



AMERICAN
BANKRUPTCY
INSTITUTE

42nd Annual Alexander L. Paskay Memorial Bankruptcy Seminar

Consumer Potpourri: Hot Topics in Chapter 13

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Consumer Potpourri:
Issues Affecting Consumer Debtors and Creditors

Presented by

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- FLMB Order Confirming Plan, revised August 17, 2016
- FLSB Model Chapter 13 Plan, effective October 1, 2017
- List of 101 Citing References for *In re Failla*, 838 F.3d 1170 (11th Cir. 2016).
- Dennis J. LeVine, *Does Assumption of a Lease by a Chapter 7 Debtor Render the Lease Obligation Not Subject to Discharge*, ABI Journal.
- Bankr. M.D. Fla. R. 1002-1 Petition – Filing on Debtor’s Behalf by a Court-Appointed Representative, Holder of Power of Attorney, Proposed Next Friend, or Guardian ad Litem

LIST OF CASES

- Slater v. United States Steel Corporation*, 871 F.3d 1174 (11th Cir. 2017).
- Romeo v. Israel*, 2017 WL 5068369 (S.D. Fla. Nov. 3, 2017).
- In re Failla*, 838 F.3d 1170 (11th Cir. 2016).
- In re Taylor*, 3 F.3d 1512 (11th Cir. 1993).
- In re Belanger*, 962 F.2d 345 (4th Cir. 1992).
- In re Edwards*, 901 F.2d 1383 (7th Cir. 1990).
- Lowry Fed. Credit Union v. West*, 882 F.2d 1543 (10th Cir. 1989).
- In re Townsend*, 2015 WL 5157505 (Bankr. M.D. Fla. 2015).
- In re Woide*, 551 B.R. 865 (Bankr. M.D. Fla. 2016).
- In re Guerra*, 8:11-bk-15663-MGW (Bankr. M.D. Fla. 2016)(J. Williamson).
- In re Keddo*, 2017 WL 3267705 (Bankr. S. D. Fla. July 27, 2017).
- In re Kurzban*, 2017 WL 3141915 (Bankr. S.D. Fla. July 24, 2017).
- In re Scott*, 567 B.R. 847 (Bankr. S.D. Fla. 2017).
- In re Ayala*, 568 B.R. 870 (Bankr. M.D. Fla. 2017).
- In re Kaschkadayev*, 2017 WL 587982 (Bankr. M.D. Fla. Feb. 14, 2017).
- In re Thomas*, 2017 WL 3309719 (Bankr. S.D. Fla. Feb. 10, 2017).
- In re Elkouby*, 561 B.R. 551 (Bankr. S.D. Fla. 2016).
- In re Bailly*, 522 B.R. 711 (Bankr. M.D. Fla. 2014).
- In re Perlman*, 468 B.R. 437 (Bankr. S.D. Fla. 2012).
- Midland Funding, LLC v. Johnson*, 137 S. Ct. 1407 (2017).
- Henson v. Santander Consumer USA, Inc.*, 137 S. Ct. 1718 (2017).
- Spokeo, Inc. v. Robbins*, 136 S. Ct. 1540 (2016).
- Baez v. Specialized Loan Servicing, LLC*, 219 F. Supp. 3d 1221 (S.D. Fla. 2016).
- Florence Endocrine Clinic, PLLC v. Arriva Med., LLC*, 858 F.3d 1362 (11th Cir. 2017).
- In re Justice*, 817 F.3d 738 (11th Cir. 2016).
- In re McCoy*, 666 F.3d 924 (5th Cir. 2012).
- In re Dukes*, 2015 WL 3856335 (Bankr. M.D. Fla. June 19, 2015).
- In re Dukes*, 2016 WL 5390948 (M.D. Fla. Sept. 27, 2016).

CONSUMER POTPOURRI

ISSUES AFFECTING CONSUMER
DEBTORS AND CREDITORS

PANELISTS

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**Rule
1006**

Court is required to accept a petition for filing if it is accompanied by an application to pay installments – and not by a partial payment – even if court generally requires payment of the initial installment at the time of the filing.

—Rule 1006(b)(1)
Payment of Filing Fee in Installments



**Rule 1015(b)
Consolidation or Joint Administration**

Substitutes the word "spouse" for the words
"husband and wife."



Rule 2002 – Notice

2002(a)(9) – 21 days' notice to parties in interest of time for filing objections confirmation

2002(b)(3) – 28 days' notice of confirmation hearing

Rule 3002

Filing Proof of Claim or Interest


- Creditors, including secured creditors, and equity security holders must file proofs of claim in order for the claim or interest to be allowed. Rule 3004 still allows for the filing of claims by the debtor or trustee.
- Liens that secure a claim are not void due to the failure to file a proof of claim.
- Time for Filing Proofs of Claim – old claims bar date: 90 days after 341 meeting. NEW claims bar date: 70 days from the date of petition.
- Claims bar date may be extended on creditor's motion filed before the claims bar date for 60 days from the date of the order granting the motion.

Rule 3002 (Cont.)

Filing Proof of Claim or Interest

Proof of claim filed by holder of security interest in debtor's principal residence is timely filed if:

1. Proof of claim filed not later than 70 days after petition date with the attachments required by Rule 3001(c)(2)(C) [the attachment prescribed in Official Form for escrow] AND
2. Any attachments required by Rule 3001(c)(1) [copy of writing on which the claim is based] and (d) [evidence of perfection].



Rule 3007 – Service of Objections to Claims

- Objection must be served on person identified in Proof of Claim.
- Objections to claims filed by insured depository must be served per Rule 7004(h).
- Objections to claim by the United States served per Rule 7004.
- Notice of hearing must be served via first-class mail.

Rule 3012

Determining the Amount of Secured and Priority Claims

- The amount of a secured or priority claim may be determined by motion, in a claim objection, or in a Chapter 12 or 13 plan.
- Requests to determine the amount of a claim must be served under Rule 7004.
- Claims of governmental units may only be made by motion or in a claim objection AFTER the governmental unit has filed a proof of claim or the time of filing one under Rule 3002(c)(1) has expired.
- NOTE: in the Middle District – determination of secured status is by motion, not by claim objection or in the plan.

Rule 3015

Form Chapter 13 Plan,
Objections to Confirmation,
and Effect of Confirmation -
Effective December 1, 2017

Official Form of Chapter 13 plan must be used unless a Local Form has been adopted under Rule 3015.1. Nonstandard provisions are effective ONLY if included in section of the form designated for nonstandard provisions.

Objections to plans must be filed seven days prior to confirmation hearing, unless court orders otherwise.

Upon confirmation, any determination in the plan as to the amount of a secured claim is binding on the holder of the claim, even if the holder filed a contrary proof of claim or the debtor listed the claim differently in the schedules.

Requires review of all the facts and circumstances of a particular case: sophistication of debtor, whether bankruptcy disclosures were corrected, whether trustee or creditor aware of the claim or asset, findings or action by the bankruptcy court after the omission was discovered.

Rule 3015.1

Requirements for
Local Form of
Chapter 13 Plan

Lists the requirements for
"Local Form."

Local Form must be district-
wide.

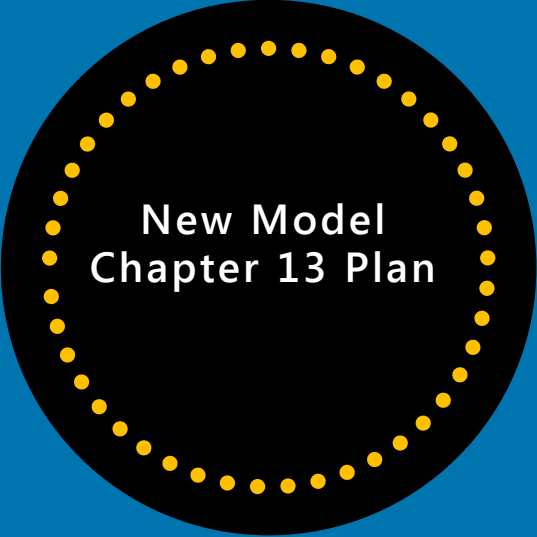
Middle District's Model Plan
complies with Rule 3015.1.

**Rule
5009(d)**

Satisfaction of Liens

Chapter 12 and 13 debtors may request an order declaring secured claim satisfied and lien released under terms of confirmed plan.

Assists debtors with title issues.



New Model
Chapter 13 Plan

New Model Plan

Complies with new Federal Rule of Bankruptcy Procedure 3015.1.

NEW: Debtor's attorney's fees include monthly monitoring fee.

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
DIVISION

DVRE:

CASE NO:

Debtor(s): _____

AMENDMENT of Chapter 11/Chapter 12/CHAPTER 13 PLAN

A. NOTICES

Debtor¹ must check one box on each line to state whether or not the Plan includes each of the following items. If an item is checked as "Not Included," if both boxes are checked, or if neither box is checked, the provision will be ineffective if set out later in the Plan.

A limit on the amount of a secured claim based on a valuation which may result in a partial payment or no payment at all to the secured creditor. See Sections C.5(d) and (e). A separate motion will be filed.	Included <input type="checkbox"/>	Not Included <input type="checkbox"/>
Avoidance of a judicial lien or nonpossessory, nonpurchase money security interest under 11 U.S.C. § 522(f). A separate motion will be filed. See Section C.5(e).	Included <input type="checkbox"/>	Not Included <input type="checkbox"/>
Nonstandard provisions, set out in Section E.	Included <input type="checkbox"/>	Not Included <input type="checkbox"/>

B. MONTHLY PLAN PAYMENTS: Plan payments include the Trustee's fee of 10% and shall begin 30 days from petition filing/conversion date. Debtor shall make payments to the Trustee for the period of _____ months. If the Trustee does not return the full 10%, any portion not returned will be disbursed to allowed

¹All references to "Debtor" include and refer to both of the debtors in a case filed jointly by two individuals.

New Model Plan (Cont.)

Debtor must check one box on each line to state whether or not the Plan includes each of the following items. If an item is checked as "Not Included," if both boxes are checked, or if neither box is checked, the provision will be ineffective if set out later in the Plan.

A limit on the amount of a secured claim based on a valuation which may result in a partial payment or no payment at all to the secured creditor. See Sections C.5(d) and (e). A separate motion will be filed.	Included <input type="checkbox"/>	Not Included <input type="checkbox"/>
Avoidance of a judicial lien or nonpossessory, nonpurchase money security interest under 11 U.S.C. § 522(f). A separate motion will be filed. See Section C.5(e).	Included <input type="checkbox"/>	Not Included <input type="checkbox"/>
Nonstandard provisions, set out in Section E.	Included <input type="checkbox"/>	Not Included <input type="checkbox"/>

**New Model
Plan
(Cont.)**

Options for Treatment of Secured Debts

Cure and maintain claims secured by debtor's principal residence.

(a) Claims Secured by Debtor's Principal Residence Which Debtor Intends to Retain - Mortgage, HOA and Condo Association Payments, and Arrears, if any, Paid Through the Plan. If the Plan provides for curing prepetition arrearages on a mortgage on Debtor's principal residence, Debtor will pay, in addition to all other sums due under the proposed Plan, all regular monthly postpetition mortgage payments to the Trustee as part of the Plan. These mortgage payments, which may be adjusted up or down as provided for under the loan documents, are due beginning the first due date after the case is filed and continuing each month thereafter. The Trustee shall pay the postpetition mortgage payments for Debtor's principal residence on the following mortgage claims:

**New Model
Plan
(Cont.)**

Options for Treatment of Secured Debts

Cure and maintain claims on other real property.

(b) Claims Secured by Other Real Property Which Debtor Intends to Retain - Mortgage Payments, HOA and Condo Association Payments, and Arrears, if any, Paid Through the Plan. If the Plan provides to cure prepetition arrearages on a mortgage, Debtor will pay, in addition to all other sums due under the proposed Plan, all regular monthly postpetition mortgage payments to the Trustee as part of the Plan. These mortgage payments, which may be adjusted up or down as provided for under the loan documents, are due beginning the first due date after the case is filed and continuing each month thereafter. The Trustee shall pay the postpetition mortgage payments on the following mortgage claims:

**New Model
Plan
(Cont.)**

Options for Treatment of Secured Debts

Seek mortgage modification.

(c) Claims Secured by Real Property - Debtor Intends to Seek Mortgage Modification. If Debtor obtains a modification of the mortgage, the modified payments shall be paid through the Plan. Pending the resolution of a mortgage modification request, Debtor shall make the following adequate protection payments to the Trustee: (1) for *homestead* property, the lesser of 31% of gross monthly income of Debtor and non-filing spouse, if any (after deducting homeowners association fees), or the normal monthly contractual mortgage payment; or (2) for *non-homestead*, income-producing property, 75% of the gross rental income generated from the property.

**New Model
Plan
(Cont.)**

Options for Treatment of Secured Debts

Avoid liens under Section 522 or strip off.

(e) Liens to be Avoided Under 11 U.S.C. § 522 or Stripped Off Under 11 U.S.C. § 506. Debtor must file a separate motion under § 522 to avoid a judicial lien or a nonpossessory, nonpurchase money security interest because it impairs an exemption or under § 506 to determine secured status and to strip a lien.

**New Model
Plan
(Cont.)**

Options for Treatment of Secured Debts

Claims to which valuation does not apply (910 cars and debts incurred within one year of filing (modify interest rates?)).

(f) Claims Secured by Real Property and/or Personal Property to Which Section 506 Valuation DOES NOT APPLY Under the Final Paragraph in 11 U.S.C. § 1325(a). The claims listed below were either: (1) incurred within 910 days before the petition date and secured by a purchase money security interest in a motor vehicle acquired for the personal use of Debtor; or (2) incurred within one year of the petition date and secured by a purchase money security interest in any other thing of value. These claims will be paid in full under the Plan with interest at the rate stated below.

**New Model
Plan
(Cont.)**

Options for Treatment of Secured Debts

Pay Claim with interest through the plan.

(g) Claims Secured by Real or Personal Property to be Paid with Interest Through the Plan under 11 U.S.C. § 1322(b)(2). The following secured claims will be paid in full under the Plan with interest at the rate stated below.

**New Model
Plan
(Cont.)**

Options for Treatment of Secured Debts

Maintain payments and cure arrearages on personal property.

(h) Claims Secured by Personal Property – Maintaining Regular Payments and Curing Arrearage, if any, with All Payments in Plan.

**New Model
Plan
(Cont.)**

Options for Treatment of Secured Debts

Pay Direct—automatic stay is terminated.

(i) Secured Claims Paid Directly by Debtor. The following secured claims are being made via automatic debit/draft from Debtor's depository account and are to continue to be paid directly to the creditor or lessor by Debtor outside the Plan via automatic debit/draft. The automatic stay is terminated *in rem* as to Debtor and *in rem* and *in personam* as to any codebtor as to these creditors and lessors upon the filing of this Plan. Nothing herein is intended to terminate or abrogate Debtor's state law contract rights.

**New Model
Plan
(Cont.)**

Options for Treatment of Secured Debts

Surrender—automatic stay is terminated.

(j) Surrender of Collateral/Property that Secures a Claim. Debtor will surrender the following collateral/property. The automatic stay under 11 U.S.C. §§ 362(a) and 1301(a) is terminated in rem as to Debtor and in rem and in personam as to any codebtor as to these creditors upon the filing of this Plan.

**New Model
Plan
(Cont.)**

Options for Treatment of Secured Debts

Retain but do not intend to pay – stay terminated but state law contract rights and defenses are preserved.

(k) Secured Claims That Debtor Does Not Intend to Pay. Debtor does not intend to make payments to the following secured creditors. The automatic stay is terminated in rem as to Debtor and in rem and in personam as to any codebtor with respect to these creditors upon the filing of this Plan. Debtor's state law contract rights and defenses are neither terminated nor abrogated.

New Model
Plan
(Cont.)

Leases and Executory Contracts —
Three Options:

- (1) Assume lease and promptly cure arrearages (Possible future liability – damage to car, excess wear and tear or mileage).

Important New Provision:

As and for adequate protection, the Trustee shall disburse payments to creditors under leases or executory contracts prior to confirmation, as soon as practicable, if the Plan provides for payment to creditor/lessor, the creditor/lessor has filed a proof of claim or Debtor or Trustee has filed a proof of claim for the secured creditor/lessor under § 501(c), and no objection to the claim is pending.

New Model
Plan
(Cont.)

Leases and Executory Contracts —
Three Options:

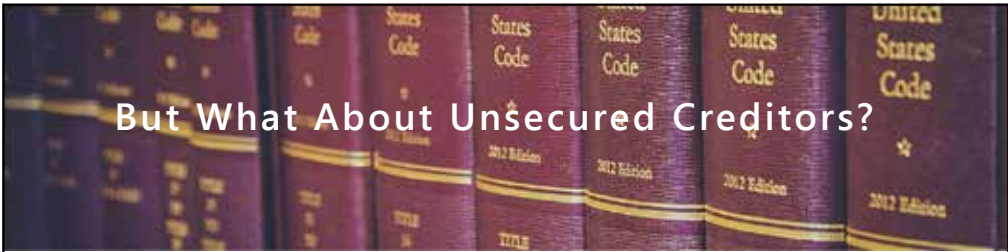
- (2) Assume lease and pay direct – automatic stay is terminated.
- (3) Reject and surrender – automatic stay is terminated.

New Model Plan Plan (Cont.)

Middle District's Model Plan specifically provides:

D. General Plan Provisions

4. The amounts listed for claims in this Plan are based upon Debtor's best estimate and belief and/or the proofs of claim as filed and allowed. Unless otherwise ordered by the Court, the Trustee shall only pay creditors with filed and allowed proofs of claim. An allowed proof of claim will control, unless the Court orders otherwise.



But What About Unsecured Creditors?

Under Sec. 1325(b)(1), if an unsecured creditor or the trustee objects, the court may not confirm the plan unless (A) value of property to be distributed on account of a claim is not less than the amount of the claim, or (B) debtor commits projected disposable income to the plan.

Query: debtor proposes 100% payment to unsecured creditors over 60 months, but debtor's disposable income on Schedule J is sufficient to pay 100% in shorter time period. Must debtor pay interest to unsecureds?



[I]n cases where the trustee or an unsecured creditor objects, § 1325(b)(1) allows the debtor to choose subsection (B) and devote all of his projected disposable income to the plan or, if the debtor wishes to devote less of his income to the plan, he may chose subsection (A). The price for doing so, however, is that unsecured claims must be paid in full with interest.

In re Cheatham, No. 9:17-BK-01169-FMD, 2017 WL 5614910, at *1 (Bankr. M.D. Fla. Nov. 20, 2017) (quoting *In re McKenzie*, 516 B.R. 661 (Bankr. M.D. Ga. 2014)).

Southern District's Model Plan

Some differences between the Middle District and Southern District Plans:

- Automatic stay does not terminate as to a secured creditor unless the secured creditor is identified by name.
- Secured creditors must request pre-confirmation adequate protection.
- Plan does not specify whether Plan or proof of claim controls the amount of the claim.



Slater

The Unscheduled Asset

Possible collateral estoppel effect if the omission was designed to “make a mockery of the judicial system.”

Two-Part Test:

- (1) the party took an inconsistent position under oath in a separate proceedings, and
- (2) these inconsistent positions were calculated to make a mockery of the judicial system.

As an equitable doctrine, judicial estoppel should apply only when the party's conduct is egregious enough that the situation demands equitable intervention; when a party intended no deception, judicial estoppel may not be applied.

Slater v. United States Steel Corporation, 871 F.3d 1174 (11th Cir. 2017).

Slater
(Cont.)

Trial court may consider bankruptcy court's treatment of the non-disclosure.

Bankruptcy court may punish debtor for concealing assets by:

- **Revoking discharge**
- **Denying claim of exemption for proceeds of asset**
- **Fine or imprison debtor for contempt of court**
- **Refer to U.S. Attorney for criminal prosecution**

Slater v. United States Steel Corporation, 871 F.3d 1174 (11th Cir. 2017).

Slater (Cont.)



Plaintiff failed to disclose claim for false arrest against Broward County Sheriff's Department in her bankruptcy schedules. Trustee moved to be substituted in as real party in interest. Defendant opposed citing judicial estoppel.

Court held that: "The trustee is the real party in interest in the civil lawsuit, has never taken an inconsistent position under oath, and has not abandoned [Plaintiff's] claim," and it is "appropriate to permit the substitution."

Romeo v. Israel, 2017 WL 5068369 (S.D. Fla. Nov. 3, 2017).

Slater

(Cont.)

Effect of *Slater* on *Failla*

- 11 U.S.C. § 521(a)(2) requires debtor to file a statement of intention as to secured debt: surrender, retain and reaffirm, or retain and redeem.
- *In re Failla*, 838 F. 3d 1170 (11th Cir. 2016), holds that debtor who elects surrender option must surrender and may not continue to defend state court foreclosure action.
- *Slater* recognizes debtor's ability to amend schedules.

Slater

(Cont.)

Pre-*Failla* case law:

- *In re Taylor*, 3 F.3d 1512 (11th Cir. 1993): "Surrender" of debtor's collateral, as alternative to redemption, involves debtor's surrendering the collateral to the lienholder who then disposes of it pursuant to requirements of state law.
- *In re Belanger*, 962 F.2d 345 (4th Cir. 1992): Debtor may retain property without reaffirming or redeeming.
- *In re Edwards*, 901 F.2d 1383 (7th Cir. 1990): Debtor must redeem or reaffirm to retain property.
- *Lowry Fed. Credit Union v. West*, 882 F.2d 1543 (10th Cir. 1989): Within discretion of bankruptcy court, debtor may retain property without reaffirming or redeeming.

Surrender of Collateral and *In re Failla* – what's new

Debtor indicates "surrender" on Statement of Intentions.

Recent cases:

In re Townsend, Case No. 9:08-bk-12383-FMD, 2015 WL 5157505 (Bankr. M.D. Fla. 2015)(J. Delano). Plan stated "nothing herein is intended ... to abrogate Debtor's state court contract rights."

In re Woide, 551 B.R. 865 (Bankr. M.D. Fla. 2016)(J. Briskman).

In re Guerra, 8:11-bk-15663-MGW (Bankr. M.D. Fla. 2016)(J. Williamson).

In re Keddo, 2017 WL 3267705 (Bankr. S. D. Fla. July 27, 2017)(J. Olson).

In re Kurzban, 2017 WL 3141915 (Bankr. S.D. Fla. July 24, 2017)(J. Isicoff).

In re Scott, 567 B.R. 847 (Bankr. S.D. Fla. 2017)(J. Ray).

In re Ayala, 568 B.R. 870 (Bankr. M.D. Fla. 2017)(J. Colton).

In re Kaschkadayev, 2017 WL 587982 (Bankr. M.D. Fla. Feb. 14, 2017)(J. Williamson).

In re Thomas, 2017 WL 3309719 (Bankr. S.D. Fla. Feb. 10, 2017)(J. Kimball).

Post-*Failla* Case Law



- *In re Woide*, 551 B.R. 865 (Bankr. M.D. Fla. 2016): To surrender collateral, debtor must relinquish collateral and make it available to secured creditor by refraining from taking any overt act that impedes secured creditor's ability to foreclose its interest in collateral.
- *In re Elkouby*, 561 B.R. 551 (Bankr. S.D. Fla. 2016): Surrender by debtor of real property securing creditor's claim was surrender to trustee, not to creditor, and creditor could not assert that debtor's stated intent to surrender the property had any consequences with respect to creditor post-bankruptcy, such as by precluding debtor from defending action by creditor to foreclose its security interest in property.

Post-*Failla*
Case Law
(Cont.)

Questions remaining:

- Is *Failla* applied differently in Chapter 7's and 13's?
- Debtor's surrender to third party?
- Trustee's surrender to third party?

Treatment of
Leases Assumed in
a Chapter 7

**Assumed
Leases**

Treatment of Leases Assumed in a Chapter 7

- Is a reaffirmation agreement required for a lease assumption?
- Section 365(p)(2) vs. Section 524.

**Assumed
Leases**

Treatment of Leases Assumed in a Chapter 7

Relevant case law in Florida:

In re Bailly, 522 B.R. 711 (Bankr. M.D. Fla. 2014)(J. Jennemann).

In re Perlman, 468 B.R. 437 (Bankr. S.D. Fla. 2012)(J. Olson).

ABI Journal, "Does Assumption of a Lease by a Chapter 7 Debtor Render the Lease Obligation Not Subject to Discharge."



Local Rule
1002-1

The Incapacitated Client

Bankr. M.D. Fla. R. 1002-1 sets procedures when a petition is filed by a court-appointed representative, holder of power of attorney, guardian ad litem, or proposed next friend.

Proposed amendment to the rule will streamline procedures – court to set a hearing to determine whether debtor has authorized the filing or in debtor's best interest.

Local Rule
1002-1

The Incapacitated Client

Bankr. M.D. Fla. R. 1002-1 lists required information:

- (1) the party's name, address, and relationship to the debtor;
- (2) whether a representative was appointed for the debtor under nonbankruptcy law before the petition was filed;
- (3) if applicable, why appointment of the party as next friend or guardian ad litem is necessary;
- (4) if applicable, why appointment of the party would be in the debtor's best interest;

Local Rule
1002-1

The Incapacitated Client

Bankr. M.D. Fla. R. 1002-1 lists required information:

- (5) the fee, if any, that the party would charge the debtor for serving as next friend or guardian ad litem;
- (6) the party's criminal, financial, and professional history;
- (7) the party's competence to handle the debtor's financial affairs, including the movant's knowledge of debtor's financial affairs;
- (8) whether the party has any current or potential future interest in the debtor's financial affairs; and
- (9) whether any of the debtor's debts were incurred for the benefit of the party.

Claims &
FDCPA

Proofs of Claim and the
Fair Debt Collection Practices Act

- Timeline to file a claim has been shortened by Rule 3002.
- Filing a claim based on time-barred debt was not false, deceptive or misleading. *Midland Funding, LLC v. Johnson*, 137 S. Ct. 1407 (2017).
- Creditors have additional time to provide support for filed claim.
- The bankruptcy process provides procedural safeguards to protect consumers.
- Claims filed in states that extinguish barred debt would be a violation.
- Did Congress intend for the two statutes to coexist in bankruptcy?
- Do materially inaccurate claims violate the FDCPA?
- Not all creditors are debt collectors. *Henson v. Santander Consumer USA, Inc.*, 137 S. Ct. 1718 (2017).

Claims &
FDCPA

Adversary Proceedings and
Consumer Statutes

- Adversary proceedings are brought against creditors for alleged, prepetition violations of various federal statutes.
- Fair Credit Reporting Act. *Spokeo, Inc. v. Robbins*, 136 S. Ct. 1540 (2016).
- Article III standing requires an injury in fact, fairly traceable to the conduct of the defendant and likely to be redressed by a favorable judicial decision.
- Injury must be "concrete and particularized" even in the context of a statutory violation.
- Whether a procedural violation of a statute creates an injury in fact depends on the statute.
- Real Estate Settlement Procedures Act – damages must be more than a failure to comply with statute. *Baez v. Specialized Loan Servicing, LLC*, 219 F. Supp. 3d 1221 (S.D. Fla. 2016).
- Compare an FDCPA violation – damages flow directly from the statute because Congress created a new private, individual right.
- Telephone Consumer Protection Act – unsolicited faxes sent to plaintiff establishes concrete injury under the statute (new private cause of action granted by statute).
- However, the plaintiff failed to allege a violation of the TCPA because the faxes were not advertisements. *Florence Endocrine Clinic, PLLC v. Arriva Med., LLC*, 858 F.3d 1362 (11th Cir. 2017).

Post-Discharge Issues

Post-Discharge Issues



- (1) Non-dischargeable student loans.
- (2) HOA or condo fees excepted from discharge for as long as the debtor has a legal, equitable, or possessory ownership interest in the property unit. Section 523(a)(16)
- (3) Note: Section 523 only applies to a discharge under Sections 727, 1141, 1228(a), 1228(b), or 1328(b).
- (4) Code violations excepted from discharge under section 523(a)(7).

Post-Discharge Issues (Cont.)

Are those taxes discharged?

Six factors to determine dischargeability of income tax in Chapter 7:

- (1) The Three-Year Rule – the most recent due date for filing the return is more than three years old. Section 507(a)(8)(A)(i).
- (2) The Two-Year Rule – the tax return or equivalent, if required, was filed more than two years before the petition date. Section 523(a)(1)(B).
- (3) The 240-Day Rule – the tax claim was assessed more than 240 days prior to the petition date. Section 508(a)(8)(A)(ii).
- (4) The tax is assessable but not yet assessed.
- (5) Non-fraudulent return.
- (6) No willful tax evasion.

Post-Discharge Issues (Cont.)

Are those taxes discharged?

Note: Priority taxes under Sections 507(a)(8)(A) and (B) are not excepted from discharge under Section 1328(a). The importance of this is the accrual of interest during the pendency of a Chapter 13 plan.

Substitute tax returns – *In re Justice*, 817 F.3d 738 (11th Cir. 2016).

In re McCoy, 666 F.3d 924 (5th Cir. 2012).

Practice Pointer: REVIEW YOUR CLIENT'S IRS TAX TRANSCRIPT!

Pay Direct

Effect of Pay Direct/Retain But
Don't Intend to Pay

In re Dukes

**2015 WL 3856335 (Bankr. M.D. Fla. June 19, 2015).
2016 WL 5390948 (M.D. Fla. Sept. 27, 2016).
On appeal to the 11th Circuit, Case No. 16-16513.**

Undisclosed
Assets

Unscheduled assets discovered post-
discharge. What happens?

- Chapter 13
- Chapter 7



Report on the ABI Consumer Commission's
Chapter 7 Committee

What is the ABI Consumer Commission?

Issues to be studied.

Attorneys and Judges should get involved.

Final Report of Commission due in 2018.



Questions?

New Bankruptcy Rules to Take Effect December 1, 2017 Impact Secured Creditors in Chapter 13 Cases

Congress has approved major changes to the administration of Chapter 13 consumer bankruptcy cases by adopting amendments to the Federal Rules of Bankruptcy Procedure. These amendments to the Bankruptcy Rules have been adopted by the Rules Committee, approved by the United States Supreme Court, and submitted to Congress. The amendments become effective for cases filed after December 1, 2017. The most noteworthy changes are:

1. Debtors must use a Model Chapter 13 Plan

WHAT IT MEANS - an official form plan must be used by all debtors in Chapter 13 – either the national form plan in the amended Rule, or a local plan in any District which has opted out of the national plan and decided to use its own local plan.

IMPACT - easier for creditors and trustees to spot “non-standard” provisions in the Chapter 13 plan. These non-standard provisions would be effective only if included in the appropriate designated section of the form plan. **The amended Rules should streamline the plan review process for creditors, who now will be able to more easily locate the debtor’s proposed treatment of their claims and identify any non-standard provisions within the plan.**

2. Secured creditors must file a proof of claim

WHAT IT MEANS - secured creditors will be required to file a claim in Chapter 13 cases; however, a lien that secures a claim against the debtor’s property is not void due only to the failure to file a proof of claim.

IMPACT - not significant, since most secured creditors already file claims in each Chapter 13 case.

3. **Proof of claim filing deadline now only 70 days**

WHAT IT MEANS - Creditors must file claims within **70 day** of the case filing (old Rule was 90 days from the date of the first creditors meeting).

IMPACT - Creditors have less time to prepare and file claims. On the other hand, creditors will have more certainty across the country since the claims bar date will now be tied to the petition filing date and can be calendared immediately upon receiving notice of a Chapter 13 filing.

NOTE - creditor with claim secured by a lien on the debtor's principal residence has up to 120 days of the case filing to amend a claim to include any attachments required by Rule 3001(c)(1) and (d) (e.g. note, mortgage, assignment, alonge, etc.)

4. **Establishment of certain deadlines related to plan confirmation**

WHAT IT MEANS - creditors must receive **at least 21 days notice by mail of the deadline to object to confirmation of a Chapter 13 plan**, and at least **28 days' notice** by mail of the confirmation hearing. Any objection to confirmation of a Chapter 13 plan must be filed and served **at least seven days before the date set for the hearing on confirmation** (unless the court orders otherwise).

IMPACT - **This amendment provides uniformity and predictability across all districts regarding the plan confirmation process, particularly the deadline to file an objection to confirmation of the plan.**

5. **Plan generally will determine amount of secured and priority claims**

WHAT IT MEANS - Courts may determine the amounts of secured claims through several methods – by a motion, claim objection, or in the Chapter 13 plan. The amount of a secured claim set out in the Chapter 13 plan will be binding (i.e. *the amount listed in the plan controls, not the claim*).

IMPACT - SIGNIFICANT. **Creditors must carefully review the Chapter 13 plan to determine whether an objection is necessary. Under the**

amended Rules, any determination made in the plan under Rule 3012 about the amount of a secured claim is binding on the holder of the claim – even if the creditor files a contrary proof of claim or the debtor schedules the claim, and regardless of whether an objection to the claim has been filed.

F:\LEVINE FILES\Dennis\Newsletter Articles\2017.May.New Bankruptcy Rules to Take Effect December 1.6-20-17.wpd

**PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE***

1 Rule 1001. Scope of Rules and Forms; Short Title

2 The Bankruptcy Rules and Forms govern procedure
3 in cases under title 11 of the United States Code. The rules
4 shall be cited as the Federal Rules of Bankruptcy Procedure
5 and the forms as the Official Bankruptcy Forms. These
6 rules shall be construed, administered, and employed by the
7 court and the parties to secure the just, speedy, and
8 inexpensive determination of every case and proceeding.

* New material is underlined; matter to be omitted is lined through.

1 **Rule 1006. Filing Fee**

2 * * * * *

3 (b) PAYMENT OF FILING FEE IN
4 INSTALLMENTS.

5 (1) *Application to Pay Filing Fee in*
6 *Installments.* A voluntary petition by an individual
7 shall be accepted for filing, regardless of whether any
8 portion of the filing fee is paid, if accompanied by the
9 debtor's signed application, prepared as prescribed by
10 the appropriate Official Form, stating that the debtor
11 is unable to pay the filing fee except in installments.

12 * * * * *

1 **Rule 1015. Consolidation or Joint Administration of**
2 **Cases Pending in Same Court**

3 * * * * *

4 (b) CASES INVOLVING TWO OR MORE
5 RELATED DEBTORS. If a joint petition or two or more
6 petitions are pending in the same court by or against (1) a
7 ~~husband and wife~~wivespouses, or (2) a partnership and one or
8 more of its general partners, or (3) two or more general
9 partners, or (4) a debtor and an affiliate, the court may
10 order a joint administration of the estates. Prior to entering
11 an order the court shall give consideration to protecting
12 creditors of different estates against potential conflicts of
13 interest. An order directing joint administration of
14 individual cases of a ~~husband and wife~~wivespouses shall, if one
15 spouse has elected the exemptions under § 522(b)(2) of the
16 Code and the other has elected the exemptions under
17 § 522(b)(3), fix a reasonable time within which either may
18 amend the election so that both shall have elected the same

19 exemptions. The order shall notify the debtors that unless
20 they elect the same exemptions within the time fixed by the
21 court, they will be deemed to have elected the exemptions
22 provided by § 522(b)(2).

23

* * * * *

1 **Rule 2002. Notices to Creditors, Equity Security**
2 **Holders, Administrators in Foreign**
3 **Proceedings, Persons Against Whom**
4 **Provisional Relief is Sought in Ancillary**
5 **and Other Cross-Border Cases, United**
6 **States, and United States Trustee**

7 (a) TWENTY-ONE-DAY NOTICES TO PARTIES
8 IN INTEREST. Except as provided in subdivisions (h), (i),
9 (l), (p), and (q) of this rule, the clerk, or some other person
10 as the court may direct, shall give the debtor, the trustee, all
11 creditors and indenture trustees at least 21 days' notice by
12 mail of:

13 * * * * *

14 (7) the time fixed for filing proofs of claims
15 pursuant to Rule 3003(c); ~~and~~

16 (8) the time fixed for filing objections and the
17 hearing to consider confirmation of a chapter 12 plan;
18 and

19 (9) the time fixed for filing objections to
20 confirmation of a chapter 13 plan.

21 (b) TWENTY-EIGHT-DAY NOTICES TO
22 PARTIES IN INTEREST. Except as provided in
23 subdivision (l) of this rule, the clerk, or some other person
24 as the court may direct, shall give the debtor, the trustee, all
25 creditors and indenture trustees not less than 28 days'
26 notice by mail of the time fixed (1) for filing objections and
27 the hearing to consider approval of a disclosure statement
28 or, under § 1125(f), to make a final determination whether
29 the plan provides adequate information so that a separate
30 disclosure statement is not necessary; ~~and~~ (2) for filing
31 objections and the hearing to consider confirmation of a

32 chapter 9, or chapter 11, ~~or chapter 13~~ plan; and (3) for the
33 hearing to consider confirmation of a chapter 13 plan.

34

* * * * *

1 **Rule 3002. Filing Proof of Claim or Interest**

2 (a) NECESSITY FOR FILING. ~~An~~A secured
3 creditor, unsecured creditor, or an equity security holder
4 must file a proof of claim or interest for the claim or
5 interest to be allowed, except as provided in Rules 1019(3),
6 3003, 3004, and 3005. A lien that secures a claim against
7 the debtor is not void due only to the failure of any entity to
8 file a proof of claim.

9 (b) PLACE OF FILING. A proof of claim or
10 interest shall be filed in accordance with Rule 5005.

11 (c) TIME FOR FILING. In a voluntary chapter 7
12 ~~liquidation~~case, chapter 12 ~~family~~ ~~farmer's~~ ~~debt~~
13 ~~adjustment~~case, or chapter 13 ~~individual's~~ ~~debt~~
14 ~~adjustment~~case, a proof of claim is timely filed if it is filed
15 not later than ~~90~~70 days after the order for relief under that
16 chapter or the date of the order of conversion to a case
17 under chapter 12 or chapter 13. In an involuntary chapter 7

18 case, a proof of claim is timely filed if it is filed not later
19 than 90 days after the order for relief under that chapter is
20 entered.~~the first date set for the meeting of creditors called~~
21 ~~under § 341(a) of the Code, except as follows:~~ But in all
22 these cases, the following exceptions apply:

23 * * * * *

24 (6) ~~If notice of the time to file a proof of claim~~
25 ~~has been mailed to a creditor at a foreign address, o~~On
26 motion filed by the~~a~~ creditor before or after the
27 expiration of the time to file a proof of claim, the
28 court may extend the time by not more than 60 days
29 from the date of the order granting the motion. The
30 motion may be granted if the court finds that~~the~~
31 ~~notice was insufficient under the circumstances to~~
32 ~~give the creditor a reasonable time to file a proof of~~
33 ~~claim.:~~

34 (A) the notice was insufficient under the
35 circumstances to give the creditor a reasonable
36 time to file a proof of claim because the debtor
37 failed to timely file the list of creditors' names
38 and addresses required by Rule 1007(a); or

39 (B) the notice was insufficient under the
40 circumstances to give the creditor a reasonable
41 time to file a proof of claim, and the notice was
42 mailed to the creditor at a foreign address.

43 (7) A proof of claim filed by the holder of a
44 claim that is secured by a security interest in the
45 debtor's principal residence is timely filed if:

46 (A) the proof of claim, together with the
47 attachments required by Rule 3001(c)(2)(C), is
48 filed not later than 70 days after the order for
49 relief is entered; and

50 (B) any attachments required by
51 Rule 3001(c)(1) and (d) are filed as a supplement
52 to the holder's claim not later than 120 days after
53 the order for relief is entered.

1 **Rule 3007. Objections to Claims**

2 (a) ~~OBJECTIONS TO CLAIMS~~TIME AND
3 MANNER OF SERVICE.

4 (1) Time of Service. An objection to the
5 allowance of a claim and a notice of objection that
6 substantially conforms to the appropriate Official
7 Form shall be ~~in writing and filed,~~ and served at least
8 30 days before any scheduled hearing on the objection
9 or any deadline for the claimant to request a hearing.
10 ~~A copy of the objection with notice of the hearing~~
11 ~~thereon shall be mailed or otherwise delivered to the~~
12 ~~claimant, the debtor or debtor in possession, and the~~
13 ~~trustee at least 30 days prior to the hearing.~~

14 (2) Manner of Service.

15 (A) The objection and notice shall be
16 served on a claimant by first-class mail to the
17 person most recently designated on the

18 claimant's original or amended proof of claim as
19 the person to receive notices, at the address so
20 indicated; and

21 (i) if the objection is to a claim of
22 the United States, or any of its officers or
23 agencies, in the manner provided for
24 service of a summons and complaint by
25 Rule 7004(b)(4) or (5); or

26 (ii) if the objection is to a claim of an
27 insured depository institution, in the
28 manner provided by Rule 7004(h).

29 (B) Service of the objection and notice
30 shall also be made by first-class mail or other
31 permitted means on the debtor or debtor in
32 possession, the trustee, and, if applicable, the
33 entity filing the proof of claim under Rule 3005.

34 * * * * *

1 **Rule 3012. ~~Valuation of Security~~Determining the**
2 **Amount of Secured and Priority Claims**

3 ~~The court may determine the value of a claim secured~~
4 ~~by a lien on property in which the estate has an interest on~~
5 ~~motion of any party in interest and after a hearing on notice~~
6 ~~to the holder of the secured claim and any other entity as~~
7 ~~the court may direct.~~

8 **(a) DETERMINATION OF AMOUNT OF CLAIM.**

9 On request by a party in interest and after notice—to the
10 holder of the claim and any other entity the court
11 designates—and a hearing, the court may determine:

12 (1) the amount of a secured claim under
13 § 506(a) of the Code; or

14 (2) the amount of a claim entitled to priority
15 under § 507 of the Code.

16 **(b) REQUEST FOR DETERMINATION; HOW**
17 **MADE.** Except as provided in subdivision (c), a request to

18 determine the amount of a secured claim may be made by
19 motion, in a claim objection, or in a plan filed in a
20 chapter 12 or chapter 13 case. When the request is made in
21 a chapter 12 or chapter 13 plan, the plan shall be served on
22 the holder of the claim and any other entity the court
23 designates in the manner provided for service of a
24 summons and complaint by Rule 7004. A request to
25 determine the amount of a claim entitled to priority may be
26 made only by motion after a claim is filed or in a claim
27 objection.

28 (c) CLAIMS OF GOVERNMENTAL UNITS. A
29 request to determine the amount of a secured claim of a
30 governmental unit may be made only by motion or in a
31 claim objection after the governmental unit files a proof of
32 claim or after the time for filing one under Rule 3002(c)(1)
33 has expired.

1 **Rule 3015. Filing, Objection to Confirmation, Effect of**
2 **Confirmation, and Modification of a Plan**
3 **in a Chapter 12 ~~Family Farmer's Debt~~**
4 **~~Adjustment~~ or a Chapter 13 ~~Individual's~~**
5 **~~Debt Adjustment Case~~**

6 (a) FILING A CHAPTER 12 PLAN. The debtor
7 may file a chapter 12 plan with the petition. If a plan is not
8 filed with the petition, it shall be filed within the time
9 prescribed by § 1221 of the Code.

10 (b) FILING A CHAPTER 13 PLAN. The debtor
11 may file a chapter 13 plan with the petition. If a plan is not
12 filed with the petition, it shall be filed within 14 days
13 thereafter, and such time may not be further extended
14 except for cause shown and on notice as the court may
15 direct. If a case is converted to chapter 13, a plan shall be
16 filed within 14 days thereafter, and such time may not be
17 further extended except for cause shown and on notice as
18 the court may direct.

19 (c) ~~DATING.~~ ~~Every proposed plan and any~~
20 ~~modification thereof shall be dated.~~ FORM OF CHAPTER
21 13 PLAN. If there is an Official Form for a plan filed in a
22 chapter 13 case, that form must be used unless a Local
23 Form has been adopted in compliance with Rule 3015.1.
24 With either the Official Form or a Local Form, a
25 nonstandard provision is effective only if it is included in a
26 section of the form designated for nonstandard provisions
27 and is also identified in accordance with any other
28 requirements of the form. As used in this rule and the
29 Official Form or a Local Form, “nonstandard provision”
30 means a provision not otherwise included in the Official or
31 Local Form or deviating from it.

32 (d) ~~NOTICE AND COPIES.~~ If the plan ~~The plan or~~
33 ~~a summary of the plan shall be~~ is not included with the each
34 notice of the hearing on confirmation mailed under
35 pursuant to Rule 2002, the debtor shall serve the plan on

36 the trustee and all creditors when it is filed with the court.
37 ~~If required by the court, the debtor shall furnish a sufficient~~
38 ~~number of copies to enable the clerk to include a copy of~~
39 ~~the plan with the notice of the hearing.~~

40 (e) TRANSMISSION TO UNITED STATES
41 TRUSTEE. The clerk shall forthwith transmit to the
42 United States trustee a copy of the plan and any
43 modification thereof filed under ~~pursuant to~~ subdivision (a)
44 or (b) of this rule.

45 (f) OBJECTION TO CONFIRMATION;
46 DETERMINATION OF GOOD FAITH IN THE
47 ABSENCE OF AN OBJECTION. An objection to
48 confirmation of a plan shall be filed and served on the
49 debtor, the trustee, and any other entity designated by the
50 court, and shall be transmitted to the United States trustee,
51 ~~before confirmation of the plan~~ at least seven days before
52 the date set for the hearing on confirmation, unless the

53 court orders otherwise. An objection to confirmation is
54 governed by Rule 9014. If no objection is timely filed, the
55 court may determine that the plan has been proposed in
56 good faith and not by any means forbidden by law without
57 receiving evidence on such issues.

58 (g) EFFECT OF CONFIRMATION. Upon the
59 confirmation of a chapter 12 or chapter 13 plan:

60 (1) any determination in the plan made under
61 Rule 3012 about the amount of a secured claim is
62 binding on the holder of the claim, even if the holder
63 files a contrary proof of claim or the debtor schedules
64 that claim, and regardless of whether an objection to
65 the claim has been filed; and

66 (2) any request in the plan to terminate the stay
67 imposed by § 362(a), § 1201(a), or § 1301(a) is
68 granted.

69 ~~(g)~~(h) MODIFICATION OF PLAN AFTER
70 CONFIRMATION. A request to modify a plan pursuant to
71 under § 1229 or § 1329 of the Code shall identify the
72 proponent and shall be filed together with the proposed
73 modification. The clerk, or some other person as the court
74 may direct, shall give the debtor, the trustee, and all
75 creditors not less than 21 days' notice by mail of the time
76 fixed for filing objections and, if an objection is filed, the
77 hearing to consider the proposed modification, unless the
78 court orders otherwise with respect to creditors who are not
79 affected by the proposed modification. A copy of the
80 notice shall be transmitted to the United States trustee. A
81 copy of the proposed modification, or a summary thereof,
82 shall be included with the notice. ~~If required by the court,~~
83 ~~the proponent shall furnish a sufficient number of copies of~~
84 ~~the proposed modification, or a summary thereof, to enable~~
85 ~~the clerk to include a copy with each notice.~~ Any objection

86 to the proposed modification shall be filed and served on
87 the debtor, the trustee, and any other entity designated by
88 the court, and shall be transmitted to the United States
89 trustee. An objection to a proposed modification is
90 governed by Rule 9014.

1 **Rule 3015.1. Requirements for a Local Form for Plans**
2 **Filed in a Chapter 13 Case**

3 Notwithstanding Rule 9029(a)(1), a district may
4 require that a Local Form for a plan filed in a chapter 13
5 case be used instead of an Official Form adopted for that
6 purpose if the following conditions are satisfied:

7 (a) a single Local Form is adopted for the district
8 after public notice and an opportunity for public comment;

9 (b) each paragraph is numbered and labeled in
10 boldface type with a heading stating the general subject
11 matter of the paragraph;

12 (c) the Local Form includes an initial paragraph for
13 the debtor to indicate that the plan does or does not:

14 (1) contain any nonstandard provision;

15 (2) limit the amount of a secured claim based
16 on a valuation of the collateral for the claim; or

17 (3) avoid a security interest or lien;

18 (d) the Local Form contains separate paragraphs
19 for:

20 (1) curing any default and maintaining
21 payments on a claim secured by the debtor's principal
22 residence;

23 (2) paying a domestic-support obligation;

24 (3) paying a claim described in the final
25 paragraph of § 1325(a) of the Bankruptcy Code; and

26 (4) surrendering property that secures a claim
27 with a request that the stay under §§ 362(a) and
28 1301(a) be terminated as to the surrendered collateral;

29 and

30 (e) the Local Form contains a final paragraph for:

31 (1) the placement of nonstandard provisions, as
32 defined in Rule 3015(c), along with a statement that
33 any nonstandard provision placed elsewhere in the
34 plan is void; and

35 (2) certification by the debtor's attorney or by
36 an unrepresented debtor that the plan contains no
37 nonstandard provision other than those set out in the
38 final paragraph.

1 **Rule 5009. Closing Chapter 7—Liquidation, Chapter**
2 **12Family—Farmer’s—Debt—Adjustment,**
3 **Chapter 13—Individual’s—Debt—Adjustment,**
4 **and Chapter 15—Ancillary and Cross-**
5 **Border Cases; Order Declaring Lien**
6 **Satisfied**

7 (a) CLOSING OF CASES UNDER CHAPTERS 7,
8 12, AND 13. If in a chapter 7, chapter 12, or chapter 13
9 case the trustee has filed a final report and final account
10 and has certified that the estate has been fully administered,
11 and if within 30 days no objection has been filed by the
12 United States trustee or a party in interest, there shall be a
13 presumption that the estate has been fully administered.

14 * * * * *

15 (d) ORDER DECLARING LIEN SATISFIED. In a
16 chapter 12 or chapter 13 case, if a claim that was secured
17 by property of the estate is subject to a lien under
18 applicable nonbankruptcy law, the debtor may request entry
19 of an order declaring that the secured claim has been

20 satisfied and the lien has been released under the terms of a
21 confirmed plan. The request shall be made by motion and
22 shall be served on the holder of the claim and any other
23 entity the court designates in the manner provided by
24 Rule 7004 for service of a summons and complaint.

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
DIVISION**

IN RE:

CASE NO.:

Debtor(s).

[AMENDED (if applicable)] CHAPTER 13 PLAN

A. NOTICES.

Debtor¹ must check one box on each line to state whether or not the Plan includes each of the following items. If an item is checked as “Not Included,” if both boxes are checked, or if neither box is checked, the provision will be ineffective if set out later in the Plan.

A limit on the amount of a secured claim based on a valuation which may result in a partial payment or no payment at all to the secured creditor. See Sections C.5(d) and (e). A separate motion will be filed.	Included <input type="checkbox"/>	Not Included <input type="checkbox"/>
Avoidance of a judicial lien or nonpossessory, nonpurchase money security interest under 11 U.S.C. § 522(f). A separate motion will be filed. See Section C.5(e).	Included <input type="checkbox"/>	Not Included <input type="checkbox"/>
Nonstandard provisions, set out in Section E.	Included <input type="checkbox"/>	Not Included <input type="checkbox"/>

B. MONTHLY PLAN PAYMENTS. Plan payments include the Trustee’s fee of 10% and shall begin 30 days from petition filing/conversion date. Debtor shall make payments to the Trustee for the period of _____ months. If the Trustee does not retain the full 10%, any portion not retained will be disbursed to allowed claims receiving payments under the Plan and may cause an increased distribution to the unsecured class of creditors.

\$ _____ from month _____ through _____.
 \$ _____ from month _____ through _____.
 \$ _____ from month _____ through _____.

¹ All references to “Debtor” include and refer to both of the debtors in a case filed jointly by two individuals.

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C. PROPOSED DISTRIBUTIONS.

1. ADMINISTRATIVE ATTORNEY'S FEES.

Base Fee \$ _____ Total Paid Prepetition \$ _____ Balance Due \$ _____

MMM Fee \$ _____ Total Paid Prepetition \$ _____ Balance Due \$ _____

Estimated Monitoring Fee at \$ ____ per Month.

Attorney's Fees Payable Through Plan at \$ _____ Monthly (subject to adjustment).

2. DOMESTIC SUPPORT OBLIGATIONS (as defined in 11 U.S.C. §101(14A)).

Acct. No.	Creditor	Total Claim Amount

3. PRIORITY CLAIMS (as defined in 11 U.S.C. § 507).

Last Four Digits of Acct. No.	Creditor	Total Claim Amount

4. TRUSTEE FEES. From each payment received from Debtor, the Trustee shall receive a fee, the percentage of which is fixed periodically by the United States Trustee.

5. SECURED CLAIMS. Pre-confirmation payments allocated to secured creditors under the Plan, other than amounts allocated to cure arrearages, shall be deemed adequate protection payments. The Trustee shall disburse adequate protection payments to secured creditors prior to confirmation, as soon as practicable, if the Plan provides for payment to the secured creditor, the secured creditor has filed a proof of claim or Debtor or Trustee has filed a proof of claim for the secured creditor under § 501(c), and no objection to the claim is pending. If Debtor's payments under the Plan are timely paid, payments to secured creditors under the Plan shall be deemed contractually paid on time.

42ND ANNUAL ALEXANDER L. PASKAY MEMORIAL BANKRUPTCY SEMINAR

(a) Claims Secured by Debtor’s Principal Residence Which Debtor Intends to Retain - Mortgage, HOA and Condo Association Payments, and Arrears, if any, Paid Through the Plan. If the Plan provides for curing prepetition arrearages on a mortgage on Debtor’s principal residence, Debtor will pay, in addition to all other sums due under the proposed Plan, all regular monthly postpetition mortgage payments to the Trustee as part of the Plan. These mortgage payments, which may be adjusted up or down as provided for under the loan documents, are due beginning the first due date after the case is filed and continuing each month thereafter. The Trustee shall pay the postpetition mortgage payments for Debtor’s principal residence on the following mortgage claims:

Last Four Digits of Acct. No.	Creditor	Collateral Address	Regular Monthly Payment	Gap Payment	Arrears

(b) Claims Secured by Other Real Property Which Debtor Intends to Retain - Mortgage Payments, HOA and Condo Association Payments, and Arrears, if any, Paid Through the Plan. If the Plan provides to cure prepetition arrearages on a mortgage, Debtor will pay, in addition to all other sums due under the proposed Plan, all regular monthly postpetition mortgage payments to the Trustee as part of the Plan. These mortgage payments, which may be adjusted up or down as provided for under the loan documents, are due beginning the first due date after the case is filed and continuing each month thereafter. The Trustee shall pay the postpetition mortgage payments on the following mortgage claims:

Last Four Digits of Acct. No.	Creditor	Collateral Address	Regular Monthly Payment	Gap Payment	Arrears

AMERICAN BANKRUPTCY INSTITUTE

(c) Claims Secured by Real Property - Debtor Intends to Seek Mortgage Modification. If Debtor obtains a modification of the mortgage, the modified payments shall be paid through the Plan. Pending the resolution of a mortgage modification request, Debtor shall make the following adequate protection payments to the Trustee: (1) for *homestead* property, the lesser of 31% of gross monthly income of Debtor and non-filing spouse, if any (after deducting homeowners association fees), or the normal monthly contractual mortgage payment; or (2) for *non-homestead*, income-producing property, 75% of the gross rental income generated from the property.

Last Four Digits of Acct. No.	Creditor	Collateral Address	Adequate Protection Payment

(d) Claims Secured by Real Property or Personal Property to Which Section 506 Valuation APPLIES (Strip Down). Under 11 U.S.C. § 1322 (b)(2), this provision does not apply to a claim secured solely by Debtor’s principal residence. **A separate motion to determine secured status or to value the collateral must be filed.** The secured portion of the claim, estimated below, shall be paid. Unless otherwise stated in Section E, the payment through the Plan does not include payments for escrowed property taxes or insurance.

Last Four Digits of Acct. No.	Creditor	Collateral Description/ Address	Claim Amount	Value	Payment Through Plan	Interest Rate

(e) Liens to be Avoided Under 11 U.S.C. § 522 or Stripped Off Under 11 U.S.C. § 506. Debtor must file a separate motion under § 522 to avoid a judicial lien or a nonpossessory, nonpurchase money security interest because it impairs an exemption or under § 506 to determine secured status and to strip a lien.

Last Four Digits of Acct. No.	Creditor	Collateral Description / Address

42ND ANNUAL ALEXANDER L. PASKAY MEMORIAL BANKRUPTCY SEMINAR

(f) Claims Secured by Real Property and/or Personal Property to Which Section 506 Valuation DOES NOT APPLY Under the Final Paragraph in 11 U.S.C. § 1325(a). The claims listed below were either: (1) incurred within 910 days before the petition date and secured by a purchase money security interest in a motor vehicle acquired for the personal use of Debtor; or (2) incurred within one year of the petition date and secured by a purchase money security interest in any other thing of value. These claims will be paid in full under the Plan with interest at the rate stated below.

Last Four Digits of Acct. No.	Creditor	Collateral Description/ Address	Claim Amount	Payment Through Plan	Interest Rate

(g) Claims Secured by Real or Personal Property to be Paid with Interest Through the Plan under 11 U.S.C. § 1322(b)(2). The following secured claims will be paid in full under the Plan with interest at the rate stated below.

Last Four Digits of Acct. No.	Creditor	Collateral Description/ Address	Claim Amount	Payment Through Plan	Interest Rate

(h) Claims Secured by Personal Property – Maintaining Regular Payments and Curing Arrearage, if any, with All Payments in Plan.

Last Four Digits of Acct. No.	Creditor	Collateral Description	Regular Contractual Payment	Arrearage

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(i) **Secured Claims Paid Directly by Debtor.** The following secured claims are being made via automatic debit/draft from Debtor’s depository account and are to continue to be paid directly to the creditor or lessor by Debtor outside the Plan via automatic debit/draft. The automatic stay is terminated *in rem* as to Debtor and *in rem* and *in personam* as to any codebtor as to these creditors and lessors upon the filing of this Plan. Nothing herein is intended to terminate or abrogate Debtor’s state law contract rights.

Last Four Digits of Acct. No.	Creditor	Property/Collateral

(j) **Surrender of Collateral/Property that Secures a Claim.** Debtor will surrender the following collateral/property. The automatic stay under 11 U.S.C. §§ 362(a) and 1301(a) is terminated *in rem* as to Debtor and *in rem* and *in personam* as to any codebtor as to these creditors upon the filing of this Plan.

Last Four Digits of Acct. No.	Creditor	Collateral/Property Description/Address

(k) **Secured Claims That Debtor Does Not Intend to Pay.** Debtor does not intend to make payments to the following secured creditors. The automatic stay is terminated *in rem* as to Debtor and *in rem* and *in personam* as to any codebtor with respect to these creditors upon the filing of this Plan. Debtor’s state law contract rights and defenses are neither terminated nor abrogated.

Last Four Digits of Acct. No.	Creditor	Collateral Description/Address

6. **LEASES / EXECUTORY CONTRACTS.** As and for adequate protection, the Trustee shall disburse payments to creditors under leases or executory contracts prior to confirmation, as soon as practicable, if the Plan provides for payment to creditor/lessor, the creditor/lessor has filed a proof of claim or Debtor or Trustee has filed a proof of claim for the secured creditor/lessor under § 501(c), and no objection to the claim is pending. If Debtor’s

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payments under the Plan are timely paid, payments to creditors/lessors under the Plan shall be deemed contractually paid on time.

(a) Assumption of Leases/Executory Contracts for Real or Personal Property to be Paid and Arrearages Cured Through the Plan. Debtor assumes the following leases/executory contracts and proposes the prompt cure of any prepetition arrearage as follows.

Last Four Digits of Acct. No.	Creditor/Lessor	Description of Leased Property	Regular Contractual Payment	Arrearage and Proposed Cure

(b) Assumption of Leases/Executory Contracts for Real or Personal Property to be Paid Directly by Debtor. Debtor assumes the following lease/executory contract claims that are paid via automatic debit/draft from Debtor’s depository account and are to continue to be paid directly to the creditor or lessor by Debtor outside the Plan via automatic debit/draft. The automatic stay is terminated *in rem* as to Debtor and *in rem* and *in personam* as to any codebtor as to these creditors and lessors upon the filing of this Plan. Nothing herein is intended to terminate or abrogate Debtor’s state law contract rights.

Last Four Digits of Acct. No.	Creditor/Lessor	Property/Collateral

(c) Rejection of Leases/Executory Contracts and Surrender of Real or Personal Leased Property. Debtor rejects the following leases/executory contracts and will surrender the following leased real or personal property. The automatic stay is terminated *in rem* as to Debtor and *in rem* and *in personam* as to any codebtor as to these creditors and lessors upon the filing of this Plan.

Last Four Digits of Acct. No.	Creditor/Lessor	Property/Collateral to be Surrendered

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7. **GENERAL UNSECURED CREDITORS.** General unsecured creditors with allowed claims shall receive a *pro rata* share of the balance of any funds remaining after payments to the above referenced creditors or shall otherwise be paid under a subsequent Order Confirming Plan. The estimated dividend to unsecured creditors shall be no less than \$_____.

D. GENERAL PLAN PROVISIONS:

1. Secured creditors, whether or not dealt with under the Plan, shall retain the liens securing such claims.
2. Payments made to any creditor shall be based upon the amount set forth in the creditor's proof of claim or other amount as allowed by an Order of the Bankruptcy Court.
3. If Debtor fails to check (a) or (b) below, or if Debtor checks both (a) and (b), property of the estate shall not vest in Debtor until the earlier of Debtor's discharge or dismissal of this case, unless the Court orders otherwise. Property of the estate
 - (a) _____ shall not vest in Debtor until the earlier of Debtor's discharge or dismissal of this case, unless the Court orders otherwise, or
 - (b) _____ shall vest in Debtor upon confirmation of the Plan.
4. The amounts listed for claims in this Plan are based upon Debtor's best estimate and belief and/or the proofs of claim as filed and allowed. Unless otherwise ordered by the Court, the Trustee shall only pay creditors with filed and allowed proofs of claim. An allowed proof of claim will control, unless the Court orders otherwise.
5. Debtor may attach a summary or spreadsheet to provide an estimate of anticipated distributions. The actual distributions may vary. If the summary or spreadsheet conflicts with this Plan, the provisions of the Plan control prior to confirmation, after which time the Order Confirming Plan shall control.
6. Debtor shall timely file all tax returns and make all tax payments and deposits when due. (However, if Debtor is not required to file tax returns, Debtor shall provide the Trustee with a statement to that effect.) For each tax return that becomes due after the case is filed, Debtor shall provide a complete copy of the tax return, including business returns if Debtor owns a business, together with all related W-2s and Form 1099s, to the Trustee within 14 days of filing the return. Unless otherwise ordered, consented to by the Trustee, or ordered by the Court, Debtor shall turn over to the Trustee all tax refunds in addition to regular Plan payments. Debtor shall not instruct the Internal Revenue Service or other taxing

agency to apply a refund to the following year's tax liability. **Debtor shall not spend any tax refund without first having obtained the Trustee's consent or Court approval.**

- E. **NONSTANDARD PROVISIONS as Defined in Federal Rule of Bankruptcy Procedure 3015(c).** Note: Any nonstandard provisions of this Plan other than those set out in this section are deemed void and are stricken.

CERTIFICATION

By filing this document, the Attorney for Debtor, or Debtor, if not represented by an attorney, certifies that the wording and order of the provisions in this Chapter 13 Plan are identical to those contained in the Model Plan adopted by this Court, and that this Plan contains no additional or deleted wording or nonstandard provisions other than any nonstandard provisions included in Section E.

SIGNATURE(S):

Debtor(s)

_____ Date _____

_____ Date _____

Attorney for Debtor(s)

_____ Date _____

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA

www.flmb.uscourts.gov

In re

ADMINISTRATIVE ORDER
PRESCRIBING PROCEDURES FOR
CHAPTER 13 CASES

Administrative Order
FLMB-2017-3

**FOURTH AMENDED ADMINISTRATIVE ORDER
PRESCRIBING PROCEDURES FOR CHAPTER 13 CASES**

This Fourth Amended Administrative Order establishes uniform procedures for all Chapter 13 cases filed in this District on or after September 15, 2017. Accordingly, it is

ORDERED:

Debtor's failure to timely make payments to the Chapter 13 Trustee (the "Trustee") or to comply with any of the other requirements of this Order may result in dismissal or conversion of the case.

1. Additional Information Required to be Filed with the Court. No later than 14 days from the petition date, Debtor shall file with the Court the lists, statements, and schedules required by Rule 1007.

2. Service of this Administrative Order to Debtor. Debtor's attorney or, if Debtor has no attorney, the Trustee shall provide a copy of this Administrative Order to Debtor within seven days of the petition date.

3. Chapter 13 Plan. No later than 14 days from the petition date or the date the case converts to Chapter 13, Debtor shall file a Chapter 13 plan (the "Plan") using the form Model Chapter 13 Plan available on the Trustee's and the Court's website. Any modifications to the Model Chapter 13 Plan shall be included in the "Nonstandard Provisions" section of the Plan. Plans that are filed with the petition will be served on creditors by the Clerk; if the Plan is not filed with the petition, Debtor shall serve a copy of the Plan upon all parties in interest and promptly file a proof of service.

4. Plan Payments. Payments under the Plan shall be made through the Trustee's office and shall include *all* payments to secured creditors that will come due after filing the petition (and will serve as adequate protection to such creditors) as follows:

*All references to "Debtor" shall include and refer to both debtors in a case filed jointly by two individuals.

**All references to "Plan" shall include any amended plan, which shall supersede all previously filed plans.

***All statutory references are to the Bankruptcy Code, Title 11 of the United States Code, unless otherwise noted. References to rules are to the Federal Rules of Bankruptcy Procedure.

a. For claims secured by real or personal property that are valued in the Plan, the monthly Plan payment shall include adequate protection payments based upon the proposed value of the collateral with interest.

b. For claims secured by mortgages for which the Plan proposes mortgage modification mediation (“MMM”), unless otherwise ordered by the Court, the monthly Plan payment shall include:

i. For *homestead* properties, until the MMM is concluded, the lesser of:

A. 31% of gross monthly income of Debtor and non-filing spouse, if any (after deducting homeowner association fees), or

B. The normal monthly contractual mortgage payment.

ii. For *non-homestead*, income-producing property, until the MMM is concluded, 75% of the gross rental income generated from the property.

c. For executory contract or lease claims for real or personal property, the monthly plan payment shall include adequate protection payments equal to the regular monthly contractual payment. If there are prepetition arrearages, the Plan shall provide for the prompt cure of arrearages.

d. If Debtor is successful in obtaining a mortgage modification at any time during the case, payments on the modified mortgage shall be paid through the Plan.

e. If the MMM does not result in a modified mortgage, then within 14 days of the filing of the mediator’s final report, Debtor shall file an amended or modified Plan that proposes treatment of the mortgage claim and the appropriate payment, if any.

f. For claims secured by mortgages for which the Plan proposes to cure prepetition arrearages, the Plan payment shall include the regular postpetition contractual payment and the total arrearages paid in monthly installments over the term of the Plan.

g. The Plan payment need not include postpetition payments on claims secured by property to be surrendered in the Plan or by junior liens on Debtor’s principal residence that Debtor intends to value and to strip.

h. The Plan may provide for Debtor to make postpetition payments directly to secured creditors or lessors only on claims that are not in default, for which no arrearages are being cured through the Plan, and that the Plan does not modify. Debtor shall make direct payments via automatic debit/draft from a bank account and provide documentation to the Trustee upon request. The establishment of an automatic/debit draft at Debtor’s request is not a violation of the automatic stay. IF THE PLAN PROVIDES FOR DEBTOR TO MAKE DIRECT PAYMENTS TO A SECURED CREDITOR OR LESSOR, THE AUTOMATIC STAY IS TERMINATED, *IN REM*, AS TO THAT CREDITOR.

5. Payments to Trustee. Debtor, not later than 30 days after the petition date, shall make Plan payments to the Trustee as directed in the **Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, and Deadlines**, and on the same day of each succeeding month. **If the Trustee does not receive payment when due, the Trustee may seek dismissal of the case.** All payments must be made to the Trustee by approved electronic transfer, cashier's check, money order, or employee wage deduction. Each payment shall include Debtor's name, legibly printed, and the case number. The Trustee is authorized to pay from these funds any fees and charges assessed against the estate by law as authorized by § 1326(b) and to collect from all receipts the Trustee's fee authorized by 28 U.S.C. § 586 ("Trustee's commission"). The Trustee's commission shall be earned upon receipt of each payment from the Debtor and may be distributed to the Trustee upon receipt of the payment. The Trustee shall hold the remaining funds pending entry of the order confirming the Plan, except as set forth in this Order.

6. Adequate Protection for Secured Creditors and Lessors. Pending confirmation of a Plan and as a condition of Debtor's continued possession or use of real or personal property subject to a security interest, the following, when taken collectively, shall constitute adequate protection to each such secured creditor:

a. Under § 1326(a)(1), Debtor shall include all adequate protection payments required by § 1326(a)(1)(C) as Plan payments and make those payments directly to the Trustee, who then will pay secured creditors as ordered by the Court.

b. Debtor shall timely file the Plan and all required information.

c. Debtor shall make all payments due to the Trustee on time.

d. All payments proposed in the initial or any amended Plan to the holders of secured claims are allowed as costs and expenses of preserving the estate within the meaning of § 503(b)(1)(A).

e. The Trustee shall make monthly disbursements of adequate protection payments to secured creditors and lessors prior to confirmation of the Plan, as soon as practicable, if:

i. The Plan provides for such payment to the secured creditor/lessor;

ii. The secured creditor/lessor has filed a proof of claim OR Debtor or the Trustee has filed a proof of claim under § 501(c);

iii. No objection to the proof of claim is pending; and

iv. As provided for in the Court's Administrative Order Prescribing Procedures for Mortgage Modification Mediation, if the Plan provides for MMM of the secured claim.

f. All disbursements to secured creditors/lessors are deemed adequate protection payments. Acceptance of such payments is not a waiver of creditors' rights to contest confirmation or Debtor's valuation of collateral, to request relief from the automatic stay on grounds other than a default in payments, or to request additional adequate protection.

g. If a secured creditor/lessor desires to receive payments at an address other than the address in the secured creditor's proof of claim, the secured creditor must file a Notice of Payment Address Change with the Clerk and provide written notice to the Trustee.

h. Creditors holding a security interest in the Debtor's principal residence provided for in the Plan under §1322(b)(5) shall comply with Rule 3002.1 with respect to payment changes and requests for postpetition fees and costs. The Trustee may adjust the Plan payments accordingly and notify Debtor of any such payment change. However, if a secured creditor is subject to an MMM order, the implementation of any notice under Rule 3002.1 is abated until the conclusion of the mediation.

i. Within 14 days of a written request by a secured creditor, Debtor must provide proof of insurance to the secured creditor as required by the loan documents.

j. Within 72 hours of any telephonic request by a secured creditor, Debtor must allow inspection of the collateral if required by the loan documents.

7. Refund of Plan Payments to Debtor if Case Is Converted or Dismissed. Notwithstanding the provisions of paragraph 6, if Debtor files a notice of conversion of this case to a Chapter 7 or the Court orders the conversion of this case to a Chapter 11 or its dismissal, any undistributed funds in the Trustee's possession on the date of conversion or dismissal shall be payable to Debtor and, if Debtor is represented by counsel, mailed to Debtor in care of Debtor's attorney.

8. Executory Contracts and Unexpired Leases. The Plan must provide for the assumption or rejection of executory contracts and lease obligations. If there are prepetition arrearages, the Plan shall provide for the prompt cure of arrearages.

9. Termination of the Automatic Stay. If the Plan provides for (a) the surrender of collateral to the secured creditor or lessor, (b) for payments to be made by Debtor directly to the secured creditor or lessor, (c) that Debtor does not intend to make payments to the creditor, or (d) fails to provide for the claim of the secured creditor or lessor, such secured creditor or lessor is granted *in rem* relief from the automatic stay to pursue its remedies against the property that is security for the claim or the subject of the lease and both *in rem* and *in personam* relief against any codebtor. If Debtor later amends or modifies the Plan to provide for the secured creditor or lessor, Debtor must move to re-impose the stay.

10. Modification of the Automatic Stay. The automatic stay is modified to permit creditors whose claims are secured by mortgages on Debtor's real property to communicate directly with Debtor in good faith regarding the possible modification or refinance of the mortgage obligation.

11. Meeting of Creditors and Documents to be Submitted to Trustee. Debtor shall appear at the meeting of creditors scheduled under § 341(a) and Rule 2003(a). No later than seven days before the initial meeting of creditors, Debtor shall provide the Trustee with copies of tax returns for the two years preceding the petition date (or an affidavit that Debtor is not required to file tax returns) and copies of all pay stubs, advices, or documentation of income sources for the six-month period ending on the last day of the month preceding the month of the petition date. The Trustee may request other documentation including information about the non-debtor spouse's income, other documents required by the Bankruptcy Code or other local court order, or information needed to administer a Chapter 13 case.

12. Confirmation Hearing. The Clerk is directed to schedule a confirmation hearing between 20 and 45 days after the date first set for the meeting of creditors. Debtor shall be current in payments to the Trustee and ensure that the case is ready for confirmation, if possible, at the initial confirmation hearing. Following the meeting of creditors, the Trustee may file and serve a Recommendation Concerning Confirmation of the Plan. Debtor shall correct any deficiencies or problems in the Recommendation Concerning Confirmation of the Plan at least seven days prior to the initial confirmation hearing. At the initial or any subsequent confirmation hearing, the Court will consider confirmation of the Plan and, on a preliminary, non-evidentiary basis, all pending motions and objections, including any motion to dismiss, objection to confirmation, or objection to claim. If an evidentiary hearing is needed or if cause exists to defer confirmation, the Court will note the date for the continued confirmation hearing on the docket. The Trustee may raise objections to confirmation of the Plan at any confirmation hearing.

13. Preconfirmation Deadline for Filing Amended Plans and Certain Motions. The following shall be filed no later than 28 days after the claims bar date:

- a. An amended Plan, if necessary to obtain confirmation;
- b. Motions to determine secured status of claim; and
- c. Motions to avoid liens, if necessary to obtain confirmation.

14. Deadline for Filing Objections to Claims. Debtor shall file objections to any claims that Debtor seeks to have disallowed, in whole or in part, no later than 28 days after the claims bar date or 14 days after the filing of an amended proof of claim.

15. Deadline to Seek Mortgage Modification Mediation. Any party seeking MMM shall file a motion making this request within 90 days of the petition or conversion date.

16. Service Requirements. Debtor shall serve a copy of any amended Plan upon the Trustee and all other parties in interest and promptly file proof of service. Debtor shall serve a copy of any motion or objection on the Trustee and the affected creditor in the manner required by Rule 7004.

17. Duties of Debtor's Attorney and Payment of Attorney's Fees. Debtor's attorney must assist Debtor in all matters related to this case unless the Court has granted the attorney's motion to withdraw from the case. Debtor's counsel shall not withhold legal advice or service from Debtor because of lack of payment and may not demand payment from Debtor or any person on behalf of Debtor as a condition of providing legal advice or service. If the case is converted or dismissed, the Court shall retain jurisdiction to review the total amount of attorney's fees requested by or paid to Debtor's attorney.

As required by Rule 2016(b), Debtor's attorney must disclose:

- a. Any prepetition retainer paid to the attorney by Debtor or any other person for Debtor's benefit;
- b. Filing fees collected from Debtor and remitted to the Court; and
- c. Postpetition payments made to the attorney by Debtor or other person for Debtor's benefit. Such payments shall be held in the attorney's trust account pending Court approval.

If Debtor's attorney fails to timely and completely file these disclosures or to comply with all requirements in this Order, the Court may order a reduction in the amount of attorney's fees requested or the disgorgement of fees.

18. Tax Returns and Refunds. No later than the day before the initial meeting of creditors, Debtor shall file any delinquent tax returns for any tax period concluding within the four years before the petition date. Debtor shall immediately provide a copy of the returns or a statement that Debtor is not required to file tax returns to the Trustee. During the pendency of the Chapter 13 case, Debtor shall timely file all tax returns and make all tax payments and deposits when due. For each tax return that becomes due after the case is filed, Debtor shall provide to the Trustee, within 14 days of the filing of the return, a complete copy of the tax return, including business returns if Debtor owns a business, together with all related W-2s and Form 1099s. Unless otherwise consented to by the Trustee or ordered by the Court, Debtor shall turn over to the Trustee all tax refunds in addition to regular Plan payments. Debtor shall not instruct the Internal Revenue Service or other taxing agency to apply a refund to the following year's tax liability. **Debtor shall spend no tax refunds without first having obtained the Trustee's consent or court approval.**

19. Filing Claims on Behalf of Creditors. Under Rule 3004, within 30 days after the expiration of the claims bar date, Debtor may file a proof of claim on behalf of a creditor if the creditor has not timely filed a claim and Debtor proposes to make payments to the creditor under the Plan.

20. Extension of Time to File Objections to Debtor's Claims of Exemption. To assure proper administration if the Chapter 13 case converts to another chapter, under § 105, the Court extends the time for the Trustee or any party in interest to file objections to property claimed as exempt by Debtor to not later than (a) 30 days after the conclusion of the meeting of creditors after conversion of the case to a case under another chapter, or (b) 30 days after Debtor amends the list of property claimed as exempt, whichever is later, unless within such period,

further time is granted by the Court. However, this extension does not limit the right of any party in interest to object to entry of a discharge under § 1328(h) on the ground that § 522(q)(1) is applicable. To the extent necessary, the extension of time to object to Debtor's claim of exemptions includes and extends beyond the confirmation hearing in every Chapter 13 case; Trustee or any party in interest may contest Debtor's claimed exemptions in objecting to confirmation of the Plan.

21. Cooperation with Trustee. Debtor and Debtor's attorney shall cooperate with the Trustee to the greatest extent possible during the pendency of a Chapter 13 case, both before and after the Plan is confirmed. Upon the Trustee's oral or written request, Debtor shall provide to the Trustee any requested information, including books, documents, records, and papers, relating to property of the estate. Within 28 days of the Trustee's request, Debtor shall, at Debtor's expense, obtain and deliver to the Trustee a current appraisal of real or personal property performed by a qualified appraiser in an acceptable format. Debtor may file, if needed, a motion to employ professionals under § 327.

22. Debtor's Duty to Supplement. Debtor shall promptly disclose to the Trustee and file amendments with the Court reporting all changes of Debtor's financial circumstances, including, but not limited to, inheritances, personal injury settlements, new or additional employment, loss of employment, or reduction or increase to income.

23. Notice of Domestic Support Obligations. At the initial meeting of creditors, Debtor shall inform the Trustee of any domestic support obligation, as defined in § 101(14A), and provide the following information: the name of the holder of the claim, the address of the holder of the claim, the state court case number (if applicable), and the telephone number of the holder of the claim. Debtor promptly shall provide the same information to the Trustee for any domestic support obligation that arises after the meeting of creditors.

24. Notice to Creditors and Other Interested Parties. All parties must comply with the noticing and service requirements of Local Rule 2002-1. Failure to timely serve orders and notices may cause the denial of the party's motion without prejudice.

25. **Default. If Debtor fails to make payments to the Trustee when due or to timely comply with any of the requirements of this Order, the case may be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code upon motion by the Trustee or a party in interest.**

DATED: September 1, 2017.

MICHAEL G. WILLIAMSON
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA

DIVISION
www.flmb.uscourts.gov

In re:

Case No.

Chapter 13

Debtor.¹
_____/

ORDER CONFIRMING PLAN

THIS CASE came on for a hearing on *, 201* following the transmittal of Debtor's Chapter 13 plan (the "Plan," Docket No. * reference to which shall include any subsequent amendment made by prior order, in open court during the hearing, or in this Order) to all parties in interest. Any amendment to the Plan made by Debtor or the Chapter 13 Trustee at confirmation has been incorporated herein. The Court finds that the Plan complies with the provisions of Chapter 13 of the Bankruptcy Code² and with other applicable provisions of the Code.

Accordingly, it is hereby

ORDERED:

¹ All references to "Debtor" shall include and refer to both of Debtors in a case filed jointly by two individuals.

² All statutory references are to the Bankruptcy Code, Title 11 of the United States Code, unless otherwise noted. References to rules are to the Federal Rules of Bankruptcy Procedure.

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1. The Plan as amended is confirmed as set forth herein. If there is a discrepancy between the provisions of the Plan and this Order, the provisions of this Order supersede the Plan.

2. Payments by Debtor as set forth in the attached Exhibit "A," incorporated herein by reference, shall be made each month by Trustee-approved electronic transfer, money order or cashier's check for * consecutive months commencing on *, 201* to the Chapter 13 Standing Trustee, **(Trustee name), (Trustee Address)**. Nevertheless, if Trustee has insufficient monies to make distribution pursuant to this Order, or any other Court order, the payments may be adjusted during the life of the Plan without further order of this Court.

3. Debtor is prohibited from incurring any non-ordinary course post-confirmation debt during the term of this Plan without prior approval of the Court or the Trustee.

4. All claims, including Debtor's attorney's fees, are allowed or disallowed as set forth in Exhibit "A" attached hereto and by reference made a part hereof. Any party in interest may, within 21 days of the date of this Order, request the Court to examine the fees to be paid to Debtor's attorney.

5. The Trustee will collect from each payment received his/her percentage fee, which percentage fee is fixed periodically by the United States Trustee. If the Trustee's actual fee is less than provided for in the Plan, any unused portion of the fee may be used to fund the Plan or to increase the distribution to unsecured creditors.

6. Distributions by the Trustee may commence and continue on a monthly basis to pay allowed claims as set forth on attached Exhibit "A" or as subsequently provided for in an amended Exhibit "A" or Court order. The Trustee is authorized to disburse partial payments based on the availability of funds. The Trustee may distribute partial Plan payments to creditors in their order of priority based upon the availability of funds.

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7. The procedure for treatment of mortgage payment changes and escrow account adjustments during the life of the Plan shall be governed by Rule 3002.1(b).

8. If a Notice of Payment Change is filed and served, the Trustee may take the following action:

(a) If the new payment is *less* than the current payment, the Trustee may reduce the payment to the creditor in accordance with the notice and apply the difference to increase the distribution to unsecured creditors; or

(b) If the new payment is *greater* than the current payment, the Trustee may compute the additional sum Debtor must pay and notify Debtor and Debtor's attorney of the new monthly payment amount. The payment to the creditor will be adjusted accordingly.

The foregoing provisions are, in effect, a modification to the Plan, which is deemed requested by the Trustee as provided in Section 1329. Notice and hearing are waived inasmuch as no creditor will be adversely affected by such change.

9. Provisions for both prepetition and postpetition arrearages, if any, on allowed secured claims are included in the Plan. After the completion of all payments under the Plan and the entry of a discharge of Debtor, the delinquencies on mortgages and security interests related to such claims will be deemed cured and their contractual maturities reinstated. Any postpetition costs or expenses incurred by or on behalf of any secured creditor will be discharged upon the completion of the Plan, unless specifically provided for in this Order, or allowed pursuant a notice provided under Rule 3002.1(c) before the completion of Plan payments.

10. The automatic stay was terminated *in rem* as to Debtor and *in rem* and *in personam* as to any codebtor as to any secured creditor or lessor for which the Plan provided (a) for the surrender of collateral or leased property to the secured creditor or lessor, or (b) for Debtor to make payments directly to the secured creditor or lessor, (c) that Debtor does not intend to make

payments while preserving state law contract rights and defenses, or (d) for which no provision was made in the Plan. The automatic stay is hereby terminated *in rem* as to Debtor and *in rem* and *in personam* as to any codebtor as to any secured creditor or lessor not provided for in this Order.

11. The holders of allowed secured claims provided for in the Plan shall retain the lien securing such claim until the earlier of the payment of the underlying debt determined under non-bankruptcy law or discharge under Section 1328. If the case is dismissed or converted without completion of the Plan, such lien shall also be retained by such holder to the extent recognized by applicable non-bankruptcy law.

12. If the bar date to file proofs of claim has not yet expired, Debtor shall have 28 days following the expiration of the claims bar date to object to any filed claim which has not already been provided for in this Order.

13. Any claim or amended claim filed after the claims bar date, other than a claim filed by Debtor or the Trustee under Rule 3004, unless provided for in Exhibit "A" of this Order or subsequent modification shall be disallowed and receive no distribution unless an order is entered allowing such untimely filed claim.

14. If any timely filed claim is not already provided for in this Order, Debtor (through counsel, if any) shall timely file an appropriate motion to modify the confirmed Plan and any objection to claims or motions to value claims. The Trustee shall review the claims register after all bar dates have passed and may file a motion to dismiss if Debtor fails to timely take appropriate action to address all filed claims.

15. The Trustee shall hold all funds payable to general unsecured creditors for at least 30 days after the bar date for filing claims has passed, and the Trustee may continue to hold all such funds until all objections to claims have been resolved.

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16. If Debtor files a notice of conversion of this case to a Chapter 7 or the Court orders the conversion of this case to a Chapter 11 or the dismissal of this case, any undistributed funds in the Trustee's possession on the date of conversion or dismissal shall be payable to Debtor and, if Debtor is represented by counsel, mailed to Debtor in care of Debtor's attorney.

17. Unless otherwise provided for in this Order or any other order of this Court, Debtor is responsible for paying all postpetition ongoing homeowners' assessments, homeowners' dues, and/or property taxes that are related to real property being retained by Debtor under the Plan, and the automatic stay shall not apply to these postpetition claims.

18. Debtor is responsible for paying any domestic support obligation that first becomes payable after the petition date.

19. Any objections to confirmation of the Plan are deemed withdrawn and/or overruled by entry of this Order.

20. Upon completion of all payments under the Plan, Debtor shall promptly file a declaration under penalty of perjury or affidavit that (a) lists all domestic support obligations and whether such obligations are current or file a certificate stating that Debtor is not required to pay a domestic support obligation and (b) states that § 522(q)(1) is not applicable and that no proceeding is pending in which Debtor could be found guilty of an offense listed in § 522(q)(1) or liable for a debt of the kind listed in § 522(q)(1)(B).

21. Debtor shall complete a required personal financial management course and file a certificate that such course has been completed within 90 days of the entry of this Order.

22. The entry of a discharge shall be withheld until Debtor complies with Paragraphs 20 and 21.

23. This case is not subject to the provisions of § 521(i)(1).

24. During the pendency of the Chapter 13 case, Debtor shall timely file all tax returns and make all tax payments and deposits when due. (However, if Debtor is not required to file tax returns, Debtor shall provide Trustee with a statement to that effect.) For each tax return that becomes due after the case is filed, Debtor shall, within 14 days of filing the return, provide the Trustee with a complete copy of the tax return, including business returns if Debtor owns a business, together with all related W-2s and Form 1099s.

25. Unless otherwise consented to by the Trustee or ordered by the Court, Debtor shall turn over to the Trustee all tax refunds in addition to regular Plan payments for distribution to allowed general unsecured creditors. Debtor shall not instruct the Internal Revenue Service or other taxing agency to apply a refund to the following year's tax liability. **Debtor shall not spend any tax refund without first having obtained the Trustee's consent or court approval.**

26. Any discharge entered in this case shall not discharge Debtor's liability on a federally guaranteed student loan unless the Court specifically finds that repayment of the debt would cause an undue hardship to Debtor or Debtor's dependents pursuant to § 523(a)(8).

27. To the extent this Order contains any modified term or condition that was not timely noticed to the parties, any party may seek reconsideration of this Order within 14 days of its entry by separate motion.

28. Debtor is under a continuing duty to disclose any changes in financial circumstances and new assets or potential rights to assets that Debtor acquires post-petition by promptly filing amended schedules with the Court. Any failure to disclose changes in financial circumstances or assets by the filing of amended schedules may result in dismissal of the case and/or denial of Debtor's discharge.

29. If a claim is withdrawn by a creditor or the creditor files a satisfaction of the debt or claim, the Trustee, in his/her discretion may elect to seek recovery of funds already disbursed

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or to take no action at all regarding funds already disbursed to that creditor. The Trustee may also discontinue any further disbursements if a claim is withdrawn by a creditor. Any disbursements made under this Order on account of a claim that is subsequently withdrawn or for which the Trustee receives a satisfaction of claim are deemed authorized disbursements and the Trustee shall have no liability therefor.

Trustee (**Trustee Name**) is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of entry of the order.

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APPENDIX

State Taxes

Sales Taxes and Unemployment Taxes.

Mail reports and payments to:

State of Florida - Department of Revenue
Office of General Counsel/Bankruptcy Section
P.O. Box 6668
Tallahassee, FL 32314-6668

Federal Taxes

Federal tax deposits of social security taxes (employer and employee shares) and withholding taxes are to be made within three banking days after each payroll is made. Deposits are to be made in a Federal Reserve Bank or a commercial bank authorized to accept federal tax deposits. Deposits are to be made by cashier's or certified check and be accompanied by Form 8109, Federal Tax Deposit Withheld Income and FICA Taxes. If Form 8109 is not available, deposits are to be mailed within the time prescribed or deposits to the address indicated below. If you pay amounts with Form 941 that should have been deposited, you may be subject to penalty. See Deposit Penalties in Section 11 of Pub. 15 (Circular E).

Mail original returns prepetition (prior to confirmation) to the appropriate district office listed below according to the county listed in the bankruptcy petition as Debtor's residence or place of operating business.

If any taxes are due on the prepetition returns, they should be included in the Plan (paid through the Trustee) and the IRS should be noticed at the Philadelphia address regarding the bankruptcy

Jacksonville District
Internal Revenue Service
Attn: Insolvency, Stop 5720
400 W. Bay Street, Suite 35045
Jacksonville, FL 32202

Ft. Lauderdale District
Internal Revenue Service
Attn: Insolvency, Stop 5730
P.O. Box 17167
Ft. Lauderdale, FL 33318

Mailing of original returns postpetition (after confirmation) and/or payments for those specific returns should be sent to the regularly scheduled address as listed by the IRS on your filing information.

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UNITED STATES BANKRUPTCY COURT, SOUTHERN DISTRICT OF FLORIDA

www.flsb.uscourts.gov

CHAPTER 13 PLAN (Individual Adjustment of Debts)

- _____ Original Plan
- _____ Amended Plan (Indicate 1st, 2nd, etc. Amended, if applicable)
- _____ Modified Plan (Indicate 1st, 2nd, etc. Modified, if applicable)

DEBTOR: _____ JOINT DEBTOR: _____ CASE NO.: _____

SS#: xxx-xx-_____ SS#: xxx-xx-_____

I. NOTICES

- To Debtors: Plans that do not comply with local rules and judicial rulings may not be confirmable. All plans, amended plans and modified plans shall be served upon all creditors and a certificate of service filed with the Clerk pursuant to Local Rules 2002-1 (C)(5), 3015-1(B)(2), and 3015-2. Debtor(s) must commence plan payments within 30 days of filing the chapter 13 petition or within 30 days of entry of the order converting the case to chapter 13.
- To Creditors: Your rights may be affected by this plan. You must file a timely proof of claim in order to be paid. Your claim may be reduced, modified or eliminated.
- To All Parties: The plan contains no nonstandard provisions other than those set out in paragraph VIII. Debtor(s) must check one box on each line listed below in this section to state whether the plan includes any of the following:

The valuation of a secured claim, set out in Section III, which may result in a partial payment or no payment at all to the secured creditor	<input type="checkbox"/> Included	<input type="checkbox"/> Not included
Avoidance of a judicial lien or nonpossessory, nonpurchase-money security interest, set out in Section III	<input type="checkbox"/> Included	<input type="checkbox"/> Not included
Nonstandard provisions, set out in Section VIII	<input type="checkbox"/> Included	<input type="checkbox"/> Not included

II. PLAN PAYMENTS, LENGTH OF PLAN AND DEBTOR(S)' ATTORNEY'S FEE

A. MONTHLY PLAN PAYMENT: This Plan pays for the benefit of the creditors the amounts listed below, including trustee's fees of 10%, beginning 30 days from the filing/conversion date. In the event the trustee does not retain the full 10%, any unused amount will be paid to unsecured nonpriority creditors pro-rata under the plan:

1. \$0.00 _____ for months ____ to ____ ;
2. \$0.00 _____ for months ____ to ____ ;
3. \$0.00 _____ for months ____ to ____ ;

B. DEBTOR(S)' ATTORNEY'S FEE: NONE PRO BONO

Total Fees: \$0.00	Total Paid: \$0.00	Balance Due: \$0.00
Payable \$0.00 /month (Months ____ to ____)		
Allowed fees under LR 2016-l(B)(2) are itemized below:		
Applications for compensation must be filed for all fees over and above the Court's Guidelines for Compensation.		

III. TREATMENT OF SECURED CLAIMS

A. SECURED CLAIMS: NONE

[Retain Liens pursuant to 11 U.S.C. §1325 (a)(5)] Mortgage(s)/Lien on Real or Personal Property:

1. Creditor: _____	Arrearage/ Payoff on Petition Date _____
Address: _____	[Select Payment Type] _____ \$0.00 /month (Months ____ to ____)
Last 4 Digits of Account No.: _____	
Other: _____	

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Debtor(s): _____ Case number: _____

<input type="checkbox"/> Real Property <input type="checkbox"/> Principal Residence <input type="checkbox"/> Other Real Property Address of Collateral: _____ <input type="checkbox"/> Personal Property/Vehicle Description of Collateral: _____	Check one below for Real Property: <input type="checkbox"/> Escrow is included in the regular payments <input type="checkbox"/> The debtor(s) will pay <input type="checkbox"/> taxes <input type="checkbox"/> insurance directly
--	---

B. VALUATION OF COLLATERAL: NONE

IF YOU ARE A SECURED CREDITOR LISTED BELOW, THE PLAN SEEKS TO VALUE THE COLLATERAL SECURING YOUR CLAIM IN THE AMOUNT INDICATED. A SEPARATE MOTION WILL ALSO BE SERVED UPON YOU PURSUANT TO BR 7004 AND LR 3015-3.

1. REAL PROPERTY: NONE

1. Creditor: _____ Address: _____ Last 4 Digits of Account No.: _____ Real Property <input type="checkbox"/> Principal Residence <input type="checkbox"/> Other Real Property Address of Collateral: _____	Value of Collateral: \$0.00 Amount of Creditor's Lien: \$0.00 Interest Rate: 0.00% Check one below: <input type="checkbox"/> Escrow is included in the monthly mortgage payment listed in this section <input type="checkbox"/> The debtor(s) will pay <input type="checkbox"/> taxes <input type="checkbox"/> insurance directly	Payment Total paid in plan: \$0.00 \$0.00 /month (Months ___ to ___)
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2. VEHICLES(S): NONE

1. Creditor: _____ Address: _____ Last 4 Digits of Account No.: _____ VIN: _____ Description of Collateral: _____ Check one below: <input type="checkbox"/> Claim incurred 910 days or more pre-petition <input type="checkbox"/> Claim incurred less than 910 days pre-petition	Value of Collateral: \$0.00 Amount of Creditor's Lien: \$0.00 Interest Rate: 0.00%	Payment Total paid in plan: \$0.00 \$0.00 /month (Months ___ to ___)
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3. PERSONAL PROPERTY: NONE

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Debtor(s): _____ Case number: _____

1. Creditor: _____ Address: _____ Last 4 Digits of Account No.: _____ Description of Collateral: _____ Check one below: <input type="checkbox"/> Claim incurred less than one year pre-petition <input type="checkbox"/> Claim incurred 1 year or more pre-petition	Value of Collateral: <u> \$0.00 </u> Amount of Creditor's Lien: <u> \$0.00 </u> Interest Rate: <u> 0.00% </u>	<p align="center">Payment</p> Total paid in plan: <u> \$0.00 </u> \$0.00 /month (Months <u> </u> to <u> </u>)
--	---	--

C. LIEN AVOIDANCE NONE

Judicial liens or nonpossessory, nonpurchase money security interests securing the claims will be avoided to the extent that they impair the exemptions under 11 U.S.C. § 522 as listed below. A separate motion will also be served pursuant to BR 7004 and LR 3015-3.

1. Creditor: _____ Address: _____ Last 4 Digits of Account No.: _____	Collateral: _____ Exemption: _____
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D. SURRENDER OF COLLATERAL: Secured claims filed by any creditor granted stay relief in this section shall not receive a distribution from the Chapter 13 Trustee.

- NONE
- The debtor(s) elect to surrender to each creditor listed below the collateral that secures the creditor's claim. The debtor(s) request that upon confirmation of this plan the automatic stay be terminated in rem as to the debtor(s) and in rem and in personam as to any codebtor(s) as to these creditors.
- Other: _____

Name of Creditor Last 4 Digits of Account No. Description of Collateral (Address, Vehicle, etc.)

1. _____

E. DIRECT PAYMENTS: Secured claims filed by any creditor granted stay relief in this section shall not receive a distribution from the Chapter 13 Trustee.

- NONE
- The debtor(s) elect to make payments directly to each secured creditor listed below. The debtor(s) request that upon confirmation of this plan the automatic stay be terminated in rem as to the debtor(s) and in rem and in personam as to any codebtor(s) as to these creditors. Nothing herein is intended to terminate or abrogate the debtor(s)' state law contract rights.

Name of Creditor Last 4 Digits of Account No. Description of Collateral (Address, Vehicle, etc.)

1. _____

IV. TREATMENT OF FEES AND PRIORITY CLAIMS [as defined in 11 U.S.C. §507 and 11 U.S.C. § 1322(a)(4)]

A. ADMINISTRATIVE FEES OTHER THAN DEBTORS(S)' ATTORNEY'S FEE: NONE

Name: _____ Payment Address: _____ Total Due: <u> \$0.00 </u> Payable: <u> \$0.00 </u> /month (Months <u> </u> to <u> </u>)

B. INTERNAL REVENUE SERVICE: NONE

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Debtor(s): _____ Case number: _____

Total Due: \$0.00 Total Payment \$0.00
Payable: \$0.00 /month (Months ___ to ___)

C. DOMESTIC SUPPORT OBLIGATION(S): [] NONE [] CURRENT AND PAID OUTSIDE

1. Name of Creditor: _____
Payment Address: _____
Total Due: \$0.00
Payable \$0.00 /month (Months ___ to ___)
Regular Payment (if applicable) \$0.00 /month (Months ___ to ___)

D. OTHER: [] NONE

1. Name of Creditor: _____
Payment Address: _____
Total Due: \$0.00
Payable \$0.00 /month (Months ___ to ___)
Regular Payment (if applicable) \$0.00 /month (Months ___ to ___)

V. TREATMENT OF UNSECURED NONPRIORITY CREDITORS

A. Pay \$0.00 /month (Months ___ to ___)

Pro rata dividend will be calculated by the Trustee upon review of filed claims after bar date.

B. [] If checked, the Debtor(s) will amend/modify to pay 100% to all allowed unsecured nonpriority claims.

C. SEPARATELY CLASSIFIED: [] NONE

1. Name of Creditor: _____
Payment Address: _____
Last 4 Digits of Account No.: _____
Basis for Separate Classification _____
Payable \$0.00 /month (Months ___ to ___)

*Debtor(s) certify the separate classification(s) of the claim(s) listed above will not prejudice other unsecured nonpriority creditors pursuant to 11 U.S.C. § 1322.

VI. EXECUTORY CONTRACTS AND UNEXPIRED LEASES: Secured claims filed by any creditor/lessor granted stay relief in this section shall not receive a distribution from the Chapter 13 Trustee.

[] NONE

[] Unless provided for under a separate section, the debtor(s) request that upon confirmation of this plan, the automatic stay be terminated in rem as to the debtor(s) and in rem and in personam as to any codebtor(s) as to these creditors/lessors. Nothing herein is intended to terminate or abrogate the debtor(s)' state law contract rights.

Name of Creditor Collateral Acct. No. (Last 4 Digits) Assume/Reject

1. _____ [] Assume [] Reject

VII. INCOME TAX RETURNS AND REFUNDS: [] NONE

[] Debtor(s) will not provide tax returns unless requested by any interested party pursuant to 11 U.S.C. § 521.

[] The debtor(s) is hereby advised that the chapter 13 trustee has requested that the debtor(s) comply with 521(f) 1-4 on an annual basis during the pendency of this case. The debtor(s) hereby acknowledges that the deadline for providing the Trustee with their filed tax returns is on or before May 15 of each year the case is pending and that the debtor(s) shall provide the trustee (but not file with the Court) with verification of their disposable income if their gross household income increases by more than 3% over the previous year's income. [Miami cases]

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Debtor(s): _____ Case number: _____

Debtor(s) shall provide copies of yearly income tax returns to the Trustee (but not file with the Court) no later than May 15th during the pendency of the Chapter 13 case. In the event the debtor(s)' disposable income or tax refunds increase, debtor(s) shall increase payments to unsecured creditors over and above payments provided through the Plan up to 100% of allowed unsecured claims. [Broward/Palm Beach cases]

VIII. NON-STANDARD PLAN PROVISIONS NONE

Nonstandard provisions must be set forth below. A nonstandard provision is a provision not otherwise included in the Local Form or deviating from it. Nonstandard provisions set out elsewhere in this plan are void.

Mortgage Modification Mediation

PROPERTY OF THE ESTATE WILL VEST IN THE DEBTOR(S) UPON PLAN CONFIRMATION.

I declare that the foregoing chapter 13 plan is true and correct under penalty of perjury.

Debtor Date Joint Debtor Date

Attorney with permission to sign on Date
Debtor(s)' behalf

By filing this document, the Attorney for Debtor(s) or Debtor(s), if not represented by counsel, certifies that the wording and order of the provisions in this Chapter 13 plan are identical to those contained in Local Form Chapter 13 Plan and the plan contains no nonstandard provisions other than those set out in paragraph VIII.

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List of 101 Citing References for In re Failla

Citing References (101)

Treatment	Title	Date	Type	Depth	Headnote(s)
Disagreed With by NEGATIVE	1. In re Ryan ¶ 560 B.R. 339, 348+ , Bkrtcy.D.Hawai'i BANKRUPTCY - Claims. Surrender of mortgage property does not preclude wrongful foreclosure action against mortgagee.	Oct. 19, 2016	Case		3 6 14 F.3d
Declined to Follow by NEGATIVE	2. In re Gregory 572 B.R. 220, 238+ , Bkrtcy.W.D.Mo. BANKRUPTCY - Discharge. Bankruptcy court had no authority to vacate debtor's discharge for alleged failure to surrender property pursuant to statement of intention.	June 14, 2017	Case		19 20 F.3d
Declined to Extend by NEGATIVE	3. In re Ayala 568 B.R. 870, 871+ , Bkrtcy.M.D.Fla. BANKRUPTCY - Case Administration. Case could not be reopened to enforce debtors' stated intent to surrender.	Apr. 17, 2017	Case		20 F.3d
Examined by	4. In re Thomas ¶ 2017 WL 3309719, *1+ , Bkrtcy.S.D.Fla. This matter came before the Court for hearing on February 1, 2017 upon the Motion to Reopen Bankruptcy and to Deem Debtor's Interest in Real Property Surrendered Pursuant to 11...	Feb. 10, 2017	Case		3 4 6 F.3d
Examined by	5. Recommended Order of Magistrate ¶ U.S. Bank Trust, N.A. v. Ellis 2017 WL 538318, *1+ , Fla.Cir.Ct. (Trial Order) This matter came on for hearing before the Magistrate on January 26, 2017, on the following motions: 1. Plaintiff's Motion for Protective Order; and 2. Plaintiff's Motion to Strike...	Feb. 08, 2017	Trial Court Order		15 19 F.3d
Examined by	6. Brief of Appellee Federal Nationalmortgage Association ¶ Charles E. WOIDE and Susannah C. Woide Appellants, v. FEDERAL NATIONAL MORTGAGE ASSOCIATION, Appellees. 2017 WL 3084524, *1+ , 11th Cir. (Appellate Brief)	July 17, 2017	Brief		4 17 20 F.3d
Examined by	7. Answer Brief of Appellee, Bank of New York Mellon f/k/a the Bank of New York as Trustee for the Certificateholders of CWMBBS, Inc., CHL Mortgage Pass-T... ¶ Garrett E. MILLER and Kathryn L. Miller, Appellants, v. BANK OF NEW YORK MELLON f/k/a the Bank of New York as Trustee for the Certificateholders of CW... 2017 WL 3492897, *1+ , Fla.App. 1 Dist. (Appellate Brief)	July 21, 2017	Brief		4 6 19 F.3d
Examined by	8. Appellants' Initial Brief ¶ Phillip E. ELLIS, et al., Appellants, v. U.S. BANK TRUST, N.A., as Trustee for the LSF8 Master Participation Trust, et al., Appellees. 2017 WL 5502467, *1+ , Fla.App. 2 Dist. (Appellate Brief)	Oct. 09, 2017	Brief		15 19 20 F.3d

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List of 101 Citing References for In re Failla

Treatment	Title	Date	Type	Depth	Headnote(s)
Examined by	9. Appellee Jpmorgan Chase Bank, National Association's Answer Brief ¶¶ John V. KOLES a/k/a John Koles, Appellant, v. JPMORGAN CHASE BANK, National Association, Appellee. 2017 WL 2062776, *1+ , Fla.App. 2 Dist. (Appellate Brief)	Apr. 26, 2017	Brief		4 6 19 F.3d
Examined by	10. Answer Brief of Jpmorgan Chase Bank, N.A. ¶¶ George ANDRASI and Edith S. Andradi, Defendants /Appellants, v. JPMORGAN CHASE BANK, N.A., Plaintiff/Appellee. 2016 WL 7799487, *1+ , Fla.App. 2 Dist. (Appellate Brief)	Dec. 14, 2016	Brief		4 15 F.3d
Examined by	11. Memorandum of Law in Support of Motion to Dismiss ¶¶ James T. COSTELLO, Plaintiff, v. WELLS FARGO BANK, N.A., Federal Housing Finance Agency, conservator for Federal Nationalmortgage Association, Mortgag... 2017 WL 2927861, *1+ , D.Conn. (Trial Motion, Memorandum and Affidavit)	Jan. 04, 2017	Motion		4 9 19 F.3d
Declined to Follow by NEGATIVE	12. Skibbe v. U.S. Bank Trust, N.A. for LSF9 Master Participation Trust ¶¶ 2017 WL 2506405, *6+ , N.D.Ill. For the reasons stated herein, the Court grants Dwayne and Deborah Skibbe's Motion to Dismiss U.S. Bank Trust's Counterclaims [ECF No. 50]. The events in this lawsuit are largely...	June 09, 2017	Case		8 F.3d
Discussed by	13. Costello v. Wells Fargo Bank National Association ¶¶ 2017 WL 3262157, *8+ , D.Conn. James T. Costello, ("Plaintiff") brings this action, pro se, against Wells Fargo Bank National Association ("Wells Fargo"); the Federal Housing Finance Agency ("FHFA"), the...	July 31, 2017	Case		8 F.3d
Discussed by	14. In re Mountain Farms, LLC ¶¶ 2017 WL 598489, *4+ , Bkrtcy.N.D.Ala. This chapter 12 case came before the court on January 31, 2017 for an evidentiary hearing on the Motion for Relief from Stay ("Motion" Doc. 15) filed by Carol Oakes as Executrix of...	Feb. 14, 2017	Case		8 15 F.3d
Discussed by	15. In re Scott ¶¶ 567 B.R. 847, 851+ , Bkrtcy.S.D.Fla. BANKRUPTCY - Plans. Debtor could not "surrender" mortgage property and defend state court foreclosure action.	Apr. 26, 2017	Case		15 19 20 F.3d
Discussed by	16. In re Kaschkadayev 2017 WL 587982, *2+ , Bkrtcy.M.D.Fla. Before filing for bankruptcy, the Debtor surrendered his car to Collateral Bankruptcy Services, a towing and storage company. Collateral Bankruptcy Services, which has continued to...	Feb. 14, 2017	Case		3 F.3d

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List of 101 Citing References for In re Failla

Treatment	Title	Date	Type	Depth	Headnote(s)
Discussed by	17. Order on Plaintiff's Motion for Attorney's Fees Pursuant to Florida Statute s 57.105 ¶¶ US Bank Nat. Ass'n v. Bernardini 2017 WL 3496521, *2+ , Fla.Cir.Ct. (Trial Order) THIS CAUSE having come to be heard by the Court on Plaintiff's Motion for Attorney's Fees Pursuant to Florida Statute § 57.105, and the Court having heard argument of counsel at...	July 05, 2017	Trial Court Order		13 20 F.3d
Discussed by	18. Brief of Creditor-Appellee HSBC Bank USA, N.A. ¶¶ In re: Raymond E. ZAIR and Christine M. Zair, Debtors. Raymond E. Zair, Christine M. Zair, Debtors-Appellants, v. Hsbc Bank USA, N.A., Creditor-Appell... 2016 WL 6350390, *1+ , 2nd Cir. (Appellate Brief)	Oct. 21, 2016	Brief		4 6 9 F.3d
Discussed by	19. Answer Brief of Appellee, Pennymac Corporation ¶¶ Victoria Hvitved COOKE, Appellant, v. PENNYMAC CORPORATION, Morten Hvitved, et al., Appellees. 2017 WL 3439209, *1+ , Fla.App. 1 Dist. (Appellate Brief)	June 26, 2017	Brief		4 6 19 F.3d
Discussed by	20. Answer Brief of HSBC Bank USA, National Association as Indenture Trustee for FBR Securitization Trust 2005-3, Callable Mortgage-Backed Notes 2005-3 ¶¶ CLAY COUNTY LAND TRUST, Appellant, v. HSBC BANK USA, National Association as Indenture Trustee for FBR Securitization Trust 2005-3, Callable Mortgage-... 2017 WL 2590579, *1+ , Fla.App. 1 Dist. (Appellate Brief)	Mar. 27, 2017	Brief		6 15 19 F.3d
Discussed by	21. Appellant's Reply Brief James FISCHER, Appellant, v. HSBC BANK USA, National Association as Trustee, Appellee. 2017 WL 5371686, *1+ , Fla.App. 2 Dist. (Appellate Brief)	Oct. 13, 2017	Brief		8 F.3d
Discussed by	22. Answer Brief of Appellee ¶¶ Rosemary CORINTI, Appellants, v. BAYVIEW LOAN SERVICING, LLC, Appellee. 2017 WL 3955375, *1+ , Fla.App. 2 Dist. (Appellate Brief)	Aug. 29, 2017	Brief		4 6 9 F.3d
Discussed by	23. Answer Brief of Appellee ¶¶ James FISCHER, Appellant, v. HSBC BANK USA, National Association, as Trustee for Deutsche Alt-A Securities, Inc., Mortgage Loan Trust, Series 2006-AR1... 2017 WL 2901593, *1+ , Fla.App. 2 Dist. (Appellate Brief)	June 16, 2017	Brief		4 6 9 F.3d
Discussed by	24. Appellant's Amended Initial Brief ¶¶ GREEN TREE SERVICING, LLC, Appellant, v. Traci Robin EYER a/k/a Traci R. Eyer, et al., Appellee. 2017 WL 2062736, *1+ , Fla.App. 2 Dist. (Appellate Brief)	Apr. 06, 2017	Brief		4 9 19 F.3d

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List of 101 Citing References for In re Failla

Treatment	Title	Date	Type	Depth	Headnote(s)
Discussed by	25. Appellant's Initial Brief  GREEN TREE SERVICING, LLC, Appellant, v. Traci Robin EYER a/k/a Tracir. Eyer, et al, Appellee. 2017 WL 2062737, *1+ , Fla.App. 2 Dist. (Appellate Brief)	Mar. 13, 2017	Brief		4 9 19 F.3d
Discussed by	26. Answer Brief of Appellee  Vincent P. DINARDO and Maria Olarte Dinardo, Appellants, v. BAYVIEW LOAN SERVICING, LLC, Appellee. 2017 WL 2671209, *1+ , Fla.App. 2 Dist. (Appellate Brief)	Feb. 22, 2017	Brief		4 6 9 F.3d
Discussed by	27. Answer Brief of Appellee  Jeremy HRABAL and Jennifer Hrabal, Appellants, v. BAYVIEW LOAN SERVICING, LLC, Appellee. 2016 WL 8229795, *1+ , Fla.App. 5 Dist. (Appellate Brief)	Dec. 09, 2016	Brief		4 6 9 F.3d
Discussed by	28. Appellee's Answer Brief  Staci LOPEZ, Appellant, v. U.S. BANK NATIONAL ASSOCIATION, as Trustee, for Residential Asset Securities Corporation, Home Equity Mortgage Asset-Backed... 2016 WL 7427580, *1+ , Fla.App. 5 Dist. (Appellate Brief)	Nov. 18, 2016	Brief		3 4 6 F.3d
Discussed by	29. Brief for the Defendant-Appellant Gerardo Chacon  EVERBANK, Plaintiff-Appellee, v. Gerardo CHACON, Defendant-Appellant. 2016 WL 10570210, *1+ , Mass.App.Ct. (Appellate Brief)	Dec. 30, 2016	Brief		4 6 19 F.3d
Discussed by	30. Respondent USB as Trustee's Appellate Response Brief  Douglas S. TINGVALL and Augusta Rego-Barros, Husband and Wife, Plaintiffs/Appellants, v. U.S. BANK, NA, Successor Trustee to Bank of America, NA, Succ... 2016 WL 6740771, *1+ , Wash.App. Div. 1 (Appellate Brief)	Oct. 19, 2016	Brief		4 6 15 F.3d
Discussed by	31. Respondent USB as Trustee's Appellate Response Brief  Douglas S. TINGVALL and Augusta Rego-Barros, Husband and Wife, Plaintiffs/Appellants, v. U.S. BANK, NA, Successor Trustee to Bank of America, NA, Succ... 2016 WL 7217901, *1+ , Wash.App. Div. 1 (Appellate Brief)	Oct. 19, 2016	Brief		4 6 15 F.3d
Declined to Extend by NEGATIVE	32. EverBank v. Chacon --- N.E.3d ----+ , Mass.App.Ct. On appeal from a judgment entered in the Housing Court in a summary process case, awarding possession of his home to his former lender EverBank, Gerardo Chacon asks us to weigh...	July 28, 2017	Case		—

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List of 101 Citing References for In re Failla

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	33. Wortley v. Bakst 844 F.3d 1313, 1317 , 11th Cir.(Fla.) BANKRUPTCY - Appeals. Court of Appeals lacked standing to consider merits of bankruptcy court's unauthorized order on direct certified appeal.	Jan. 05, 2017	Case		2 F.3d
Cited by	34. In re Ocean 4660, LLC. ¶¶ 673 Fed.Appx. 937, 938 , 11th Cir.(Fla.) BANKRUPTCY - Appeals. Order resolving disputed election of permanent Chapter 7 trustee was final, appealable order.	Dec. 20, 2016	Case		1 2 F.3d
Cited by	35. Jones v. CitiMortgage, Inc. 666 Fed.Appx. 766, 769+ , 11th Cir.(Ga.) BANKRUPTCY - Debtor Protections. District court lacked jurisdiction to enforce compliance with discharge injunction.	Nov. 09, 2016	Case		3 F.3d
Cited by	36. In re Keddo 2017 WL 3267705, *1+ , Bkrtcy.S.D.Fla. THIS CASE is before the Court on July 25, 2017 at 9:30 A.M. upon the Motion to Compel Debtor to Surrender Real Property [ECF No 27] (the "Motion") filed by U.S. Bank National...	July 28, 2017	Case		4 6 F.3d
Cited by	37. In re Kurzban 2017 WL 3141915, *1 , Bkrtcy.S.D.Fla. This matter came before me on July 5, 2017, on Motion of Creditor the Bank of New York Mellon F/ K/A the Bank of New York, as Trustee to Reopen Debtor's Bankruptcy Case and to...	July 24, 2017	Case		20 F.3d
Cited by	38. In re: Rosemarie Francis McCray, a/k/a Rose Marie McCray, a/k/a Rose McCray, Debtor. 2017 WL 5956639, *3 , Bkrtcy.E.D.Mich. This matter is before the Court in an individual Chapter 7 consumer bankruptcy case. A creditor holding a security interest in the debtor's mobile home has filed a motion...	Nov. 30, 2017	Case		3 F.3d
Cited by	39. Order Granting Plaintiff's Motion to Preclude Interference in Mortgage Foreclosure Action Based on Surrender of Property in Chapter 13 Bankruptcy ¶¶ JPMorgan Chase Bank, N.A. v. Gomory 2016 WL 7381781, *1 , Fla.Cir.Ct. (Trial Order) THIS CAUSE came before the Court on October 20, 2016, on Plaintiff's, JPMorgan Chase Bank, National Association's ("Chase"), Motion to Preclude Interference in Mortgage...	Dec. 16, 2016	Trial Court Order		4 F.3d
Cited by	40. Answer Brief of Appellee Nationstar Mortgage LLC Arlene ROTH, Appellant, v. NATIONSTAR MORTGAGE LLC, Appellee. 2017 WL 4230892, *1+ , 11th Cir. (Appellate Brief)	Sep. 20, 2017	Brief		4 F.3d

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Mentioned by	49. In re McCuan 569 B.R. 511, 517 , M.D.Fla. BANKRUPTCY - Avoidance. Court improperly decided disputed issue on motion to dismiss fraudulent transfer claims.	Mar. 29, 2017	Case		1 2 F.3d

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—	50. Special commentary: Performance and interpretation of debtor's duties regarding retention or surrender of property of bankruptcy estate encumbered by consumer debt under 11 U.S.C.A. s 521(2) 159 A.L.R. Fed. 521 This annotation collects and analyzes those cases in which the courts discussed the debtor's duties under 11 U.S.C.A. § 521(2) regarding retention or surrender of property of the...	2000	ALR	—	3 15 F.3d
—	51. Taking mortgage in name of, or assigning it to, third person to evade taxation, as affecting its validity and enforceability 21 A.L.R. 396 The reported case (Berridge v. Gaylord, ante, 393), in holding that one who has advanced money for a loan to be secured by a mortgage is entitled to enforce the lien even though he...	1922	ALR	—	15 F.3d
—	52. Asset Protection: Legal Planning, Strat. & Forms P 12.01, OVERVIEW From its inception, asset protection planning should take into consideration the possible effects of bankruptcy. An individual facing bankruptcy has the following two overall...	2017	Other Secondary Source	—	3 4 6 F.3d
—	53. Bankruptcy Code Manual s 105:3, Examples of actions permitted under s105(a)	2017	Other Secondary Source	—	—
—	54. Bankruptcy Code Manual s 362:61, Section 362(h): core concept	2017	Other Secondary Source	—	3 F.3d
—	55. Bankruptcy Code Manual s 521:14, Surrendering the property If the debtor does not wish to retain property that could be retained under § 521(a)(2)(A), the debtor may simply surrender the property. Section 521(a)(2) does not specify to whom...	2017	Other Secondary Source	—	3 4 6 F.3d
—	56. Bankruptcy Desk Guide s 12:110, Time to redeem Although the Bankruptcy Code provides that an individual Chapter 7 debtor must exercise his or her stated intent to redeem collateral within 30 days after the filing of the notice...	2017	Other Secondary Source	—	8 13 15 F.3d
—	57. Bankruptcy Evidence Manual s 301:15, Congressional Intent A presumption exists that Congress means what it says in legislation. In re Tempnology LLC, 559 B.R. 809, 63 Bankr. Ct. Dec. (CRR) 106, 76 Collier Bankr. Cas. 2d (MB) 1393 (B.A.P....	2017	Other Secondary Source	—	—
—	58. Bankruptcy Law Fundamentals s 5:4, Proceedings to relieve or modify the stay- Expedited and preliminary hearing Bankruptcy Law Fundamentals	2017	Other Secondary Source	—	3 F.3d
—	59. Bankruptcy Law Fundamentals s 7:6, Real property exemption as homestead or property held by tenants by the entireties Bankruptcy Law Fundamentals	2017	Other Secondary Source	—	4 F.3d

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—	60. Bankruptcy Law Fundamentals s 9:6, The use, sale, or lease of property of the estate-The disposition of encumbered property Bankruptcy Law Fundamentals	2017	Other Secondary Source	—	4 6 F.3d
—	61. Bankruptcy Law Fundamentals s 6:11, Abandoning valueless property or redemption by the debtor Bankruptcy Law Fundamentals	2017	Other Secondary Source	—	6 F.3d
—	62. Bankruptcy Law Fundamentals s 11:18, Enforcement of the discharge-Reaffirmation of the discharged debt Bankruptcy Law Fundamentals The creditor holding a claim excepted from discharge may pursue the debtor since the voiding of the judgment of Bankruptcy Code § 524(a)(1) is "... with respect to any debt..."	2017	Other Secondary Source	—	4 F.3d
—	63. Bankruptcy Law Fundamentals HIGHLIGHTS, of 2017 Edition Bankruptcy Law Fundamentals The Supreme Court stated a major policy as to priorities which should be respected in the settlement of disputes in Chapter 11. Czyzewski v. Jevic Holding Corp., 2017 WL 1066259...	2017	Other Secondary Source	—	4 F.3d
—	64. Bankruptcy Practice for the General Practitioner s 3:27, File and perform statement of intention In a Chapter 7 case, if an individual debtor owes debts secured by property of the estate, the debtor is required to file a statement of intention. The statement of intention must...	2017	Other Secondary Source	—	3 4 6 F.3d
—	65. Bankruptcy Service Lawyers Edition s 26:40, Schedule of current income and expenditures Statement of intention that debtor is required to file with respect to the property collateralizing secured debt must declare one of four things: that collateral is exempt, that...	2017	Other Secondary Source	—	—
—	66. Bankruptcy Service Lawyers Edition s 26:63, Options available to debtor Debtor seeking to retain personal property secured by a creditor may reaffirm or redeem a debt. 11 U.S.C.A. § 521(a)(2) [formerly § 521(2)] affords debtor wishing to retain estate...	2017	Other Secondary Source	—	3 F.3d
—	67. Bankruptcy Service Lawyers Edition s 26:77, Surrender In the context of a bankruptcy proceeding, "surrender" by the debtor of secured collateral means that the debtor agrees to make the collateral available to the secured creditor,...	2017	Other Secondary Source	—	4 6 15 F.3d
—	68. Bankruptcy Service Lawyers Edition s 26:89, By court Bankruptcy courts have broad powers to remedy violations of the mandatory duties imposed on debtors with regard to property that collateralizes secured debt. 11 U.S.C.A. § ...	2017	Other Secondary Source	—	—

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—	<p>70. Bankruptcy Service Lawyers Edition s 12:790, Abuse of process-Illustrative particular applications</p> <p>Even if creditor's conduct did not violate the discharge injunction, it was an abuse of the bankruptcy process warranting sanctions where creditor filed a proof of claim against...</p>	2017	Other Secondary Source	—	—
—	<p>71. California Practice Guide: Bankruptcy CH 5(l)-A, Commencing Voluntary Bankruptcy Proceedings</p> <p>California Practice Guide: Bankruptcy</p> <p>[5:1] A voluntary case is commenced by filing a petition under Chapter 7, 11, 12 or 13 with the clerk of the U.S. Bankruptcy Court by a person or entity eligible to be a debtor...</p>	2017	Other Secondary Source	—	3 F.3d
—	<p>72. Chapter 13 Practice and Procedure s 5:9, Surrender of encumbered property as treatment of secured claim</p> <p>Chapter 13 Practice and Procedure</p>	2017	Other Secondary Source	—	4 6 F.3d
—	<p>73. 19 Florida Practice Series s 28:7, Litigation-Summary judgment and default judgments</p> <p>Florida Practice Series</p> <p>Most mortgage foreclosures are resolved through summary judgment instead of through trial. Despite this fact, many misconceptions persist regarding when summary judgment can be...</p>	2017	Other Secondary Source	—	19 F.3d
—	<p>74. 19 Florida Practice Series HIGHLIGHTS, PREFACE TO THE 2017 EDITION</p> <p>Florida Practice Series</p> <p>This book is written to assist both transactional and litigation real estate practitioners with those questions that come across their desks in a typical day. Accordingly, the book...</p>	2017	Other Secondary Source	—	—
—	<p>75. Georgia Real Estate Finance and Foreclosure Law s 12:4, Issues in Chapter 7 proceedings</p> <p>In a bankruptcy petition filed under Chapter 7, there is no court-authorized payment plan to give the debtor the opportunity to cure an arrearage on a secured claim. Moreover, a...</p>	2017	Other Secondary Source	—	3 F.3d
—	<p>76. 2016 No. 11 Norton Bankruptcy Law Adviser NL 2, Recent Decisions from the Appellate Courts</p> <p>Hannon v. ABCD Holdings LLC (In re Hannon), 838 F.3d 792 (1st Cir. 2016). False oath on monthly operating reports ("MORs") barred debtor's discharge. Debtor failed to mention on...</p>	2017	Other Secondary Source	—	15 19 20 F.3d

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—	78. Norton Bankruptcy Law and Practice 3d s 20:4, List of creditors, schedules, and statements (Code s521(a)(1)) Unless the court orders otherwise, the debtor, except a debtor in a Chapter 9 municipality case, must file, in addition to the petition, a schedule of assets and liabilities, a...	2017	Other Secondary Source	—	3 F.3d
—	79. Norton Bankruptcy Law and Practice 3d 11 USC s 521, s 521. Debtor's duties This section lists three duties of the debtor in a bankruptcy case. The Rules of Bankruptcy Procedure will specify the means of carrying out these duties. The first duty is to file...	2017	Other Secondary Source	—	19 F.3d
—	80. Rutter Group Practice Guide: Bankruptcy, National Edition CH 5(l)-A, Commencing Voluntary Bankruptcy Proceedings Rutter Group Practice Guide: Bankruptcy, National Edition [5:1] A voluntary case is commenced by filing a petition under Chapter 7, 11, 12 or 13 with the clerk of the U.S. Bankruptcy Court by a person or entity eligible to be a debtor...	2017	Other Secondary Source	—	3 F.3d
—	81. Sutherland Statutes and Statutory Construction s 46:6, Each word given effect "It is an elementary rule of construction that effect must be given, if possible, to every word, clause and sentence of a statute." Courts construe a statute to give effect to...	2017	Other Secondary Source	—	—
—	82. Sutherland Statutes and Statutory Construction s 70:6, Bankruptcy statutes Federal bankruptcy laws were enacted for the dual purpose to: (1) discharge the indebtedness of honest debtors so they are afforded an unburdened opportunity to start afresh in...	2017	Other Secondary Source	—	5 F.3d
—	83. The Law of Debtors and Creditors s 12:19, Filing the petition-Schedules of assets and liabilities, current income and expenditures, and list of creditors Section 521(a) requires the debtor to file a list of creditors and, unless the court orders otherwise, a schedule of assets and liabilities, a schedule of current income and...	2017	Other Secondary Source	—	4 6 F.3d
—	84. Trial Handbook for Georgia Lawyers s 20:18, Other presumptions created by law Trial Handbook for Georgia Lawyers Presumption arising from failure to produce evidence, see O.C.G.A. § 24-14-22. Presumption from failure to answer a letter when good faith requires an answer, presumption that...	2017	Other Secondary Source	—	11 12 F.3d

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—	85. 9 West's Legal Forms s 4:28, Statement of financial affairs for individuals-Official Form B107 Bankruptcy forms were substantially revised and renumbered, effective December 1, 2015. Former Procedural Forms are now known as Director's Forms. See the renumbering chart at §...	2017	Other Secondary Source	—	4 8 F.3d
—	86. 9B West's Legal Forms s 33:1, Introduction It frequently occurs that the bankruptcy estate has no equity in property that is subject to a valid, perfected lien, or that the cost of collecting receivables or of retrieving,...	2017	Other Secondary Source	—	4 6 F.3d
—	87. 125 Am. Jur. Trials 541, Litigation Concerning Mortgage Foreclosures Am. Jur. Trials This article focuses on residential mortgage foreclosure litigation. When a borrower defaults on the terms, most often the payments, of a mortgage loan, mortgage foreclosure is the...	2017	Other Secondary Source	—	8 F.3d
—	88. CJS Bankruptcy s 53, Statement of intention with respect to retention or surrender of collateral CJS Bankruptcy An individual debtor in a Chapter 7 case must file a statement of his or her intention with respect to the retention or surrender of property of the estate that secures debts...	2017	Other Secondary Source	—	6 F.3d
—	89. BENCHNOTES 36-FEB Am. Bankr. Inst. J. 6 , 6 In In re Yellowstone Mountain Club LLC, the Ninth Circuit Court of Appeals held that the Barton doctrine applies to members of an unsecured creditors' committee (UCC) who are sued...	2017	Law Review	—	3 F.3d
—	90. 'SURRENDER' LIMITED TO BANKRUPTCY Bankruptcy Court Decisions Weekly News & Comments Chapter 7 debtors don't lose the ability to oppose the foreclosure sale of their homes by selecting the "surrender" option on their Statement of Intention, a bankruptcy judge in...	2016	Other Secondary Source	—	4 F.3d
—	91. DEBTORS 'SURRENDER' HOUSE, CANNOT CONTEST FORECLOSURE Bankruptcy Court Decisions Weekly News & Comments Ruling: The 11th U.S. Circuit Court of Appeals affirmed the U.S. District Court, Southern District of Florida, which affirmed the bankruptcy court pursuant to Section 521(a)(2).	2016	Other Secondary Source	—	—
—	92. 3) In Re Failla (11th Circuit) Eleventh Circuit holds that "surrender" in § 521(a)(2) requires debtors to drop their opposition to a foreclosure action Debtors in In re Failla[] owned a house in Boca Raton,...	2016	Other Secondary Source	—	20 F.3d

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—	94. SURRENDER DECISION ISN'T BINDING FOREVER Consumer Bankruptcy News Ruling: The bankruptcy court denied a secured creditor's motion to reopen the debtors' case.	2017	Other Secondary Source	—	4 F.3d
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—	96. 'SURRENDER' DOES NOT AFFECT DEBTOR'S SUBSTANTIVE RIGHTS Consumer Bankruptcy News RulingRuling: The bankruptcy court ruled that the Chapter 7 debtors' choice of the surrender option did not preclude them from bringing a wrongful foreclosure action against the...	2016	Other Secondary Source	—	3 F.3d
—	97. 11TH CIRCUIT: DEBTORS CAN'T SURRENDER HOME AND OPPOSE FORECLOSURE Consumer Bankruptcy News Debtors who state an intention to surrender their homes in bankruptcy court may not oppose a state court foreclosure action, the 11th U.S. Circuit Court of Appeals ruled in Failla...	2016	Other Secondary Source	—	8 20 F.3d
—	98. SURRENDER OPTION FORECLOSES FORECLOSURE DEFENSE Consumer Bankruptcy News RulingRuling: The 11th U.S. Circuit Court of Appeals affirmed the lower courts' rulings that a debtor who surrenders his home may not oppose the lender's foreclosure action.	2016	Other Secondary Source	—	4 6 F.3d
—	99. 11th Circuit: Court had power to halt debtors' foreclosure fight (C.A.11 (Fla.)) WESTLAW Bankruptcy Daily Briefing A Florida couple who pledged to surrender their home in their Chapter 7 case were properly ordered by the bankruptcy court to cease their state court challenge to a post-bankruptcy...	—	Other Secondary Source	—	—
—	100. "Surrender" Inconsistent with Defense of Foreclosure Action West's Bankruptcy Newsletter The Eleventh Circuit Court of Appeals has held that, in order to "surrender" the real property securing residential mortgage debt in accordance with their stated intent, Chapter...	2016	Other Secondary Source	—	8 13 15 F.3d

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**Does Assumption of a Lease by a Chapter 7 Debtor render the
Lease Obligation Not Subject to Discharge**

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Americans increasingly are leasing instead of buying new vehicles.¹ As a result, lease issues frequently are raised in bankruptcy cases. This article examines the issue of whether a chapter 7 debtor assuming a vehicle lease must also file a reaffirmation agreement with the court in order to render the assumed lease obligation not subject to discharge.

The 2005 Amendment to the Bankruptcy Code

Prior to enactment of the Bankruptcy Abuse and Consumer Protection Act of 2005 (BAPCPA), the Bankruptcy Code made no provision for a chapter 7 debtor to assume a lease. Only the chapter 7 trustee had such authority.² BAPCPA added several provisions related to leases, including Section 365(p) which set out the process for a chapter 7 debtor to assume a lease agreement, and the impact on the automatic stay when a debtor failed to assume a lease.

The Lease Assumption Process

When a chapter 7 debtor wants to assume a lease agreement, § 365(p)(2) sets out a non-judicial procedure:

“(2)(A) If the debtor in a case under chapter 7 is an individual, the debtor may notify the creditor in writing that the debtor desires to assume the lease. Upon being so notified, the creditor may, at its option, notify the debtor that it is willing to have the lease assumed by the debtor and may condition such assumption on cure of any outstanding default on terms set by the contract.

(B) If, not later than 30 days after notice is provided under subparagraph (A), the debtor notifies the lessor in writing that the lease is assumed, *the liability under the lease* will be

¹ In 2013 leasing represented a record 23 percent of new car sales. See <http://www.edmunds.com/industry-center/commentary/autoeconomy-trends-leasing-goes-mainstream.html>

² 11 U.S.C. § 365(a); § 365(d)(1).

assumed by the debtor and not by the estate.

(C) The stay under section 362 and the injunction under section 524(a)(2) shall not be violated by notification of the debtor and negotiation of cure under this subsection.³

The informal process under § 365(p)(2) has been likened to a “handshake”.⁴ An agreement to assume a lease does not require judicial review, and the court plays no role in a chapter 7 debtor assuming a lease.⁵ Section 365(p)(2)(C) also authorizes the debtor and lessor to freely discuss the lease assumption terms and documentation during the bankruptcy case, and such discussions do not violate the automatic stay.⁶ Finally, other than a 30 day window for the debtor to notify the lessor that the lease will be assumed, the Code contains no deadlines for lease assumption.⁷

Reaffirmation of a Pre-petition Debt under Section 524

In general, for a pre-petition debt to remain in effect post-discharge, a debtor must enter into a reaffirmation agreement containing the disclosures listed in § 524(k). The reaffirmation agreement must be “made” before discharge is entered, signed by the debtor and creditor, filed with the court within 60 days after the creditors meeting, and, where appropriate, a hearing held pursuant to § 524(d) to ensure the agreement is “fully informed and voluntary” and “does not impose an undue hardship on the debtor or a dependent of the debtor”.⁸ The court plays a significant role in determining whether to approve a proposed reaffirmation agreement.⁹

Is Reaffirmation of a Debt under Section 524 related to Lease Assumption in Section 365(p)

³ 11 U.S.C. § 365(p)(2) (emphasis added).

⁴ See *In re Ebbrecht*, 451 B.R. 241, 244–245 (Bankr. E.D. N.Y. 2011).

⁵ *In re Bailly*, 522 B.R. 711 (Bankr. M.D. Fla. 2014)(C.J. Jennemann) (“Parties do not need to file any motion or stipulation seeking approval for any lease assumption. Let me restate, parties do not need my permission for a debtor to assume a lease or for a creditor to enforce the assumed lease. The only requirement is the two parties agree to the lease assumption as allowed by § 365(p)(2)”).

⁶ 11 U.S.C. § 365(p)(2)(C).

⁷ *In re Mortensen*, 444 B.R. 225, 230 (Bankr. E.D. N.Y. 2011).

⁸ 11 U.S.C. § 524(c); Bankruptcy Rule 4008.

⁹ See *In re Ebbrecht*, 451 B.R. 241, 247 (Bankr. E.D. N.Y. 2011).

The Code treats lessors differently than secured lenders in numerous provisions.¹⁰ Fundamentally, they have different rights – a secured creditor holds a lien on the debtor's property, while a lessor owns the property subject to the debtor's possessory rights.¹¹ As with many of the 2005 amendments in BAPCPA, the addition of § 365(p)(2) did not fully answer all issues related to lease assumption. Some courts find that since a lease is a debt subject to discharge, any lease assumption must be accompanied by a reaffirmation agreement filed in compliance with § 524 or the lease debt does not survive discharge. Other courts find the provisions of § 365(p)(2) are the exclusive procedure for a chapter 7 debtor to assume a lease, and explicitly state that a debtor assuming a lease under § 365(p)(2) does not need to also reaffirm the debt under § 524. One court recently noted a reaffirmation agreement is not needed because “[r]eading § 524(c)’s reaffirmation requirements into § 365(p)(2)’s lease assumption procedures is cumbersome, violates all rules of statutory construction, and is not merited”.¹² Another court noted, “Congress could have written the statute to require the debtor to indicate he will reaffirm **and** assume the unexpired lease, but it did not; BAPCPA treats lease assumptions under § 365(p)(2) and reaffirmation under § 524(c) as “distinct alternatives.”¹³ Courts have criticized debtor’s counsel for filing reaffirmation agreements related to lease assumption, and disapprove such reaffirmation agreements as improvident and unnecessary.¹⁴

The Unanswered Question - is an Assumed Lease Obligation in Chapter 7 excepted from the Discharge

The question *not clearly answered* in the Code is whether a lease obligation survives discharge where a debtor assumes a lease pursuant to § 365(p)(2), but the parties do not sign and file a reaffirmation agreement. In other words, does assuming a lease pursuant to § 365(p)(2) in and of itself extend *in personam* liability on the lease after discharge, or do the debtor and lessor also have to file a reaffirmation agreement to have the *in personam* liability under the lease survive the chapter 7 discharge.

Several courts considering lease assumption have explicitly declined to address this

¹⁰ See, e.g., § 362(h), § 365(p)(2) and § 521(d).

¹¹ *In re Mortensen, supra.*

¹² *In re Bailly, supra.* at 717.

¹³ See *In re Thompson*, 440 B.R. 130, 132 (Bankr. W.D. Mich. 2010), *rev'd and remanded sub nom. Thompson v. Credit Union Fin. Grp.*, 453 B.R. 823 (W.D. Mich. 2011); see also *In re Ebbrecht, supra.* at 247; *In re Bailly, supra.* at 716.

¹⁴ *In re Perlman*, 468 B.R. 437 (Bankr. S.D. Fla. 2012)(J. Olson)

question, stating the issue was not before the court.¹⁵ Other courts discuss the distinction between reaffirmation and lease assumption at length, but do not directly address whether the lease is subject to discharge upon assumption.¹⁶ In cases where courts have taken a position on this issue, there is a split of authority.

An Assumed Lease debt, without reaffirmation, is discharged in bankruptcy

Some courts find that a lease assumption is nothing more than a post-petition agreement related to a pre-petition obligation, and hold that the liability on an assumed lease is unenforceable unless the procedures in § 524 are strictly followed.¹⁷ Courts following this position reason that a lease assumption is nothing more than a debt or agreement “the consideration for which ... is based on a debt that is dischargeable”; therefore, an agreement to assume a lease must be covered by § 524.¹⁸ In other words, to survive discharge, a lease assumption must be accompanied by a reaffirmation agreement.¹⁹

In the 2006 case *In re Finch*, the debtor and creditor filed a Motion to approve a lease assumption agreement which provided that the debtor would waive the discharge under § 524(a) as to the assumed lease obligation.²⁰ The court denied the Motion, finding that by stipulating the lease debt would survive discharge, the lease assumption agreement actually constituted a reaffirmation agreement. Since no agreement had been signed or filed pursuant to § 524, the court held the lease assumption invalid and ineffective. Other courts have adopted this

¹⁵ *In re Farley*, 451 B.R. 235 (Bankr. E.D. N.Y. 2011); *In re Rogers*, 359 B.R. 591 (Bankr. D. S.C. 2007); *In re Gaylor*, 379 B.R. 413 (Bankr. D. Conn. 2007)(Section 365(p)(2) did not require judicial approval of the assumption of the lease, so stipulation for assumption of the lease agreement did not need to be approved by the Court; however, the Court declined to rule as to what extent debtor had waived the effects of discharge); *In re Walker*, 2007 WL 1297112 (Bankr. M.D. N.C. 2007).

¹⁶ *In re Pearlman*, *supra.*; *In re Bailly*, *supra.*

¹⁷ *In re Creighton*, 427 B.R. 24, 27 (Bankr. D. Mass. 2007)(pre-petition vehicle leases require both assumption under Section 365(p) and reaffirmation under § 524).

¹⁸ *See, e.g., In re Eader*, 426 B.R. 164, 166–67 (Bankr. D. Md. 2010)(finding *in personam* obligation of debtor arising under the pre-petition lease, even if assumed, does not act to prevent the discharge of the assumed liability of such debt unless a reaffirmation agreement is made in full compliance with § 524 and Rule 4008).

¹⁹ *In re Rogers*, 359 B.R. 591, 593 (Bankr. D.S.C. 2007), citing *Collier Consumer Bankruptcy Practice Guide* ¶ 15.04[8].

²⁰ *In re Finch*, 2006 WL 3900111, at *1 (Bankr. D. Colo. 2006).

reasoning.²¹

The leading case – and only higher court – adopting the position that assuming a lease agreement, by itself, does not except the underlying obligation from discharge is the district court’s ruling in *Thompson v. Credit Union Financial Group*.²² In *Thompson*, the debtor assumed a vehicle lease, but surrendered the vehicle prior to discharge. The bankruptcy court found the parties were not required to follow the reaffirmation process when the debtor assumed the lease. The bankruptcy court held the lease liability assumed by the debtor became a postpetition obligation, and upon default the lessor could attempt collection post-discharge without violating discharge injunction.²³ The district court in *Thompson* rejected this analysis and reversed, setting out several reasons why lease assumption alone does not lead to nondischargeability:

- § 365(p) does not state the debtor loses the discharge protection upon assuming a lease
- § 365(p) focuses on possession of property, and not on ultimate liability after discharge
- § 524(c) explicitly requires judicial approval of a debtor's agreement to except an otherwise dischargeable debt from discharge
- a chapter 7 debtor would jeopardize his “fresh start” by unwittingly binding himself to a lease liability which could be discharged.²⁴

Under the district court’s rationale in *Thompson*, unless a lease debt is also reaffirmed pursuant to § 524, any waiver of discharge provision contained in a lease assumption agreement “is ineffective as to preventing the indebtedness under the lease and personal liability under assumption agreement from being discharged by an Order of Discharge entered in the debtor's bankruptcy case”.²⁵

²¹ *In re Creighton, supra.* at 27 (Bankr. D. Mass. 2007); *In re Eader, supra.* at 166-167.

²² *In re Thompson*, 440 B.R. 130 (Bankr. W.D. Mich. 2010), *rev'd and remanded sub nom. Thompson v. Credit Union Fin. Grp.*, 453 B.R. 823 (W.D. Mich. 2011).

²³ *In re Thompson*, 440 B.R. at 132.

²⁴ *In re Thompson*, 453 B.R. at 827-828.

²⁵ *In re Eader, supra.* at 166-167.

The Contrary View - a debt related to an Assumed Lease survives Discharge

Courts following the bankruptcy court’s reasoning in *Thompson* find that by following the § 365(p)(2) process, a chapter 7 debtor's post-petition assumption of a pre-petition lease creates a post-petition obligation that survives discharge.²⁶ In this scenario, a chapter 7 debtor waives the discharge injunction regarding a lease obligation, with no judicial review or approval.²⁷ These courts note that “Congress clearly intended to provide two separate provisions covering reaffirmation and lease assumption, and adopted two very different procedures.”²⁸ Had Congress intended the reaffirmation process and lease assumption process to be interconnected or interchangeable, “it would not have made the two procedures so different and incompatible.”²⁹ As one Court concluded, “[t]he restrictions placed on reaffirmation have no place in an assumption, where the lessor owns the property in question.”³⁰

We start with the language in § 365(p)(2)(B). This section specifically provides that when the parties reach an agreement for lease assumption, “*the liability under the lease* will be assumed by the debtor”. The addition of the words “the liability under the lease” indicates that lease assumption has meaning related to “liability” under the lease, not simply possession of the leased personal property.³¹

The timing differences between reaffirmation and lease assumption agreements also support the argument that a chapter 7 debtor assuming a lease waives the discharge protection regarding the lease obligation solely by following § 365(p). Section 365(p)(2)(C) states that the discharge injunction under § 524(a)(2) “shall not be violated by notification of the debtor and negotiation of cure under this subsection.” Congress clearly contemplated lease assumption agreements could be made after entry of the discharge, and specifically authorized the parties to negotiate lease assumption agreements notwithstanding the automatic stay or discharge injunction.³² Since § 524 requires reaffirmation agreements be made prior to discharge, this could result in a valid lease assumption under § 365(p)(2) being deemed unenforceable because

²⁶ *In re Thompson*, 440 B.R. at 132.

²⁷ See *In re Mortensen, supra.*; *In re Ebbrecht, supra.* at 247.

²⁸ *In re Ebbrecht, supra* at 247.

²⁹ *In re Perlman, supra.* at 441.

³⁰ *In re Mortensen, supra.* at 231.

³¹ *In re Mortensen, supra.* at 231 (“In exchange for the right to retain the lessor's property for her use, the Debtor cannot assert that the Debtor has been discharged of her obligations under the Lease—the discharge injunction simply does not apply”).

³² *In re Thompson*, 440 B.R. at 131–32 (citing 11 U.S.C. § 365(p)(2)(C)).

the parties did not follow the statutory provisions governing reaffirmation.³³

From a logical perspective, Congress would not have added a specific procedure for a chapter 7 debtor to assume a lease if, after discharge, there was no consequence whatsoever should the debtor default on the lease.³⁴ Such an interpretation would render § 365(p)(2) a nullity, and create an absurd result.³⁵

Other arguments support the position that the debt on an assumed lease is not subject to discharge.³⁶ The structure of the Statement of Intent (SOI) – which each chapter 7 debtor must file to indicate whether he will redeem certain collateral, enter into a reaffirmation agreement, or assume an unexpired lease – indicates reaffirmation and lease assumption are separate and unrelated.³⁷ The Official Form for the SOI has been amended and updated to provide completely separate sections for reaffirmation and lease assumption agreements.³⁸ Had Congress intended the reaffirmation process to cover assumed leases, this should have been indicated in Form B8.³⁹

Conclusion

Statutory construction requires that “when the statute's language is plain, the sole function of the courts — at least where the disposition required by the text is not absurd — is to enforce it according to its terms.”⁴⁰ The Code does not provide a clear answer to the question of whether a chapter 7 debtor assuming a lease agreement must also file a reaffirmation agreement to render the lease obligation not subject to discharge. The bankruptcy court decisions are split, and this issue may never be addressed at the BAP or Circuit level. Assuming no legislative fix, the uncertainty in the law creates a significant problem for lessors, who must decide what action to take when a chapter 7 debtor defaults on an assumed lease (without a reaffirmation). Would

³³ *In re Thompson*, 440 B.R. at 132.

³⁴ *In re Perlman*, *supra*. at 440; *see also In re Mortensen*, *supra*. at 230 (rejecting the reasoning in *Eader and Creighton*).

³⁵ *In re Mortensen*, *supra*. at 230.

³⁶ For an interesting review of creative arguments by the creditor on this issue, albeit all rejected by the court, *see In re Creighton*, *supra*. at 28-30.

³⁷ *See* § 521(a)(2) and § 521(a)(6).

³⁸ *See* Official Form 8 (12/08) and Advisory Committee's Note to Official Form No. 8 (2008). http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/BK_Forms_Pending_2008/B_008_1208.pdf

³⁹ *Contra, In re Creighton*, *supra*. at 28 - 30.

⁴⁰ *Lamie v. U.S. Trustee*, 540 U.S. 526, 534, 124 S.Ct. 1023, 157 L.Ed.2d 1024 (2004).

a collection call to the debtor result in an action for violating the discharge injunction? Even worse, a bankruptcy judge's opinion that filing a reaffirmation agreement is not required in order for the assumed lease debt to survive discharge could be overturned on appeal – which is precisely what happened in *In re Thompson* – potentially subjecting the lessor to sanctions for violating the discharge injunction. In an article published in last year's *ABI Journal* on post-petition repossession, the author highlighted how a creditor had relied on a prior district court opinion to not return a vehicle repossessed post-petition, but when that district court opinion later was reversed, the secured creditor was subject to sanctions.⁴¹

By following the lease assumption procedure in § 365(p)(2), a lessor may reasonably expect an assumed lease obligation is no longer subject to the bankruptcy discharge. A conservative lessor, however, may have little choice but to also file a reaffirmation agreement, or seek other clarification from the Court.

⁴¹ *In re Weber*, 719 F.3d 72 (2nd Cir. 2013), discussed in *ABI Journal* (June 2014), “Creditor Must Return Repossessed Vehicle Post-Chapter 13 Filing” (www.journal.abi.org/sites/default/files/2014/april/consumer.pdf).

RULE 1002-1

**PETITION – FILING ON DEBTOR’S BEHALF BY A
COURT-APPOINTED REPRESENTATIVE, HOLDER OF
POWER OF ATTORNEY, PROPOSED NEXT FRIEND, OR GUARDIAN AD LITEM**

(a) ***Voluntary Petition by a Court-Appointed Representative.*** If, before the petition date, a representative, such as a guardian or conservator, has been appointed by a court under nonbankruptcy law for a debtor who is an infant or incompetent person, then a copy of the appointment instrument must be filed with a voluntary petition.

(b) ***Voluntary Petition by the Holder of a Power of Attorney.***

(1) ***Prerequisites to Filing Petition.*** The holder of a power of attorney may file a voluntary petition on behalf of a debtor only if:

(A) the debtor is an individual;

(B) a written power of attorney, valid under nonbankruptcy law, expressly authorizes the holder of the power of attorney to file a bankruptcy petition on behalf of the debtor;

(C) extraordinary circumstances exist warranting the commencement of a bankruptcy case under the authority granted by the power of attorney; and

(D) the debtor is not a minor or been adjudicated an incompetent person prior to the date of the power of attorney.

(2) ***Duties of the Holder of Power of Attorney; Limit on Authority.***

(A) The holder of the power of attorney must sign the petition as attorney-in-fact for the debtor and file it with a copy of the power of attorney, the mailing address of the holder’s residence or place of business and a statement, signed under penalty of perjury, certifying each prerequisite set forth in paragraph (1) above and explaining the extraordinary circumstances described in (1)(C).

(B) The Court will issue an order that the attorney-in-fact and the debtor show cause why the case should not be dismissed.

(C) Unless and until the Court orders otherwise, the holder of the power of attorney shall take no other action in the bankruptcy case on behalf of the debtor.

(c) ***Voluntary Petition by Proposed Next Friend or Guardian Ad Litem.*** If, before the petition date, there has been no representative appointed by a court under nonbankruptcy law for a debtor who is an infant or incompetent person, then a proposed next friend or guardian ad

litem shall file a motion for appointment as next friend or guardian ad litem with the voluntary petition. If a motion for appointment of a next friend or guardian ad litem is not filed with the petition, the Court will issue an order that the individual filing the petition and the debtor show cause why the case should not be dismissed. Unless and until the Court orders otherwise, the proposed next friend or guardian ad litem shall take no other action in the bankruptcy case on behalf of the debtor.

(d) **Required Information.** Responses to an order to show cause why the case should not be dismissed and motions for the appointment of a next friend or a guardian ad litem shall be accompanied by a declaration under penalty of perjury by the holder of the power of attorney or proposed next friend or guardian ad litem that contains the following information:

- (1) the party's name, address, and relationship to the debtor;
- (2) whether a representative was appointed for the debtor under nonbankruptcy law before the petition was filed;
- (3) if applicable, why appointment of the party as next friend or guardian ad litem is necessary;
- (4) if applicable, why appointment of the party would be in the debtor's best interest;
- (5) the fee, if any, that the party would charge the debtor for serving as next friend or guardian ad litem;
- (6) the party's criminal, financial, and professional history;
- (7) the party's competence to handle the debtor's financial affairs, including the movant's knowledge of debtor's financial affairs;
- (8) whether the party has any current or potential future interest in the debtor's financial affairs; and
- (9) whether any of the debtor's debts were incurred for the benefit of the party.

(e) **Required Documents.** In cases where appointment is sought on behalf of an incompetent person, the declaration must be accompanied by the following documents:

- (1) a letter from the debtor's physician regarding the debtor's ability to conduct the debtor's own financial affairs;
- (2) a letter from the debtor's caregiver regarding the debtor's ability to conduct the debtor's own affairs; and

(3) a copy of any power of attorney or other document giving the movant authority to act for the debtor.

(f) ***Service of Motion.*** The motion and declaration must be served under Fed. R. Bankr. P. 7004 on the debtor and notice thereof must be provided to the trustee, all creditors, the U.S. Trustee, any governmental entity from which the debtor is receiving funds, and the debtor's closest relative, if known.

Notes of Advisory Committee

2017

This rule establishes procedures for the filing of voluntary petitions by court-appointed representatives, holders of powers of attorney, guardians ad litem, and next friends. The rule specifies the information and documents that must be filed in support of a motion or in response to an order to show cause. This new rule is effective July 1, 2017.