DEBTOR ATTORNEY – OUTLINE OF PROCEDURES

I. FILING OF THE CASE:

A. Court website: The Bankruptcy Court for the Western District of Virginia has a website which contains important information about procedures, court docket calendars, Local Rules, personnel, forms, deadlines, etc. For further information see the home page of the U.S. Bankruptcy Court, Western District of Virginia. This entry point also contains a link to the Court's CM/ECF case look-up system, which requires a user name and password in order to access specific case information. A training session is available for attorneys who will be filing pleadings on CM/ECF. Attorneys who are new to the Western District should familiarize themselves with this site and the Court's requirements. If you have questions, call the Clerk's office in Roanoke (540-857-2391) or Harrisonburg (540-434-8327).

B. Trustee's office structure and whom to contact: The staff contact person for a case will depend upon the stage of the case and the nature of the issue. The main phone number for the office is 434-817-9913, but because many of the staff telework, the best form of communication with them will be via e-mail.

1. Contact Staff:

a. For matters relating to Section 341 creditors' meeting documents:
ch13docs@cvillech13.net

b. For action items concerning a case at any time during the case:
Cassandra Dennis CDennis@cvillech13.net ext. 116

c. For action and documents before Court hearings by case number:

Jennifer Schindler JSchindler@cvillech13.net case ending 00-49

Melanie Tenant mtennant@cvillech13.net case ending 50-99

d. For any claims-related issues;

Jennifer Hersh JHersh@cvillech13.net ext. 115

e. For issues or questions relating to the closing of a case:

Ryan Bryant RBryant@cvillech13.net ext. 113

f. For all Orders: All orders which require the Trustee's signature should be sent via e-mail to the paralegal:

R.C. Johnson trorders@cvillech13.net ext. 120

Please identify the order in the subject line of the e-mail by case number, debtors' names, type of hearing, and date of hearing. For example, please state "07-60579 T&E Johnson MTLS 01-20-2008," where 01-20-2008 is the date of the hearing that will be held or was held on the Motion to Lift Stay; or "07-60579 T&E Johnson TMTD 01-20-2008," where 01-20-2008 is the date of the hearing that will be held or was held on the Trustee's Motion to Dismiss.

Note: If you are using one of the form orders that are set forth at the end of this Outline, but you have made changes to the standard language in the body of the order, you need to alert the Trustee in your cover e-mail to the changes you have made. Failure to do so may affect your credibility with our office and will delay the processing of the order.

C. Chapter 13 Plan format and initial notices:

1. Standard Chapter 13 Plan format: In the Western District of Virginia, debtors are required to use a National Form Chapter 13 Plan which has been approved by the Judges. The form can be found on the Court's website.

2. Adequate Protection Payments: Section 1326 of the Code requires that a Plan provide that adequate protection ("AP") payments be made to any creditor that is being paid through the plan and that is secured by a purchase money security interest in personal property. These payments must commence within 30 days from the date the case is filed, and a case cannot be confirmed until the Court is satisfied that the plan has properly provided for such payments. A plan may propose that such payments be made directly by the debtors to the creditor, or they can be made to the Trustee as part of the debtors' plan payment and disbursed by the Trustee.

If such payments are made to and disbursed by the Trustee, there will be no need for the debtors to provide proof of payment or proof of receipt by the creditor. If the payments are made directly by the debtors to the creditor, the Trustee will have to obtain proof of payment by the debtors and proof of receipt by the creditor prior to confirmation. Because of the difficulties inherent in proving that the debtors have made these payments, virtually all of the plans filed in this area have proposed that AP payments be made by the Trustee rather than directly by the debtors, and the Trustee will probably object to any plan that proposes that the debtors make these payments directly. See the Court's Standing Order #9, 12-05-2006, and Local Rule 4001-2.

The BAP&CPA Code changes do not specify the required minimum amount of the AP payments. As a matter of practice, almost all of the plans filed in this District provide a monthly AP payment equal to about 1% of the value of the collateral to compensate for the diminution in value; this amount is seen as approximating the collateral's depreciation in value each month. Unless the plan provides otherwise, the amount of the adequate protection payment will be the amounts to be disbursed under parts 3.2 and 3.3 of the plan. Local Rule 4001-2 B.

3. Automatic Stay—Extension of [Code §362(c)]: A hearing to extend the automatic stay beyond the initial 30 days [§362(c)(3)] or to establish a stay [§362(c)(4)] *must be held by the Court within 30 days* of the date on which the case is filed, and the date and time of any hearing must be arranged beforehand with the Clerk's Office. Debtors' counsel must notice *all* creditors of any such hearing.

a. The court has approved the use of a "negative notice" pleading that notices all parties that the stay may be extended if no parties object within 21 days and the Court has no objections to the motion. The pleading, which is both a motion and an order, must set a court date in the event that any objections are filed and must provide Zoom instructions, and extends the stay until the potential court date. The Judge wants the pleading to state the reason why the former case was dismissed, and why the current case has a better chance of succeeding. The order must be endorsed by the Trustee.

4. Noticing Requirements: For noticing requirements for initial and amended plans, see the first page of the Form Plan and Local Rules 3015-1 and 3015-2.

D. Payments, Pay Direct Orders, and Wage Deduction Orders:

1. Plan payments are to be sent to a Truist Bank lockbox maintained by the Trustee in Memphis, Tennessee. DO NOT SEND PAYMENTS TO THE TRUSTEE'S OFFICE IN CHARLOTTESVILLE. THE CHARLOTTESVILE ADDRESS IS FOR CORRESPONDENCE ONLY.

The address for plan payments is:

Angela M. Scolforo
Chapter 13 Trustee's Office
P.O. Box 1961
Memphis TN 38101-1961

All payments must include the debtors' full names and their full case number (for example: "Thomas William Jones and Edna Joyce Jones, #07-60115."). Payments should be made payable to "Angela M. Scolforo, Trustee." Please advise your clients that the Trustee will not accept "walk-in" payments at our Charlottesville office or cash payments in Court. If debtors bring payments to Court or to the Trustee's Charlottesville office they will be given an addressed envelope for mailing the payment to the Truist Bank lock-box in Memphis.

In every case, either the debtors must set up an automatic recurring payment through their bank account using a company called TFS [see below] or an order must be entered by the Court ordering a debtor's employer to make the plan payments (a "*wage deduction order*"). The debtors' attorney is required to file the appropriate wage deduction order with the Court. Copies of all of the appropriate wage deduction forms are attached. The Trustee does *not* usually need to endorse this order. However, if you want to submit a wage order that reduces the amount of a confirmed plan payment, or suspends a confirmed plan's payments, you must have the Trustee's endorsement. A wage deduction order should be filed or a TFS account set up, *as soon as the case is filed* so that the debtors will not fall behind right away. Studies show that automatic wage deduction cases are far more successful than direct payment cases. While many debtors prefer the privacy of the TFS payment option, debtors are able to adjust or stop TFS payments without telling their attorney, and often fall behind in their payments without the attorney's knowledge as a result.

Those debtors choosing to use TFS will set up a monthly automatic electronic withdrawal from their checking account on a day or days specified by them. The attorney has the ability to set up and monitor this process at his/her office if the debtors do not have a computer and e-mail address at home, of if they do not feel comfortable with such internet processes. There is a small fee for each monthly payment. An information flyer from TFS explaining the process and how to register is attached.

2. Automatic Monthly Mortgage payments: Sometimes extra precautions are advisable to keep debtors who have had trouble making their mortgage payments every month from defaulting on future payments. One possibility is for the plan to provide that the monthly mortgage payment will be made through the plan by the

Trustee; in this scenario, the Trustee will take his usual commission on each such payment. Such a plan is called a "**conduit plan**." *Be sure to submit to the Court a motion and order as soon as the case is filed which will authorize the Trustee to begin making mortgage payments prior to confirmation; without such an order, the Trustee will not be able to begin making the regular mortgage payments until the case is confirmed, and the debtors may be charged late payments or be subjected to a motion to lift stay in the interim.* The motion and order must clearly state the date upon which the Trustee will begin making payments, the exact amount of the payment, and the address for the mortgage company or mortgage servicer to which the payment shall be mailed. Also, you need to discuss with the mortgagee any issues regarding late payments and late fees for the first month or two of the plan, perhaps including them in the arrears amount to be paid. Generally, the Trustee will not have sufficient funds to begin making post-petition mortgage payments until the second or third month after the case is filed. Any plan proposing that the Trustee make the regular monthly mortgage payments will need to have special language in Part 8.1 of the plan; these requirements are discussed in detail in the subsequent section on Part 8.1 of the plan.

A second method is to have the Court enter a second, separate, wage deduction order with the employer that will have the employer send a separate check directly to the mortgagee each month to cover the mortgage payment. This method has the advantage of saving the debtors the Trustee's commission each month, and getting the payment to the mortgagee more quickly. An example of such a mortgage payment wage deduction order is attached.

A third option is to set up an automatic monthly draft from the debtors' checking account directly to the mortgagee. This can be done by the debtors without any Court order or hearing. Many banks will provide this service (sometimes called "*automatic bill pay*") to the debtors at no additional charge.

If the debtors are significantly behind in their mortgage payments when the case is filed, the Trustee will object to confirmation of the proposed plan unless one of these three methods of automatic mortgage payment is being utilized by the debtors for future mortgage payments.

3. Debtor Refunds: Once a case has been confirmed, the Trustee cannot refund money to debtors unless and until the court enters an order authorizing such a refund. Counsel should file a motion explaining the circumstances surrounding the request. The only exception is when garnished funds have been sent to the Trustee and the funds have been exempted in full by the debtor on Schedule C; in that instance the Trustee can refund the money without a court order. The Trustee has more flexibility regarding refunds for good cause if a case has not yet been confirmed.

F. Trustee's Introductory Letter

In every case the Trustee's office will, within a few days of filing, send to the debtors a letter outlining the debtors' initial responsibilities to make plan payments, provide documents, and attend the creditors' meeting. It is quite common for debtors to fail to follow through on the last two requirements, so they are set out in detail below.

1. Documents to be sent to the Trustee:

a. How to send documents to the Trustee: The Trustee asks that all requested information and documents be sent *by the attorney* through the BK Docs portal:

https://www.bkdocs.us/

There are four (4) form types. Please use the form type that matches the documents you are sending:

Drivers License and Social Security Number (PII) - these documents only
Tax Returns (PII) – for sending all tax returns to our office
Paystubs - for sending all paystubs
Pre-341 Hearing - all other docs not listed above, before the 341 meeting
After 341 Hearing - all other docs not listed above, after the 341 meeting

This will allow Trustee staff to quickly receive the documents into our electronic case management software while protecting personal information. Our software will automatically delete PII documents following the meetings.

b. Documents required in every case: In every case the following documents should be provided to the Trustee at least *TEN DAYS prior to the initially scheduled creditors' meeting. Please tell your clients NOT to send documents directly to our office; all documents should be sent to the attorney for review, and then by the attorney to our office using BK Docs. Remember to redact Social Security numbers and children's names from these documents, except for those uploaded for identification purposes.*

(1.) All pay stubs, retirement payments, government benefits, or operating statements (the "payment advices" referred to in Code §521) *received by the debtors* within the 60 calendar days immediately preceding the filing of the case. Do *not* send six months of paystubs unless you are documenting a change in income from the first four months. Also, if you are sending an employer print-out instead of actual paystubs, make sure that the print-out shows gross income and *all*

deductions for each paycheck during the 60 day period. Bank statements showing paycheck deposits are not sufficient.

(a.) If a Debtor is self-employed, and the attorney needs a monthly operating statement / profit and loss form to show the Debtor's income and expenses, the Trustee has a simple form that can be used.

(b.) If the debtors are retired or disabled, send either a copy of: (i) the retirement, pension, Social Security or disability payments for the last two months, (ii) bank statements showing these funds being deposited, or (iii) the statement of benefits.

(2.) Real estate tax bills *for the current year* showing city/county valuations (in some cases the Trustee may later ask for personal property tax bills as well).

(a.) If there has been a recent *private appraisal* [within two years of filing], the Trustee will expect that to be provided also to him as well. If the property has been recently purchased or appraised and the resulting value is different from the tax assessed value, the Trustee will expect that value to be used on Schedule A, as that is a more accurate reflection of current fair market value than a tax assessed value.

(3.) The federal personal income tax return for the most recent year (prior to filing) filed by the debtors. Do *not* send prior years unless specifically requested by the Trustee's Report.

(a.) If the debtors are not required to file tax returns, they should submit an affidavit stating this fact, the reason why, and the years for which no returns were required. A sample of such an affidavit is attached.

(4.) *Note:* Pursuant to Code §521(i), **failure to provide within 45 days of the filing of the case the payment advices or other items required by the Court in Code §521(a)(1) can result in automatic dismissal of the case.** *The debtors can request an extension of this deadline, but the request must be made before the expiration of the 45-day period.* . Pursuant to Code **§521(e)(2)(B) the Court "shall dismiss" the case if the Debtor fails to provide their most recent federal tax return to the Trustee at least 7 days prior to the first 341 hearing date**, absent extenuating circumstances.

c. Other documents:

(1.) Deed(s) and proof of joint vs. individual liability: If the debtor(s) own real estate as tenants by the entireties, or jointly with another person or persons, and there is unprotected equity in the property, the Trustee will want to see a copy of the deed

and appropriate third-party documents (copies of bills; credit reports; etc.) to establish whether there are any joint debts.

(2.) Unusually high living expenses: The Trustee may ask for documentation of such expenses, so providing them right away will speed up the process. Examples include medical bills, transportation, unusually large entertainment or internet & phone bills, child care, utility bills, etc. If you are submitting a large stack of bills or receipts, the Trustee will not review them unless they are accompanied by a *summary sheet* explaining what the attached documents will show. For medical prescription expenses, the summary statement from the debtors' pharmacy is the best document to use.

(3.) Financial assistance to the debtors from family or friends: If the debtors will be relying upon significant financial assistance from family or friends to make their plan feasible, the Trustee will usually require those persons to execute an affidavit that makes clear the amount and duration of their assistance. The Trustee recommends that this affidavit be executed before the plan is filed so that the attorney will know right away if the debtors can truly rely upon this anticipated financial assistance.

(4.) Prior Homestead Deeds: If the Chapter 7 test [Code sec. 1325(a)(4)] is an issue, and the debtors have previously filed Virginia Homestead Deeds, the Trustee will need to see them to ensure that the debtors are not claiming more Virginia Code §34-4 protection than they are entitled to. If each debtor is claiming $10,000 worth of exemptions under 34-4 because he/she is over the age of 65, please note the debtor's age on Schedule C or I. Also note that a Homestead Deed must recite all 34-4 exemptions claimed in prior filed Homestead Deeds.

(a.) Be aware of the permanent and potentially expanding protection that Virginia Code §34-18 may provide debtors who have previously protected all of the equity in their home.

(b.) Beginning 07-01-2020 claiming 34-4 exemptions on a Schedule C is the equivalent of filing a Homestead Deed. Exemptions so claimed can be used again—a change from old Virginia law—but not until 8 years have elapsed.

(c.) Each debtor may now get an additional $50,000 in 34-4 exemptions to apply to any equity in his/her primary residence, which can include a mobile home in a mobile home park.

(5.) Valuation issues: If the debtors are claiming that their real estate is worth less than the most recent tax assessment, their car is worth less than the current NADA

retail value, etc., the Trustee will expect to see appropriate third-party evidence of the lower value.

(6.) Other income sources: Provide the Trustee with appropriate third-party evidence of any other income or benefits received by the debtors: Food Stamps (SNAP), TANF, Unemployment Insurance, child or spousal support, Veterans' Benefits, etc.

(7.) Charitable contributions: If the amount of contributions being claimed by the debtors is unusually high (more than $100/mo.), the Trustee may request documents showing the history of contributions in the year or two prior to filing.

2. Trustee's Questionnaire to Debtors: This two page questionnaire has been sent to all debtors' attorneys. It must be filled out by the debtors and returned to the Trustee before the 341 meeting. It will provide the Trustee with information required by BAP&CPA, and will save time at the 341 meeting. Since the debtors will need the attorney's assistance in filling out this questionnaire, it should **not** be sent to the Trustee by the debtors. *The Trustee requires that the attorney or a staff person assist the debtors in filling out this form, or review it before it is sent to the Trustee. It should then be sent to the Trustee with the required documents listed above.*

By signing this questionnaire, the debtors are certifying that the information is correct as of the date the questionnaire is signed by them, and that it will also be true as of the date their plan is confirmed, which can be several months in the future. The attorney needs to explain to the debtors the importance of this document being filled out correctly and completely, and the *debtors' obligation to advise the Trustee if any of the information subsequently changes or is determined by the debtors to be incorrect.*

H. Debtors' personal financial management course (Code §111[d]): BAP&CPA requires that in order for debtors to obtain a Chapter 13 discharge, they must take the Personal Financial Management course no later than the date on which they make their last plan payment as required by their plan [Rule 1007(c)]. However, Local Rule 4008-1 and Local Form 4008-1A give the debtors 60 days from the date on which the Trustee advises the Court that they have completed their plan payments to certify to the Court that they have completed the course.

There are also more than seventy private providers that have been approved by the U.S. Trustee to provide a Personal Financial Management course in this District; information about these providers can be found on the U.S. Trustee Program's website. These providers will charge the debtors a fee to take the course, and will sometimes provide the course by phone or online.

The Trustee strongly recommends that the debtors take this course as soon as possible, as it will greatly assist the debtors in the management of their personal finances and the successful completion of their case. If the debtor(s) fail to take this course, the Court may close their case without entering the discharge order.

I. Other matters:

1. Attorney's Fees:

a. New Standing Order. Effective February 15, 2022, the Judges in the WD of VA put into effect Standing Order 22-001, a copy of which can be found on the Court's website. It is entitled "Order on fees for debtor's counsel in Chapter 13 cases; adoption of guidelines for fee applications in Chapter 13 cases filed on or after February 15, 2022." Every attorney should read this Standing Order fully and carefully. Among other things, it (i) raises the "no look" fee for Chapter 13 cases through confirmation from $4,000 to $4,750; (ii) does away with any requirement to formally apply for approval of such fees; (iii) clarifies that such a fee includes all routine costs (copying, postage, etc.), but does not include filing fees or actual costs paid to outside entities (credit reports, credit counseling, lien searches, etc.); (iv) sets out the range of tasks and responsibilities that an attorney must perform to earn such a fee; (v) sets forth guidelines for how an attorney can apply for fees in excess of this "no look" fee; (vi) sets forth a table of additional "no look" fees for various post-confirmation matters that an attorney may apply for if the attorney chooses initially to seek the $4,750 "no look" fee for services through confirmation; and (vii) provides the forms to be used when an attorney is applying for supplemental compensation. The Standing Order also authorizes a higher fee of $5,750 for “business cases.” To receive this higher fee, the attorney will need to file additional documents (e.g., a 2 year business budget including future income projections) with the Trustee. See the Order for further details on what constitutes a business case and what documents are required.

b. If shortly after confirmation a motion to lift stay is filed on a car or home mortgage that is being paid directly by the debtors, and it is determined that the debtors incorrectly stated in their pre-confirmation affidavit that they were current on this obligation as of the confirmation hearing date, the Judge will deny attorney fees for defending against the motion.

c. The Court has ruled that while attorney fees may be paid *ahead* of unsecured claims, executory contracts, secured debt arrears, and priority claims other than DSO [Domestic Support Obligation] arrears, they come *behind* AP and fixed monthly payments to secured creditors and at best can only be paid *pro rata* with DSO arrears being paid by the Trustee. For attorney's fees for work performed *after*

confirmation of the case, see the "Post-Confirmation" part of this Outline, section V. I.

d. Dismissal before confirmation. If a case is being dismissed before it has been confirmed, the attorney must apply for fees and obtain a Court order before the Trustee can disburse any fees prior to the case being dismissed. The Judge may not enter such an order after a case has been dismissed, so the attorney must set the application for a hearing before the case is dismissed. If the debtors are willing to endorse an order on the fees, or if the attorney's fee agreement states that the debtor agrees in advance to the award of such fees, the order may be able to be entered by the Court without a hearing. If the debtors have not endorsed the order, or there is no such fee agreement provision, the attorney must provide them with appropriate prior notice of the hearing on the application for fees. The Court may be willing to continue dismissal of a case in order for the attorney to be awarded fees, but the Court may be less flexible if the fee application is filed at the last minute.

e. **Conversion before confirmation.** Because of *Harris v. Viegelahn, 135 S. Ct. 1829 (2015),* if a case is being converted to Chapter 7 prior to confirmation, the attorney cannot be paid any fees by the Trustee *unless an order on the fees has been entered, AND THE CHECK HAS BEEN CUT BY THE TRUSTEE, prior to the entry of the conversion order.* As with the dismissal situation, the application for fees must be set for a hearing, and the debtors properly noticed, unless the debtors have endorsed the fee order or the attorney's fee agreement states that the debtor agrees in advance to the award of such fees.

2. NDC: The National Data Center ("NDC") provides debtors' attorneys and creditors to have 24/7 access to basic information about all the Trustee's pending cases: payments received, claims filed, disbursements to creditors, etc. You may register with them to access the information at: https://www.ndc.org/home

3. Credit Counseling Certificate: A certificate from a certified credit counseling agency must be filed with the Court; a plan cannot be confirmed without it. The Court's website lists those agencies which have been approved for debtors in the Western District of Virginia. The debtors must have taken the credit counseling session within 180 days of the date on which their case is filed. The credit counseling session can be taken the same day as the case is filed, but it must be taken before the case is actually filed. *In re Marvin and Wanda Crewey*, #11-71179, Bankr. Ct., W.D. Va., 06-28-2011 opinion (Stone); *In re Susan Holsinger,* W.D. Bankr. Ct., #11-51720, 02-27-2012 opinion (Krumm) [pro see debtor's request for an exemption from this requirement is denied and her case is dismissed]; see also *In re Michael and Anna Grayson*, W.D. Bankr. Ct., #12-71908 [Chap. 7], 01-25-2012 opinion (Stone) [Court can't waive the requirement.]

4. Debtor audits by the United States Trustee: Generally, in this District the confirmation process will proceed independently of any case audits being conducted by the Office of the United States Trustee.

5. DSO Letters: At the beginning of the case, the Trustee is required by BAP&CPA to send a notice to any DSO (Domestic Support Order) payee and the state agency in charge of collecting child support to alert them to the case and certain information about the debtor. In order to ensure proper noticing of such claims, the Trustee will not recommend confirmation unless all DSO payees *and potential DSO payees* are listed on Schedule E, and he recommends that the state child support agency be listed there as well in every case.

6. Extension of time to file schedules or plan: When an attorney is asking for the Trustee's endorsement on an order requesting an extension of time in which to file schedules or a plan in a new case, the attorney should provide the Trustee with a brief statement of the reason(s) why the extension is needed. This explanation must also be in the motion filed to request the extension. This explanation need not be any longer than one sentence and should be included within the e-mail that contains the order for which the Trustee's endorsement is being sought. The motion for an extension must be filed before the deadline for filing the schedules or plan. A motion to extend the time for filing schedules must be heard, if necessary, prior to the scheduled 341 meeting, and the hearing must be noticed to the UST. *In re Pamela Brooks*, #14,60935, 07-24-2014 bench ruling (Connelly).

7. Orders needing the Trustee's endorsement: Almost all orders in a Chapter 13 case in this District require the endorsement of the Chapter 13 Trustee. At any time in the case if an order requires the Trustee's endorsement, please send it *via e-mail* to: TrOrders@cvillech13.net. Do not send it to the Trustee's or the staff attorney's individual e-mail address. Using this email address will ensure that the order is sent directly to the Trustee's paralegal, R.C. Johnson, and that it will be reviewed promptly. As stated previously, the Trustee asks that orders be sent by e-mail instead of by fax or the postal service, and that they include the full case number, the name of the debtor(s), the kind of order, and hearing date in the subject line of the email. (E.g. "07-62161 B Jones MTLS 01-21-2008").

8. Eligibility for Chapter 13. Congress enacted a significant change to the eligibility requirements for a Chapter 13 debtor contained in §109(e). Previously there were separate limits for secured debt ($1,395,875) and unsecured debt ($465,275). Now there is a unitary limit of $2,750,000, with no distinction as to the kind of debt. This provision may sunset in June 2024. This amount is adjusted for inflation every three years. For a discussion of liquidated, non-contingent, and undisputed debts, see *In re Jean Mitchell*, W.D. Bankr. Ct., #12-70856, 01-30-2013 opinion (Stone).

J. Practice Pointers:

1. Retainer Agreement: Be sure to spell out in your agreement your right to fees if the case is converted or dismissed; the amount of any such fees will have to be approved by the Court. Some judges do not allow *any* fees in such circumstances unless the agreement allows for them. In this District the initial fee agreement is presumed to cover all ordinarily required attorney services through initial plan confirmation. For a Supreme Court case discussing the application of sections 101(12A), 526, and 526 to attorneys generally, see *Milavetz, Gallop et al.* v. U.S., 130 S. Ct. 1324, 03-08-2010 opinion.

2. Lien search: If the debtors own *any* interest in real estate, the Trustee strongly recommends that a lien search be conducted by debtors' counsel. It is the only way to ensure that all existing liens are known and dealt with. Do not take the debtors' word regarding what liens exist against real estate. The best way to conduct such a search is to do it shortly before the case is filed, and then do a supplemental search shortly after filing; this ensures that the attorney does not miss any last-minute liens filed against the debtor's property. If you're only going to do one search, do it shortly after the case is filed, for the same reason.

3. Credit report: Always obtain a copy of a current credit report for each debtor and review it with them. It is the best way to ensure that no debts have been omitted from the schedules, and to determine if the debtors are the victims of identity theft. A new federal law allows each person one free credit report each year. www.AnnualCreditReport.com

4. Recent creditor addresses: Under the requirements of Code §342(c)(2)(A), in order to ensure that creditors are noticed at the correct address(es) the attorney will need to obtain from the debtors copies of all correspondence received from creditors in the 90 days immediately preceding the filing of the case, and to notice each creditor at every listed address.

5. National PACER search for debtors' prior cases: *Before a case is filed*, it is essential to know about all of the debtors' prior bankruptcy cases. The debtors' ability to obtain or retain the automatic stay, and their eligibility for discharge, hinge on this information. Do not take the Debtor's word on this, as they often get it wrong. The web site is: Pacer Service Center: U.S. Party Case / Index.

a. Eligibility for discharge: Judge Anderson has ruled that §1328(f) means that the 2 and 4 year disqualification periods are to be measured from the date the former case was filed to the date the current case was filed. In *re Kimberly Campbell*, Case #06-60678, 07-13-2006 ruling. This ruling has not been challenged to date.

b. 109(g) issues: Debtors may be ineligible to file again if there was a causal connection in a prior case pending within the last 180 days between a motion to lift stay and the debtors' motion to dismiss the case. *In re Marilyn Myers*, #10-60880, Bankr. Ct., W.D. Va., 06-21-2010 opinion (Anderson).

6. Materials explaining the Chapter 13 process: The need for such materials from the attorney has been decreased somewhat by the Trustee's introductory letter to debtors, but letters or checklists from the attorney's office clarifying the debtors' initial duties, payment schedules, court hearing dates and locations, etc., are still essential to prevent problems in the first stages of the case.

7. Homestead exemptions: In order to determine which state's exemptions the debtors are eligible for, the attorney needs to know the debtors' domicile for the past 2 years. Code §522(a)(3). Review Virginia Code Section 34-4.

8. Discussion of non-dischargeable debts: Do the debtors understand their post-case responsibilities for any non-dischargeable debts (student loans, taxes, DSO obligations, etc.) that will not be paid in full during the case? Remember that any such debts will have to be disclosed in the end-of-case DSO letters that the Trustee is required to send to the DSO recipient and the state child-support collection agency. Code §1302.

9. Discussion of fraudulent or preferential transfers: The Trustee will always ask at the creditors' meeting about any such transfers in the five years prior to filing. Such transfers may affect how much the debtors will have to pay in their plan, and may directly affect the transferees. Have these issues been discussed with the debtors and the transferees prior to filing? Do they understand that they may have to file a statute of limitations waiver?

10. Plan payments:

a. By wage deduction: Make sure that debtors understand their responsibility to begin making plan payments themselves *immediately* until they see the deduction showing up on their paystubs, and the need to *keep all paystubs received* during the plan to prove payments if problems arise.

b. Direct by debtors: Similarly, make sure that debtors understand the importance of making sure their TFS payments are occurring regularly and there are sufficient funds in their account to cover each of these payments. They should check their account periodically and not just assume that all is well. www.tfsbillpay.com

c. If the plan payment is required to increase during the plan ("step up plans): Stress to the debtors that it is their responsibility to ensure that any required "step up" in payments occurs on time, whether payment be by wage deduction or direct payment (TFS). Give the debtors written materials that clarify the change(s) and when they are to occur. They will need to remind their payroll department when the time comes. A number of attorneys "go the extra mile" and have a system that sends reminders to the debtors a month before plan payments are supposed to increase.

11. Preparation of schedules:

a. Basic rules:

(1.) *"Disclose, disclose, disclose"*: when in doubt, put *something* in the schedules. E.g.: equitable/contractual interests in real property or vehicles; *all* bank accounts or sources of income, no matter how small; personal injury claims; "uncollectible" debts; possibly imminent inheritances.

(2.) DO A SIDE-BY-SIDE COMPARISON OF THE PLAN AND SCHEDULES ONE LAST TIME BEFORE FILING: It is depressing how often the figures on the plan do not match those on the schedules, and how many debts are stated on Schedule D or E but not provided for in the plan (or *vice versa*). Take the time to cross-check the plan and the schedules before filing them with the Court. You will save yourself significant time, trouble and embarrassment by not having to correct these documents later, and the Trustee will greatly appreciate the decrease in mistakes that need to be fixed. *The failure to conduct this final review is the single most common source of plan mistakes* (and the Trustee's #1 pet peeve of all his pet peeves).

(3.) If you need additional time to file the schedules, you need to get an order allowing additional time entered before the initial 15-day deadline has expired. The Judge will expect the motion to explain the reasons why additional time is needed, and the order will need the Trustee's endorsement.

b. Valuing assets: On Schedules A and B, please disclose the *source* of your valuation of real estate, vehicles, and other assets of significant value (e.g.: tax assessment, NADA retail value, private appraisal). **Do *not* deduct liquidation costs**, and if property is jointly owned, please specify if you are providing the total value or the value of the debtor's proportional interest in the property.

c. Schedule A:

(1.) Disclose *all* forms of ownership: condos, burial plots, mineral rights, life estates, property owned in other states, rent-to-own interests, property jointly owned, a small interest in family land, etc.

(2.) Always disclose the results of any recent appraisal and send the Trustee a copy.

d. Schedule B:

(1.) Use retail fair market values.

(2.) Commonly omitted items: bank accounts; jewelry; debts owed to the debtors; earned-but-not-received commissions or bonuses; "junk" vehicles; property in which the debtor owns a partial or equitable interest.

(3.) Disclose all potential claims: personal injury, child/spousal support, commissions, etc.

(4.) A debt or promissory note owed to the debtors by a third party should be listed as an asset on Schedule B. If regular payments are being received by the debtors on this debt, those payments should also be listed as income on Schedule I.

e. Schedule C:

(1.) Remember to review Code §522(b)(3)(A) and determine eligibility for Virginia exemptions.

(2.) Remember that if an asset is owned by one spouse, the other spouse's Va. Code §34-4 exemptions cannot be used to protect it.

(3.) You will need to review any previously filed Homestead Deeds and any Schedule C.

(4.) All debtors' attorneys should review the 06-17-2010 decision of the U.S. Supreme Court in the case of *Schwab v. Reilly*, 130 S. Ct. 2652. In a Chapter 7 case, the Court held that an exemption claim does not cover the excess value of the asset over the value disclosed on Schedule B. *In re Stoney*, 21 CBN 562, Bankr. Ct., E.D.Va. 2011 [Court sustained the Trustee's objection to the debtor's claiming "100% of FMV" on Schedule C because it supersedes state exemption statutes]

(5.) Other cases: *In re James Perkins*, #10-63148, Bankr. Ct., W.D. Va., 03-31-2011 opinion (Anderson) [Va. Code sec 34-29 applies only to earnings subject to garnishment and does not cover paycheck earnings once deposited into the debtor's

checking account]; *In re Carl and Rita Lyall*, W.D. Bankr. Ct., #11-70535, 08-09-2012 opinion (Stone) [Debtors allowed to amend their Schedule C exemptions post-confirmation because no bad faith present]; *Clark v. Rameker*, U.S. Sup. Ct., 134 S. Ct. 2242, 06-12-2014 opinion [funds held in an inherited IRA are not "retirement funds" and may not be exempted under Code 522(b)(3)(C).

(6.) Be aware of the significant changes to Virginia Code section 34-4 exemptions: (a) the creation of an additional $50,000 exemption per householder for equity in a primary residence; and (b) claiming an exemption on Schedule C after 07-01-2020 is the equivalent of filing a Homestead Deed.

(7.) See the opinion evaluating Virginia Code Section 34-18 concerning the permanent exemption of home equity once claimed. *In re Wanda Tolley*, #18-60203, 09-12-2018 opinion.

f. Schedule D:

(1.) State the *date* (day, month and year) each claim was incurred (for "910 claim" issues, etc.).

(2.) Clearly identify the collateral for each claim.

g. Schedule E:

(1.) State the year(s) and kind of tax for each tax owed. Several experienced debtor attorneys list the Va. Dept. of Taxation and the IRS on Schedule E in *every case for $1 even if no tax debts are known.* . This ensures that if there is a tax problem the debtor is unaware of, it is flushed into the open and can be dealt with in the case. The Trustee recommends this approach.

(2.) The Trustee strongly prefers that any *non-priority* taxes be listed separately and solely on Schedule F, but if you do list both on Schedule E, be sure to specify which amounts are priority and which are non-priority.

(3) The Trustee will not object if the plan proposes to pay in full a pre-petition child support delinquency by an ongoing wage deduction from the debtor's wages to the DSO [Domestic Support Obligation] recipient or the state agency IF it will be paid in full during the term of the plan; it does not need to be paid through the plan by the Trustee if no party is objecting. Show this treatment of the claim in Part 4.4 or 4.5 of the Court's required form plan. You will have to confirm with your client that the garnishment continues to withdraw the payments at the higher amount post-petition. If

the delinquency will not be paid in full during the term of the plan, the DSO recipient or state agency will have to agree to such treatment unless Code §1322(a)(4) applies.

(4.) List any DSO recipient and the appropriate state support collection agency, *even if the debtor says there is no delinquency on the support obligation*. Also list a custodial parent even when no support order has been entered, since Code §101 14A)(C) includes orders entered even after a Chapter 13 case has been filed.

(5.) For Virginia personal property taxes, state law gives the locality a lien on the vehicle for all taxes owed. Virginia Code §58.1-3942. So if the debtor still owns the vehicle, the claim is really a secured claim and should be listed on Schedule D, not Schedule E. If listed on Schedule D, the Trustee will not object to the payment of interest on such a claim at the rate set forth in the Virginia Code. However, the Trustee will also not object if the debt is listed on Schedule E as long as it is no more than one year old, since that is the way most localities file their claims.

h. Schedule F:

(1.) List *account number, reason for the debt,* and *date claim incurred* for each debt. Be as precise in your description of the debt as your software will allow; "credit card" is better than "open account."

(2.) Redacting all but the last four digits of account numbers [Bank. Rule 9037(a)] will cause problems for creditors trying to match Trustee plan payments with debtors' accounts. Debtors may choose to submit full account numbers and waive this requirement [Rule 9037(g)], and **the Trustee encourages debtors to do so to ensure payments are properly applied by creditors to their accounts.** Surprisingly, creditors often return Trustee checks if they cannot match the account number.

i. Schedule G: If a lease or executory contract is being cured in the plan, be sure the creditor is listed on the matrix so it can file a proof of claim and be paid.

j. Schedule I:

(1.) If in a joint case one spouse is not working, disclose at the top of the form whether the non-filing spouse is retired, disabled, homemaker, or looking for employment; it will save time at the 341 meeting.

(2.) At the bottom of the form, disclose any expected changes, temporary nature, or seasonality of income, children with special needs, any unusual situation regarding family structure or dependents, any health problems affecting income, etc. If you are concerned with the debtor's privacy, send an e-mail to the Trustee's office with this

information when the case is filed; it's helpful, and it saves time, if we know about special circumstances *before* the 341 meeting.

(3.) At the top of the form, disclose nature of job, physical address of employer, and length of time at this job.

(4.) If the debtor is living with someone in a common-law-marriage type situation, please disclose income and expenses of both parties as if they were married. Disclose *everyone* who is living with the debtor, even if there is no legal obligation of support between them; give the Trustee an accurate and complete picture of the debtor's actual living situation.

k. Schedule J:

(1.) Use actual current expenses.

(2.) Try not to "bundle" expenses or show expenses on the extra lines. Please show each expense on the lines provided on the form.

(3.) Please disclose any anticipated changes in expenses at the bottom of the form.

(4.) The Trustee will not object to a $100/adult and $50/child "unforeseen emergencies" expense, or a $100/mo. expense for home maintenance where the debtors own their home.

l. Statement of Financial Affairs ("SOFA"):

(1.) Questions #4 & 5: Complete for all gross income during two previous years and current year.

(2.) Question #14: Be sure any religious contribution figures are the same as that on Schedule J and Form 122-C2.

(3.) Question #16: Be sure the figure for attorney's fees is the same here as on the attorney disclosure form and in the plan.

(4.) Questions #27 & 28 must be filled out for every business operated by the debtor in the past four years, even if it is no longer in existence.

m. Disclosure of Attorney Compensation Form: Disclose *all* amounts received, and specify which are costs and which are fees. Make sure amounts match Part 4.3 of the plan and question #16 on the SOFA; this is a common problem.

n. Form 122-C1 and 122-C2 (CMI form): *Unless otherwise specified*, the interpretations set forth below represent the position the Trustee will take as to how the amount on each line should be calculated. Unless otherwise noted, the Trustee's position is the same as that of the US Trustee program if it has announced a position on that issue.

All debtors' attorneys should read the 06-17-2010 decision of the U.S. Supreme Court in the case of *Hamilton v. Lanning*, 560 U.S., 505. The Court held that in determining disposable income in an above-median case, the Bankruptcy Court should adopt a forward-looking approach and interpret "projected disposable income" in Code section 1325 to include known or virtually certain changes in the debtor's income and expenses since filing. In other words, the Bankruptcy Court may look beyond the amounts set forth on Forms 122C-1 and 122C-2 for the preceding six months in determining the debtor's projected disposable income as of the confirmation hearing.

(1.) Form 122C-1:

(a.) Include the income of the non-filing spouse. Some of this (e.g., expenses on which the non-filing spouse is solely obligated; retirement contributions) may be deducted later on Line 13 or 19, but at this stage all spousal income must be included.

(b.) If self-employed, put gross income and operating expenses on Line 5. Such expenses can only be deducted once, so if they are used here, they cannot be deducted elsewhere in the form.

(c.) Line 10: Include income from ALL sources: interest, dividends, mileage reimbursement from the debtor's employer. [*In re Tinsley*, #09-51194, 04-08-2010 opinion (Krumm)], etc. Include regular contributions from others who are helping with living expenses, including payments made to third parties for the benefit of the debtors.

(d.) Line 4: Include child or spousal support here; such amounts may be deductible later on Line 19.

(e.) Include unemployment compensation (Line 8) and the retirement-based portion of any V.A. benefits (Line 10), but not Social Security benefits. See *In re Ranta*, 2013 WL 3286252, (4th Cir. 07-01-2013 decision): Social Security benefits are excluded from a debtor's projected disposable income for both above and below median debtors, but can be voluntarily offered by the debtor to show plan feasibility. See the HAVEN Act (2020) for exclusion of the disability benefit portion of certain VA benefits.

(f.) Line 16 b: Household size: The Trustee will review multiple factors, including whether alleged dependents are claimed on tax returns; how long the group has been functioning as a family unit; whether the debtors are providing more than half of the person's support; and the Census Bureau's definition of family unit. Judge Krumm has denied a deduction for an 18-year old child living with the debtors. *In re Kessee*, #10-70465, 2010 ruling [no formal opinion]. He also held that a debtor cannot claim young children for whom he has visitation rights but not physical custody. *In re Smallwood*, #09-70529, 05-21-2009 decision. See also *In re Tanya R. Johnson*, 686 F.3d 224 (4th Cir. 07-11-2012 decision): It was not error for the lower court to use the "fractional economic unit" approach to determine household size for purposes of Form B22C [now 122-C1].

(g.) Line 19: If the non-filing spouse's paycheck deductions are backed out on Line 19, be sure that you do not then claim these amounts on Lines 16 and 17 of Form 122C-2.

(2.) Form 122C-2:

(a.) Line 41: For loans against retirement plans which end before the plan ends, the balance owed as of filing (including interest) should be divided by 60.

(b.) Line 7, 22, and 25: health-related expenses: Debtor can't claim expenses on Line 25 for the non-filing spouse; the non-filing debtor's medical expenses are not medical expenses of the debtor and he is not a dependent of the debtor; a discussion of how these provisions are to be treated and computed is provided in this case. *In re Heidi Elmore*, W.D. Bankr. Ct., #12-51394, 05-09-2013 opinion (Connelly). If you allege other expenses on Line 22, you will need to provide documents to prove their actual expenses exceed the total amount of lines 7, 22, and 25 added together.

(c.) Lines 10, 20, 22, 28, 29, or 30: The Trustee may require the debtor to supply appropriate supporting documents when asserting expenses on these lines. See *In re Minahan*, #08-70118, an 08-20-2008 decision by Judge Stone; also, *In re Kessinger*, #09-82328, 05-12-2010 decision by Judge Krumm. The Court held that these expenses can only exceed the IRS allowances in unusual circumstances, and even then only by five percent, and that the actual amounts spent on these items by the debtors are not relevant in determining the appropriate Chapter 13 plan payment.

(d.) Lines 13:

(i.) *In Ransom v. FIA Card Services*, 131 S. Ct. 716 (2011), the U.S. Supreme Court ruled that an over-median debtor could not claim a car ownership expense unless he had a loan or lease payment on a vehicle as of filing. The Court left open questions

such as whether a creditor could move for an increase in plan payments if the loan ended early in the plan. This decision would appear to overrule Judge Krumm's 2007 decision in *In re Earl and Robin Hylton*, 374 B.R. 579 (2007) insofar as over median debtors are concerned.

(ii.) In *In re Styles*, 397 B.R. 771 (Bankr. W.D. Va. 2008), Judge Krumm held that one debtor may take deductions for two vehicles on Lines 28 and 29 [now Line 13], but he went on to say that any such claim is subject to the good faith test set forth in his *Hylton* decision, 374 B.R. at 586. In *Hylton*, the debtor was required to add back into the unsecured claim "pot" any money being used by him during the plan to pay for a luxury vehicle he was keeping and for which he was deducting payments on Line 47 [now Line 33]. *Styles* will now have to be interpreted in light of the Supreme Court's *Ransom* decision.

(iii.) If the debtor cannot claim a car ownership expense on a vehicle because there is no loan payment on it as of filing, the Trustee will not object to the debtor taking a clunker allowance" of $200/mo. if as of filing the vehicle is either six years old or has 72,000 miles on it. This allowance is limited to one vehicle per debtor, and is only applicable if the debtor is not already claiming a car ownership expense on another vehicle. The deduction should be taken on Line 43. [Note: Judge Krumm ruled that this deduction cannot be taken on Line 27 [now Line 13] because there is no statutory basis for the deduction. *In re Larry and Deborah Sisler*, W.D. Bankr. Ct., #11-50597, 01-31-2012 opinion.]

(e.) Line 16: If the debtor received a large tax refund in the year prior to filing, the amount on this line should be decreased by 1/12th of the refund amount unless the debtor's situation, wage withholding, etc., has changed significantly. The debtor must offset taxes withheld with tax refunds to determine actual tax liability. *In re Kessinger*, #09-73238, Bankr. Ct., W.D. VA., 05-12-2010 ruling by Judge Krumm [no formal opinion].

(f.) Line 18: The debtors should only claim the amount attributable to *term* life insurance, not any *whole life* portion of the premium.

(g.) Line 19: Do not include the arrearage portion of any support payment, as it will be deducted on Line 35. Only deduct *court-ordered* payments; any informal payments should be deducted on Line 43.

(h.) Line 22: Health care expenses:

(i.) Do not include health insurance or health savings account ("HSA") premiums here; they should be put on Line 25. Any expenses listed here are only those in excess

of the $52/person or $114/person [as of 04-01-2020; this number is adjusted annually] allowance for medical expenses already listed on Line 7 and also exceed the amount in a HSA account on line 25.

(i.) Line 23: Do not include telephone land line or basic cell phone service; they are already included in Line 8.

(j.) Line 29:

(i.) Do not include preschool or college expenses.

(ii.) Currently, the maximum deduction is $170.83/child [this number is changed annually].

(k.) Line 30: There is a statutory cap of 5% on this additional expense, and you will need to document both the expenses claimed and the justification for them.

(l.) Line 31:

(i.) There is a statutory cap of 15% of gross income on this deduction. Code §548(d)(3) and (4).

(ii.) The Trustee may ask for documents to support the amount and prior history (usually the most recent 24 months) of any charitable contributions. If the amount of the contribution has increased significantly on the eve of bankruptcy the Trustee will probably object.

(m.) Lines 33 and 34:

(i.) If debt is being paid in full in less than 60 months, or is a balloon payment, pro rate (amortize) the payments over 60 months, including interest.

(ii.) Do not deduct leased vehicle payments, as they are covered by Line 13.

(iii.) Arrearages: Deduct 1/60th of the total being cured in the plan, including interest. Per the statute, do **not** deduct arrearages owed on luxury items.

(iv.) In *In re McPherson*, 350 B.R. 38 (Bankr. W.D. Va 2006), [Judge Anderson], the Court held that: debtors cannot deduct the amount of pre-petition contractual payments owed if the collateral is being surrendered in the plan; they can only deduct the amount actually being paid by the Trustee in the plan on the secured portion of the debt.

(v.) In *In re Kermit and Terri Ball*, Case #06-70154, 05-17-2006 opinion by Judge Krumm, the Court held that debtors cannot deduct the amount of pre-petition contractual payments if in their plan they are surrendering the collateral.

(vi.) *Good faith requirement:* In *In re Earl and Robin Hylton*, 374 B.R. 579 (Bankr. W.D. Va. 2007), Judge Krumm stated that the confirmation requirement of good faith [§1325(a)(3) and (7)] still applies, and the Court will still examine such secured debt payments to determine "if the unsecured creditors are better off than they would be if the asset is excluded and the monthly payments on the secured debt are added into a monthly plan payment." To put it another way: the Trustee will object if the unsecured creditors are being asked to pay for the debtors' boat, and will compute the disposable income test as if these payments were not being made by the debtors.

(n.) Line 35: Deduct 1/60th of the priority payments being made in the plan. Do not duplicate arrearage amounts being paid through a separate ongoing state-court-ordered wage deduction.

(o.) Line 36: This amount should reflect the Trustee's commission on the actual monthly plan payment. The commission percentage can be found on the UST's website. On Line 36 a. use the amount of the monthly plan payment in the proposed plan. (Generally, the Trustee will not object if a 10% commission rate is used.)

(p.) Line 40: You can deduct here income on Line 7 from child support.

(q.) Line 41: Include actual retirement contributions, plus 1/60th of any loan being repaid in the plan, including interest.

(r.) Line 43:

(i.) Do not deduct student loan payments.

(ii.) Per the statute [Code §1325(b)(2)], all expenses must be reasonably necessary for the support of the debtors and their dependents.

(iii.) This is the line to use if you need to show a "*Lanning* adjustment," which is a change that is both significant and known or virtually certain, going forward from any income or expense figures from the six months prior to filing and which were used on other parts of Form 122C-1 or 122C-2. Examples might be significant changes — up or down — in the debtor's income from a new job or a reduction or raise in pay; an increase in expenses from the recent birth of a child; need to pro-rate a bonus; retirement; etc.

(s.) Line 45: *Monthly Disposable income*:

(i.) This is the net amount (after Trustee's commission) which must be paid to *unsecured non-priority claims and attorney's fees* in the plan. (So the amount that needs to be paid to general unsecured claims would be this amount less the attorney fees being paid by the Trustee.) It does **not** include plan payments for priority claims, Trustee's commission, or secured debts. It is not the amount of the monthly plan payment, since that amount will also have to include monthly payments on secured, administrative, and priority claims, plus the Trustee's commission. The plan payment will always be larger than the amount set forth on Line 45.

12. THE TRUSTEE'S PRIME DIRECTIVE / #1 PET PEEVE TO ATTORNEYS: **Preparation of Plan:**

a. *Before filing the plan, review it one last time and compare it with the schedules.*

Most plan mistakes will be avoided if the attorney reviews the plan a final time and compares it with the final version of the schedules. Since most plans are not done at one sitting — many are revised several times before they are submitted, often by different staff members, and schedules are often changed significantly as the debtors provide information — it is very common for the final draft of the plan not to match up fully with the final draft of the schedules. This is especially important if the plan has been drafted by a paralegal. Make sure that *every* scheduled secured and priority claim has been provided for in the plan. This last–minute "side by side comparison" of the plan and schedules is the single most important step to avoid dumb (and embarrassing) mistakes in these documents.

b. *Determining the Applicable Commitment Period ("ACP")*:

(1.) Above median: 60 months of payments are required, unless the plan pays 100% in a shorter period of time, and the ACP is a temporal requirement. *In re Earl and Robin Hylton*, 374 B.R. 579 (W.D. Va. 2007; Judge Krumm). The Supreme Court denied certiorari in an appeal from a 6th Cir. opinion which held that the ACP for above-median debtors with no disposable income is still 60 months. *Baud v. Carroll*, 634 F.3d 327 (6th Cir. 2011), cert. denied, 132 S. Ct. 997 (01-10-2012).

(a.) Above median debtors with negative disposable income on Form 122-C2 must remain in Chapter 13 for the full 60 months if their unsecured creditors have not been paid in full. *In re Joe and Katherine Pliler*, 747 F.3d. 260 (4th Cir. 2014), #13 1445, 03-28-2014 opinion.

(2.) Below median: 36 months of payments are required, unless 100% is being paid in a shorter period of time. Many below median cases run longer, often the full 60 months, for a variety of reasons.

(3.) For below median debtors to have a plan confirmed that is longer than 36 months, the Court must approve "for cause" the longer period. Code sec. 1322(d)(1)(2)(C).

c. Disposable income:

(1.) Above median: Disposable income is to be determined using Form 122C-1 and 122C-2.

(a.) In *Lanning*, the Supreme Court stated that in above-median cases, the amount on Line 59 [now 45], less attorney's fee is what must be paid by debtors to their unsecured creditors unless the Court finds that there have been "changes in the debtor's income or expenses that are known or virtually certain at the time of confirmation." In an above median case, the fact that the disposable income amount produced by Schedules I and J is different is not in and of itself grounds for deviating from the amount produced on Form 122C-1 and 122C-2. Some attorneys have created false expectations in their debtors by failing to explain this reality. As stated above, unless a "*Lanning* adjustment" has been made on Line 43 or 46, it will be the Trustee's expectation that the debtor's proposed plan will pay to unsecured creditors the amount set forth on Line 45, less attorney's fee, regardless of the disposable income figure produced on Line 23c of Schedule J.

(b.) Again, the amount of the total monthly plan payment in an above-median case is **not** the amount set forth on Line 45, since the former will have to include monthly payments on secured, administrative, and priority claims, plus the Trustee's commission. The plan payment will always be larger than the amount set forth on Line 45.

(c.) Disposable income is to be determined using Form 122C-1 and 122C-2, but an analysis of the debtors' good faith is still applicable (e.g., continued payment of luxury secured debts will not be allowed to reduce the payments to general unsecured creditors; see previous section of outline). *In re Earl and Robin Hylton*, 374 B.R. 579 (Bankr. W.D. Va., 08-22-2007 opinion by Judge Krumm); *Lanning* requires that a debtor's ATV payments not be deducted from disposable income: *Morris v. Quigley*, 673 F.3d 269 (4th Cir. 03-07-2012).

(d.) Computing the total plan payment in an above-median, non-business cases. Since there is some confusion about what Form 122C-1 and 122C-2 require

above-median debtors to pay into a Chapter 13 plan, the Trustee offers the following as a worksheet:

Add the following amounts:	
(i.) 60 x amount on Line 45 (amount to be paid to unsecured creditors, including attorney's fees), less 60 x the total of all amounts on Line 46 (special circumstances and Lanning adjustments)	= $_____
(ii.) 60 x amount on Line 36 (Trustee's commission) using a 10% commission rate	= $_____
(iii.) 60 x amount on Line 35 (priority claims being paid by the Trustee)	= $_____
(iv.) 60 x each monthly secured debt payment* *on Line 33 being paid by the Trustee* (*: if interest is being paid on the claim, include in the monthly payment 1/60th of the total interest)	= $_____
(v) 60 x each monthly amount on Line 34 (secured debt arrears)	= $_____
Total of plan payments	**= $_____**

(2.) Below median: The Trustee uses the disposable income figure set forth on Schedule J, unless he believes that the numbers on Schedule I or J are incorrect or claimed expenses are greater than reasonably necessary.

(a.) Some cases discussing disposable income in below-median cases: *In re Tinsley*, #09-51194, Bankr. Ct. W.D. Va., 04-08-2010 Krumm opinion [mileage reimbursement is income; employer per diem amount is relevant evidence of actual expenses]; *In re Donald and Regina Wallace*, #10-72504, Bankr. Ct., W.D. Va., 07-08-2011 Krumm opinion [Court rules on specific monthly living expenses; cigarette expenses not allowed because unnecessary]

d. Computing percentage payout to unsecured creditors: When computing plan payments, please assume a Trustee's commission of 10%, as that is the maximum rate that can be charged and is the figure the Trustee's staff will use in evaluating any proposed plan. So, for example, if the net total of payments to all creditors is to be $10,000, and you are trying to determine what the total of plan payments would have to be to yield that amount after deduction of the Trustee's commission, you would divide $10,000 by 0.9: $10,000 ÷ 0.9 = $11,111.11. Also, remember that when the plan provides for the surrender of the debtor's collateral on a secured debt and the debt exceeds the value of the collateral, you need to add the expected unsecured deficiency claim to the total of unsecured debts when calculating the percentage to be paid to unsecured creditors. Note: In conduit cases or cases having an unusually large total of payments, the Trustee may allow the plan to be computed on a lower commission percentage basis, depending on his current commission rate and caseload. Consult the Trustee's office.

e. Chapter 7 test calculations: The Trustee follows the ruling of Judge Stone in *In re Christopher and Angel Todd, Case #7-02-04451*, (03-17-2003 opinion)in calculating the amount necessary to meet the "Chapter 7 test" of Code §1325(a)(4). That decision held that in evaluating whether a plan meets this test, both reasonable costs of sale and the Chapter 7 Trustee's statutory commission must be deducted from the fair market value of the property in question. For costs of sale the Trustee uses a 6% commission for improved real estate and a 10% commission for unimproved real estate and personal property; the Chapter 7 Trustee's sliding commission rate can be found at Code §326(a). The Trustee will also allow an additional $1,000 deduction for real estate to reflect the usual closing costs. Judge Stone has ruled that the "effective date of the plan"—the final hearing on plan confirmation—is the appropriate time to value property for purposes of the Chapter 7 test. In *In re Allen*, 240 B.R. 231, 237-238 (Bankr. W.D. Va. 1999) and *In re Minahan*, 394 B.R. 116 (Bankr. W.D. Va., 2008)

Example: Debtor owns a $100,000 house with a balance of $40,000 remaining on the mortgage. He has exempted $30,000 in equity using his Va. Code 34-4 exemptions. The Chapter 7 test amount for this asset would be $12,250 [$100,000 (value of the asset) - $40,000 (mortgage balance) - $6,000 (RE commission) - $10,750 (Chap. 7 Trustee commission) - $1,000 (closing costs) - $30,000 (VaC 34-4 exemptions)].

13. Opting out of unsolicited offers of credit: One problem for debtors in Chapter 13 is that they continue to receive unsolicited offers of credit even after their case has been filed. These offers can present dangerous opportunities to fall back into the credit cycle. There is now an "official Consumer Credit Reporting Industry" website that will allow debtors to opt out of such solicitations, either permanently or for five years. The website address is OptOutPrescreen.com.

14. Service of process on corporations and financial institutions See Bankruptcy Rule 7004. The Judge monitors proper Rule 7004 service very carefully.

(a) To serve an insured institution, Bank:
First: go to FDIC.gov to find out if the bank is federally insured (you only need to fill in the name, it will give you choices). This will tell you if the bank is insured, or if there is a successor institution, and give the "official address." **Second:** Google the bank name and "investor relations" or "corporate governance." The list of the Board of Directors including the CEO should appear on a letter or in the yearly report. (Serve the CEO at the official address by certified mail, then any other address - from a proof of claim etc.).

(b) To serve an insured institution, Savings and Loan:
First: go to the OTS web site to find out if S&L is federally insured (you only need to fill in the name, it will give you choices). This will tell you if the S&L is insured, if there is a successor institution, and give the "official address." **Second:** google the S&L name and "investor relations" or "corporate governance." The list of the Board of Directors including the CEO should appear on a letter or in the yearly report.

(c) To serve a corporation:
Every state has a secretary of state which maintains a web site. In Virginia, you can find registered agents and officers for corporations by visiting https://cisiweb.scc.virginia.gov/z_container.aspx. You can search by Name of the Corporation. (You can also use this site to find out if the debtors have additional corporations.) This will provide you with the name of the registered agent. If the Corporation is not registered in your state and has filed a proof of claim check the Secretary of State from the proof of claim address.

II. THE CHAPTER 13 PLAN (Note: all text for The Chapter 13 Plan has a light gray background - see below.)

THE CHAPTER 13 PLAN

(Note: All references to the plan, below, are to the official Chapter 13 plan form approved by the Judges of the Western District of Virginia effective 12-01-2017; this form can be found on the Court's website. As of 09-30-2020, for cases filed prior to 12-01-2017 attorneys still have a choice: when amending the plan in these older cases they can either use the official Chapter 13 plan form in effect prior to 12-01-2017, or they may use the current plan form.)

1. Top of page 1: If this is an amended plan, you must check the box in the upper right hand corner and list the sections of the plan that have been changed. The Court also requires that the "Amended Chapter 13 Plan Cover Sheet and Notice of Hearing" form be attached to any amended or modified plan; that form is available on the Court's website.

2. Part 1: Notices

a. You must check each box which applies or the relevant plan provision will have *no legal effect and the Judge will probably make you re-notice the plan.*

b. Check the first box (1.1) if there is any cram down provision in Part 3.2 of the plan.

c. Check the second box (1.2) if there is a lien avoidance in Part 3.4 of the plan.

d. Check the third box (1.3) if there are any non-standard provisions in Part 8.1 of the plan. The Trustee has recommended a variety of such provisions to debtors' attorneys in the past, and will be glad to provide them upon request. The Trustee strongly recommends the use of such provisions in every case.

3. Part 2: Plan Payments and Length

a. Part 2.1: If plan payments are not to begin 30 days after the case has been filed, the Plan must clearly state that. If plan payments are to change during the course of the plan, specify the *date on which any such changes take place and the number of months each different-amount-payment is to be made.*

(1.) *In step-up plans, make sure the debtors understand that it will be their responsibility alone to ensure that the payments change on the specified dates, even if payment is by wage deduction.* The Trustee always advises debtors at the 341 meeting that they will need to contact their payroll department to remind them at the time of a required increase in plan payments. Some attorneys calendar these payment changes and send out a reminder letter to the debtor at that time; such letters are most helpful in preventing plan payment defaults.

(2.). Instead of such "step up" plans, some attorneys amortize over the entire length of the plan the increased disposable income which results from direct-by-debtor payments (e.g., car payments) ending early; it's simpler for the debtors, and the Trustee will not object to such plans. Make sure the debtors understand the impact of such a plan on their monthly finances early in the plan.

(3.) As a general rule, if in a below-median case a fixed payment (e.g., car payment) being made directly by the debtors ends in less than 36 months, the Trustee will expect that the plan payment will be increased by that amount from that point onward.

b. Part 2.2: Debtors must make their plan payments by one of two automatic means: either through a wage deduction order issued to the debtor's employer, or through an agreement with TFS to automatically debit their checking account each month with the plan payment. The effect of checking the second box is that the debtor must set up a TFS account; the Trustee recommends that you insert "TFS" at the end of that line. The attorney is responsible for either obtaining a wage deduction order from the Court or assisting the debtor in setting up a TFS account; both these processes are discussed in more detail in other parts of this outline.

c. Part 2.3: The Trustee frowns on using annual tax refunds to fund a plan. They almost invariably result in a payment default and a motion to dismiss. If you are thinking about using this option, please call the Trustee or the staff attorney to discuss this before doing so. The Trustee recommends instead that the debtors adjust their payroll tax withholding at the beginning of the plan and thereby increase their monthly plan payment from the beginning.

d. Part 2.4: If payments other than regular monthly payments are to be part of the plan, specify the date they will be made and the source of the payment. E.g.: "$20,000 from sale of real estate at 123 Brown St. no later than 01-30-2014"; "pre-confirmation funds of $2,500 already received by the Trustee as of 11-30-2013.".

e. Part 2.5: Please check your math to make sure that the total of plan payments accurately reflects the various payments called for. Mistakes are painfully common.

f. *Review the fixed monthly payments required in the other parts of the plan to ensure that in every month the plan payment is sufficient to pay in full all the fixed payments plus the Trustee's commission on those payments.*

(1.) IMPORTANT: If the debtor is paid weekly, ensure that four weekly payments (as opposed to the 4.33 weekly payments per month that those payments will "average" over the course of the year) will cover the required Trustee payments every month. If the debtor is paid bi-weekly, ensure that two bi-weekly payments (vs. the 2.167 average of such pay periods of the year) will cover the Trustee payments.

g. While the Court will not confirm a plan that specifically calls for more than sixty months of payments, the Court can, under appropriate circumstances, confirm a plan that calls in Parts 2.1 – 2.5 for "funds received of $____ as of [a date certain]" and then sixty months of payments, as long as the total number of months in the plan is only a few more than sixty.

4. Part 3: Treatment of Secured Claims:

a. Adequate Protection Payments

(1.) While Code sec. 1326(a)(1)(C) requires adequate protection ("AP") payments for certain kinds of debts, there is no Code provision clarifying the amount or duration of such payments. They are supposed to be payments made to a secured creditor prior to confirmation to compensate the creditor for the depreciation of the collateral between case filing and the beginning of the fixed monthly payments. Most attorneys usually provide for 1% of the collateral value per month. Even over-secured creditors are entitled to adequate protection payments.

(2.) AP payments made prior to confirmation are subtracted from the principal amount of the secured claim until the plan is confirmed; after confirmation, the claim begins to bear interest, and any payments made on the claim (AP or otherwise) from that point onward will be applied first to accrued interest.

(3.) *The Trustee will not object if additional terms clarifying AP payments are also put in Part 8.1.*

(4.) The plan must provide for adequate protection payments to *begin 30 days after filing* for all creditors holding **purchase money liens** on **personal property** (*not* required for debts secured by real estate).

(5.) *If you are going to run the adequate protection payments beyond the initial confirmation date, state how many months those payments should be made,* and make

sure that this number plus the number of months of payments in Part 3 produces the correct total of months of payments to each creditor (i.e., not more than the number of months in your plan, and in no event more than 60). E.g. "$__/mo. x __ mos."

(6.) The Trustee will object to any plan that provides that the debtors will make the AP payments directly to the creditor. No plan has tried to do this in the past fifteen years. It would be a bookkeeping nightmare for the debtor to provide proof of such payments having been made, and the plan cannot be confirmed until the debtor had provided such proof.

b. Part 3.1: ***Maintenance of Payments and Cure of Default, if any***

(1.) Always check the box in the plan indicating who will be disbursing the payments [the Trustee or the debtor(s)]. If a party other than the debtors are to make the ongoing payments directly to the creditor during the plan, clearly state the identity of that party.

(2.) Column 3 "Current Installment Payment" must show the actual monthly contract payment.

(3.) Column 4 "Amount of arrearage" should be the prepetition default which the Trustee will cure through plan payments.

(a.) Always try to get documents from the debtor showing the exact arrearage; debtors almost always underestimate the amount of the arrearage, often significantly.

(b.) If there are both pre-petition and post-petition arrears on a particular claim, *you must designate those amounts separately (e.g.: "$9,500 pre–petition arrears for 3/20-5/20; $1,500 for post-petition arrears for 6/20 – 9/20").* This specificity will help to identify any problems with the creditor's proof of claim and will ensure there is no confusion as to when the debtor is to resume direct payments on the claim.

(4.) Column 5 "Interest rate on arrearage" is for interest on the arrearage that is being paid by the Trustee. It is very rare that the creditor's documents will authorize this, and the Trustee will usually object to any such interest. You would usually state "0%."

(5.) Column 6 "Monthly Payment on arrearage": the Trustee strongly recommends stating that these arrears will be paid "pro rata," thereby avoiding some complicated calculations and possible underfunding of the Plan; this will also ensure that these payments will be paid sooner than if you set fixed monthly payments. If you are putting in a specific monthly amount, you need also to state the number of months it is to be paid.

(6.) Cases Regarding Payments in Part 3.1:

(a.) Loan Modification: In a prior case, the plan proposed that the pre-petition mortgage arrears would be cured only by a loan modification; that if no loan modification was granted by the mortgagee, the debtor would surrender the property; and that no time frame would be imposed on this resolution. Both the Trustee and mortgagee objected. The court held that she would not approve this approach because of the objections, because there was no cure "within a reasonable time" as required by the Code, and because the debtor could surrender the property and still apply for a loan mod. *In re Franklin Bruce*, #13-61314, 08-29-2013 bench ruling. The Trustee will object to such language in Part 3.1. If the paragraph states that the arrearage will be cured only by a loan modification by a date certain, and the property will be surrendered if that does not occur, such language has been approved by the Court.

(b.) Long Term Debt: The court ruled that the debtors may provide in this paragraph that the debtors will pay the ongoing student loan debt directly as a long term debt; *be sure to state clearly that the Trustee will not make any payments on this debt. In re Shirley Hunter, #13 61463*, 09-19-2013 bench ruling. The Trustee takes the position that such payments are subject to the non-discrimination requirements of Code section 1322(b)(1), and the Trustee will object to any such proposal that allows the student loan creditor to receive during the term of the plan a significantly higher percentage payout than that being received by the other general unsecured creditors. The Trustee will not object to the student loans receiving a somewhat higher percentage payout, and is open to discussion on what constitutes a reasonable differential. The Judge has not yet ruled on this issue.

(c.) Long Term Debt: Possessory Interest: Debtor's possessory interest in her real estate even after a completed foreclosure sale is property of her estate, and her right to challenge the validity of the sale survived the bankruptcy filing. *In re Rachel Ulrey*, Bankr. W.D. Va. #13 70645, 06-02-2014 opinion (Black).

(d.) Car Loan Provisions: The court may deny attorney fees incurred by debtor's counsel while opposing a motion to lift stay in cases where an under-secured car payment was being made directly by the debtor, instead of being paid inside the plan, and the creditor filed a motion to lift stay because of a default in payments by the debtor. The Judge has cited the lack of benefit to the debtor from the direct-pay arrangement. E.g., *In re John Whiting*, 13 61936, 07-28-2014 bench ruling.

(e.) The Judge will generally deny debtor attorney fees for defending a motion to lift stay shortly after confirmation where the debtors' pre-confirmation affidavit incorrectly stated that the debt was current as of confirmation.

(7.) Conduit Plans: There are special considerations when the Trustee is disbursing both the regular monthly mortgage payment ("a conduit plan") and a pre-petition mortgage arrearage.

(a.) Order to Disburse: It is crucial that the debtors' attorney immediately file an Order authorizing the Trustee to begin making the regular monthly payments prior to confirmation.

(i.) Be sure to submit to the Court as soon as the case is filed the order which will authorize the Trustee to begin making mortgage payments prior to confirmation.

(ii.) Because the plan is considered a motion, no additional motion is required before you submit the order to disburse.

(iii.) The order must clearly state the date upon which the Trustee will begin making payments, the exact amount of the payment, the redacted account number, and the address for the mortgage company to which the payment shall be mailed.

(iv.) Without such an order, the Trustee will not be able to begin making the regular mortgage payments until the case is confirmed, and the debtors may be charged late payments or be subjected to a motion to lift stay in the interim.

(b.) Gap Payments: Discuss with the mortgagee any issues regarding late payments and late fees for the first month or two of the plan. Generally, the Trustee will not have sufficient funds to begin making post-petition mortgage payments until the third month after the case is filed, and the Trustee recommends making the first two payments "gap payments" that will be paid as funds are available (see below). Some attorneys have taken to making the first three post-petition monthly payments gap payments, and the Trustee will not object to that.

(c.) Part 8.1 Special Language: In order to ensure that regular monthly mortgage payments by the Trustee start on time and there are sufficient funds on hand to pay them, both Trustees in the WD of VA have agreed upon standard language to be inserted into every plan that is providing for conduit mortgage payments in Part 3.1. This language has been approved by the Judge, and has been in general use since 2015. *The Trustee will object to any conduit plan that does not include this language.* The basic idea is that the regular mortgage payment for the first two or three months after the case is filed will be treated as post-petition arrears ("gap payments"), and will be paid by the Trustee when funds are available. Beginning in the third or fourth month, the Trustee will commence making the regular monthly mortgage payments. The total number of monthly mortgage payments that must be provided for is the number of months in the plan plus two. So if it is a 60 month plan,

you must provide sufficient funds for 62 months of regular mortgage payments. In Part 8.1 include the following standard language:

"Pursuant to Part 3.1, the Trustee shall pay the designated post-petition mortgage payments through the plan. These mortgage payments shall be classified and paid as follows:

(i.) Prepetition Arrears: The prepetition arrears are $_____.

(ii.) GAP Payments: The first three post-petition mortgage payments shall be disbursed pro-rata by the Trustee as post-petition arrears, including late fees, in the approximate amount of $_____.

(iii.) Other Postpetition Arrears: The following additional post-petition default shall be cured and disbursed by the Trustee, approximately $_____, for the months of _____ through and including _____.

(iv.) Ongoing Payments: The regular post-petition mortgage payments shall be disbursed by the Trustee beginning with the mortgage payment due for the month of _____, and continuing for approximately _____ months; the total number of such payments to be made by the Trustee will usually equal the number of monthly plan payments being made by the Debtor(s) to the Trustee, unless the plan pays off early.

Disbursement of ongoing post-petition mortgage payments from the Chapter 13 Trustee may not begin until an allowed claim on behalf of the mortgagee has been filed. At the completion of the term of the plan, it is predicted that the Debtor(s) shall resume monthly mortgage payments directly pursuant to the terms of the mortgage contract beginning with the payment due in (month), (year)."

c. Part 3.2: *Valuation or Cram Down of Secured Claims*

(1.) Part 3.2 requires the Debtors to list those secured debts which they are proposing to "cram down" [split the debt into two parts: a secured part, for which the creditor will be paid the replacement value of its collateral plus interest in fixed monthly amounts; and the balance, which will be made an unsecured claim and paid pro rata with the other allowed unsecured claims.]

(2.) In the 2nd column "Estimated amount of creditor's total claim" show the entire balance owed to the creditor.

(3.) In the 3rd and 4th columns describe the "Collateral" and list the "Value of collateral" using its current fair market value.

(4.) In the 5th column list the amount of senior liens, if any.

(5.) In the 6th column, "Amount of secured claim," list the amount of the "crammed down" claim, which should match the value of the collateral in the 4th column.

-- *Note:* The Trustee is required to pay the amount set forth in this column regardless of the values stated on the creditor's proof of claim, *unless* the claim is by a governmental unit, in which case the value of the secured claim stated on the creditor's claim controls. Even if the non-governmental creditor states an amount of secured claim less than the amount in this column, the Trustee will pay the higher amount unless the plan is amended to notice the creditor that the lower amount will be paid.

(6.) In the 7th column, "Interest Rate,", you must state the rate of interest to be paid on the claim. The interest rate must be in accordance with the Supreme Court's decision *in Till v. SCS Credit Corp,* 541 U.S. 465 (2004). Based on *Till*, the Trustee will usually not object to any rate of interest that is (i) at least the Wall Street prime rate on the first day of the month in which the case was filed, and (ii) no more than the Wall Street prime rate on that date plus two points. [Here's a web site where you can always check the current prime interest rate: Wall Street Journal prime interest rate.]

(7.) In the 8th column, "Monthly Payment to creditor," put the monthly amount to be disbursed by the Trustee. If you state the number of months these payments are to be made, be sure the total of months in this paragraph does not exceed the total number of months in the plan, or in any event 60 months. If you want the initial A.P. payments to be smaller than the post-petition payments, specify both payment amounts and how many months each is to be paid. Local Rule 4001-2 B states that if there is no separate designation of A.P. payments, the amount set forth in this column will be presumed to be the A.P. payment amount.

(8.) In the 9th column, "Estimated total of monthly payments," the figure should include the principal value of the collateral plus interest at the rate stated.

(9.) *Note:* The Fourth Circuit has held that the "negative equity" portion of a purchase-money loan on a vehicle is part of the creditor's purchase-money-security-interest and cannot be crammed down in Chapter 13. In re Price, 562 F.3d 343 (4th Cir. 2009).[But note: The U.S Supreme Court denied cert. in a 2010 Ninth Circuit case that held that "negative equity" in a car loan is not purchase money for purposes of the hanging paragraph at the end of section 1325(a)(5). *AmeriCredit Fin. Servs,*

Inc. v. Penrod, #10-1443, 10-03-2011, 132 S. Ct. 108.] The Fourth Circuit has also held that a mobile home that is the debtor's principal residence and is still considered personal property by the local taxing authority can be crammed down. *In re Donnie Ennis*, 558 F.3d 343 (4th Cir. 2009). If the mobile home has become real property, it *cannot* be crammed down [*In re Witt*, 113 F.3d 508 (4th Cir. 1997)], unless the last payment on the mortgage is due before the end of the Chapter 13 plan. *In re Larry Hurlburt*, #17-2449, 05-24-2019 Opinion (Wynn).

(10.) Cross-collateralized debt. It can be confusing to provide for credit union debts or other bank loans where the lender has cross-collateralized several loans with the same collateral, often a car. Usually the result is that one or two of the loans are fully or partially secured, and one or two more are being crammed down and will be fully unsecured. In these situations the Trustee recommends that all these debts be listed in Part 3.2.; that any of them that are also purchase-money security interests be given Adequate Protection payments; and that a complete explanation like the following be given in Par 8.1, and the creditor instructed in Part 3.2 to review Part 8.1:

"**Cross-collateralized Debt.** Upon information and belief, the 2003 Honda that Debtor is financing through XYZ Credit Union is serving as collateral for both the direct car loan, a credit card, and 2 other loans she has with the Credit Union. The approximate payoff on the car loan is $4,500.00, which is less than the vehicle's current value. Debtor owes approximately $21,200.00 on her credit card and signature loans with the Credit Union. Debtor is proposing to (i) pay the Credit Union the value of the vehicle, $8,702.00, with interest, through her Chapter 13 Plan, (ii) bifurcate the remainder of the debts she owes to the Credit Union and treat them as unsecured claims, and (iii) pay the remainder of the debts that are being treated as unsecured claims pro rata with the other unsecured claims on Schedule F."

d. Part 3.3: *Payment in Full of Secured Claims*

(1.) This paragraph sets forth the payments to be made by the Trustee to pay in full the claims of secured creditors. It covers judgment liens, tax liens, mortgages, and secured debts to be paid in full by the Trustee, including "910 claims."

(2.) In the 3rd column, "Amount of Claim," put the balance owed on the debt. If the claim amount for a "910 claim" or a claim being paid in full is different on the creditor's filed proof of claim, the Trustee will automatically adjust the monthly payment to pay the proof of claim amount, plus interest at the rate specified, over the number of months specified.

(3.) The amount of the creditor's allowed claim will control the amount to be paid by the Trustee, not the amount estimated by the debtor in this paragraph of the plan. *In re Carlton and Betty Cassell*, #13-71980, 03-14-2014 opinion (Black).

(4.) In the 4th column, "Interest Rate," you must state the rate of interest to be paid on the claim. The interest rate must be in accordance with the Supreme Court's decision in *Till v. SCS Credit Corp*, 541 U.S. 465 (2004). Based on *Till*, the Trustee will usually not object to any rate of interest that is (i) at least the Wall Street prime rate on the first day of the month in which the case was filed, and (ii) no more than the Wall Street prime rate on that date plus two points. [Here's a web site where you can always check the current prime interest rate: Wall Street Journal prime interest rate.]

(5.) In the 5th column, "Monthly Plan Payment," put the monthly amount to be disbursed by the Trustee. If you state the number of months these payments are to be made, be sure the total of months in this paragraph do not exceed the total number of months in the plan, or in any event 60 months. If you want the initial A.P. payments to be smaller than the post-petition payments, specify both payment amounts and how many months each is to be paid. Local Rule 4001-2 B states that if there is no separate designation of A.P. payments, the amount set forth in this column will be presumed to be the A.P. payment amount.

(6.) In the 6th column, "Estimated total payments by the trustee," the total should cover the principal owed on the debt, plus interest at the rate stated in the 4th column.

(7.) Restructured Mortgage Loans: If the last contractual payment on the Debtors' mortgage is due during the Plan, the Debtors can choose to modify the monthly payments, alter the interest rate using the *Till* case, and have the Trustee pay through the Plan the remaining balance due on the mortgage. You must specify the monthly payment amount and the number of months it is to be paid. If the claim amount is different on the creditor's proof of claim, the Trustee will adjust the monthly payment to pay the proof of claim amount, plus interest at the rate specified, over the number of months specified. If such a restructuring is not required and has a dramatic impact on the payout to the general unsecured creditors, the Trustee may object to it.

e. Part 3.4: *Lien Avoidance*

(1.) Judicial and non-possessory, non-purchase money liens under Code §522: Partial avoidance of judgment liens is available under 522(f)(2) and this part of the plan. That section explains the math that must be used to determine what portion of the lien can be avoided, and that math must be shown in detail in this part of the plan. Be careful when filling in the amounts in this Part; math errors are frequent and can be embarrassing.

(2.) Remember that each creditor listed here must receive heightened notice pursuant to Bankruptcy Rule 7004, so make sure you have achieved certified mail service upon a named officer for any FDIC insured institutions. You may also have to serve the Trustee for every Deed of Trust on the property. The Judge and her law clerks check these service requirements carefully.

(3.) While a separate motion is not required to avoid a judicial lien on the debtors' real estate—once the plan is confirmed the effect of this section is to avoid the judicial lien—remember that you will need to file something in the state court land records to show that the lien has been avoided. It is awkward to file a Chapter 13 plan and confirmation order, so some attorneys file a separate motion and obtain a court order which can then be filed in the state court. The motion must recite specific facts for the Court to rule in the debtor's favor, ie. value of property, balance of all mortgages, claimed exemption. Debtors' counsel may have to provide evidence of such information at a hearing on the motion.

(4.) ORDERS:

(a.) Contact the office for the special language that should be included in any order avoiding lien stating that it is subject to Code §349(a).

(b.) Counsel may docket the lien avoidance order in the appropriate state Circuit Court immediately, IF the order includes language alerting a title examiner to verify that the case has not been dismissed or converted, such as:

"This Order is subject to 11 U.S.C. §348 and 11 U.S.C. §349, so that if the captioned bankruptcy case is dismissed or converted to another chapter pursuant to bankruptcy law, the Deed of Trust avoided in this Order is reinstated and revests the real estate interest as it was immediately before the commencement of the bankruptcy case."

(c.) Attorneys should consider also filing in the state court a copy of the discharge at the end of the case, to show that the lien avoidance is final.

(5.) Lien avoidance on grounds other than Code §522 (e.g., §506):

(a.) Part 3.4 *cannot* be used to avoid consensual liens on real estate (mortgages, deeds of trust, etc.). That kind of avoidance must be based on Code §506. You would use Part 3.2, and file an Adversary Proceeding.

(b.) The basis of such an action is that there is no equity for the junior lien to attach to: the property is worth less than the senior lien. The Fourth Circuit has reaffirmed that debtors can avoid junior liens on their primary residence if the lien is wholly

unsecured. *In re Derrick & Tracie Millard*, #09-2266 (4th Cir. 12-15-2010, unpublished opinion.)

(c.) If there is even $1 of equity for a junior lien to attach to, it cannot be avoided using Code §506.

(6.) Lien avoidance Cases:

(a.) Debtors cannot use section 522(f) to avoid a potential judgment lien against one debtor on tenants by the entireties property, because the lien does not attach if both debtors are alive and still married according to Judge Krumm. *In re James & Virginia Smith*, #10-50687, Bankr. Ct., W.D. Va., (12-22-2010) [In light of this decision, the Trustee does not oppose listing such debts as unsecured claims on Schedule F instead of listing them as secured claims on Schedule D.]

(b.) The Fourth Circuit upheld the decision of the District Court for the Western District of Virginia (Judge Kaiser) and held that a Chapter 13 debtor need not file a Homestead Deed prior to avoiding a judgment lien on real estate using Code section 522. *In re Annie L. Botkin*, #10-1681 F. 3d. (06-13-2011)

(c.) Judge Anderson ruled that a Debtor can still avoid a mortgage lien after he's surrendered the property in a confirmed plan; here the deed of trust was lost and never recorded. *In re Charles and Christine Rector*, #09-62669, Bankr. Ct., W.D. VA., 03-11-2011.

(d.) Liens can be avoided in a Chapter 13 case filed close on the heels of a Chapter 7 case even though the debtors are not eligible for discharge, but in this case confirmation is denied because the case was filed in bad faith to avoid *Dewsnup: In re Karen Helton*, #11-60126, Bankr. Ct., W.D. Va., 08-12-2011 Anderson opinion in A.P. #11-06028. *In re Donna Hayes*, W.D. Bankr. Ct., #12-61487, 10-11-2012 opinion (Anderson) [no bad faith in the filing of this "Chapter 20," and lien avoidance will be allowed].

(e.) The Chapter 13 Trustee can use his strong-arm powers under Code §544(a)(3) to avoid an unrecorded deed of trust. *In re Perrow*, #09-61234, (Bankr. W.D. Va. 2013). See also, *In re McCormick*, 669 F.3d 177 (4th Cir. 2012)(upholding the Trustee's use of the strong-arm power to avoid a lien).

(f.) The Chapter 13 debtor was stopped from using §544 to avoid a lien because she had no exemption to protect. *In re Lee*, #10-1772, 2012 WL 29185, (4th Cir. 2012) unpublished opinion.

(g.) A plan cannot require a secured creditor whose lien is being paid in the plan to release its lien prior to discharge according to Judge Stone. *In re Stephen and Kathy Akers*, W.D. Bankr. Ct., #12-70844, (12-10-2012)

(h.) The Court ruled that a Chapter 13 debtor ineligible for a discharge, upon completion of the plan, may strip a wholly-unsecured lien. *In re Davis*, 716 F.3d 331 (4th Cir. 05-10-2013)

(i.) The Court affirmed by an unpublished per curiam opinion that an objection to a secured claim seeking disallowance of the secured claim and allowance as an unsecured claim is, upon discharge, sufficient to void the creditor's lien on a vehicle. *National Capital Management v. Lashauna Gammage-Lewis*, #12-2286 judgment. (4th Cir. 06-06-2013)

(j.) A married debtor cannot use Code §506(a) to strip a valueless lien off of T by Es property unless the spouse is also a debtor. *In re Jose Alvarez*, 733 F.3d 136 (4th Cir. 2013).

f. Part 3.5: *Surrender of Collateral*

(1.) Where the debtor is surrendering the collateral (house, car, furniture, etc.), the claim must be listed in this part.

(2.) Any unsecured deficiency remaining after the collateral is liquidated by the creditor will be paid by the Trustee *pro rata* with the other allowed unsecured claims. [Note: Don't forget to include in your Part 5.1 calculation of the estimated distribution to unsecured creditors the difference on Schedule D between the value of the collateral being surrendered and the amount of the creditor's claim.]

(3.) Clearly identify the collateral (address of real property; year and make of car; etc.). The value and claim information must match what's on Schedule D.

(4.) Surrender of collateral in full satisfaction of the debt has been prohibited by the 4th Circuit in *Tidewater Finance Co. v. Kenney*, 531 F. 3d 312 (4th Cir. 2008).

(5.) *The Trustee will object if the following language is not included in Part 8.1*, since it benefits the debtors, provides a limit on when the deficiency claim can be filed, and can affect distribution of plan payments. Tell the creditor in this part to also look at Part 8.1. The Trustee urges counsel to include this language in every plan.

"SURRENDER AND DEFICIENCY CLAIM: Any unsecured proof of claim for a claim of deficiency that results from the surrender and liquidation of collateral noted

in Part 3.5 of this plan must be filed by the earlier of the following or such claim shall be forever barred: (1) within 180 days of the date of the first confirmation order confirming a plan providing for the surrender of said collateral, or (2) within the time period for the filing of an unsecured deficiency claim as established by any Order granting relief from the automatic stay with respect to said collateral. Said unsecured proof of claim for a deficiency must include appropriate documentation establishing that the collateral surrendered has been liquidated, and the proceeds applied, in accordance with applicable state law. Any net proceeds from the sale of the property will be promptly paid to the Trustee and applied toward plan payments."

(6.) If real property is being surrendered and there are delinquent real estate taxes owed on the property, don't forget to list in this paragraph the locality to whom the taxes are owed and provide that these taxes will be paid outside the plan by the foreclosing trustee.

(7.) If the initially confirmed plan had the debtor retaining the residence and paying arrears, and the debtor is surrendering the house pursuant to an order lifting stay, you may want to modify the plan to surrender the house so that the discharge will cover the claim. Otherwise, this debt may not be covered by the discharge. Code §1328(a)(1) and §1322(b)(5). Remember to state in the plan that the Trustee has previously disbursed $X to the mortgagee and said payments are hereby approved.

(8.) The Debtors may be able to quitclaim real estate to the mortgagee in a clearly-worded and properly noticed plan. (Note that in this case the mortgagee failed to object or respond to the proposed plan, and there were no junior lienholders on the property. There are a number of cases, including one in the ED of VA, which hold that the Debtors *cannot* make such a transfer without the mortgagee's consent.) *In re Anthony Williams*, Bankr. W.D. Va. #10 60519, 07-10-2014 bench ruling (Connelly).

5. Part 4: Fees and Priority Claims:

a. Part 4.2: Trustee's fees. Estimate the Trustee's fees at 10% in each case, which is the statutory maximum, unless it is a conduit case. If it's a conduit case, contact the Trustee's office; the Trustee may allow an estimated fee of 8% for such cases if his UST-approved commission rate is less than that and appears likely to remain at that level for the foreseeable future.

b. Part 4.3: *Attorney Fees*

(1.) The Court has held that Debtors' attorney fees may be paid pro rata with support arrears and adequate protection payments, but not ahead of such payments. The amount of attorney fees to be paid by the Trustee &mdash not the total fee being

charged by the attorney if that is a different number &mdash shall appear in Part 4.3 of the plan.

(2.) Fee disclosure language in Part 8.1: The Trustee suggests that the following language be added to. Part 8.1 of any amended plan to ensure that all plans accurately reflect *all* debtors' attorney's fees which have been awarded or are being sought. The Trustee may object to any plan which does not contain this language in Part 8.1 The Trustee recommends that the attorney also use this language in the initial plan:

"The $_____ in Debtor(s)' attorney's fees to be paid by the Chapter 13 Trustee are broken down as follows:
(a.) $ _____: Fees to be approved, or already approved, by the Court at initial plan confirmation;
(b.) $ _____: Additional pre-confirmation or post-confirmation fees already approved by the Court by separate order or in a previously confirmed modified plan [ECF# _____ : $ _____ ; ECF# _____ : $ _____];
(c.) $ _____: Additional post-confirmation fees being sought in this modified plan, which fees will be approved when this plan is confirmed;

(3.) Pursuant to Bankruptcy Rule 2002(a)(6), any new fees in excess of $1,000 will still have to be noticed for a hearing to all creditors. The Court may allow negative notice for any such fee application.

(4.) The easiest way to determine what other attorney fee orders have been previously entered by the Court is to (a) hit "Control F" on the Bankruptcy Court website ECF docket page for a case, and then type in "order granting application"; that will highlight all fee orders entered by the Court; (b) hit "Control F" and type in "order confirming plan," and review each confirmation order; and (c) hit "Control F" and type in "plan" and review Part 4.3 of each plan that was confirmed.

(5.) "No look fee": See above for discussion of no look fees in the WD of VA. All fees must be disclosed in the plan and in the Form 2016(b) attorney fee disclosure statement. Review the Court's Standing Order 22-001, effective 02-15-2022. The "no look fee" in effect since 02-15-2022 has been $4,750.

(6.) Post confirmation fees: Except for fees incurred for a post-confirmation modified plan (which fees will be added to Part 4.3 of the modified plan) all post-confirmation fees require a fee application and either (a) an order entered by the Court or (b) an ECF docket entry awarding the fees. See Standing Order 22-001 for the allowed amounts, which will not require documentation.

(7.) Amounts must match amounts set forth on Form 2016(b) and the Statement of Financial Affairs paragraph #9.

(8.) Make sure this amount is consistent with the amounts stated on the fee disclosure statement and the SOFA.

d. Part 4.4: *Priority Claims*

(1.) The Trustee requests that you break down the priority claims in this section, rather than just giving a grand total of all the priority claims. E.g.: "IRS: $2,500; Va. Dept. of Tax.: $1,850; Va. Div. of Ch. Supp. Enforce: $2,105."

(2.) Old Taxes: Older taxes are not priority (income: 3 years; property: 1 year; withholding: no time limit) unless the tax was recently reassessed. While income taxes older than three (3) years are not priority taxes, they may be non-dischargeable; in that regard, they are like student loans. [Code §523(a)(1)(B)(i); 1328(a)9(2); 507(A)(iii). Also, there's a split of authority as to the impact of if and when a return is "filed" when the IRS files a substitute return for the taxpayer.]

(3.) Spring Time When Income Tax Return Unfiled:

(a.) If a case is filed between January 1st and May 1st, a problem with the taxing authorities usually arises. Both the Va. Dept. of Taxation and the IRS will probably file claims for that year's personal income taxes because even though the returns aren't due to be filed until April 15th or May 1st, the tax is statutorily "due" as of January 1st. They will often base the amount of their claim on last year's return, which may result in a claim that is much larger than is in fact owed for the current year. Since a filed claim is "allowed" unless objected to, and it's a confirmation issue that will need to be resolved before the case can be confirmed.

(b.) Contact the Richmond office of the IRS (Cynthia Hubbard, 804-916-8035, Hubbard Cynthia M. (Cynthia.Hubbard@irs.gov), or Valerie G. Riley, 804-916-8088, (Valerie G.Riley@irs.gov), or for the Virginia Dept of Taxation contact James Allendorf at 312-348-1578 or VA Tax (Bk@harriscollect.com) Send them a copy of the current year's tax return showing no taxes owed; and ask them to withdraw or amend their claim asap. If that doesn't resolve the issue, you may have to object to the filed tax claim.

(c.) Once a debtor files a bankruptcy case, all Federal income tax returns are filed by mailing them directly to: Internal Revenue Service, Insolvency Unit, 400 N. 8th Street, Box 76, Richmond, VA 23219-4838 [04-05-2011 IRS notice].

(d.) The IRS office in Richmond has advised the Trustee as follows: The Richmond office of *IRS* Special Procedures used to handle all Chapter 13 cases in the WD of VA, from beginning to end, but its responsibilities have changed. The Richmond office still reviews, and is responsible for, all Chapter 13 cases from the WD of VA "from filing through confirmation." It files the proof of claim in each case. After confirmation, the case is sent to the Philadelphia office. Any issues regarding post-confirmation plan payments by the debtors will be dealt with by the Philadelphia office. If any issues arise regarding post-confirmation taxes, the case will be sent back to Richmond and the Richmond office will handle the matter. Debtors or attorneys can always call the toll free number in Philadelphia (800-913-9358) if they have questions about a case; that office can answer most questions, and will refer the case to Richmond if need be.

(4.) Pending Exam Claim: The court held that where the IRS proof of claim ("POC") shows an amount is owing on a tax return which is "pending examination," confirmation will not be delayed even though the debtor's plan does not provide for that amount, IF (a) the debtors provide the Trustee with the tax return showing that $0 is owed, (b) the IRS has not filed an objection to confirmation, and (c) the debtors agree in the confirmation order that they will object to the POC if it is not amended within a reasonable time after confirmation. See *In re Martelli Booker*, #13-60624, 9/19/13 bench ruling.

(5.) Unfiled Returns:

(a.) Where (a) the IRS POC showed a balance owed of $1,500 and the return was *"not filed,"* (b) the debtor showed the Trustee a tax return that showed $0 was owed, (c) the IRS has told the attorney that it would amend the POC to $0, (d) the IRS had not filed an objection to confirmation, and (e) the attorney stated that he would object to the POC if it wasn't amended within a reasonable time after confirmation, the court allowed confirmation of the plan. *In re Olivia Andrews*, 13 61377, 09-19-2013 bench ruling.

(b.) Confirmation Order Language: In *In re Eleanor Jackson*, #13-62581, bench ruling, the court agreed with the Trustee that the following language could be added to the confirmation order in these situations:

If the taxing authority's POC has not been amended to an amount approximately the same as that provided for in the plan within 30 days after the governmental bar date has passed, debtor's counsel will promptly file and prosecute an objection to the claim.

(6.) Personal Property Taxes: Virginia law gives the county or city a lien on the vehicle for all taxes owed. Virginia Code §58.1-3942. If the debtor still owns the

vehicle, the claim is more properly classified as a secured claim, and should be listed in Part 3.3 of the plan. Check with the locality to determine what interest rate is currently being charged on such taxes. The reality is that most localities file these claims as priority claims, and the Trustee therefore pays them in full but without interest.

(7.) Child or Spousal Support Arrears:

(a.) The plan must provide in Part 4.4 for the cure of all child support and alimony arrears owed to the DSO recipient prepetition with few exceptions.

(b.) If the DSO delinquency is being paid through an ongoing wage deduction, the Trustee will not oppose a plan provision that allows the arrears to be cured through such an existing wage order IF (i) it will cure the arrears within the term of the plan, (ii) the portion that will not be cured by the existing wage order is cured in the plan, (iii) the treatment is clearly disclosed in Part 4.4, and (iv) the Virginia Division of Child Support Enforcement ("DCSE") does not object to the proposed treatment.

(c.) For a discussion of how to determine support obligations vs. property settlement obligations, see *In re Leslie Ludwig*, W.D. Bankr. Ct., #12-51167, 02-25-2013 opinion (Connelly).

e. Part 4.5: *Domestic Support Obligations – Owed to Government*

(1.) Provision for cure of child support arrears should usually appear in Part 4.4 of the plan.

(2.) Part 4.5 of the plan should only be used when the debt is owed to, or has been assigned to, a governmental entity (e.g., TANF benefits), not to the DSO recipient. Bankruptcy Code Sections 507(a)(1)(B) and 1322 (a)(4) allow payment of less than the full amount of such a debt if all of the debtor's disposable income is being devoted to the proposed plan; any amount not paid in the plan would be a non-dischargeable debt, and DCSE will usually insist that language to that effect be added to the confirmation order.

6. Part 5: Nonpriority Unsecured Claims

a. Part 5.1: The Trustee recommends that you check the second and third boxes. Don't check the first box, because it will require the debtor to pay that amount to the unsecured claims regardless of what unexpected events or claims arise.

(1.) State the anticipated payout percentage to general unsecured creditors and the amount expected to be paid to them, *excluding* any unsecured claims which are being separately classified in Parts 5.2 and 5.3.

(2.) You must also state the payout percentage the general unsecured creditors would receive under the "Chapter 7 test" analysis [Code §1325(a)(4)]. Be sure to include in the total of unsecured debts you are using to calculate this percentage the likely amount of any unsecured deficiency claim on any secured claims for which the collateral is being surrendered in the plan.

(3.) The stated percentage in 5.1 is an estimate, and the court may not hold the debtor to meeting that precise percentage, except that if it states 100%, the plan must actually pay 100%, or be re-noticed to creditors at a correct lower payout. Some courts may not construe this as an estimate.

(4.) Good Faith: The Trustee may oppose a plan as proposed in bad faith if the percentage distribution to unsecured claims is too low or for a variety of other issues. See, *In re Hylton*, 07-70320 (Judge Krumm, 08-22-2007 opinion) [Debtor paying for luxury items], and *In re Minahan*, 08-70118 (Judge Stone, 08-20-2008 opinion) [above-median debtor claiming expenses substantially than the allowances on Form 122].

b. Parts 5.2 and 5.3: *Separately classified claims.*

(1.) If the plan classifies unsecured claims to be paid at a higher or lower percentage, make sure you precisely identify the claim. The best way is to identify it by the number of the proof of claim filed with the Court by the creditor and the amount of the claim; if no claim has yet been filed, show the name of the creditor, the basis for the classification, the amount of debt to be paid, and the treatment (e.g., "pay 100%").

(2.) The Trustee will generally not oppose classification of co-signed debts, joint debts being paid from the non-exempt equity in tenants by the entireties property, or criminal fines that must be paid to recover a driver’s license or keep a debtor out of jail.

(a.) Suggested additional language for classified joint debts: "This debt is being paid in full to satisfy the Chapter 7 test, as the debtors believe this debt to be a joint liability. However, if the allowed claim filed by the creditor does not substantiate joint liability on this debt, the claim will be paid pro rata with the other general unsecured claims."

(3.) The Trustee will not oppose more favorable treatment for student loan debts if there is not a significant negative impact on the other general unsecured creditors and the differential between this treatment and that for the other unsecured creditors is not too large. If the debtor is paying student loans in an Income Based Repayment Plan ("IBRP"), the Trustee will endeavor to work with the debtor to keep those payments flowing.

(4.) If the student loans will be paid directly by the Debtor outside the plan the Trustee suggests this language: "This debt shall be paid directly by the Debtor, and the Trustee shall make no payments on any allowed claim filed by this creditor."

(5.) Be sure to state whether the current installment payments are being paid by the Trustee or the debtor, especially in Part 5.3 where there is no such box to check.

7. Part 6: Executory Contracts and Unexpired Leases

a. Make sure that all contracts and leases being assumed by the Debtor(s) are listed on Schedule G, provided for in Part 6 as appropriate, and included on the creditor matrix.

b. Please authorize the Trustee to disburse any arrears "pro rata" under "Treatment of Arrears."

c. Rejection: If an executory contract or lease is not listed in this Part, it is deemed rejected by operation of law.

d. Be sure to add to your percentage payout computation for general unsecured debts in Part 5 any balance that will be owed on a rejected lease or contract.

e. Note that Code §1322(b)(7) says that if plan fails to provide for the assumption of a lease of personal property, the automatic stay & co-debtor stay are terminated as of plan confirmation.

8. Part 7: Vesting of Property of the Estate

a. The Trustee asks that you always check the box that vests property in the Debtor at "plan confirmation." No attorney has tried to vest property at discharge for years, because the Trustee will insist on being made a named insured on insurance policies and will oppose this kind of delayed vesting.

b. Even though property "revests" in the debtor upon "plan confirmation," per standard language in the confirmation order the debtor needs prior Court permission

to *sell, refinance, put a lien on, or do a loan modification on the mortgage of real property*.

c. For all motions to sell, refinance, or modify liens on property: Judge Krumm required that notice be given to Trustee, any creditor who has requested notice, and anyone else required by the Court's Local Rules.

d. Be aware that Local Rule 6004-3 (on the Court's website) requires 21-day notice to all creditors for a motion to sell or refinance real property post-confirmation. Also look at FRBP 6004.

9. Part 8: Nonstandard Plan Provisions

a. The Trustee *strongly* recommends that every plan contain non-standard provisions. Some plans will require more provisions than others. The following are some of the provisions recommended by the Trustee.

b. Treatment and payment of claims – these provisions will make it unnecessary to object to certain claims.

(1.) All creditors must file a proof of claim ("POC") to receive payment from the Trustee. The only exception is if there is a Court order specifically instructing the Trustee to pay a claim.

(2.) If a claim is scheduled as unsecured, but the POC is filed as secured: the creditor may be treated in the plan as unsecured. The creditor can still enforce its lien after discharge.

(3.) If a claim is scheduled as secured, but the POC is filed as unsecured: the creditor may be treated in the plan as unsecured.

(4.) The Trustee can adjust the monthly disbursement amount as needed to pay an allowed secured claim in full.

c. The following provision serves as a notice and reminder to the debtor:

No Court permission is needed to incur a total of $15,000 (principal plus interest) in new debt during the Plan. This amount is cumulative and applies to unsecured or secured debt. Any loan exceeding that amount, even a loan against the debtor's retirement account, must be approved by the Court. Local Rule 6004-3 D.

d. Rule 3002.1 Notices: In order to ensure clarity as to how Rule 3002.1 creditor notices of post-petition mortgage charges or defaults will be treated, the Trustee recommends inserting the following language into Part 8.1. See, I*n re David and Amy Quesenberry*, #12-62001.

Any fees, expenses, or charges accruing on claims set forth in Part 3.1 of this Plan which are noticed to the debtor pursuant to Bankruptcy Rule 3002.1(c) shall not require modification of the debtor's plan to pay them. Instead, any such fees, expenses, or charges shall, if allowed, be payable by the debtor outside the Plan unless the debtor chooses to modify the plan to provide for them.

e. Surrender of collateral: The Court allows, and the Trustee will insist on, standard language being added to the form plan that limits the time within which a creditor may file an unsecured proof of claim for a deficiency on property being surrendered pursuant to Part 3.5 of the plan. This language will provide certainty and closure in situations where debtors must pay 100% of claims or want to pay off their plan early. The following language (or something comparable) can be inserted into Part 8.1 of the plan:

Any unsecured proof of claim for a deficiency which results from the surrender and liquidation of the collateral noted in Part 3.5 of this plan must be filed by the earlier of the following dates or such claim will be forever barred: (1) within 180 days of the date of the first confirmation order confirming a plan which provides for the surrender of said collateral, or (2) within the time period set for the filing of an unsecured deficiency claim as established by any order granting relief from the automatic say with respect to said collateral. Said unsecured proof of claim for a deficiency must include appropriate documentation establishing that the collateral surrendered has been liquidated, and the proceeds applied, in accordance with applicable state law. Any net proceeds from the sale of the property will be promptly paid to the Trustee and applied toward plan payments.

f. Conduit Plans: The Trustee will object to any proposed conduit plan (Trustee making the regular monthly mortgage payments) that fails to contain the following language:

Pursuant to Part 3.1, the Trustee shall pay the designated post-petition mortgage payments through the plan. These mortgage payments shall be classified and paid as follows:

(1.) Prepetition Arrears: The prepetition arrears are $ _____.

(2.) GAP Payments: The first two (or three) post-petition mortgage payments shall be disbursed pro-rata by the Trustee as post-petition arrears, including late fees, in the approximate amount of $ _____.

(3.) Other Post-petition Arrears: The following additional post-petition default shall be cured and disbursed by the Trustee, approximately $ _____, for the months of _____ through and including _____.

(4.) Ongoing Payments: The regular post-petition mortgage payments shall be disbursed by the Trustee beginning with the mortgage payment due for the month of _____, and continuing for approximately _____ months; the total number of such payments to be made by the Trustee will usually equal the number of monthly plan payments being made by the Debtor(s) to the Trustee, unless the plan pays off early.

Disbursement of ongoing post-petition mortgage payments from the Chapter 13 Trustee may not begin until an allowed claim on behalf of the mortgagee has been filed. At the completion of the term of the plan, it is predicted that the Debtor(s) shall resume monthly mortgage payments directly pursuant to the terms of the mortgage contract beginning with the payment due in (month),(year).

g. The Trustee suggests that the following language be added to. Part 8.1 of the plan to ensure that all plans accurately reflect *all* debtors' attorney's fees which have been awarded or are being sought. The Trustee may object to any plan which does not contain this language:

"The $ _____ in Debtor(s)' attorney's fees to be paid by the Chapter 13 Trustee are broken down as follows:

***(1.)** $ _____: Fees to be approved, or already approved, by the Court at initial plan confirmation;*

***(2.)** $ _____: Additional pre-confirmation or post-confirmation fees already approved by the Court by separate order or in a previously confirmed modified plan [ECF# _____ : $ _____ ; ECF# _____ : $ _____];*

***(3.)** $ _____: Additional post-confirmation fees being sought in this modified plan, which fees will be approved when this plan is confirmed;*

h. Note: Except as otherwise specifically authorized, attorneys are *not supposed to change or add to any of the text of the first 7 Parts of the Chapter 13 plan form*. The Judges' intent is that anything unusual be put into Part 8 and be clearly identified as to

substance and the parties affected. Both Judge Anderson and Judge Krumm put significant limits on the kinds of substantive provisions that can be inserted into Part 8 (formerly paragraph 11). See, *In re Maupin*, 07-61051, and *In re Jones*, 07-50446, in which both Judges denied a debtor attorney's attempts to provide for a variety of substantive and procedural issues. Many of these proposed provisions would have affected substantive creditor rights (e.g.: negating contractual arbitration provisions; how payments were to be applied by creditors; releasing of title). The attorney should read these decisions before trying to use this paragraph in any new or creative ways.

III. CREDITOR'S (SECTION 341) MEETING

A. English-deficient or deaf debtors: If the debtors are not able to understand or converse in English, the Office of the US Trustee provides for access during 341 meetings to a phone-based translation service. If you have such a client, please advise the Trustee at least ten days ahead of the scheduled 341 meeting of your debtor's need for this service and his/her/their primary language so that the Trustee can make arrangements for a translator to be available by phone at the hearing. Failure to give adequate advance notice may result in continuation of the 341 hearing.

If the debtor is deaf, arrangements have to be made by the Trustee to retain an interpreter for the deaf. Such arrangements are more complicated, so please give the Trustee at least thirty days advance notice of the need for such a service. Failure to give adequate advance notice may result in continuation of the 341 hearing. Generally, family members or friends are not allowed to translate for debtors.

B. Debtors' ID: Please make sure that the debtors have provided you with (i) an original of an official government-issued picture ID [driver's license, military picture I.D., etc.] and (ii), (if the ID does not have the full Social Security number), an original or copy of Social Security cards or other official third-party documents (tax return; W-2; Medicare card) containing their full Social Security numbers. At the creditors' meeting, the Trustee will put into the record either (i) that he has reviewed these documents which have been sent to him by the attorney, or (ii) the certification the attorney has sent him that the attorney has done the same thing. The Trustee prefers the second method, and the form to be used is one approved by the U.S. Trustee. If these documents have not been provided prior to the creditors' meeting, it may have to be continued to a later date.

C. Trustee's "Informational Pamphlet": At present, the Trustee will mail to each debtor shortly after a case is filed a letter prepared by the Trustee's office that contains important information for the debtors about the Chapter 13 process and their

obligations in Chapter 13. Please encourage them to read this material right away, as it will help them to understand the Chapter 13 process and provide them with other resources to assist them, such as:

1. National Data Center: This 24/7 web site is available to all debtors at no charge. It will allow them to check the status of their case — payments, claims filed, claims paid, etc.— at any time in their case once the plan has been confirmed. The home page can be found at www.ndc.org.

2. Credit report information: How to obtain a free credit report each year. (You can obtain one on-line, for example, by going to: www.freecreditreport.com.)

D. Conduct of the creditors' meeting: Debtors must appear with video using the Zoom link provided on the 341 meeting notice. The debtors' testimony will be under oath and will be digitally recorded. The Trustee or his staff attorney will have questions for the debtors, and creditors attending the hearings will be allowed to ask questions of the debtors. Debtors are also encouraged to ask questions of the Trustee.

At the end of the creditors' meeting, the Trustee and the debtors' attorney will determine, as best they can, if the case can be ready at the originally scheduled confirmation hearing. If it appears that there are appropriate reasons why it cannot be ready, the Trustee and the attorney may agree that the case should be set for a later confirmation date, and the Trustee's Report will so state. This approach will save both the attorney and the Trustee's staff from reviewing a case for the initial confirmation hearing if there is no chance that the case will be ready at that time. For example, in cases where claims issues pose problems (e.g., equity in the debtors' tenancy by the entireties property requires that joint unsecured creditors be paid 100%), the Trustee will probably suggest that confirmation be continued beyond the claims bar date. In this way the Court can be sure that these claims have been properly provided for in the plan, and both the Trustee and the debtors' attorney will only have to review claims one time. (Note: If the attorney prefers to confirm the case now and status it for review after the claims bar date, the Trustee will do that, but he may require some additional language in the confirmation order. However, the Trustee believes that it is more efficient for all concerned to continue confirmation in such cases beyond the bar date.)

E. Trustee's Objections Following Meeting of Creditors: The day after the creditors' meeting, the Trustee will file with the Court, the debtors, and the debtors' attorney his Objections. This is a detailed report which sets forth the Trustee's objections to confirmation, if any; any documents or information that still need to be submitted; any motions that need to be filed by debtors' counsel; and any other items that need to be resolved in order for the debtor's proposed plan to be confirmed.

Please note that: (a) this means that there is pending in every case a motion to dismiss until such time as the case is confirmed, and (b) the Trustee retains the right to ask at the first or any continued confirmation hearing for dismissal of a case if either the debtors are not current in their proposed plan payments, the debtors are not making satisfactory progress toward getting their case confirmed, or the attorney fails to present appropriate reasons why matters in the Trustee's Objections remain unresolved.

The Trustee's Objections provide the "road map" for getting a case confirmed. It contains everything that the Trustee needs in order to recommend to the Court that a case be confirmed, and until all items on it have been completed the Trustee will not be able to advise the Court that a case is "ready." The Trustee *strongly* recommends that the attorney *meet with the debtors right after the creditors meeting* to review what needs to be done, and to make sure the debtors understand the importance and time-sensitive nature of following through on the documents and information needed. *Beginning work on these items promptly after the creditors' meeting is the key to getting a case confirmed on schedule.*

IV. PERIOD BETWEEN THE CREDITORS MEETING AND CONFIRMATION

A. Trustee's Goals: The Trustee's goals during this crucial period between the creditors' meeting and case confirmation are as follows:

1. *Confirm cases at the original confirmation hearing* if at all possible, or as soon as possible thereafter. In any event, *a case should be confirmed within six months of filing* unless there are extraordinary circumstances.

2. Reduce to an absolute minimum the time spent by Trustee's staff on preparing a case for a given Court date if it is clear that the case will not be ready on that date.

3. Over time, reverse the current practice whereby Trustee's staff take the initiative in determining readiness of a case prior to the confirmation hearing and report to the attorneys what he/she needs to do to have the case ready. Instead, **the attorney needs to take the initiative and report to the appropriate Case Administrator when a case is ready**, at which time the Case Administrator will review the case and confirm the attorney's assertion or advise the attorney of any remaining problems.

4. Front-end-load the court preparation process so that attorneys *forward Trustee Report items to Trustee's staff as soon as possible after the creditors' meeting*, to make the process ongoing from the filing date forward and not have it be compressed

into the days just prior to a scheduled Court date, where it is more stressful for all concerned.

B. Debtors' Pre-Confirmation Affidavit: This affidavit (which is often referred to as "the PCA") is to be submitted to the Court, with a copy to the Trustee, prior to confirmation. This form is available on the Court's website under Local Forms – Affidavit by Debtor(s) Requesting Confirmation of Plan. It provides the Trustee and the Court with information and certifications which under BAP&CPA must be obtained before a case can be confirmed. Specifically, the debtors must affirm to the Court that they are current on all post-petition tax payments, support payments, and secured debt payments, and that they have filed all tax returns required to be filed in the past four years.

The affidavit states that the information being certified by the debtors is true as of that date, and will also be true as of the date of the confirmation hearing, *so the debtors have an ongoing and affirmative obligation to notify the Trustee if, for example, they fall behind in support payments or secured debt payments after the affidavit is executed but prior to the confirmation hearing. The debtors' attorney needs to make sure the debtors understand this aspect of the affidavit*. The Judge expects the attorney to ensure that the affidavit is correct as of the confirmation hearing date, and that the debtor has not fallen behind since the affidavit was filed. If a motion to lift stay is filed shortly after confirmation and it becomes clear that the debtors' affidavit was not correct as of the date of confirmation, the Trustee reserves the right to bring this problem to the Court's attention and ask for sanctions. The Trustee will object to any modified plan that seeks to cure a post-petition-pre-confirmation mortgage default by reducing the payout to unsecured creditors. The court may deny debtor attorney fees on motions to lift stay where the affidavit was incorrect regarding the mortgage being current.

C. Preparing cases for Court: Communication between the debtors' attorney and the Trustee's office:

1. The debtors' attorney will be electronically served with a copy of the Trustee's Objection within a day or so after the creditors' meeting, and the Trustee will also mail a copy to the debtors. As stated previously, this Report sets out all items which need to be completed or resolved before the Trustee will recommend to the Court that the proposed plan be confirmed. It is the attorney's responsibility to attend promptly to all these items, and to contact the Trustee's office once the attorney believes all items have been completed or resolved.

2. The attorney will contact one of the Case Administrators in the Trustee's office during this period. See section above to determine which Case Administrator you should contact.

3. It's crucial to begin working on the Trustee's Report items immediately after the 341 meeting, and to give the debtors a clear written list of what is needed from them and by when. As with pre-341 documents, send all documents as a single attachment to an e-mail, and specify on the subject line the debtor's name, case number, "conf docs," and the date of the confirmation hearing. If you send a large amount of documents for a particular issue (e.g., medical bills to establish monthly medical expenses), you must attach a summary that explains what the documents will show or the Trustee's staff will not review the documents.

4. Pre-hearing process.

E-mails from the Case Administrators:

a. In each case involving confirmation of an initial or modified plan, a motion to dismiss, or a status hearing, a Case Administrator ("C.A.") will send to your office prior to Court an e-mail detailing (i) our recommendation to the Court, (ii) if applicable, what statements will be read into the record in Court (e.g., any unusual confirmation order provisions), (iii) if applicable, the items that we believe must still be completed for a case to be ready or our motion to be resolved, and (iv) if applicable, a proposed continuation order and continued Court date.

b. If your office does not respond to that e-mail, we will assume that you are in agreement with what we've said. If there is any question about the e-mail address we're supposed to be using, please advise the C.A. right away.

c. If you don't agree with the contents of the e-mail, please respond promptly to the C.A. to state your position and to see if he or she can assist you in resolving the matter prior to Court. When you respond, please make sure the subject line of the e-mail contains the debtor's name, the case number, and the Court date.

d. We retain each of the e-mails—the ones we send and your responses—in an Outlook subdirectory, stored by case number, so that we have access to them at any time.

e. If you know a case must be continued, we strongly recommend that you submit a proposed continuation order (the form is on the Court's website under Local Forms) to the C.A. at least three days before Court which contains a deadline for filing an amended plan in paragraph 6 if a plan must be filed and which itemizes in paragraph 9

all outstanding Trustee Objection items or action items. If the Court agrees to such an order the matter will be removed from the docket prior to the scheduled hearing. We will not review such orders the day before Court. If the order has not been entered by the Court prior to the scheduled hearing, the attorney must still appear, as the Judge may have concerns about the proposed order that she wants addressed in Court.

Pre-Court phone call from the Trustee or the Staff Attorney:

f. The Trustee or the Staff Attorney will call debtor attorneys a few days before Court to discuss those cases in which (i) the Trustee is asking dismissal and the attorney has not previously indicated whether the debtors are opposing the motion; (ii) there are still issues that need resolving (disposable income; Chapter 7 test; etc.); or (iii) there is a question about what the continuation date or the terms of the continuation order should be.

g. As has been the custom, the attorney is free during this call to bring to the attention of the Trustee or Staff Attorney any cases that from the attorney's perspective need to be discussed.

Court's Electronic Docket and Trustee's Matter Listing:

h. In addition to the Court website's listing of cases to be called on each Court Docket, the Trustee is now producing and sending to each attorney a "Matter Listing" document the day or two before Court. It will denote all matters where the Trustee and the attorney have agreed to a resolution of issues, and will state the proposed resolution. This document is generated gradually during the two weeks prior to each Court hearing, is viewable on the Trustee's BSS 13 Network site (for which each attorney has been given or can be given a password by the Trustee), and is updated each day. The Matter Listing allows the attorney to know in advance all of the recommendations the Trustee will be making in Court, and it can be configured by case number, by attorney, or by type of issue. Note: There is an overnight lag in updating the BSS website with the notes the Trustee has put into his case management system.

i. The Trustee will usually have with him in Court a complete history of each case, including recent payment history.

NOTE: *If you file an amended plan within seven days of a scheduled confirmation hearing, notify the C.A. immediately by e-mail, since we do not always check the Court website once a hearing is less than seven days away.*

j. Once the Trustee's office is notified that the attorney thinks the case is ready, if the Trustee's staff agrees with this assessment the case will be noted as ready for confirmation, pending only (i) a last minute check to make sure the debtors are current in their plan payments as of the confirmation hearing date, and (ii) the deadline for filing objections to confirmation has passed and no objections have been filed. In order for the debtors to be considered "current," the payments received by the Trustee must be up-to-date pursuant to the proposed plan, or the debtors must present recent paystubs showing that funds have been withheld by the employer sufficient to make them current once these funds are sent to the Trustee. If an automatic wage deduction or TFS account is in place and working, as long as any "default" is less than one month's payment, the Trustee will usually consider the debtors to be current. Debtors paying directly without a working automatic payment must be fully up-to-date in their payments to be considered current.

k. *"SEVEN DAY RULE"*: Given the other demands placed upon the Trustee's office, all documents and information required for confirmation of a case must be received by the Trustee's office at least seven (7) days before the scheduled confirmation hearing. Any documents tendered to the Trustee's office less than seven calendar days prior to the hearing may not be reviewed by the Trustee's staff, and the case may be reported to the Court as not ready for confirmation and needing to be continued.

D. Continuation of the confirmation hearing:

1. If the case will not be ready to be confirmed at the initial confirmation hearing, it is the attorney's responsibility to so advise the Trustee's office as soon as that becomes evident. As long as the debtors are making their plan payments as proposed and the attorney is making appropriate progress toward resolving the remaining issues, the Trustee will not object to a continuance beyond the initial confirmation hearing. It will of course be solely up to the Judge whether to grant any continuance. Unless an agreed continuation order has been entered prior to the scheduled hearing, the matter will be heard and counsel must be prepared to address the court’s questions. Generally, the Trustee expects that documents will be provided, and any amended plan will be filed, within 14 days of the confirmation hearing that is being continued, unless there’s good reason to extend the time frame.

2. In the Western District, the Court has issued a standard Continuance Order form; see the Local Forms portion of the Court's website - Chapter 13 Continuance Order. It is a two-page form used by the Judge to continue cases in which she wants to set forth specific tasks to be performed or specific deadlines. She will instruct the attorney in Court as to what needs to go in to each paragraph of the order. The attorney must draft the order, obtain the Trustee's endorsement (by sending the proposed order via e-mail

with the name of the debtors, the case number, and the date the order is due in the subject line), and file it with the Court within ten days from the hearing. If the plan is nearly ready and no specific items or deadlines need to be stated in a continuance order, the Judge may instead continue the case via "docket entry" in open Court, and no order will need be entered.

3. The Trustee can always submit a confirmation order to the Court for entry prior to the next scheduled confirmation hearing if the case becomes ready before that date. It is the responsibility of debtors' counsel to advise the Trustee's office (usually the appropriate Case Administrator) that a case has become ready and the attorney is requesting that a confirmation order be submitted prior to the scheduled hearing.

E. Filing and noticing amended and modified plans:

1. If prior to confirmation an amended plan is filed, it must be filed with the Court and noticed to creditors at least 28 days prior to the scheduled confirmation hearing, or a new hearing date will have to be set. For a modified plan being filed after a plan has already been confirmed, an order will be issued by the Court setting a hearing date, and the attorney must serve that notice on creditors with the new plan. If the attorney believes that an amended or modified plan does not require noticing, the attorney must file with the Court a motion and order waiving service of notice on creditors. The order must be endorsed by the Trustee, and should be sent to the appropriate Trustee's Case Administrator for review and processing. The Judge may want to be told in the motion why the new plan does not need to be noticed to creditors — i.e., why no creditor is being prejudiced, the date on which the plan was filed and the docket number of the plan.

a. If the attorney files an amended plan, that has not been confirmed, and then files one or more subsequent amended plans, be sure that page one of the latest plan clearly states that it is "replacing the modified plan(s) dated ...".

b. With every amended plan you must file with the court the "Amended Chapter 13 Plan Cover Sheet" which can be found at the Court's website under Local Forms. Carefully complete each of the boxes with the relevant information to place creditors, the Trustee, and the Court on notice of the changes in the plan.

F. Dismissal or conversion of case pre-confirmation:

1. Attorney's fees: If a case is *dismissed* prior to confirmation, all funds on hand with the Trustee except accrued Adequate Protection payments and conduit mortgage payments will, as required by the Code, generally be returned to the debtors upon dismissal. The Trustee will usually not object to the initial fee set forth in the

proposed plan if the attorney has done everything required in the case up to that point and the dismissal of the case is not the attorney's fault. The court may require either that the debtor endorse any such fee order, or the matter be set for a hearing if the debtor refuses to endorse the proposed order. You may need to ask the Judge to postpone dismissal until you can file your application for fees if you haven't previously filed it; she will not generally award fees after a case has been dismissed.

If a case is being *converted* prior to confirmation, the Trustee is required to return all funds to the debtors, and he cannot put funds aside for a possible subsequent attorney fee award. The attorney must get his attorney fee order entered, and the check for those fees cut by the Trustee, prior to conversion or he/she will not receive any fees unless the Judge has issued a specific order to the contrary. *See Harris v. Viegelahn, 135 S. Ct. 1829 (05-15-2015 opinion).*

2. Trustee's commission: The Trustee takes his statutorily-authorized commission upon plan payments when they are received by the Trustee's office, not when the Trustee disburses payments to creditors. So, even if a case is dismissed or converted prior to confirmation, the Trustee will have taken his commission on any payments received prior to that. The commission rate is never more than 10%, and may be adjusted by the U.S. Trustee during each fiscal year as need be.

G. Preferential transfers by the debtors: In situations where a debtor within five years of filing a Chapter 13 case has transferred property of significant value without receiving full consideration, the Trustee will usually ask that a consent order be entered in which both the debtor and the transferee waive the statute of limitations on the recovery of such property by the Trustee until such time as the plan has distributed funds sufficient to make this issue moot. In return the Trustee will agree not to recover the property for the estate at this time. If the transferee refuses to cooperate, in cases where the value of the property is not great, the Trustee may ask that a comparable consent order endorsed only by the debtor be entered. In cases involving property of greater value, if the debtor and transferee refuse to sign the order, the Trustee may refuse to recommend confirmation or file an adversary proceeding to obtain an appropriate order nullifying the transfer.

H. Viewing debtors' payment history on NDC to make sure debtors are current in plan payments: The Trustee strongly recommends that a few weeks prior to the confirmation hearing the attorney check the National Data Center website at https://www.ndc.org/home to make sure the debtors are current in plan payments at the time of the confirmation hearing. A case will not be confirmed if the debtors are not current, and can be dismissed if the delinquency is substantial. Evidence that plan payments are being regularly withheld from an employer (copies of recent paystubs,

etc.) pursuant to a wage deduction order may be sufficient to show that the debtors are current in their payments.

1. For cases that have not been confirmed, be aware that NDC will determine if a case is "current" based *solely on the initially filed plan*. If the debtors have filed an amended plan pre-confirmation, the system may not be correct in determining if the debtors are in fact current *pursuant to the most recently filed plan*, and the attorney will need to make that computation himself or check with the Trustee's case administrator.

2. Payments from debtors are first sent to the Truist Bank lockbox in Memphis, Tennessee. They are then downloaded into the Trustee's case management system. A day later they are posted to the NDC. This means that payments received by the Trustee's office may take up to ten days to show up on NDC.

I. Feasibility of plan.

1. In a joint case, the Court may confirm a plan even if the wife has died after the 341 hearing but prior to confirmation. *In re Ricky and Carol Clark*, #10-63514, 12-19-2011 bench ruling (Anderson).

2. If the feasibility of the plan is put into question by the Trustee — even in situations where a significant portion of the debtors' Schedule I income has not materialized — the Court may still confirm the plan if the debtors have made regular payments and are current as of the confirmation hearing.

J. Pre-trial conferences: The court will often hold pre-trial conferences (e.g., lien avoidance motions) via telephone conference call. The court's law clerk may set up the call on a day other than the monthly Court docket day.

K. Debtor refunds. The Trustee may not refund to the debtors any plan payments received by the Trustee after a plan has been confirmed until and unless there has been an order entered authorizing such a refund. The court may require a motion from the debtors setting fourth the reason(s) for the request, and any proposed order must be endorsed by the Trustee. Prior to confirmation, the Trustee has more latitude to allow refunds without a Court order, but there must be a very good reason and such refunds are rare.

IV. CONFIRMATION

A. The confirmation hearing:

1. The Judge's process: Court hearings are currently be held remotely via Zoom. Attorneys and debtors should NOT travel to the Court in person. Attorneys should log into Zoom ten minutes before the beginning of the 9:30 regular docket. If you have a client attending via Zoom, let the Trustee know, and such cases may sometimes be given a preference. Attorneys should advise the Court and Trustee well in advance of any contested matters that will take a significant amount of time, as the Court may want to schedule those for a specific later time.

2. Attorney's presence: The Trustee does not have the authority to excuse the attorney's presence at the confirmation hearing, even if a case appears to be fully ready to be confirmed. The Trustee strongly suggests that if an attorney will not be present at this hearing, he or she should either: (1) make arrangements for substitute counsel to appear on the attorney's behalf in case unanticipated matters arise, or (2) call the Judge's Law Clerk to determine if the attorney's presence will be required. If the attorney cannot be present and obtains substitute counsel, the attorney needs to ensure that the substitute is familiar with the facts of the case and can answer the Judge's questions if anything arises. If you think all confirmation issues have been resolved but no confirmation order has actually been entered on the Court's ECF site, you MUST appear for the hearing. If a confirmation order has been entered by the Court prior to the hearing, and the matter is removed from the docket, the attorney may not appear. If the attorney has any questions about the need to appear, call Chambers.

3. Debtors' and attorney's presence at the confirmation hearing: If a case is ready for Confirmation and there are no other unresolved matters pertaining to the case pending on that day's docket, the debtors may not need to appear by Zoom at the confirmation hearing. They should consult with their attorney about their need to appear.

B. Confirmation Order: There is a standard form for the Confirmation order in the Western District. It is only one page long, and incorporates by reference the terms of the confirmed plan. This order will be prepared and submitted to the Court by the Trustee after the confirmation hearing has been concluded. The Trustee must first obtain the endorsement of (i) debtors' counsel if there are new substantive terms in the "Other Provisions" section (see below) that affect the debtors and this language was not noticed in the proposed plan, and (ii) any creditor whose rights are being affected by such additional language if the language was not noticed in the proposed plan.

The last section, entitled "Other Provisions," is a versatile section which can be used at the confirmation hearing for a variety of purposes, including: correcting math mistakes or typos in the plan; allowing the Trustee to retain a disposable income or Chapter 7 test objection; placing an affirmative obligation on the debtors to notify the

Trustee of any significant change in income; clarifying that the plan must pay 100%; requiring the attorney to make sure a wage deduction order is working; stating that there is no automatic stay in the case; or increasing plan payments to an amount greater than that set forth in the plan. Such uses of the "Other Provisions" section allows confirmation of the plan without additional notice or hearing where the additional provisions do not prejudice creditors.

C. Continuation of the Trustee's motion to dismiss case: In certain situations, the Trustee may agree to recommend confirmation only if he is allowed to continue or retain an objection (usually a Chapter 7 test or disposable income test objection under Code §1325) to a future date. In this event, the "Other Provisions" section of the Confirmation Order will contain the continuation of his motion to dismiss, the retention of his objection, and the date by which the debtors must provide him with certain documents.

D. Espinosa Decision. On 03-23-2010, the Supreme Court announced its decision in *United Student Aid Funds v. Espinosa*, U.S.130 S. Ct. 1367. The Court held that a confirmation order is not void under FRCP 60(b)(4) because a court lacked the statutory authority to confirm the plan in question; there was legal error, but the confirmation order is still enforceable and binding because the creditor had actual notice and failed to object. The Court went on to say that Code section 1325(a) requires Bankruptcy Courts to address and correct defects in a debtor's proposed plan "even if no creditor raises the issue." The Trustee therefore sometimes brings certain issues to the Court's attention even if no other party is objecting or raising the issue.

V. POST-CONFIRMATION (Note: The Court requires the Trustee's endorsement of any and all of the orders described below. To obtain the Trustee's endorsement, please send any such proposed order as an attachment to e-mail to: TrOrders@cvillech13.net). On the subject matter line, please always put the debtors' names and case number and the date of the Court hearing.

A. Review of claims within 30-day window after claims bar date: The Trustee expects that debtors' counsel will in every case **examine the Court's claims register within 30 days after the claims bar date** to ensure that all claims which are necessary for the successful completion of the debtors' plan have been timely filed. Under Bankruptcy Rule 3004 the attorney may, within 30 days after the bar date, file a claim on behalf of any creditor who has failed to file its claim. This is especially crucial for any priority or secured claims which the debtor needs to pay. Failure to review the claims register at this juncture and file necessary late claims can result in the Trustee filing a motion to dismiss the case, or in the debtors not obtaining the relief they have been assured by their attorney they would receive. When filing such a late claim, be sure to attach documentation sufficient to establish a secured or priority

claim. This claims review and timely filing of needed claims is a required element of the attorney's "no look fee" under the Court's 02-15-2022 Standing Order #22-1; failure to perform these tasks can be grounds for disgorgement of fees.

1. Objections to claims. See these important decision concerning objections to proofs of claim. In *re Glenn and Julie Hilton*, #12-61102, 12-02-2013 opinion. (See also *In re Jack Riggs, Jr.*, #12-71294, 09-19-2013 opinion; and *In re David and Amanda Falwell*, #08-60495, 11-05-2009 Opinion by Judge Anderson). These opinions cover burdens of production and proof; acceptable bases for objection; and other related issues, and they caution attorneys not to object solely on the basis of no documents being attached to the creditor's proof of claim. [Regarding attorneys' fees recoverable for such objections, see paragraph V.I., Attorney's fees for post-confirmation work.] *In re Magic Wand, LLC*, W.D. Bankr. Ct., #12-70404, 10-12-2012 opinion (Stone)[Chap. 7 case][A claim's lack of documentation is not by itself sufficient grounds to object when the debtor has not disputed the validity of the debt]

a. Other cases: *In re Randall and Tina Woods*, #10,62058, W.D. Va. Bankr. Ct., 01-27-2011 Anderson opinion [in an objection to claim based on the statute of limitations the debtor must provide evidence, since he has both the burden of production and of persuasion]; *In re Reginald Ponton*, #10-61515, W.D. Va. Bankr. Ct., 01-27-2011 Anderson opinion [a second claim filed by a secured creditor as a supplemental claim for repossession is a separate claim]; *In re George Tomaras*, #10-60785, W.D. Va. Bankr. Ct., 02-09-2011 Anderson opinion [an objection that the debtor has made other arrangements outside of bankruptcy to pay the claim is not a valid grounds]; *In re Frank and Sandra Zacchino*, #10-62312, Bankr. Ct., W.D. Va., 04-08-2011 Anderson opinion [fact that a claim is contingent or unliquidated is not a basis for disallowing the claim]; *In re Chrystalene McCutcheon*, #09-64035, Bankr. Ct., W.D. Va., 10-06-2010 order [Court lacks jurisdiction to hear objection to claim asserting that it is not a joint claim]. *In re Nolan Burnett*, W.D. Bankr. Ct., #11-71622, 11-18-2011 opinion (Stone)[the intentional filing of an unsecured claim by a properly secured creditor may violate Rule 9011 and subject the creditor to possible sanctions; *in re Robert Brooks*, W.D. Bankr. Ct., #09-61690, 12-22-2011 bench ruling (Anderson) [No laches applied to second lien holder who filed deficiency claim 18 months after foreclosure sale; creditor will be allowed to receive prospective distributions from the Trustee]; *In re Judith Burke*, W.D. Bankr. Ct., #11-51585, 06-14-2012 opinion (Krumm) [Court has no discretion to allow a late filed unsecured claim; it must be disallowed.]; *In re Jason and Tammy Davis*, #13-61853, 01-16-2014 bench ruling [if a creditor withdraws its POC after the debtor has objected to it, the debtor is entitled under Rule 3006 to an order sustaining his objection].

b. The Clerk's Office has advised attorneys that each objection should be on a separate pleading, and a hearing on an objection should be scheduled with no less than 45 days notice. See FRBP 3007(d) for omnibus objections.

c. Where the creditor has filed an amended claim prior to the entry of an order disallowing the original claim: It is unclear at this time whether an order disallowing an initial claim affects the validity of an amended claim, and whether an amended claim would be an allowed claim unless a separate objection to it was sustained.

d. Objection where the creditor cannot identify the claim. Where the Trustee has been advised by letter from the creditor that it cannot identify the account, and the Trustee objected to the claim and sought permission to redistribute the money to other creditors, the Trustee's objection was denied, and the Trustee instructed to send the money in the name of the creditor to the Bankruptcy Court Registry. *In re Richard and Carlette Duperior*, #08-63190, 08-29-2013 bench ruling.

e. Service issues on objections to claims. Service must be accomplished via Rule 7004, and that any service must also be made upon the Registered Agent if there is one. If a creditor is a corporation, serving an objection to claim on a general corporate mail box address is not sufficient process. She will follow Judge Anderson's ruling that if the creditor has designated a specific person (e.g., attorney, law firm, or corporate employee) and an address at the top of the POC form, then service on that party at that address does satisfy the Rules. *In re Keith and Lucy Holmes*, #08-62195, Bankr. W.D. Va., 06-05-2009 Order (Anderson). It is best to serve the entity who filed the claim.

B. Trustee's objections to claims: The Trustee will generally object to any proofs of claim that are filed late, but there are exceptions to this rule. The Trustee will generally not object to late-filed secured or priority claims that are essential to the success of the debtors' plan, though on occasion he may object to the unsecured, non-priority, portion of such claims. The Trustee will not object to late-filed student loan claims. The Trustee will not object to late-filed unsecured claims where the creditor was not listed in the initial schedules, as long as the creditor filed its claim within 70 days of finding out about the case. The Trustee will not generally object to unsecured claims where (i) the claim has been listed on Schedule F, (ii) a proof of claim has been filed in approximately the same amount as that set forth in Schedule F, and (iii) the proof of claim does not have the usually-required documentation. The Trustee may also object to other claims (secured, priority, or unsecured) for inadequate documentation, but in accordance with the *Hilton* decision (#12-61102, 12-02-2013 opinion), the Trustee must also have other legally sufficient grounds for such an objection.

If discrepancies, excessive charges, inadequate documentation, or other problems are found in mortgage claims, the problem will usually be referred to the debtors' attorney so that the attorney can take whatever actions are deemed to be in the best interests of the debtors. Egregious problems, or ongoing problems with a particular creditor, may result in the filing of an objection by the Trustee or referral to the US Trustee.

C. Change in debtors' work or home address: Please promptly advise the Trustee and the Court in writing if the debtors have moved their residence; if the debtors have moved and cannot be found, the Trustee may file a motion to dismiss the case. The address lodged with the Court is the only official address for the debtors, and all service of process from our office will be sent to that address.

Similarly, if the debtors are making their plan payments by wage deduction and they change jobs, please promptly notify the Trustee *in writing* and file an amended Wage Deduction Order for the new employer.

D. Annual Trustee's Case Reports: Once a year (usually in the spring) the Trustee will send to all debtors and their attorneys an interim statement of all payments received from the debtors and all disbursements made in their case.

E. Resolution of debtors' default in payments prior to the Trustee filing a motion to dismiss case: If debtor's counsel is attempting to "nip the problem in the bud" and resolve a plan payment delinquency before the Trustee has filed his motion to dismiss the case, the Trustee has devised a motion and consent order which will allow the debtors to adjust or increase their plan payments over the balance of the existing plan term and thereby resolve the problem without having to file an amended plan. It is called the Order Resolving Default. This is a "check box" form that allows the attorney to check off those paragraphs that apply to the case at hand. The debtor can increase their plan payments by adjusting the amount of the monthly payment, extending the length of the plan, increasing the total of payments, or some combination of these three changes. The order does not require notice to all creditors, since it is only benefiting the unsecured creditors and not changing the treatment of any secured or priority creditors, and so can be used to solve certain problems in a very short time frame. It can be also be used to resolve certain issues that involve the failure of a confirmed plan to provide for later-filed claims. In such instances the attorney may have to file an amended wage deduction order to provide for the new payment amount. The debtors must endorse the order. The order may also include a provision authorizing the award to the attorney of fees for the preparation of the pleadings, usually $250.

F. Resolution of a Trustee's motions to dismiss case: The Trustee will generally file a motion to dismiss the case when: (i) the debtors are cumulatively at least *two*

months behind in their monthly plan payments; (ii) the debtors have failed to make a scheduled plan payment from tax refunds, sale of property, etc; or (iii) an allowed claim reveals that the confirmed plan has failed to provide for a priority claim that must be provided for, and the debtors need either to modify their plan or object to the claim.

1. Filing documents needed to respond to the Trustee's Motion to Dismiss: When e-mailing documents to the Trustee that are needed to respond to a Trustee's Motion to Dismiss, the subject line should read: "07-60579 T&E Johnson TMTD 02-20-2020," where 02-20-2020 is the date of the hearing on the motion. Any documents in response to the motion (other than orders) must be provided through BK Docs at https://www.bkdocs.us/

2. Continuation of the motion to dismiss: The Trustee will generally not object to a continuance beyond the first scheduled hearing if the attorney is making progress toward solving the problem. As with the continuation of the Trustee's Motion to Dismiss in the pre-confirmation context, continuation will require use of the Court's Order of Continuance which can be found in the Local Forms section of the Court's website unless the Judge allows the matter to be continued by use of a docket entry. The Trustee will oppose continuation unless a delinquent debtor has appeared with a payment, or the attorney has presented a concrete plan for resolving the Trustee's concerns in the near future; merely asking for more time to solve the problem will usually not be sufficient, and may result in dismissal at the first hearing.

3. Filing of a modified plan: In many cases the debtors must file a modified plan under Code §1329 to address the problem(s) raised in the Trustee's motion. Whether or not such a modified plan will have to be noticed to all creditors will depend upon the nature and extent of the changes being proposed. Fourth Circuit case law [*In re Murphy* and *In re Goralski*, 474 F.3d. 143 (4th Cir. 2007)] dictates that the debtors must show an *unanticipated and substantial change in the debtors' financial circumstances* in order to decrease plan payments. The Trustee expects amended Schedules I and J, recent pay stubs, and third-party proof of any significant increases in living expenses in those situations.

When constructing a modified plan, the attorney needs to review all of the following documents to ensure that the modified plan is accurate: (i) the most recently confirmed plan; (ii) the most recent confirmation order, including especially the "other provisions" section; (iii) any prior "order resolving"; (iv) any post-initial-confirmation orders lifting stay; and (v) any post-initial-confirmation orders allowing additional compensation to debtors' counsel. Our office sees a large number of mistakes in modified plans that arise because counsel has not reviewed, and incorporated into the modified plan, the relevant provisions and dollar amounts from

all these sources especially the Other Provisions section of the prior Confirmation Order. Remember, for example, that if the debtor is choosing to surrender collateral on a secured claim that (i) the Trustee was paying through the plan (e.g., a car), or (ii) for which the Trustee was paying arrears while the debtor was making the regular monthly payment (e.g., house mortgage), the modified plan must state the amount that the Trustee has already paid on this secured claim and that the Trustee will make no further payments on this secured claim. Also remember that any modified plan must still pay enough to the unsecured creditors to satisfy the Chapter 7 test. If your proposed modified plan is replacing a previously filed and unconfirmed modified plan, be sure to fill in the boxes on page 1 that explain this and identify the date of the prior plan. The Trustee takes the position that an amended Schedule I and J are the proper documents to review, and over time that has become the accepted practice.

4. "Drop dead" order: There may be instances where the Trustee will agree not to seek dismissal of a case, but may insist on a "drop dead" order. This order will stipulate that if the debtors fall more than 30 days behind in their plan payments at any time in the future, the case will automatically be dismissed, without further notice or hearing, if the Trustee certifies such a default to the Court. This order is usually required only where the debtors have had numerous problems with their plan payments or have incurred a significant delinquency without good reason.

5. Importance of checking NDC the day before the hearing: If a Trustee's motion to dismiss is set for a hearing, debtors' counsel should always check the National Data Center website https://www.ndc.org/home the day before the hearing (or, better yet, the day of the hearing) in case a late payment by the debtors or an employer has posted to the Trustee's system at the last minute. Such payments can mean the difference between a case being dismissed or not. Remember that this website may be as much as ten days behind in showing payments sent by debtors, so obtaining evidence of recent payments from the debtors or an employer may be required. Note also that the site is usually a day behind in posting payments received by the Trustee.

6. Conversion of case to Chapter 7: If the debtors acknowledge that they cannot cure the default and express an intention to convert the case to Chapter 7, the court may continue the case for at least fourteen days until the next Court docket day with the expectation that it will be converted by that date; if it hasn't been converted by then, it will be automatically dismissed.

G. Motions to lift stay:

1. In order to expedite the processing of creditors' motions to lift stay, the Trustee has developed certain language which must be included in any order resolving such a motion. ***The Trustee will not endorse any order lifting stay unless it contains this***

language. The required language clarifies when the Trustee is to cease making payments on the creditor's secured claim for pre-petition arrearages; and sets a time limit by which any unsecured claim for deficiency must be filed. Note that the court may not enter a consent order that calls for the lifting of the automatic stay upon the occurrence of a specified event at some possible future date without the entry of a subsequent order actually lifting the stay as of a date certain.

If a modified plan is filed after an order lifting stay has been entered, and the plan pays mortgage arrears, the plan cannot be confirmed without the affirmative consent (endorsement of the confirmation order) by the mortgagee. Also, after an order lifting stay has been entered, the mortgagee need not be noticed of a subsequent modified plan that surrenders the property.

H. Attorney's fees for post-confirmation work: The Trustee makes recommendations to the Court regarding post-confirmation fees for debtors' attorneys based on the Court's Standing Order 22-1 (effective 02-15-2022). In a nutshell, the Standing Order states that the first post-confirmation attorney's fee should be paid from the unsecured creditors' "pot," and all subsequent ones will be added to the total of plan payments. This will be accomplished by simply adding a sentence to the order awarding fees, thereby doing away with the prior need to amend the confirmed plan or submit an order adjusting the total of plan payments.

1. All such fees, except those for post-initial-confirmation modified plans, must be sought by application filed with the Court by debtors' counsel, and an order approving the fees, endorsed by the Trustee, must be entered by the Court before the Trustee can pay any such fees to the attorney. The fees for post-initial-confirmation modified plans will simply be added to Parts 2.1-2.5 of the modified plan; the confirmation of the modified plan will serve as approval of these fees.

2. If a debtors' attorney is seeking an initial fee larger than the "no look" fee provided for in the Standing Order or is seeking to be paid on an hourly basis, they should consult the Standing Order for the procedures that must be followed and the pleadings that must be filed

3. Absent a showing of good cause, debtors' counsel may have 90 days from the date on which he or she has completed the work justifying the fees to submit to the Court both the fee application and the order allowing the fees. If the attorney fails to meet this deadline, the Court may not award the fees. If the Trustee declines to endorse the proposed fee order, the attorney must within 90 days from the date the work has been completed set a hearing on the requested fees, or no fees will be allowed. While the court may allow some leeway on this deadline, the court expects such applications to be filed "promptly".

4. As stated previously, if an attorney's request for fees has not been granted prior to a case being dismissed, the attorney may need to quickly ask the Court to postpone the dismissal until a fee order can be entered. If the case is being converted, both the order awarding fees and the Trustee's cutting of the check must occur before the case is converted. See *Harris v. Viegelahn*, 135 S. Ct. 1829 (2015).

5. The order awarding post-confirmation fees must designate whether the fees are to be added to the total of plan payments. If the fees are being paid from the existing unsecured creditors' "pot," the order will simply say that the Trustee is to pay the fees. If the fees are to be added to the plan payments, the order will contain a separate provision stating that:

"The total of plan payments in the most recently confirmed plan is hereby increased by $.00."**

[** fees being awarded plus the Trustee's 10% commission, for example, $350 /.9 = $389]

There will be no need to file any other pleadings (amended plan, order extending payments, etc.) to provide for these additional fees.

3. All such fees must be sought by application filed with the Court by debtors' counsel, and an order approving the fees, endorsed by the Trustee, must be entered by the Court before the Trustee can pay any such fees to the attorney.

4. For attorney's fees for creditor's counsel in motions to lift stay, the court may consider a three-tiered approach: An $850 fee is appropriate in a case that is contested and the attorney has to travel to Court for a hearing. A $500 fee is appropriate where there is a default order. Where the attorney works toward a negotiated settlement and a consent order results, a fee of $700 would be appropriate. *In re Catherine Hall, #13 61956, 03-12-2015 bench ruling*. The Court may also consider the fees authorized under Fannie Mae and Freddie Mac regulations.

5. For creditor's attorney's fees for Rule 3002.1 notices: The court has ruled that no fees will be allowed for the simple task of filing the notice [*In re James Coleman, 09 51421, 09-27-2014 order*].

Most objections to claims are uncontested, and attorneys are required by the Court's Standing Order 22-1 regarding debtor attorney fees to file and prosecute such objections as part of the initial "no look fee." For some idea of what the Court might allow for such post-confirmation work if the time required is significant, look at

section 2.e. of the "Guidelines for Fee Applications in Chapter 13 Cases Filed On or After 02-15-2022," which is part of the Standing Order. This Order can be found on the Court's website.

I. Sale or refinancing of debtors' property, loan modification, and early payoff of case:

1. Court permission required: Debtors are required to seek Court permission, after notice to all parties, before selling or refinancing real estate or modifying an existing loan (a "loan mod"). In these situations Local Rule 6004-3 requires that the notice must state: (i) the amount of sale / refinancing; (ii) the amount to be paid to the Trustee; (iii) whether the transaction will pay off the balance owed on the plan; and (iv) if the plan is not being paid off, the amount to be received by the debtors. The Judge may deny attorney fees if you fail to provide all this required information.

2. Additional language. The Trustee requires that certain additional language be inserted into the order authorizing the sale, refinancing or loan modification before he will endorse any such order.

3. Transfers of personal property. The Court also requires prior authorization in the form of a Court order before selling, transferring, or refinancing other property. If the value of the property being transferred is small, the process may not require notice to all parties. In order to approve any such transfer, the Trustee will need from the attorney appropriate documentation to establish the current fair market value of the asset, and an explanation of the reason for the transfer and how the funds will be applied.

4. Loan modifications: The court may grant approval of proposed loan modifications by negative notice to parties. The Trustee must endorse any order approving the modification. The Trustee asks that the loan modification agreement be attached to the motion, and that the motion state the following: the change in monthly payment, interest rate, and principal balance; the total of any fees and charges being assessed against the debtors; the amount of arrears being included in the new loan; and the amount of any cash being received by the debtors. Attorneys should review Local Rule 6004-3 regarding sale or refinance of property post-confirmation. If the transaction is in fact a true refinancing, as opposed to a loan modification, the court may insist on strict compliance with the noticing and language requirements of this Rule. If under the confirmed plan the Trustee was paying pre- or post-petition arrears to the mortgagee, the order must contain the language directing the Trustee to stop disbursements on the claim upon entry of the order. This is sample language:

> The Trustee shall make no further payments to this creditor on the arrearage portion of its secured claim after the date on which this Order is entered. This provision supersedes any language to the contrary in the confirmed plan and/or the Confirmation Order. The amounts paid to this creditor by the Trustee through the date of this Order on the arrearage portion of the creditor's secured claim are hereby approved. If the Debtor defaults under the terms of the loan modification being approved herein or wants the Trustee for any other reason to resume making arrearage payments to this creditor, the Trustee will not be able to resume making payments to this creditor on the arrearage portion of its secured claim until either (i) a modified plan reinstating such payments has been confirmed by the Court, or (ii) the Trustee has been instructed to resume such payments by other order of this Court.

5. Obtaining payoff information from the Trustee's office: In any situation where the debtors are attempting to pay off their case early, it is the policy of the Trustee's office to provide the payoff in terms of the total amount of payments remaining according to the confirmed plan. This is known as the "*base gross payoff*." It is possible that the *actual* payoff could be different if fewer creditors filed claims, or if creditors filed claims in amounts less than anticipated by the confirmed plan; this is known as the *"payoff by claims"*. The Trustee's office will provide this information only in writing, not orally or over the phone.

The accuracy of the payoff by claims cannot be guaranteed unless and until the Trustee's staff proceeds to take all steps necessary to close a case. Since this is a labor-intensive process generally reserved for completed cases, the staff will not provide the payoff by claims unless there is a large difference between the base gross payoff and the payoff by claims, and if the amount of the payoff affects the viability of a refinancing loan to pay off a Chapter 13 plan. Those requests will be considered on a case-by-case basis. For most purposes, the safest figure to use is the base gross payoff. *But even this base gross figure is an estimated figure which is subject to change or correction pending a full case review.*

When funds sufficient to pay the base gross figure or the payoff by claims figure are received by this office, any excess funds will be refunded to the debtors following the case-closing review. A copy of the standard explanatory letter and disclaimer issued by the Trustee's office whenever a payoff figure is requested is attached.

Early Payoff: In cases where the debtors are seeking to unexpectedly pay off their case early, the Trustee will want to know the source of the funds that are being used to pay off the case. If the Trustee determines that the debtors' assets or disposable income have unexpectedly and significantly increased, he reserves the right to seek an

increase in plan payments pursuant to Code §1329 and the *Murphy* opinion of the Fourth Circuit. If, on the other hand, the early payoff is the result of a gift, loan, retirement plan withdrawal, etc., the Trustee will usually not choose to file such a motion. These determinations are made on a case by case basis.

6. Impact of 4th Circuit *Murphy* decision on debtor motions to sell real estate: Trustee's motion to modify plan pursuant to Code §1329: In *In re Murphy*, 474 F.3d 143 (4th Cir. 2007), the 4th Circuit held that a Chapter 13 Trustee may, using Code §1329, seek an increase in plan payments when the debtor experiences a *substantial and unanticipated increase in the value* of his property and is selling it. The Trustee interprets this decision to mean that in situations where the debtors are seeking Court permission to sell real estate, the Trustee is obligated to determine (i) the amount the asset has appreciated since the case was filed, and (ii) whether as a result of this increase the debtors' plan should be modified to increase the total of plan payments and the payout to unsecured creditors. The Trustee will only seek additional plan payments if the increase in value is much greater than usual.

Please provide the Trustee with documentation of the current value of the real estate and the net proceeds that the debtors will receive when the motion to sell is filed.

J. Motion to incur debt: If the debtors need to incur debt in excess of the $15,000 limit allowed by Local Rule 6004-3 D., they must obtain prior approval from the Court. The $15,000 figure includes the total of both principal and interest of the new debt, and is a cumulative figure for all new debt incurred since the plan was filed. [Note: for cases filed prior to 12-01-2017, the limit is $5,000 in principal.]

The Trustee will want to know the reason for the motion, the terms of the loan being sought, and how the new obligation affects the feasibility of the plan; the last requirement may require amended Schedules I and J and recent paystubs. If the debtors are trying to purchase a replacement vehicle, the Trustee and the Court will want to know what efforts the debtors have made to ensure the lowest possible interest rate and monthly payment. A sample motion for purchasing real estate is attached.

K. Debtor requests for refunds: The Trustee is not authorized to refund any post-confirmation *plan payments* to debtors unless counsel has obtained an order from the Court authorizing such a refund. There is no Court-approved form for such an order, but the Trustee may endorse an order if the debtors are paid ahead or there is other good cause. Any such motion and order should state the reason for the refund; the amount of the refund; and the fact that the refund will not reduce the total amount which the debtors are required to pay under the plan. May sure the funds you seek to recover are fully exempt on Schedule C.

1. Wrecked or totaled cars: One recurring problem involves debtors' cars. If the Trustee is paying for the debtors' car in the plan, the car is totaled, and the insurance company sends the Trustee proceeds which exceed the balance owed on the secured portion of the debt, the debtors will have to obtain a Court order before the Trustee can send them the excess funds to purchase another car. The secured creditor must be noticed of the debtors' request. The Trustee recommends that any insurance proceeds come through his office for payment of a secured claim, rather than be paid directly by the insurance company to the secured creditor, because otherwise the debtors' base gross (total of plan payments) will not be reduced by the amount of the insurance proceeds, and the debtor will end up "paying twice" for the vehicle.

Another question that arises in these situations is whether any excess insurance proceeds over and above the amount of the creditor's secured claim should be paid only to the creditor as a loss-payee or distributed pro rata to all allowed general unsecured claims. Counsel may need to file a motion to determine who will be paid such proceeds, but in some cases the court may allow for pro rata distribution of excess proceeds to creditors under the plan. See, *In re Baisden, 14 61051, 03-23-2017 bench ruling*.

L. Modification of a confirmed plan under Code §1329 to reduce or increase plan payments.

1. ***Murphy*** standard. As noted previously, the Fourth Circuit has ruled that in order for debtors to have the right to reduce the payments required by their confirmed plan, they must show that they have experienced a change in their post-confirmation financial condition that is both substantial and unanticipated. Similarly, the Trustee must meet the same standard if he is seeking to have the debtors increase their plan payments: *In re Murphy* and *In re Goralski*, 474 F.3d 143 (2007). The Fourth Circuit has also held that Code §1306(a) extends the reach of Code §541 in Chapter 13 to include in the debtors' estate an inheritance received more than 180 days after filing, and to allow the Trustee to seek to add those funds to the debtors' plan. *In re Rickey and Cheri Carroll*, 735 F. 3d 147, 10-28-2013 opinion.

Debtors cannot reduce the total of plan payments just because the mortgage arrears turned out to be less than expected, even if the attempted reduction would still pay the general unsecured creditors more than the confirmed plan had provided. Debtors must meet the Murphy standard of a significant and unforeseen change in their financial situation. *In re George and Deborah Sellers*, #11 62774, 10-21-2013 bench ruling. See also *In re Grover Clark*, #5-00-00969, 04-01-2004 opinion (Krumm) [tax debts turned out to be less than expected]

2. Documents needed when seeking a reduction in plan payments. Where the debtors are seeking to reduce their plan payments, the Trustee will ask to see (i) at least two months of recent paystubs from the debtors, (ii) amended Schedules I and J if the debtors are claiming a change in their financial situation, and (iii) supporting documents for any living expenses that have changed significantly. For an above median case, the Trustee will ask for the same documents and information.

3. Trustee seeking increase in plan payments. Generally, the Trustee may seek upward modification of plan payments if he is made aware of a significant and unforeseen increase in either the debtors' income or the value of their assets. Examples of such situations include the receipt of an inheritance, or a divorce settlement; a dramatic reduction in the mortgage payment as part of a loan modification; or a new job that provides substantially higher income. (This list used to include insurance proceeds, but Virginia Code sec. 38.2-3122 now exempts most such proceeds.)

4. When modified plans need to be noticed. If the total amount of money going to the general unsecured creditors (the "unsecured pot") in a modified plan is being reduced, generally the plan should be noticed to those creditors.

M. Immediate reduction or suspension of plan payments due to unexpected change in the debtors' financial situation: In situations where the debtors have experienced a sudden and unexpected reduction in their income or an increase in their living expenses, the Trustee will work with debtors' counsel to deal with such emergencies. Counsel may file a motion to suspend with details explaining the situation, how long it is likely to last, and how the suspension will be cured. An order resolving the motion may suspend plan payments. Or, an Order Resolving Default may be used to suspend and then restart payments.

If the Trustee is disbursing ongoing conduit mortgage payment in the Plan, the mortgagee must be noticed, and its right to seek a lifting of the stay will not be affected by any suspension granted by the Court. The Trustee will usually not recommend a period of suspension greater than 90 days absent extraordinary circumstances. Based upon the attorney's proffer of good cause, in emergency situations the Trustee may not require supporting documentation of the alleged change in circumstances until the amended plan is filed. If the attorney fails to file the promised Order Resolving or modified plan within the agreed period, it may be cause to dismiss the case.

N. Notice required for modified plans that do not prejudice creditors: As stated previously, if debtors' counsel believes that a modified plan does not require noticing because no creditors are being prejudiced, the attorney may file with the Court a

motion and order waiving service of notice on creditors. The order must be endorsed by the Trustee, and should be sent to the appropriate Trustee's Case Administrator for review and processing. The motion should include an explanation for why the new plan does not need to be noticed to creditors—i.e., why no creditor is being prejudiced

O. Practice pointers:

1. Notice required for various motions: Look at Rule 7004 and check with the Court clerks to make sure proper notice has been given in each instance. The court looks carefully at motions to ensure that financial institutions and corporations have been served in accordance with this Rule.

2. Wording of motions:

a. To incur debt: To save having to redo such motions if an expected loan or purchase falls through, the Trustee suggests adding the following language to any motion and order involving approval of the debtor's request to incur debt: "... from lender X at the following terms: ... *or from any other lender/seller at terms equal to or more favorable to the debtor*."

b. To sell real estate: When selling real estate, if there is a question about existing liens against the property, the Trustee suggests using *"sale free and clear of liens"* language in both the motion and the order, so that if a previously-unknown lien is discovered in the title work-up it won't delay the sale: "*Sale to be free and clear of liens, with all valid deeds of trust, judgments, tax liens and other encumbrances being removed from the title to the real property and impressed upon the sale proceeds without change in priority.*" But note: filing such a motion involves a filing fee, so it should only be used where necessary.

3. Sale or refinancing of real estate: problem regarding who pays arrears: If the confirmed plan provides for the Trustee to pay mortgage arrears, but for whatever reason they are instead to be paid at closing, debtors must still pay the full balance of the base gross (total of payments) of the confirmed plan to obtain their discharge; the Trustee has no authority to reduce the base gross unless the plan is amended. The Trustee will probably oppose reducing the base gross by the amount of the arrears being paid at closing because of the holdings of Murphy (4th Cir.) and Grover Clark (Judge Krumm). Check with the Trustee prior to filing the motion to discuss this issue if it will cause problems for the debtors. Any order approving sale, etc., must state clearly whether such arrears will be paid by the Trustee of the closing agent.

P. Conversion and Dismissal generally: A case filed under Chap. 13 and converted to Chap. 7 is subject to §707(b), and cause to dismiss a case pursuant to that section

includes bad faith. *In re Terrance and Leslie Reece*, W.D. Bankr. Ct., #11-51044, 08-29-2013 opinion (Connelly).

Q. Distribution of plan funds at dismissal or conversion of case.

1. Conversion: Since the Supreme Court's decision in *Harris v. Veigelahn*, 135 S. Ct. 1829 (05-15-2015), unless the Bankruptcy Court orders otherwise, the Trustee lacks the authority to distribute funds on hand to any party but the debtor once an order of conversion has been entered. If an attorney wants to be paid fees in a case converting before it has been confirmed, he needs to have the fee order entered, and the check actually cut by the Trustee, before the order is entered converting the case to Chapter 7.

2. Dismissal: It is the Trustee's position, based on the language of the form confirmation order, that he is required to distribute to creditors pursuant to the confirmed plan any funds in his possession as of the date the Court enters an order dismissing a case, whether it be based on the Trustee's motion to dismiss based on the debtor's request for dismissal. In a situation where a debtor obtained permission to obtain a reverse mortgage on his property and promised to send the proceeds to the Trustee to pay off his plan, and then tried to voluntarily dismiss his case and have the proceeds returned to him, the Court agreed that the funds should be distributed by the Trustee pursuant to the debtor's confirmed plan. *In re Arley J. McCreery*, #09-60858, 08-30-2010 opinion by Judge Anderson.

R. Reopening a dismissed case. When a case has been dismissed but has not been closed by the Court, Code §350 doesn't allow the Court to reopen the case, so debtor's motion is improper; the motion must be filed under Rule 9024. *In re Leroy and Mary Jane Mull*, W.D. Bankr. Ct., #12 71486, 02-05-2013 opinion (Connelly).

S. Reconverting a case back to Chapter 13 from Chapter 7. In a case where the attorney mistakenly converted the debtors from Chapter 13 into Chapter 7 and later wanted to bring them back into Chapter 13, the court ruled that (i) it does not have the authority to vacate the debtors' initial conversion from Chapter 13 to Chapter 7, even though the attorney admitted it was due to his "mistake," but (ii) it does have the authority to reconvert their case back to Chapter 13. *In re Brett&Laura Bryant*, #12-62595, 12-16-2013 bench ruling.

T. Miscellaneous post-confirmation issues

1. Creditor request for documents (tax returns) pursuant to Code sec. 521 allowed in 59th month of plan denied. *In re Robin Tomer*, #08-61265, Bankr.W.D. Va., 03-14-2014 opinion (Black).

VI. COMPLETION OF PLAN PAYMENTS, DISCHARGE, AND CLOSING OF THE CASE

A. Completion of plan payments, stopping of wage deduction order, and debtor refunds:

1. Seeking additional time where debtors are struggling to complete plan payments. If the case is already 60 months from confirmation, the court may have no authority to confirm a modified plan, but it may continue a motion to dismiss out for several months to allow debtors nearing the end of their case to complete their plan payments. *In re Martha Price*, #08-60707, 07-18-2013 bench ruling. This process can be used, for example, at the end or beginning of a calendar year to give debtors time to receive and forward to the Trustee their income tax refund to complete payments under the plan.

2. Stopping the wage deduction. Once the debtors have completed all the payments required by their confirmed plan, any automatic wage deduction in place should be immediately stopped. While the Trustee's office has its system for keeping track of when plan payments are completed, it is not a perfect system, and the Trustee may sometimes be a month or so late in becoming aware that all plan payments have been made. *Debtors should therefore be advised to keep track of when they have completed their plan payments and should be urged to advise the Trustee immediately when payments have finished;* debtors attorneys can log onto National Data Center at any time to find out the status of their plan payments.

Once the Trustee has been made aware that all plan payments have been completed, Trustee staff will so advise the Court and it will issue a Wage Release Order stopping any ongoing wage deduction. The order will be sent to the debtors, their attorney, and any employer that is doing a wage deduction. *The debtors should call the employer's payroll office immediately to ensure that the proper person has received the order and the deduction is being stopped.* If problems arise, the debtors should promptly contact their attorney.

If excess funds have been sent to the Trustee's office because the wage deduction continued beyond its proper ending point, the debtors should notify the Trustee's office. If in fact excess funds have been sent to the Trustee's office, a refund to the debtors can be made at the next regularly scheduled monthly distribution after the employer's checks have cleared the bank and the Trustee's office has completed its case closing review of the case. (Note: The Trustee is not permitted to write checks on any uncertified funds until they have been on deposit in the Trustee's account for 14 calendar days.)

3. Trustee's case closing procedure. The Trustee's staff conducts a thorough closing procedure for every case once plan payments have finished. It usually takes 4-6 weeks to conduct this process. Sometimes this process will reveal that the debtors are entitled to a refund (for example, where not all creditors filed claims and every creditor was unexpectedly paid in full), but no such refunds to debtors can be issued until this closing process has been completed.

B. Discharge procedure: Pursuant to Local Rule 4008-1, once the Trustee has certified to the Court that the debtors have completed their plan payments, the Court will issue to the debtors a "Notice to File Certification of Compliance with 11 U.S.C. §1328." The debtors will then have 60 days to execute and file with the Court and the Trustee the "Debtors' Certification of Compliance form that accompanies this Local Rule and which can be found on the Local Forms section of the Court's website, Form 4004-1A. In this Form the debtors are certifying, among other things, that they have taken the personal financial management course required by Code §1328(g).

Once the debtors have filed the Certification form with the Court, the Clerk's Office will notify all parties that the debtors have applied for a discharge, and that, absent any objections, the discharge will be issued after a specified date. If no objections are filed, the discharge will be automatically issued; if any objections are filed, the Court will set a hearing date. If any objections to the discharge are filed, debtors' counsel will need to be prepared to present appropriate evidence at the hearing. If a hearing is scheduled, be sure to make it clear to the debtors whether they need to appear for the hearing.

D. Failure to file the required certification. If the debtors fail to file the required certification form within the 60-day period, the case may be closed by the Court Clerk's Office without the issuance of a discharge. At present, the Court's policy is to close such cases without a discharge 30 days after the expiration of the 60-day period. The Court may, in some instances, allow the reopening of a case for the purpose of complying with this certification process. **Make sure your debtors understand the dramatic consequences of not filing this form on time.**

E. Discharge procedure where debtors are not eligible for a discharge: Upon receiving the Trustee's report of completion of plan payments in a case where the debtors are not eligible for discharge, the Court will not issue the "Notice to File Certification of Compliance with 11U.S.C. §1328"; instead, it will wait for the Trustee's Final Report and close the case after the 30-day time frame has passed.

F. Hardship discharge under Code §1328(b): The Bankruptcy Code allows debtors to apply for a discharge before they have completed their plan payments only in certain restricted circumstances. This is the so-called "hardship discharge." Before the

Trustee will be able to make a recommendation to the Court in these situations, he will need to be provided with evidence that shows the debtors have met the three pronged test of this section [the failure to complete plan payments was due to circumstances beyond the debtors' control; the amount of funds already distributed to unsecured creditors meets the "Chapter 7 test"; and no modified plan is practicable]. Always check the Chapter 7 test first; if it has not been met, the other two tests are moot and no hardship discharge can be granted.

Where the Debtor has died: The court may allow a hardship discharge in a case where the requirements of 1328(b) have been met and the debtor has died before completing all plan payments.

Check local practice for the kinds of evidence that must be presented to the Court to obtain a hardship discharge. E.g.: The debtor will probably need to provide clear evidence that any alleged disability is permanent. E.g., *In re Stockton*, #5-04-00792, 05-08-2007 opinion; *In re William and Catherine Shifflett*, #05-50345, 12-14-2007 opinion.

G. DSO Letters: At the time of discharge, the Trustee is required by BAP&CPA to send notice to any DSO (Domestic Support Order) payee and the state agency in charge of collecting child support. The notice alerts them to the issuance of the discharge and certain information about the debtor and any of his/her non-dischargeable debts.

H. Rule 3002.1 notices:

1. In cases where the Trustee is paying mortgage the Rule requires the Trustee to file with the Court and send to the debtor, debtor's attorney, and the holder of the claim a notice when the Trustee has fully cured the arrearage. The notice triggers an obligation by the holder to respond within 21 days if it disagrees that the Trustee has fully cured the arrearage. Sometimes the creditor will also notify the debtors in its response that the debtors are behind in their post-petition mortgage payments. Often this is the first that the attorney has been advised of this problem, and the attorney should contact the debtors right away to see how this problem might be resolved. Failure to address this issue may result in the debtors facing a new foreclosure right after their Chapter 13 case is closed.

a. The new Rule also requires the claim holder to file with the Court and notice the debtor and Trustee of any (i) increase in the post-petition mortgage payment, or (ii) any post-petition expenses, fees, etc., incurred by the holder and to be paid by the debtor. The former is to be filed at least 21 days before the changes take place; the

latter must be filed within 180 days after the expenses have been incurred. There are two Official Forms which must be used in this process.

2. These notices, filed by creditors for post-petition charges against the debtors, are not claims; the Trustee cannot pay them unless they are filed as claims; and filing them is an administrative function that should not require an attorney and should not result in additional fees being charged to the debtors. *In re David and Amy Quesenberry*, W.D. Bankr. Ct., #12-62001, 08-26-2013 consent order (Connelly). See also *In re Johnny and Christina Sheppard*, E.D. Bankr. Ct., #10-33959-KRH, 04-18-2012 opinion (Huennekens).

3. In a case where the loan documents allowed for fees where there had been a default or where the creditor's interests had been materially affected, the court denied the creditor's request for a $275.00 for "Bankruptcy Attorney Fees" where the debtor was current at filing and current throughout the case. There was no controversy, no arrears, nothing that materially affected the creditor's interests. It was not reasonable for the debtor to have to reimburse the creditor for fling a proof of claim in this case. While the creditor could charge these fees, the creditor should pay them. Debtor attorney's request for $500 in attorney fees was denied. *In re Phyllis C. Williams*, #12-62381, 07-18-2013 bench ruling.

I. Debtor refunds where debtors' whereabouts unknown: Occasionally there is money to be refunded to the debtors upon completion of their plan, but the refund check to the debtors is returned because the debtors have moved. In those situations, if the Trustee's staff cannot reach the debtors by phone, an e-mail will be sent to the attorney asking if the attorney has a better address. If no better address is forthcoming from the attorney, the Trustee is required to send the check to the Bankruptcy Court registry. The money will remain there for a specified period of time so that the debtors can claim it. Given the importance of this money to the debtors, the Trustee asks that attorneys respond promptly to such an inquiry, and that they exert reasonable efforts to use information in the file to locate the debtors.

J. Revocation of discharge. Code sec. 1330. *In re Cathy Knupp*, #06-50342, Bankr. Ct., W.D. Va., 07-26-2011 Krumm opinion [a case of first impression in the W.D. of Va; Court sets out the standards and elements that must be proven and finds that in this instance the issuance of the discharge should be revoked].

K. Practice pointers: The Trustee strongly recommends that the debtors' attorney take the following steps at the conclusion of the debtors' case:

1. Notify credit reporting agencies of discharge: Assist the debtors in notifying the three major credit reporting agencies of the successful completion and discharge of

their case. Sending a copy of the schedules and the discharge will increase greatly the odds that the case is properly recorded in their records. The names and addresses of these agencies are in initial letter sent to Debtors by the Trustee.

Advise the debtors to check their credit report again in six months or so to make sure that their case and their discharge have been properly recorded on their credit reports.

2. Closing letter to debtors: Send a closing letter to the debtors outlining the effect of the discharge, how to follow up on the correct reporting of their case to the credit reporting agencies, what to do in case of a violation of the discharge injunction, etc.

3. Retention of the bankruptcy papers: Impress upon the debtors the importance of retaining in a safe place their bankruptcy papers. As we know all too well, they will need them over the next few years for a variety of reasons. If they lose their documents and need a copy, and sufficient time has lapsed that they are no longer retrievable from the Court's ECF system, getting a paper copy from the Bankruptcy Court Archives in Philadelphia is time consuming and requires a fee.

L. The Evans problem: A concern for debtors and their attorneys is the situation where the debtors were supposed to be making the ongoing mortgage payment directly to the mortgagee during the plan but failed to make all the post-petition payments they were required to make. This problem will usually come to light after the Trustee has filed his 3002.1 notice alleging that he has paid in full all the *pre-petition* mortgage arrears, and the mortgagee responds to the notice by advising the Court that the debtors are delinquent post-petition. *In In re Evans, Dist. Ct. ED VA, #4:16ev17,* 01-13-2017 opinion (Doumar), the District Court affirmed the Bankruptcy Court's ruling that such debtors are not entitled to a discharge because such payments are payments "under the plan." As of 09-30-2020, there has been no similar holding by a W.D. Va court, but it is an issue lurking in the shadows that will probably be heard at some point, and it poses a severe and often unanticipated penalty for debtors. Please explain this new reality to your debtors at the beginning of the case, and urge them to contact you right away if they ever fall behind in their mortgage payments at any point during their case.

VII. MISCELLANEOUS

A. Debtors' complaints about their attorney: The Trustee receives complaints from debtors about their attorneys on a regular basis. It is the Trustee's policy to handle all such calls personally, and, pursuant to Code §1302(a)(4), advise debtors of

their options. The Trustee explains to each debtor that the first step in any such situation is to arrange a meeting with the attorney to express the debtor's concerns face to face; that most of these problems are the result of a misunderstanding or lack of communication and can be resolved; that if requested, the Trustee will send the debtor a letter outlining the debtor's options and that if requested the Trustee will provide the debtor with the names of other experienced bankruptcy attorneys in the relevant geographical area if the debtor wants a second opinion or to seek substitute counsel.

B. Withdrawal of counsel. If the debtor signs the withdrawal order and the Trustee endorses the order, the withdrawing attorney should submit her motion and order to the Court, and in most cases the Judge will enter it without a hearing. If the debtor has not signed the order, the matter needs to be set for an actual hearing, and the debtor and the Trustee must be given appropriate notice of the hearing date and time. The Trustee will always ask what arrangements have been made to find the debtor substitute counsel, and the Trustee may postpone his endorsement of the order until substitute counsel has been obtained.

C. Complaints about Trustee staff or communications: The Trustee's office is committed to providing prompt, courteous, and accurate service and information to debtors, attorneys, and creditors involved in Chapter 13 cases. Any complaints concerning Trustee staff will be handled directly by the Trustee, and can be transmitted using the phone, fax, or e-mail contact information found on the home page of this web site.