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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ABILENE, AMARILLO, LUBBOCK, SAN ANGELO & WICHITA FALLS DIVISION**

IN RE:

CHAPTER 12 TRUSTEE GUIDELINES

DATED: 2/24/2014

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NOW COMES Walter O'Cheskey as Chapter 12 Trustee for the Northern District of Texas, Abilene, Amarillo, Lubbock, San Angelo and Wichita Falls Divisions, and files these Chapter 12 Trustee Guidelines. The purpose of these guidelines is to provide information concerning Chapter 12 and to make known the duties and responsibilities of a Chapter 12 Debtor and Debtor's Attorney. These guidelines are from time to time updated and clarified.

Both the Debtor and the Debtor's Attorney are required to attend:

1. Meeting of Creditors ("341 Meeting")
2. The Pre-Hearing Conference
3. The Confirmation Hearing and any continuations thereof

You will receive (or have received) a notice of the time, date, and place of each of these three (3) meetings. Failure to attend may result in the Chapter 12 case being dismissed.

TO DEBTOR'S ATTORNEY: In order to avoid unreasonable delay prejudicial to creditors, which is grounds for dismissal of the case (Section 1208 (c) (1)) and to insure that a Plan is timely filed (no later than 90 days after the Petition date) per Section 1221 (failure which is also grounds for dismissal per Section 1208 (c) (3)) you are requested and expected by the Trustee to bring to the 341 Meeting ALL of the following information and/or documentation:

1. **DOCUMENTATION:** A legible copy of ALL Notes, Deeds of Trust, Security Agreements, UCC-1's (Financing Statements), Certificates of Title, Equipment Leases or Lease-Purchase Agreements, Assignments, Pledges, and, if available, ledgers showing charges (disbursements), credits (receipts/payments), and balance of principal and interest due, and/or amortization schedules, with regard to ALL SECURED CLAIMS, whether or not the claims are to be impaired.

These documents should be obtained from the Debtor or by request from the Creditors, or by formal "Request for Production of Documents".

AND

2. **INFORMATION:** With respect to each secured claim:
 - (a) Name and complete mailing address of Creditor, account number or loan number.
 - (b) Description of collateral
 - (c) Amount of total debt, as of the date of the Bankruptcy Petition, including principal and all accrued and unpaid interest as of the date of the bankruptcy, whether over-secured or under-secured.
 - (d) Debtor's estimate of "value" of each item of collateral.
 - (e) Nature and amount of any senior liens against the collateral.
 - (f) The total amortization period of Debtor's proposed payment of the secured portion of the claim, including both the payments by the Trustee during the first three to five years of the Plan, and payments "direct" by the Debtor after the Trustee payments have ended.
 - (g) The frequency of payments proposed by the Debtors (i.e. monthly, quarterly, semi-annually, or annually).
 - (h) The rate of interest proposed by Debtor.
 - (i) The number of payments to be made by the Trustee, and the number of payments to be made by the Debtor.
 - (j) Any other information relevant to completing Paragraph II-C of the "Order Confirming Debtor's Chapter 12 Plan of Reorganization" (copy enclosed or available on request from the Trustee's Office).

TRUSTEE'S POLICIES:

1. CONFIRMATION ORDER – The Trustee will prepare and submit the "Order Confirming Debtor's (s) Chapter 12 Plan of Reorganization" (copy of form enclosed or available on request from Trustee's office). NO OTHER FORM WILL BE APPROVED BY THE TRUSTEE.
2. DIRECT PAYMENTS BY DEBTORS – Except for payment on an over-secured claim, where the creditor is unimpaired, ALL Post-Confirmation Plan payments shall be made only by the TRUSTEE during the first three to five years of the Plan, including priority claims such as Debtor's Attorney's fees. (Debtor Attorney fees are subject to Order approving same after hearing on Fee Application, on notice to all Creditors.)
3. CALCULATION AND APPLICATION OF TRUSTEE'S FEE – The Statute (28 USC 586 (e) (2) requires the Trustee to collect a percentage fee, to be set by the Attorney General of the United States (28 USC 586 (e) (1) (B) (ii)) from all payments "received" by the Trustee under Chapter 12 Plans. The current percentage fixed by the Attorney General is ten (10%) percent (on the first \$450,000.00 of receipts, per case, and three (3%) percent of excess). The Trustee is not permitted to vary or negotiate this percentage,

and the court is given no statutory authority in this regard. The policy of the Executive Office of the United States Trustee directs the Trustee to draw such fee from “disbursements”, but to compute same, per the Statute, on “receipts”. Mathematically, 11.111% of disbursements is equal to 10.000 % of the receipt. Thus, the Trustee’s fee is to be calculated by multiplying disbursements by 11.111%. Payments to be made to the Trustee by the Debtor are computed by adding the Trustee’s fee, as so calculated, to the amount to be disbursed by the Trustee.

4. NO INTEREST ON PRIORITY CLAIMS – Priority claims, including unsecured IRS claims, are not entitled to interest under Chapter 12. Note: Ad valorem tax claims are SECURED AND NOT PRIORITY, to the extent of the value of property of the estate against which the tax is assessed (See 11 USC 502 (b) (3)).
5. APPROPRIATE MAXIMUM AMORTIZATION PERIOD – For real property, 25 to 30 years; for equipment, depends upon expected useful life, usually 5 to 10 years.
6. ONE MONTH “HOLD” ON DISBURSEMENTS BY TRUSTEE – Unless the Debtor’s payment to the Trustee is by certified funds, disbursements by the Trustee will be delayed by one month to insure that the Trustee’s bank has collected the funds from the Debtor’s bank. Accordingly, Debtor’s payments to the Trustee (Paragraph I. of the “Order Confirming Debtor’s (s) Chapter 12 Plan of Reorganization”) will be scheduled one month prior to disbursements by the Trustee (Paragraph II of the said Order). The Trustee makes disbursements between the 26th and the 31st of each month. Thus, payments received after the 25th will generally not be disbursed until the end of the next month.
7. CASH COLLATERAL – Debtors (per their Attorneys) are responsible for obtaining an Order of the Bankruptcy Court, authorizing the use of any “cash collateral” (per 11 USC 363), prior to any use thereof. An effort should first be made to obtain an “Agreed Order”, and if unsuccessful, a Motion should be promptly filed and a hearing promptly scheduled. The Trustee must approve all Cash Collateral Orders. Usually, such Orders will provide for a continuing lien on crops, government checks, and proceeds, as well as a lien on crop insurance. Such Orders usually authorize the Debtor to use up to 100%, as necessary, of the cash proceeds, to operate for the ensuing crop year. At the end of such crop year, the Debtor is required to pay to the Trustee, 100% of the funds used, plus interest, from which the Trustee will disburse to the Creditor, a percentage (usually 33 1/3%, 25%, or 20% depending on whether the cash-collateral loan is to be repaid over a 3, 4, or 5 year period), plus interest, and to refund to the Debtor, the “Cash Collateral Balance” less the Trustee’s fee on the amount paid to the Creditor. This process is repeated annually, until the cash collateral loan has been paid in full, plus interest. If the Debtor is unable to make full payment of the required sum to the Trustee, at the end of each crop year, then no further use of cash collateral is authorized, without further Order of the Court.
8. PARTICIPATION IN FEDERAL FARM PROGRAMS SPONSORED BY THE F.S.A – The Debtor’s participation in Federal Farm Programs sponsored by F.S.A must be approved by the Bankruptcy Court, on Motion by the Debtor. Such Order must be approved by the Chapter 12 Trustee.

9. D-I-P BANK ACCOUNTS – The Chapter 12 Debtor must open one or more “D-I-P” bank accounts, and close all other accounts. Any “D-I-P” Account must contain the designation “Chapter 12 Debtor-in Possession” and the Chapter 12 case number on the account and printed checks. Normally a Debtor will open at least two accounts, one for living expenses, and the other for operations, and where there are both cattle and crops, a third account may be opened. D-I-P accounts may be opened in any Federally Insured Depository. If the balance in any D-I-P account ever exceeds \$250,000, another D-I-P account must be opened, in a different Federally Insured Depository, so that all funds are always protected by FDIC Insurance. The bank statements must end the reporting cycle at the end of the month or as close to the end of the month as possible. A copy of a reconciled bank statement, and copies of all deposit slips for each D-I-P account must be attached to the monthly operating reports filed with the Bankruptcy Clerk, and a copy filed with the Chapter 12 Trustee, monthly, until the case is closed. All transactions must in the form of check or debit card.
10. PREPARATION AND SERVICE OF NOTICE OF PRE-HEARING CONFERENCE AND CONFIRMATION HEARING – The Debtors’ Attorney must serve a copy of the Notice of Pre-Hearing Conference and Notice of Confirmation Hearing and a copy of the Debtor’s Plan on all parties in interest, within five (5) days after receipt of the Notice from the Chapter 12 Trustee, and file a Certificate of Service with the Bankruptcy Clerk and the Chapter 12 Trustee. The Mailing Matrix should include the Chapter 12 Trustee, all Creditors of the Debtor, all parties who have requested notice pursuant to Bankruptcy Rule 2002 (g), the Debtor, Internal Revenue Service Special Procedures, and if any agency of the Federal Government is a Creditor, the Attorney General of the United States at Washington, District of Columbia, the United States Attorney for the District in which the action is pending, the office or agency of the Federal Government which is a Creditor (per Bankruptcy Rule 7004 (b) (4) and (5)).
11. CONTENTS OF CHAPTER 12 PLANS – The following must be included in all Chapter 12 Plans, or Exhibits thereto:
 - a. A Statement as to how the Debtor’s values are derived.
 - b. A liquidation analysis.
 - c. A statement as to the anticipated tax consequences of the Chapter 12 Reorganization.
 - d. Cash Flow projections on a monthly basis, for the life of the Plan.
12. SURRENDER FOR VALUE OR IN FULL SATISFACTION OF CLAIM – If, pursuant to Section 1225 (a) (5) (c), the Debtor proposes to satisfy an allowed secured claim by “surrender” of the property securing such claim, 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, that the collateral is being surrendered “in full satisfaction” of the claim.
13. OFFICIAL CHAPTER 12 FORMS – All Chapter 12 Debtors are required to file their schedules and statements utilizing the “Official Bankruptcy Forms” approved by the Judicial Conference.

14. LOCAL RULE 6070.1-INCOME TAX REFUNDS IN CHAPTER 12 CASES – Pursuant to Local Rule 6070, the Standing Chapter 12 Trustee is authorized to endorse on behalf of any chapter 12 debtor for deposit to the Chapter 12 Trustee's trust funds account, any and all federal income tax refunds payable to the debtor, and to apply all or any portion thereof to any delinquent payments under the confirmed Chapter 12 Plan or any modification thereof. The Standing Chapter 12 Trustee shall give notice of the deposit and application to the debtor at the address last shown in the records of the office of the Standing Chapter 12 Trustee, and to the debtor's attorney of record.
15. REQUIRED INFORMATION OF THE TRUSTEE – All Chapter 12 Debtors are required to furnish the Trustee the following information as indicated below:
- a) Copies of a valid drivers license and social security card (if joint petition, provide for both debtors.) due 14 days from the Petition Date.
 - b) A voided check on each Debtor in Possession Bank Accounts, together with a name and phone number of a bank officer relating to the account (s) due 14 days from the Petition Date.
 - c) Written copies of all Farm Rental Agreements, due 14 days from the Petition Date.
 - d) Affidavit and disclosure of domestic support obligations, due 14days from Petition Date
 - e) Summary of Operations Report, due 7 days prior to the 341 meeting.
 - f) Last years Federal Income Tax Return with all Schedules, due 7 days prior to the 341 meeting.
 - g) Tax Deposit Statement (form previously furnished by United States Trustee), due 7 days prior to the 341 meeting.
 - h) FSA – Notice of Yields and Acreage Base (if any), due 7 days prior to the 341 meeting.

Forms and templates required by the Trustee can be found at <http://extranet.ch13-12westtex.org>.

16. FILED PAPERWORK – All Chapter 12 Debtors must file with the court the following by:
- a) Statement of Affairs for Debtor Engaged in Business, due 14 days from Petition Date.
 - b) All Schedules, due 14 days from Petition Date.
 - c) Chapter 12 Supplement to the Statement of Affairs, due 14 days from Petition Date.

TO THE DEBTOR (S): Remember, if future circumstances cause you to default under your Plan, you should immediately contact your Attorney and the Trustee's office so that it can be determined whether or not a "Modification" or "Extension" should be sought from the Court. Only the Judge can authorize changes to the original Plan.

Walter O'Cheskey
Standing Chapter 12 Trustee

TRUSTEE'S GUIDELINES AND PROCEDURES FOR DISPOSABLE INCOME **IN CHAPTER 12 BANKRUPTCY CASES**

In Chapter 12 Bankruptcy cases, the Chapter 12 Trustee is required to annually make a determination of "Disposable Income" and file a "Motion and Order" with the Bankruptcy Court, seeking approval of this determination.

****ATTENTION****

DEBTOR (S) AND DEBTOR'S ATTORNEY

PLEASE READ THESE GUIDELINES CAREFULLY. IF YOU DO NOT FULLY UNDERSTAND WHAT IS REQUIRED OF YOU, CONTACT THE TRUSTEE'S OFFICE IMMEDIATELY. YOUR COOPERATION AND UNDERSTANDING OF THESE PROCEDURES WILL REDUCE THE LIKELIHOOD OF COURT APPEARANCES, DELAYS, COSTS AND POSSIBLE MOTIONS TO DISMISS AND/OR CONVERT YOUR CASE.

MONTHLY OPERATING REPORTS

RESPONSIBILITIES OF THE DEBTOR

The Debtor is responsible for completing and submitting a monthly operating report to the Trustee's Office twenty (20) days after the end of each month from the filing of the Bankruptcy Petition until the case is closed. The monthly operating report must have copies attached of the following documents:

1. All Debtor-in-Possession bank statements.
2. All deposit receipt transactions.
3. Do Not send copies of the checks.

When you receive your bank statement, reconcile it immediately and complete the monthly operating report. Remember, all funds received must be deposited in your Debtor-in Possession bank account and reported to the Trustee. Likewise, all funds spent, must be paid from your Debtor-in Possession bank account and reported to the Trustee.

Check your reports! The last line on your monthly report; "Cash and Bank Account Balance at the end of Month" must equal the balance on your bank statement. If it does not, the report is incorrect. Once your report is complete and accurate, sign the report, make a copy for your files and mail a copy of the report to the Trustee.

RESPONSIBILITIES OF THE TRUSTEE

When the Trustees' Office receives your monthly operating report, a staff member will review it for accuracy and make sure that copies of the bank statements and deposit transactions are attached. If errors or missing information is detected, you will receive a letter requiring you to resubmit the report within ten (10) days.

PLEASE NOTE: If you do not submit your monthly operating report timely and accurately, the Trustee will have no other alternative than to file a Motion with the Court to have your case dismissed. Once a Motion is filed, you and your attorney will be required to attend the Court hearing on the matter. **NO EXCEPTIONS!**

ANNUAL REPORT OF DISPOSABLE INCOME

RESPONSIBILITIES OF THE DEBTOR

Each Debtor is required to submit an annual report of Disposable Income to the Trustee's Office on or before March 1st of each year of their plan. Some existing cases will have a different date than March 1st and those Debtors will be notified by the Trustee of the exact date to have their annual report of Disposable Income Submitted.

A large portion of the Annual Report of Disposable Income can be completed from your monthly operating reports. Other information such as accrued revenues and expenses will require additional information and documents. If you do not fully understand this report, contact the Trustee's Office or your accountant.

Once you have completed this report and checked it for accuracy, sign the report, make a copy for your files and mail a copy to the Trustee's Office. You are also required to submit with this report a complete copy due with all schedules attached, of your Federal Income Tax Return.

PLEASE NOTE: If your report shows a balance due of Disposable Income, you must remit a check for that amount with the report. The Trustee will hold these funds in trust until the Trustee receives a final Order from the Court. **REMEMBER, YOU ARE RESPONSIBLE FOR THE COMPLETENESS AND ACCURACY OF THIS REPORT.**

RESPONSIBILITIES OF THE TRUSTEE

When the Trustee receives your Annual Report of Disposable Income, a "Clerical Review" will be performed by a member of the Trustee's staff. If errors or missing information are detected, you will receive a letter from the Trustee's Office requiring you to resubmit the report within twenty (20) days.

PLEASE NOTE: If you do not submit your Annual Report of Disposable Income timely and accurately, the Trustee will have no other alternative than to file a Motion with the Court to have your case dismissed. Once a motion is filed, you and your attorney will be required to attend the Court hearing on the matter. **NO EXCEPTIONS!**

DISPOSABLE INCOME REVIEW PROCESS

A member of the Trustee's staff will conduct a review of the Debtor's Monthly Operating Reports, the Annual Report of the Disposable Income, and the Federal Income Tax Return. During this review process, some adjustments may be made to your Annual Report of Disposable Income. If this happens, the Trustee's Office will send you notice of what the adjustments are related to along with the Motion for Determination of Disposable Income. At that point, you may wish to agree or disagree with the Trustees' determination. Consult your attorney and/or contact the Trustee's Office.

Once the Motion for Determination of Disposable Income is filed with the Court, any party wishing to object must file an objection, in writing, with the Clerk of the Bankruptcy Court and the Trustee. If objections are filed, a hearing will be set. Otherwise, the Court may enter the Order without further notice to any party.

****ATTENTION****

IF THE TRUSTEE BECOMES AWARE THROUGH THE REVIEW PROCESS THAT THE DEBTOR HAS NOT DEPOSITED AND/OR REPORTED ALL INCOME AND EXPENSES AS REQUIRED, THEN THE TRUSTEE WILL FILE A MOTION WITH THE BANKRUPTCY COURT TO HAVE THE CASE CONVERTED FOR FRAUD. CONSULT YOUR ATTORNEY.

SUMMARY

These procedures will vastly improve the process for Determining Disposable Income. We anticipate that the Debtors will timely and accurately file their monthly operating reports and their annual report of disposable income. The Trustee's Office will review these reports and will file a Motion for Determination of Disposable Income for each year of disposable income designated in the Debtor's confirmed Chapter 12 plan.

After you have reviewed these procedures and the reporting forms, please contact the Trustee's Office for assistance should you have any questions. Thank you for your cooperation and dedication to the Court, the Trustee and your creditors.

Walter O'Cheskey
Standing Chapter 12 Trustee