of payment change and/or original proof of claim amount until or unless the Notice and objection thereto is resolved with Motion to Modify Plan to accommodate and/or withdrawal or amendment to Notice.

Note that the current rule change states that any timely filed Notice of Payment Change becomes effective if no objection is asserted in twenty-one (21) days.

There is also an exemption from the Notice requirements for HELOC loans.

**LBR 3002.1-1 Claims – Secured by a Security Interest in the Debtor’s Principal Residence**  
**– Notice and Determination**

If a claim arises from a home-equity line of credit, the notice of any change in payment amount may be filed and served on the debtor, debtor’s counsel, and the trustee no later than six months after entry of the order for relief, and not less frequently than every six months thereafter, provided that any notice of change in payment amount must be filed and served no later than twenty-one (21) days before a payment in the new amount is due. The payment amount shall be fixed until a subsequent notice of change in payment amount is filed. A subsequent notice of change in payment amount shall include any reconciliation needed to account for interest rate adjustments or balance changes since the last notice was filed.

**NOTICE OF FINAL CURE AND RESPONSE BY CREDITOR INDICATING ARREARAGE ON  
A DIRECT PAY MORTGAGE**

See Fed. R. Bankr. P. 3002.1(f) and (g)

- If parties agree with arrears - use proposed Agreed Order Form to resolve any post-petition mortgage arrears so that case can complete and close.
- If parties do NOT agree – Debtors(s)’ counsel should file a Motion to Determine post-petition mortgage arrears and request a hearing. See Fed. R. Bankr. P. 3002.1(h)

Use Trustee’s suggested form: AGREED ORDER NOTICE OF FINAL CURE PAYMENT

If Creditor’s response reflects a substantial post-petition of a direct pay mortgage, the Trustee may hold her administration until Debtor(s) and Creditor reach a resolution regarding how the loan will be brought current. Recent case law reflects a trend of such cases being dismissed or denied discharge.

**NOTICE OF POST-PETITION MORTGAGE FEES, EXPENSES, AND COSTS**

- Creditor(s)’ counsel - file Notice as required by Official Form B10 (supplement 2) and relate to the outstanding claim on the claims register.  
See Fed. R. Bankr. P. 3002.1(c) and (d)

- Debtor(s)' counsel – if you do not agree with Notice, file an objection and request a hearing or determination of charges.

See Fed. R. Bankr. P. 3002.1(e)

- Conduit cases - Trustee will send the following email to Debtor(s)' counsel and request a response as to whether Debtor(s) agree with the charges, then file a Motion to Allow or Disallow such charges based on counsel's reply to the email. If paying such fees and costs will cause the plan to exceed 60 months, then the Trustee will require a Motion to Modify Plan to be filed by Debtor(s)' counsel to accommodate such fees and charges.

Dear Counsel:

We are in receipt of a Notice of Post-Petition Mortgage Fees, Expenses and Charges (Supplement 2) filed by Wells Fargo Bank, N.A. in the amount of \$15.00 filed on 10/8/12 (Docket #\_\_\_\_).

THIS IS A CONDUIT CASE.

Please advise if you will be filing a Motion objecting to this Notice.

The Trustee will file a Motion to allow or disallow this Post-Petition Notice if no action is taken by debtor(s) Counsel.

By copy of this email, The Trustee is requesting additional information from Creditor's Counsel.

If you are not objecting to this Notice, please confirm if you want the Trustee to pay the fees through the plan.

Thank you.

- Non Conduit cases - Trustee will file a Notice stating that Trustee will not pay these additional fees and costs unless the plan is modified to accommodate such fees and charges. If Debtor(s) want these fees and costs paid, then counsel should file a Motion to allow such charges and a Motion to Modify plan to accommodate such charges.

- **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. Please refer to list on pg. 33 for questions to be answered when submitting resolutions of Motions to Dismiss.

**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 by the Debtor(s)' attorney of funds being sent to the Trustee's lockbox. Debtor(s) should bring payment to counsel and counsel should send payment.

- 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 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 U.S.C. § 1322(d).
- d. Objection to any Proof of Claim.
- e. Notice to Convert to Chapter 7 or other Chapter under the Bankruptcy Code.

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 period 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 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 (via email address listed, above, with Trustee and Staff Attorneys copied), AND you have verified on Pacer or with the Court that the hearing has been canceled.

See the specific Judge’s web page for the posted docket prior to the actual hearing date.

Review each individual Chambers’ policy for its settlement report deadline. In some cases, once the docket is posted, you must appear if your case is listed.

Please do not ask the Trustee’s office whether you need to appear, as each Chambers determines when appearances are necessary. When in doubt, appear.

• **Reporting resolutions of hearings to the Court**

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

**Include the terms of the settlement and when the Order will be submitted. Copy the Trustee with the e mail.**

**In subject line of settlement email please put the case no., name, issue and date of hearing.** The Trustee’s Office sorts emails by what is in the subject line. Providing this information helps our Office better serve you and handle the matter with expediency. Help us help you!

## **COMPLETING/CONVERTING THE CASE**

- **Debtor(s)' Final Certification for Discharge**

**Must use District Wide Mandatory Form provided in LBR Form 4002-1**

- A. This Certification was prepared using the form required by the Bankruptcy Court for the Southern District of Ohio pursuant to Local Bankruptcy Rule 4002-1(d) and the form's standard language has not been altered in any manner.
- B. The Chapter 13 Trustee has filed a Certification of Final Payment in this case.
- C. The Debtor has completed a financial management instructional course approved by the United States Trustee as described in 11 U.S.C. § 111 and has filed the certificate with the Court in accordance with Fed. R. Bankr. P. 1007(b)(7). (*See* 11 U.S.C. § 1328(g)(1)).
- D. Compliance with 11 U.S.C. § 101(14A) (Check either 1 or 2, or 3 as applicable):

- 1. The Debtor has not been required by a judicial or administrative order, or by statute, to pay any domestic support obligation as defined in 11 U.S.C. § 101(14A). *See* 11 U.S.C. § 1328(a).
- 2. The Debtor has been approved for a hardship discharge pursuant to 11 U.S.C. § 1328(b).
- 3. The Debtor certifies that as of the date of this certification, the Debtor has paid all amounts due under any domestic support obligation required by a judicial or administrative order or by statute, including amounts due before this bankruptcy was filed, to the extent provided for by the plan. *See* 11 U.S.C. § 1302(d)(1). **Note:** If this box is checked you must provide all information required in sections (a) through (e) below:

(a) Contact information for the holder of the domestic

support obligation: Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone Number:

(b) Contact information for the State child support enforcement agency for this domestic support obligation:

Name: \_\_\_\_\_ Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone Number: \_\_\_\_\_

(c) Debtor's most recent address:

Address: \_\_\_\_\_

\_\_\_\_\_ (d) Contact information for the Debtor's most recent employer:

Name: \_\_\_\_\_ Address: \_\_\_\_\_

(e) 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):  
\_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

E. The Debtor has not received a discharge in a case filed under chapter 7, 11, or 12 during the 4-year period preceding the date of the order for relief in this case. *See 11 U.S.C. § 1328(f)(1).*

F. The Debtor has not received a discharge in a case filed under chapter 13 during the 2-year period preceding the date of the order for relief in this case. *See 11 U.S.C. § 1328(f)(2).*

G. The Debtor certifies that 11 U.S.C. § 522(q)(1) is not applicable in this case and the Debtor does not have pending any proceeding in which the Debtor may be found guilty of a felony of the kind described in § 522(q)(1)(A) or liable for a debt of the kind described in § 522(q)(1)(B). *See 11 U.S.C. 1328(h).*

(NOTE TO COUNSEL: PLEASE REVIEW THIS FORM VERY CAREFULLY WITH YOUR CLIENTS. REFER TO 11 U.S.C. §§ 1302(d)(1) and 1328.)

- **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.

**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 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. Please **explore plan modification before resorting to hardship discharge.**

- **Cases Converted from Chapter 7 to Chapter 13**

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 that 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 submitted via 13Documents at least seven (7) days prior to the date for the 341 Meeting pursuant to LBR 4002(1)(b) (see pg. 19 of this Manual for further information on 13Documents). It is not necessary to file a Certification of Service of pay advices with the Court. You should also amend your disclosure of compensation, if applicable.

- **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.

**Thank you for taking the time to read this Manual.  
Please telephone or email the office should you have any questions.**

**2021**

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 – Social Security card preferred, but the Trustee may accept W-2 form, etc.
- Car titles, Memoranda of Title and Lease Agreements for automobiles
- Copies of Recorded Mortgages and Deeds and loan modification documents
- Three years of FILED Income Tax returns, including AMENDED Tax returns.
- 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

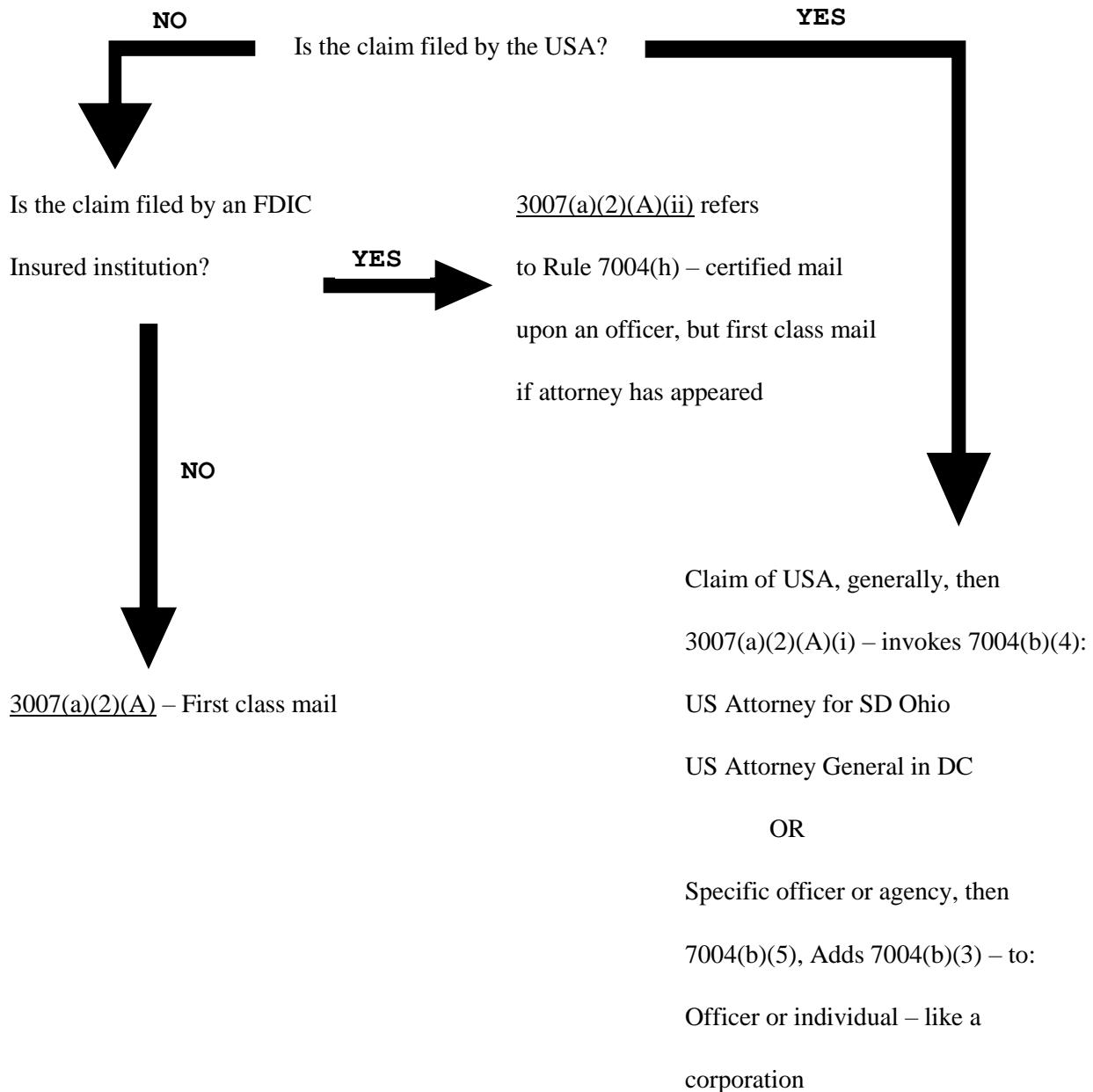
DEBTOR(S)' EXPENSES

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

<b>EXPENSES</b>	<b>DAILY</b>	<b>WEEKLY</b>	<b>MONTHLY TOTAL</b>
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 (\$60 Max Per Month If Applicable)	\$	\$	\$
Pet Expenses (\$50 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	\$	\$	\$

FLOW CHART FOR SERVICE OF OBJECTIONS TO CLAIMS –  
FED.R.BANKR.P. 3007(a)(2)



Service per Rule 7004.

Corporation, partnership or unincorporated association service:

Rule 7004(b)(3) requires service upon a corporation, partnership, or unincorporated association by FIRST CLASS mail to the attention of an OFFICER, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process.

United States service:

Rule 7004(b)(5) requires service upon a United States agency by first class mail to (1)the civil process clerk at the Office of the United States attorney for the district; (2) the Attorney General of the United States in Washington D.C. and (3) the agency itself.

Insured Depository Institution - Certified Mail (includes Credit Unions)

Rule 7004(h) requires that service on an insured depository institution in a contested matter shall be made by CERTIFIED mail addressed to an OFFICER of the institution.