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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO, ABILENE, SAN ANGELO AND WICHITA FALLS DIVISIONS

IN RE:

CHAPTER 13 TRUSTEE GUIDELINES

DATED: 9/8/2010

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NOW COMES WALTER O'CHESKEY, STANDING CHAPTER 13 TRUSTEE, and files his Guidelines. Such Guidelines are in addition to and apply only to cases filed on or after October 17, 2005. Any case filed before October 17, 2005 shall operate under the Guidelines previously filed on February 1, 2005. The purpose of these Guidelines is to provide information concerning Chapter 13 and to make known the duties and responsibilities of a Chapter 13 Debtor and Debtor's Attorney.

General Order Concerning all Chapter 13 Cases

All Chapter 13 cases filed on or after October 17, 2005 are governed by General Order 2010-01 (G.O. 2010-01), which modifies General Order 2009-03 unless otherwise ordered by the Court. A copy of G.O. 2010-01 can be obtained from the Trustee's website <http://extranet.ch13-12westtex.org> or from the Clerk's website at [www.txnb.uscourts.gov](http://www.txnb.uscourts.gov) along with any other General Orders. Other General Orders for the Northern District are referenced herein and may also be obtained from the Clerk's website.

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**Definitions-** The following definitions shall apply hereto:

**Petition Date:** Date the Chapter 13 case was filed or the date it was converted to a Chapter 13 from another case pursuant to 2010-01.

**§ 341 Meeting:** First meeting of creditors pursuant to 11 U.S.C. § 341.

**Bankruptcy Rules (B.R.):** Federal Rules of Bankruptcy Procedure.

**Local Bankruptcy Rules (L.B.R.):** Local Bankruptcy Rules for the Northern District of Texas. These rules are available from the Clerk's website at [www.txnb.uscourts.gov](http://www.txnb.uscourts.gov).

**Base Amount:** The sum of the payments in the debtor's confirmed or modified plan.

**Claims Bar Date:** for all claims other than claims of governmental units, 90 days after the first date set for the Section 341 Meeting of Creditors (Fed. R. Bankr. P. 3002) and , for claims for the governmental units (11U.S.C. § 502(b)(9)), 180 days after the date of the order for relief or 60 days after the date of the filing of a tax return under Section 1308 of the Bankruptcy Code, whichever is later (G.O. 2010-01)

**Clerk:** United States Bankruptcy Clerk for the Northern District of Texas, Abilene, Amarillo, Lubbock, San Angelo, and Wichita Falls Divisions.

**Compensation Guidelines:** Governed by General Order 2010-01

**Court:** The United States Bankruptcy Court for the Northern District of Texas, Abilene, Amarillo, Lubbock, San Angelo, and Wichita Falls Divisions.

**Authorization for Adequate Protection Disbursements (AAPD):** The document to be filed by the Debtor which authorizes adequate protection payments to be made by the Trustee to certain creditors.

**Plan:** The document filed and noticed by the Debtor within 14 days of the Petition Date outlining the Debtor's proposed repayment of secured, priority, and unsecured debt. This plan may be confirmed by the Court.

**Trustee's Recommendation Concerning Claims and Plan Modification (TRCC):** This document is prepared and noticed by the Trustee after the expiration of the governmental claims bar date.

**Trustee:** The Standing Chapter 13 Trustee for the Northern District of Texas, Abilene, Amarillo, San Angelo, and Wichita Falls Divisions.

**Notice of Intent (NOI):** Notice issued by the Trustee's Office of Trustee's intent to Dismiss a case in the absence of curative action pursuant to G.O. 2010-01.

**Bankruptcy Noticing Center (BNC):** Bankruptcy Court's official noticing center. All documents noticed by the Court are noticed through the BNC.

**Electronic Case Filing (ECF):** All documents must be filed electronically pursuant to General Order 2004-06. General Order 2004-06 can be found on the Clerk's website at [www.txnb.uscourts.gov](http://www.txnb.uscourts.gov). The website for filing cases electronically can be found at <http://ecf.txnb.uscourts.gov>.

**Affidavit and Disclosure of Domestic Support Obligations (DSO):** Affidavit prepared by the debtor disclosing if the debtor owes any person or entity for a domestic support obligation. Also used to disclose the holder and servicing agents of any domestic support obligations owed.

**Interlocutory Order:** Order produced by the Trustee and signed by the debtor and debtor attorney that resolves deficiencies set forth in a Trustee's Motion to Dismiss. This order is approved by the Bankruptcy Judge.

## **I. PAYMENTS TO THE TRUSTEE**

Pursuant to 11 U.S.C. § 1326(a) (1), the Debtor must begin payments under the Plan to the Trustee within thirty (30) days of filing the Bankruptcy Petition. Thereafter all payments will be due on the same date each month. If the Debtor is a wage or salary employee, then the Debtor must operate under a wage directive until the closing of the case. Attorneys must tell their clients HOW MUCH TO PAY AND WHEN THE FIRST PAYMENT IS DUE. The Debtor is responsible for making their first payment to the Trustee. Wage directives will not be sent to their employer until after the Debtor's have made the first payment. The Debtor is also responsible for curing any arrears and being current with all plan payments from the date of filing until completion of the plan. The Trustee uses a bank lock box to collect all plan payments. Please note the following regarding payments to the Trustee.

### **A. Mandatory Wage Directive**

The directive must be completed by the debtor and returned to the Trustee's office within 14 days from the date of the Petition. The directive will then be sent to the Debtor's employer with instructions regarding the withholding of payments to the Trustee. All withholdings should be sent to the Trustee's lock box for disbursement to creditors. Payments shall be withheld on an equal basis each pay period to the extent necessary and possible to fund the Plan. If plan payments change, the Trustee shall send an amended directive to the Debtor, employer, and Debtor's Attorney. If the Trustee receives written notice of termination of Debtor's employment, the Trustee shall send a termination of the directive to the Debtor, employer, and the Debtor's Attorney. The Debtor should notify the Trustee as soon as possible regarding any change in employment as well as continue to make plan payments until a new wage directive is in place. A new wage directive form will need to be completed and submitted to the Trustee for each new employer. This form is available at the Trustee's website <http://extranet.ch13-12westtexas.org>. Directives will not be forwarded to employers until after the 341 Meeting in order to verify the payroll information.

### **B. Payment Requirements.**

A debtor is responsible for making all plan payments to the Trustee's lock box until the wage withholding is deducted from the debtor's check. Any arrears amount must be cured by the debtor as well. All payments mailed to the Trustee must be sent to the address below:

Mail Plan Payments to the following address:  
Standing Chapter 13 Trustee  
P.O. Box 94210  
Lubbock, Texas 79493-4210

Failure to send payments to this address could result in the Trustee filing a Motion to Dismiss your bankruptcy case for failure to comply with the Trustee Guidelines.

1. DO NOT SEND CASH. The Trustee will only accept a check or money order as payment.
2. MAKE CHECKS OR MONEY ORDERS PAYABLE TO: STANDING CHAPTER 13 TRUSTEE.
3. ALWAYS PUT YOUR BANKRUPTCY CASE NUMBER ON YOUR CHECK OR MONEY ORDER. If you do not include your case number on your check or money order, we cannot assure that your payment will be credited properly to your case. Always keep a copy of your money order in case your money order payment is lost.
4. DO NOT POST-DATE YOUR CHECK OR MONEY ORDER. All post-dated checks and or money orders will be returned to you.

5. ONE MONTH HOLD ON DISBURSEMENTS. The Trustee makes disbursements to creditors between the 25th and the last day of each month. All Debtor payments received in the form of personal checks within 15 days prior to the date of disbursement will be held until the next month to ensure that the Trustee has collected funds.
6. DO NOT SEND PAYMENTS BY MAIL SERVICES THAT REQUIRE SIGNATURE UPON RECEIPT. Payments are sent to a lock box for the bank and no one can sign for mail received.
7. DO NOT BRING PAYMENTS DIRECTLY TO THE TRUSTEE'S OFFICE. Payments cannot be accepted at the Trustee's Office. Payments must be mailed to the lock box for the bank. Fax or email a copy of the payment if the Trustee's office needs to be notified of a last minute payment.
8. DO NOT INCLUDE YOUR SOCIAL SECURITY NUMBER ON YOUR PAYMENT.

**C. Failure to Begin Payments Within 30 Days.**

If a Debtor fails to begin making Plan Payments within 30 days after the Petition is filed as required by 11 U.S.C. § 1326(a)(1) of the Bankruptcy Code, the Trustee will issue a written Notice of Intent (NOI) to the Debtor and the Debtor's Attorney giving them seven (7) days to make the required payment. If the Trustee does not receive the payment within this time, the Trustee shall submit to the Clerk an Order Dismissing the case pursuant to the NOI.

**D. Failure to Make Continuing Plan Payments.**

Failure to make plan payments will result in the Trustee filing a Motion to Dismiss (MTD) your case. Both the Debtor and Debtor's Attorney will receive a minimum of 21 days notice thereof. The MTD shall contain the current arrears amount, however, the Debtor is also responsible for any payments that become due after the MTD is filed. The following options are available within the 21 days for the Debtor if a MTD is filed for non-payment:

1. Cure arrearage with certified funds; or
2. Fax or email a signed copy of an Interlocutory Order or Agreed Order to the Trustee of the MTD. The Interlocutory Order or Agreed Order should indicate how the arrearage stated in the MTD will be cured. It is the Debtor Attorney's responsibility to maintain all original signed Interlocutory Orders or Agreed Orders; or
3. File a response to the Trustee's MTD for nonpayment and have the matter set for hearing on the court docket specified in the MTD. The response must specifically set out how the debtor plans to cure the arrearage unless the arrearage is disputed; or
4. Do nothing at all and the case will automatically be dismissed after the time has expired. .

**E. Non-Sufficient Funds (NSF) Checks.**

If the Trustee receives a check returned as NSF, the Trustee will no longer accept the Debtor's personal check and the Trustee will file a Motion to Dismiss the Chapter 13 case. All future payments made by the Debtor shall be by certified funds. If an NSF check is received for the first payment due 30 days from filing the petition, certified funds must be sent immediately to the Trustee's lock box address and proof of such payment sent to the Trustee's office by mail, fax, or email before the 3 business day deadline mentioned above. On-line payments are considered personal checks and will not be accepted.

**F. Payments Inside and Outside the Plan.**

Payments to all creditors may be disbursed by the Trustee from plan payments of the Debtor. The Trustee will not object to direct payments on over-secured, unimpaired creditor claims. All home mortgage arrearage claims and pre-petition tax claims must be paid by the Trustee.

### **G. Plan Payment Changes.**

The Trustee will not allow plan payments to be changed retroactively. Only future plan payments, which have not yet become due pursuant to the most recent Plan filed with the Clerk, can be changed. Once a monthly plan payment has become due, the payment cannot be changed to a higher or lower amount. It is very important that Debtors budget themselves carefully so that plan payments can be made each time they become due. If Debtor(s) find that they cannot make plan payments, a Modified Plan along with the current budget (Schedules I & J), which reflects the monthly payment that the Debtors can make in the future, must be amended and filed with the Clerk.

## **II. DOCUMENTS REQUIRED BY THE U.S. BANKRUPTCY CLERK.**

All documents required by the Clerk must be on the Official Bankruptcy Forms where applicable and must comply with the Federal Rules of Bankruptcy Procedure, and Local BK Rules. Official forms and General Orders are available at the Clerk's website at [www.txnb.uscourts.gov](http://www.txnb.uscourts.gov).

## **III. DOCUMENTS REQUIRED BY THE TRUSTEE.**

The following information is due immediately upon filing the case. If the Trustee does not receive this information **within fourteen (14) days of filing the petition**, a Motion to dismiss the case will be filed. Each of the following documents with the exception of the Wage Directive Form, DSO Affidavit, and Tax Returns should be emailed to the Trustee in one legible PDF per case. If an illegible PDF is received, the Trustee will require the information to be resubmitted as soon as possible. The Trustee requests the debtor and debtor attorney to provide the Trustee with a home phone number, a work phone number, and if available a current email address for the debtor.

### **A. Photo ID.**

All debtors are required to provide the Trustee with a legible copy of a valid driver's license or photo identification card as required by the United States Trustee and General Order 2010-01.

### **B. Social Security Card.**

Pursuant to the United States Trustee, the debtor must provide a legible copy of a social security card to the Trustee.

### **C. Domestic Support Obligations (DSO)**

An original signed and notarized Affidavit and Disclosure of Domestic Support Obligations and any supporting documents, must be received by the Trustee within fourteen (14) days of filing of the petition.

### **D. Debtor's Acknowledgement of Duties and Responsibilities.**

The purpose of this document is to insure that Debtors have read and understand all the requirements of the Trustee throughout the term of their bankruptcy case. This form can be found at <http://extranet.ch13-12westtex.org>. The Debtor's must initial, sign, and date the form.

### **E. Pay Stubs and Wage Withholding Form.**

1. Debtors who are wage or salary employees must send copies of their prior 6 months of pay stubs and the original signed wage directive form with the debtor's signature. Pursuant to G.O. 2010-01 plan payments must be made directly to the Trustee by their employer through a wage directive order. Copies of all pay stubs and the original signed and dated wage directive form must be received by the Trustee within fourteen (14) days of filing the petition.
2. Debtors who are not wage or salary employees must provide other proof of income for the six months prior to filing the petition. This information will be used to verify the income shown in Form 22C. Debtors who are retired should provide proof of retirement and/or social security income. Income such as contract labor, unemployment benefits, child support, etc. should also be provided to the Trustee.

#### **F. Tax Returns.**

All Debtors shall submit to the Trustee within 7 days prior to the 341 meeting the most recent Federal Income Tax Return and all schedules. Tax returns shall be emailed to [tax-returns@ch13-12westtexas.org](mailto:tax-returns@ch13-12westtexas.org) to ensure proper handling. Failure to comply will result in the Trustee filing a Motion to dismiss the case. If a valid extension has been filed, a copy of such extension shall be sent to the Trustee until the return is filed with the IRS and the Trustee. The debtor(s) must also file with the court a signed and notarized Affidavit Concerning All Applicable Tax Returns. Failure to prepare and file the affidavit will prevent the case from being confirmed.

#### **G. Statement of Currently Monthly Income (Form B22C)**

In addition to Schedules I and J, this statement must be completed by every individual Chapter 13 Debtor whether or not a joint petition is filed. The Debtors are required to furnish to the Trustee within 14 days of filing of the petition complete documentation as to all sources of income and expenditures stated in this form.

#### **H. Business Cases.**

The Trustee requires the following information for all cases in which one or both Debtors are self-employed and business activity will continue after the filing of the petition. The Trustee must receive all of the following items within fourteen (14) days of filing the petition if applicable.

1. A twelve (12) month projected cash flow for the business. This cash flow should reflect projected income and expenses for the twelve (12) months following the date the petition was filed. This form can be found at <http://extranet.ch13-12westtexas.org>;
2. An Income Statement and Balance Sheet as of the date of filing;
3. Proof that all employment taxes are paid and returns are filed;
4. Monthly Operating Reports must be filed with the Trustee pursuant to G.O. 98-4 and G.O. 2003-03. Copies of reconciled bank statements and copies of deposit slips must also be attached to each monthly report. Monthly Operating Reports are due twenty (20) days after the end of each month. This form can be found at <http://extranet.ch13-12westtexas.org>;
5. A completed Trustee's business case questionnaire. This form can be found at <http://extranet.ch13-12westtexas.org>.
6. Copies of the last six months bank statements including deposits and cancelled checks.

#### **IV. PROOF OF CLAIM.**

A proof of claim must be filed with the Clerk. The official proof of claim form is B10, this form is available at the Clerk's website at [www.txnb.uscourts.gov](http://www.txnb.uscourts.gov). The Bankruptcy Noticing Center will notice the 341 Meeting and the official proof of claim form to all creditors listed on the matrix.

##### **A. Filing proof of claim.**

Proof of claims must be filed via electronic case filing and comply with General Order 2004-06 and 2004-04.

##### **B. Claim Classification.**

Pursuant to B.R. 3001(f), the Trustee interprets the proof of claim as prima facie evidence of the type and amount of debt. Unless the claim is either objected to or amended, the Debtor's Plan must provide for payment of the claim as filed with regard to classification and amount of total debt. Valuation differences between the Plan and the proof of claim will be resolved at the time of confirmation. Should a secured proof of claim be filed, the corresponding documents must also be attached to the claim in accordance with General Order 2004-06 and all other Administrative Procedures for Electronic Filing. If they are not so attached, the Trustee may defer to the Debtor's schedules for proper claim classification.

**C. Claim Objections.**

Pursuant to G.O. 2010-01, an objection to the treatment of a claim must be timely filed or the terms set forth in the TRCC will be deemed final and binding. Any objection will be resolved at or before the pre-hearing conference for the TRCC. Any matter resolved will be presented in the form of an Agreed Order. Any unresolved objection will be deemed waived if not timely filed or the proponent fails to attend the pre-hearing conference or give the Trustee prior written notice.

**D. Requirement to File Claim.**

Inclusion in the AAPD will provide payments to secured creditors until the case is confirmed. Upon confirmation all funds will be held until a Proof of Claim is filed with the court.

**E. Filed Claims.**

The Debtor's Plan shall be based upon the filed or scheduled claims of each creditor. The Debtor should file claims within the time prescribed by B.R. 3004. The Debtor is responsible for insuring that secured, priority, and unsecured special class claims have been timely filed with the Clerk. All creditors are urged to file a proof of claim by the § 341 Meeting to assist the Trustee in making prompt distributions to creditors. Once a claim is filed and is undisputed, the Trustee may disburse funds to such creditors pursuant to the most recent filed Plan or AAPD.

**F. Administrative Claims for Domestic Support Obligations**

Pre-petition Domestic Support Obligations shall be paid through the Plan along with all other claims. Post-Petition Domestic Support Obligations shall be paid directly to the holder of the obligation and be current prior to confirmation and discharge.

**G. Priority Claims.**

Priority claims, including unsecured IRS claims, are not entitled to interest under Chapter 13. Note: Ad valorem tax claims are secured, not priority, to the extent of the value of the real property of the estate against which the tax is assessed. (See 11 U.S.C. § 502(b)(3)). Post petition child support arrears shall be paid directly to the holder of the obligation prior to discharge.

**H. Unsecured Special Class Claims.**

Student loans may be separately classified as special class or paid direct according to the terms of the note (provided payments are disclosed in Schedule J and not accelerated) and only if the special treatment of the student loan results in a higher percentage paid on allowed general unsecured claims than if the student loan was not specially treated and paid along with the allowed general unsecured class over 36 months or the length of the plan.

**I. Late-Filed Claims.**

Any claim filed late shall receive subordinated treatment provided by 11 U.S.C. § 726(a)(3) unless otherwise ordered by the Court.

**J. Claims Received in Paper.**

It is the filer's responsibility to ensure that their claim is filed with the Court. All claims received in paper and not properly filed with the Clerk will be sent to the Clerk per Bankruptcy Rule 5005(c).

**V. PLAN & AUTHORIZATION FOR ADEQUATE PROTECTION DISBURSEMENTS (AAPD).**

The Debtor must complete and file Debtor's Plan with or within fourteen (14) days of filing the Petition. A Debtor must also file an AAPD with the Plan that reflects the proposed disbursements to creditors. A copy of these forms may be obtained from the Trustee's website at <http://extranet.ch13-12westtex.org>. The purpose of the AAPD is to enable the debtor to offer adequate protection to secured creditors. The Trustee will approve an adequate protection percentage of 1.25% applied to the lesser of the scheduled debt or the proposed value of the collateral, to all secured creditors. The Debtor may vary this percentage with agreement from the creditor involved.

#### A. Noticing Plan & AAPD.

1. The Debtor is responsible for noticing the Plan and AAPD to all creditors listed on the mailing list/matrix. A certificate of service shall be filed with the Clerk.
2. Failure to timely notice the Plan and AAPD to all parties listed on the Mailing List/Matrix and file a certificate of service with the Clerk will result in a Motion to Dismiss being filed by the Trustee.

#### B. AAPD Disbursements.

No refunds of AAPD payments paid to any creditor as authorized by the AAPD will be requested by the Trustee.

### VI. SECTION 341 MEETING OF CREDITORS.

The Clerk will schedule a date and time for the meeting of creditors pursuant to 11 U.S.C. § 341. The Debtor and Debtor's Attorney must attend the § 341 Meeting. If the Debtor does not attend the scheduled § 341 Meeting, the Trustee will certify the case for dismissal pursuant to G.O. 2010-01. **No member of the Trustee's staff or the Trustee can excuse Debtors from attending the § 341 Meeting. The Trustee will not agree to continue a § 341 Meeting except in extreme circumstances.** In general, the examinations will be limited to twenty (20) minutes each. The presiding officer will ask some routine questions after the Debtor is placed under oath and will verify the Debtor's name, address, and social security number. The Debtor will be passed to Debtor's counsel for further examination. If a creditor is conducting a lengthy examination, the presiding officer may adjourn or continue the § 341 Meeting and suggest that the creditor notice an examination pursuant to B.R. 2004. Future scheduled meetings can be found at the Trustee's web site at <http://extranet.ch13-12westtex.org>.

### VII. FINANCIAL MANAGEMENT MEETING.

All debtor(s) are required to complete an approved Financial Management Course prior to obtaining a discharge. The Trustee is an approved provider of a free course and will schedule your attendance the morning of your First Meeting of Creditors. If the debtor(s) do not attend the Trustee's course on the day of the creditors meeting, they will not be rescheduled. You may attend another approved course at your expense.

### VIII. TRUSTEE'S RECOMMENDATION CONCERNING CLAIMS AND PLAN MODIFICATION (TRCC).

After the governmental claims bar date, the Trustee will prepare the TRCC and serve on Debtor's Counsel, all creditors, and all interested parties pursuant to G.O. 2010-01. The TRCC will contain the date, time, and location of the hearing and pre-hearing conference. Objections must be filed within 30 days of service or are deemed waived. If there is no objection to the TRCC, the pre-hearing conference and scheduled court hearing will not be held and the TRCC will be deemed final and binding on all parties. If objections are timely filed, the objecting party must attend the pre-hearing conference. Unresolved objections will be deemed waived if they are not timely filed and served correctly, the proponent of the objection fails to notify the Trustee in writing that a hearing is necessary, or the proponent fails to attend the pre-hearing.

### IX. DEBTOR CHANGE OF ADDRESS.

Debtors who change their mailing address while their bankruptcy case is pending **must** notify the Trustee's Office and their attorney **in writing**, via U.S. Mail, fax, or email of any and all new mailing addresses. In addition, debtor or debtor attorneys shall file the correct information via ECF to change the debtor's address in the Clerk's records.

## **X. INCOME TAX REFUNDS.**

Income tax refunds sent to the Trustee after the filing of the Chapter 13 Petition will be applied to any delinquency in the Debtor's Chapter 13 payments pursuant to G.O. 2010-001. If there is no delinquency, the Trustee will forward any excess up to \$2,000.00 to the Debtor. Any remaining funds shall be kept by the Trustee and applied to the general unsecured creditors and paid pro rata. The base will be increased by that amount and the plan considered modified.

## **XI. ATTORNEY FEES.**

Chapter 13 Attorney fees are governed by G.O.2010-01.

## **XII. GENERAL PLAN CONCERNS.**

One or more of the following concerns are relevant to the generation of a Plan. The Trustee has listed these items in an effort to develop plans which are feasible and uncontested.

### **A. Valuation.**

The Trustee requires that prior to the § 341 Meeting of Creditors, the Debtor's Attorney confer with any secured creditor (or its attorney) which has the terms of its obligation altered by the plan through a cram down provision. See 11 U.S.C. § 1325(a) (5). A stipulation or agreement on value and interest rate will avoid the necessity of a hearing on valuation. A Motion for Valuation is included with all noticed Plans and is set for the same date as confirmation of the Plan. Pursuant to 1325(a) (9), if the value is less than the claim amount, the creditor shall have the option requiring the debtor to surrender the collateral by objecting to the proposed treatment. Final valuation will be determined at confirmation.

### **B. Interest Rates.**

The interest rate to be applied to any secured debt which is modified by the plan will be the annual percentage rate in the contract, unless otherwise agreed.

### **C. Plans Generally Opposed by the Trustee.**

1. Plans which do not dedicate all of the Debtor's disposable income to the plan payment for the applicable commitment period.
2. Plans of Debtors who exaggerate the normal living expenses or deliberately understate the amount of take-home pay.
3. Plans that provide for direct payment by the Debtors to claims by unsecured or undersecured creditors, except for current mortgage payments.
4. Plans which do not comply with 11 U.S.C. § 1322 and or standards of confirmation under § 1325.
5. Plans by individuals who have failed to disclose all of their assets and liabilities, and otherwise have provided inaccurate or false statements in their Schedules or Statement of Affairs.

## **XIII. Plans with "Balloon Payments".**

All Debtor Plans and/or Plan Modifications that propose "Balloon Payments" will require testimony at the confirmation hearing as to the feasibility of the Debtor's ability to make the balloon payments. No Exceptions.

#### **XIV. SURRENDER FOR VALUE OR IN FULL SATISFACTION OF CLAIM.**

If, pursuant to 11 U.S.C. § 1325(a) (5) (C), the Debtor proposes to satisfy an allowed secured claim by "surrender" of the property securing such claim, the Debtor's Plan shall state the "value" of the collateral to be surrendered (so that the amount of any unsecured deficiency claim might be determined), or state that the collateral is being surrendered "in full satisfaction" of the claim. Pursuant to G.O. 2010-01, the Trustee shall cease disbursements on account of any surrendered collateral without further order of the court as of the file date of the Plan, Amended Plan, or order approving post-confirmation modification. **PURSUANT TO G.O. 2010-01 THE STAY PROVIDED BY 11 U.S.C. § 362 IS AUTOMATICALLY LIFTED AS TO THE SURRENDERED COLLATERAL.**

#### **XV. TRUSTEE DISBURSEMENTS.**

The Trustee shall only make disbursements pursuant to Orders of the Court. The Trustee shall disburse funds to creditors at least once a month. If the Trustee receives written verification that the automatic stay has lifted pursuant to previous Court Order, disbursements to that creditor shall cease until further order of the Court.

#### **XVI. COURT HEARINGS.**

##### **A. Pre-hearing Conferences.**

The Trustee will hold Pre-Hearing Conferences on **all** matters set for hearing on the Court's docket published on the Trustee's website at <http://extranet.ch13-12westtex.org>. Pre-Hearing Conferences begin 1 or 2 hours prior to the actual Court hearing. The Debtor's Attorney and all objecting creditors are **required** to attend the Pre-Hearing Conference with the Trustee in an effort to resolve the matter. The Debtor's are only required to attend if their attorney notifies them about attending. The Court's hearing schedule **will** start on time! Do not show up five minutes before the Court's hearing in hope of resolving your matter. Court dockets can be viewed at the Trustee's website at <http://extranet.ch13-12westtex.org>.

##### **B. Confirmation Hearing**

The Debtor's Attorney shall timely file and mail the Plan to all parties on the Mailing List/Matrix upon the filing of the Plan. The Trustee will prepare, file, and notice out a Notice of Hearing with a Certificate of Service setting the confirmation hearing. Objections to confirmation must be in writing, filed and served on Debtor, Debtor's Counsel, and the Trustee 7 business days prior to the confirmation hearing. If no Objection to Confirmation is filed and the debtor is current, the debtor does not have to attend the confirmation hearing. If the Debtor has a Domestic Support Obligation, then the Debtor must also file a signed & notarized Affidavit stating that they have made all required post petition Domestic Support Obligation payments within seven (7) business days prior to the Confirmation hearing. The Trustee will assume the responsibility of drafting orders confirming the Plan. An order is not required to extend the Plan beyond three years. If the Plan proposes five years, confirmation of the Plan has the effect of giving the Court's approval for the additional time.

#### **XVII. TRUSTEE'S MOTION TO DISMISS (MTD).**

##### **A. Dismissal for Insufficient Plan Base.**

At any time that the Plan is no longer feasible, the Trustee shall file a Motion to Dismiss.

## **XVIII. MODIFICATION OF PLAN AFTER CONFIRMATION.**

The Trustee will provide the applicable form for all modifications, and all sections of the form must be completed. This form is available at the Trustee's website at <http://extranet.ch13-12westtex.org>. The payment history of the Debtor is available at [www.Trustee13.com](http://www.Trustee13.com). If there are objections to the modification or a balloon payment is included, the Debtor must attend the modification hearing. When a Plan Modification is filed, a new income and expense budget (Schedules I and J) must be submitted with the modification. The Trustee will assume responsibility of drafting orders modifying the Plan. If the Court approves the Plan Modification, the Trustee's MTD will be withdrawn. If the Trustee does not approve the modification, the dispute will be presented to the Court at that time. Pursuant to G.O. 2010-001, a modification is not required unless 11 U.S.C 1325 (a) (4) applies or the plan is no longer feasible.

## **XIX. MOTIONS FOR POSTPETITION FINANCING or MOTION TO INCUR NEW DEBT.**

Each Motion for post petition Financing must include the following information:

### **A. Items to be included in the Motion.**

1. A description of the item being purchased, and the existence and nature of any factory warranty.
2. The financing terms, interest rate, monthly payment amount and number of payments.
3. Where the interest rate is built into the price, the sum attributable to finance charges.
4. The existence and cost, including finance charges, of any extended warranties.
5. A copy of the Debtor's current income and expense budget (Schedules I & J).
6. A copy of any buyer, seller, or financing contract relative to the indebtedness. The copy should include signatures of all parties involved.
7. The reason or necessity for incurring new debt.

### **B. Noticing Requirements.**

Notice of the Motion should be served upon all parties having filed a notice of appearance, all creditors, U.S. Trustee, and Trustee.

## **XX. MOTIONS TO SELL PROPERTY.**

Each Motion to Sell Property must include the following information:

### **A. Items to be included in the Motion.**

1. A description of the real or personal property to be sold including any legal descriptions of the property.
2. A copy of the sales contract or agreement with signatures of all parties involved.
3. A breakdown of any lien holders on the property including amounts owed to each creditor.
4. The proposed or final date of sale.
5. The name, address, and phone number of any closing agent involved with the sale.
6. Should include language allowing property to be sold free and clear of all liens with liens to attach to the proceeds.
7. The reason or necessity to sell the property.
8. Shall include language that explains which creditors will be paid through closing and indicate how those creditors were to be paid pursuant to the Debtor's Plan.
9. If residual funds are produced from the sale, the Motion and Order should clearly state the disposition of those funds subsequent to the sale.
10. Shall allow for a final signed and executed closing statement to be forwarded to the Trustee immediately upon closing.
11. Shall indicate if the property was claimed exempt.

### **B. Noticing Requirements.**

Notice of the Motion should be served upon all parties having filed a notice of appearance, all creditors, U.S. Trustee, and Trustee.

## XXI. DISCHARGE OF THE DEBTOR.

Monthly, the Trustee's Office monitors cases in which the Debtor's payment equals the balance owed toward the base. These are, therefore, cases that should be ready to close upon receipt by the Trustee's Office of final payment. Simultaneously, cases in which the dividend for unsecured creditors was set at one hundred percent (100%) are also monitored for discharge once that dividend is paid. Cases are audited to determine if they are eligible for discharge. If a case is ready for discharge, the Trustee will generate the Trustee's Certification of Receipt and Disbursement of Final Chapter 13 Plan Payment. The Debtor Attorney then has 21 days to file the Debtor's Certification and Motion for Entry of Chapter 13 Discharge. This form is available at the Clerk's website at <http://www.txnb.uscourts.gov/Reference-Library/Forms>. The Debtor Attorney will also file a Notice of Hearing setting it for hearing if the case was filed in Abilene, Amarillo, Lubbock, or San Angelo districts. The Wichita Falls division does not have to be set for hearing. After the Judge approves the Motion or the objection time has run on Wichita Falls Division without any responses/objections filed, then an Order Discharging the Debtor is submitted to the Clerk. The Bankruptcy Noticing Center will notice the Order Discharging the Debtor to all creditors listed on the Creditor Matrix and to the address the Clerk has on record for the Debtor. The Clerk must have the Debtor's current address in order for the Debtor to receive a copy of the Order Discharging. Once the Order Discharging the Debtor is entered, a Trustee's Final Report and Account and the Order Discharging Trustee are prepared by the Trustee and submitted to the Clerk. The Debtor is sent a copy of the Final Report and Account and Order Discharging Trustee from the Bankruptcy Noticing Center. When the Trustee is discharged, the case is closed.

## XXII. QUESTIONS REGARDING YOUR CHAPTER 13 CASE.

Should the Debtor or the Debtor's Attorney have questions regarding the Chapter 13 case, please contact the Trustee's Office via phone, fax, or email at [geninfo@ch13-12westtex.org](mailto:geninfo@ch13-12westtex.org) with a brief description of your question and case number in the subject line. Case information is also available on the internet at [www.Trustee13.com](http://www.Trustee13.com). Login information may be obtained by contacting the Trustee's office. Please do not feel that you have to speak to the Trustee. The Trustee's staff can answer your questions, and they are trained to assist the Debtor and the Debtor's Attorney in handling the Chapter 13 case. **Please note that the Trustee and his staff cannot offer "legal advice". Refer all legal questions to your attorney.** Remember that if future circumstances cause you to default under your Plan, you should immediately contact your Attorney to determine whether or not a Modification or Extension should be sought from the Court. Only the Court can authorize changes to the original confirmed plan.

Walter O'Cheskey  
Standing Chapter 13 Trustee