

# What's New?

## New Plan, Forms and Rules

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# New Plan and Modified Plan

- New Uniform Plan (Version 1.1) Effective 02/16/2018 and New Plan Summary Effective 12/1/2017
- New Uniform Modification of Confirmed Plan and Motion for Valuation of Collateral (Version 1.1.) Effective 02/16/2018 and New Plan Summary for Proposed Modified Plan Effective 12/1/2017

# New Forms

- New Chapter 13 forms can be found at <http://www.txs.uscourts.gov/bankruptcy-forms> and <http://www.txs.uscourts.gov/bankruptcy/bankruptcy-forms-filing-fees>
  - Mandatory vs. Suggested Forms

# New Rules

- New National Rules <http://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-bankruptcy-procedure>
- New Local Rules <http://www.txs.uscourts.gov/page/bankruptcy-local-rules>
- New Home Mortgage Procedures <http://www.txs.uscourts.gov/bankruptcy/bankruptcy-forms-filing-fees>
- Judges' Procedures <http://www.txs.uscourts.gov/bankruptcy/bankruptcy-judges-procedures-schedules>
- See Chart for changes

# New Concepts

- Trustee will adjust plan payments under more situations
  - Plan paragraph 4B: Trustee will adjust plan payments on confirmed plans based on timely filed secured claims after confirmation.

B. If the monthly payment required on a timely filed secured proof of claim varies from the monthly payment scheduled in this Plan, the amounts shown on the timely filed proof of claim will govern, retroactive to the petition date. If a timely proof of claim is not filed, the amounts scheduled in this Plan will govern. If a timely proof of claim is filed after the confirmation of this plan, the Trustee must file a Notice of Plan Payment Adjustment to reflect any difference from the amounts scheduled in this Plan, effective with the next payment due after the expiration of 30 days from the date that the Notice of Plan Payment Adjustment is filed. With respect to payments made or due to the holder of the secured claim prior to the effective date of the Notice of Plan Payment Adjustment, the Trustee must increase or decrease the amounts of future payments to capture the difference in equal installments over the balance of the term of the Plan.



**TRUSTEE'S NOTICE OF PLAN PAYMENT ADJUSTMENT  
(BASED ON TIMELY FILED SECURED PROOF(S) OF CLAIM)**

The following schedule is a list of secured claims that have been timely filed, and thus allowed, in amounts that differ from the amounts specified in the confirmed chapter 13 plan. Effective May 2018 (month 7 of 60) the plan payment to Trustee is adjusted as indicated:

A	B	C	D	E	F	G	H
Court Claim #	Trustee Claim #	Name of Creditor	Amount per Claim <sup>1</sup>	Amount per Plan <sup>2</sup>	Difference (column D minus column E)	Interest Adjustment, if any <sup>3</sup>	Total Change
10	19	Resolution Finance, LLC	\$4,245.96	\$4,300.00	-\$54.04	\$44.45	-\$9.59

1	Total increase/decrease based on claims <sup>4</sup>	-\$9.59
2	Change in monthly payment (line 1 divided by remaining months in plan)	-\$0.18
3	Posted Chapter 13 Trustee Fee percentage	5.95%
4	Change in Chapter 13 Trustee Fee (line 2 multiplied by line 3)	\$0.01
5	Current monthly payment in confirmed plan	\$1,850.00
6	<b>New monthly adjusted payment to Trustee beginning 05/02/2018 (line 2 plus line 4 plus line 5)**</b>	<b>\$1,849.81</b>

**The payment adjustments reflected in this notice shall be deemed the correct plan payment effective on the dates indicated and BE FINAL AND BINDING ON ALL PARTIES WITHOUT FURTHER ORDER OF THE COURT unless a party in interest objects to the notice within 21 days from the date this notice is filed.**

<sup>1</sup> If the claim is an on-going contractual payment, insert the dollar amount of the required monthly payment per the proof of claim multiplied by the months in the plan; DO NOT insert the total claim amount.

<sup>2</sup> If the claim is an on-going contractual payment, insert the dollar amount of the stated monthly payment per the plan multiplied by the months in the plan.

<sup>3</sup> This is an estimate of the change in the amount of interest to be paid on the claim(s), based on the assumption that all payments due from the debtor are made in a timely manner. The actual amount to creditors may vary.

<sup>4</sup> Totals from Column H of table above.

# New Concepts

## Plan Payment Adjustments (continued)

### – Plan/Mod paragraph 8: Changes to Ongoing mortgage payments on principal residence

A. If the payments to be made by the Trustee pursuant to Paragraphs 8 or 11 are adjusted in accordance with the Home Mortgage Payment Procedures defined and adopted pursuant to Bankruptcy Local Rule 3015-1(b) (whether on account of a change in any escrow requirement, a change in the applicable interest rate under an adjustable rate mortgage, or otherwise) or in accordance with the procedures set forth in Paragraphs 19 or 23, the payments to the Trustee under this Plan will be modified as follows:

(i) The Debtor(s)' payments required by Paragraph 4 of this Plan will be automatically increased or decreased by (i) the amount of the increase or decrease in the Paragraph 8, 11, 19 or 23 payments; and (ii) the amount of the increase or decrease in the Posted Chapter 13 Trustee Fee that is caused by the change.

(ii) The Posted Chapter 13 Trustee Fee is the percentage fee established by the Court and posted on the Court's web site from time to time<sup>4</sup>.

(iii) If the Paragraph 4B, 8, 11, 19 or 23 changes are made and the changes (considered in combination with all other changes that did not previously invoke a payment change under Paragraph 4A(i)) would result in a cumulative change of less than \$600.00 over the remaining life of the Plan, the Debtor(s)' payments required by this Paragraph 4 will not be changed, unless the failure to implement the change would render the Plan deficient.

# New Concepts

## Plan Payment Adjustments (continued)

### – Plan/Mod paragraph 11: Changes to Ongoing mortgage payments on non-principal residence real property

A. If the payments to be made by the Trustee pursuant to Paragraphs 8 or 11 are adjusted in accordance with the Home Mortgage Payment Procedures defined and adopted pursuant to Bankruptcy Local Rule 3015-1(b) (whether on account of a change in any escrow requirement, a change in the applicable interest rate under an adjustable rate mortgage, or otherwise) or in accordance with the procedures set forth in Paragraphs 19 or 23, the payments to the Trustee under this Plan will be modified as follows:

(i) The Debtor(s)' payments required by Paragraph 4 of this Plan will be automatically increased or decreased by (i) the amount of the increase or decrease in the Paragraph 8, 11, 19 or 23 payments; and (ii) the amount of the increase or decrease in the Posted Chapter 13 Trustee Fee that is caused by the change.

(ii) The Posted Chapter 13 Trustee Fee is the percentage fee established by the Court and posted on the Court's web site from time to time<sup>4</sup>.

(iii) If the Paragraph 4B, 8, 11, 19 or 23 changes are made and the changes (considered in combination with all other changes that did not previously invoke a payment change under Paragraph 4A(i)) would result in a cumulative change of less than \$600.00 over the remaining life of the Plan, the Debtor(s)' payments required by this Paragraph 4 will not be changed, unless the failure to implement the change would render the Plan deficient.



# New Concepts

## Plan Payment Adjustments (continued)

### – Plan/Mod paragraph 19: Asset Sales

**19. Asset Sales.** The Debtor(s) are authorized—without the need for further Court order (except as provided by FED. R. BANKR. P. 2014 if applicable)—to sell their exempt property in accordance with this Paragraph. Any such sale shall provide for the full payment, at closing, of all liens on the property that is sold. If the Debtor(s) request and the Court so determines, an order confirming this authority may be granted by the Court, *ex parte*. Within 14 days following the closing of any sale of real property pursuant to this Paragraph, the Debtor(s) must provide to the Trustee a copy of the final closing statement. Any non-exempt proceeds received from the sale must be paid to the Trustee. Unless the sale was privately closed, the closing statement must be the statement issued by the title company or closing agent handling the sale. If the property that was sold was exempted as a homestead solely under Texas law, any proceeds of the sale that are not reinvested in a qualifying Texas homestead within 6 months of the closing of the sale must be paid to the Trustee within 14 days after the expiration of the 6-month period. If only a portion of the proceeds are reinvested in a qualifying Texas homestead prior to the expiration of the 6-month period, the balance of the proceeds must be paid to the Trustee within 14 days of the closing.

# New Concepts

## Plan Payment Adjustments (continued)

- How do you prepare the plan and Debtor for these plan payment adjustments and/or modify the plan after they have been made?
- When is it better for Debtor to pass confirmation to after the bar date?
  - Debtor did not have sufficient supporting documentation
  - To ensure the payment change will not cause an undue hardship, when there is a known issue

# New Concepts (continued)

- Trustee will pay per timely allowed claims or per the plan without a timely filed claim.

**25. Presence or Absence of a Proof of Claim.**

A. Secured and priority claims provided for in this Plan will be paid without the necessity of the filing of a proof of claim. If this Plan sets the amount of a monthly payment, monthly payments will be adjusted in accordance with the Court's Home Mortgage Payment Procedures as applied by Paragraphs 8 and 11 of this Plan.

B. Unless otherwise ordered by the Court (and subject to the claims objection process), the amounts shown on a timely filed proof of claim govern as to (i) the amount of that claim, (ii) the amount of any cure amount; and (iii) the amount of any monthly payment, which monthly payment is subject to adjustment in accordance with the Court's Home Mortgage Payment Procedures as applied by Paragraphs 8 and 11 of this Plan.

C. Regardless of the filing of a proof of claim, the valuation in this Plan of the collateral securing a claim controls over any contrary proof of claim.

D. A determination made under this Plan as to a claim does not constitute an order allowing or disallowing a claim against the estate for purposes of Rule 3008 or otherwise.

E. Unless the Court orders otherwise, no general unsecured claim will be paid unless a proof of claim has been timely filed.

F. The payment of Debtor(s)' attorney's fees are not governed by this Paragraph.

G. No creditor, before or after completion of the Plan, shall be allowed to collect any payments, costs, fees, or expenses, from the Debtor(s), the estate, or their property, that are not provided for in this Plan.

# New Concepts

## Timely and Untimely Claims (continued)

- If a claim is filed untimely, Trustee will not change the disbursement to that creditor (up or down), the claim will only be used to update notice and payment addresses.
- What is the impact of underestimating or overestimating claims?
- What are the risks to protect against when paying without a proof of claim?



# Timely and Untimely Claims (continued)

- Most creditors have a shorter deadline to file proofs of claim
  - Secured, priority and general unsecured creditors will have 70 days following the petition date to file their claims
  - However, if the claimant is a governmental unit, their deadline remains 180 days following the petition date
- What are the options for creditors if claims are not timely filed?

# Surrender

- Surrender vs. Transfer
- Surrendering via notice rather than modification
- What is the impact of electing to surrender or transfer on future treatment of the claim?
  - Is there any way to undo a surrender or transfer?

7. **Secured Claims for which Collateral is Surrendered.** The Debtor(s) surrender the following collateral under this Plan:

Name of Creditor	Description of Collateral

A. Upon confirmation of this Plan, the Debtor(s) surrender the collateral and the automatic stay under 11 U.S.C. § 362(a) is terminated as to actions against any (i) collateral that is described in the preceding table; and (ii) escrow deposit held by the holder of a security interest to secure payment of taxes and insurance. The automatic stay is not terminated under this Paragraph as to any other action. The co-debtor stay under 11 U.S.C. § 1301(a) is terminated with respect to the collateral identified in the preceding table.

B. Other than terminating the co-debtor stay, this Plan does not affect any co-debtor's rights in the collateral or the obligation of any secured creditor to act with respect to such a co-debtor in compliance with applicable non-bankruptcy law.

C. **The Debtor(s) and the creditor asserting a security interest against the collateral must comply with Bankruptcy Local Rule 6007-1 with respect to the surrender of the collateral.**

D. The rights of a secured creditor to a deficiency claim will be determined (i) in accordance with the creditor's allowed unsecured claim in any timely filed proof of claim; or (ii) by separate Court order.

## 20. Surrender of Collateral during the Plan Period.

A. The Debtor(s) may surrender collateral to a secured creditor after confirmation of the Plan by filing a Surrender Notice in the form set forth on the Court's website. The Surrender Notice will be effective upon the expiration of 21 days from the date that it is filed; provided, if an objection to the Surrender Notice is filed within the 21-day period, the Surrender Notice will become effective only upon entry of a Court order approving the Surrender Notice (the "Effective Date"). If a timely objection is filed, the Trustee will schedule the Surrender Notice for hearing on the next available Chapter 13 panel date. On the Effective Date, the automatic stay under 11 U.S.C. § 362(a) and the co-debtor stay under 11 U.S.C. § 1301(a) are terminated as to actions against surrendered property. The automatic stay is not terminated under this Paragraph as to any other action.

B. **Bankruptcy Local Rule 6007-1 applies to the surrender of property under this Plan.**

C. Other than terminating the co-debtor stay, this Plan does not affect any co-debtor's rights in the collateral or the obligation of any secured creditor to act with respect to such a co-debtor in compliance with applicable non-bankruptcy law.

D. If payments on debt secured by the surrendered property were made through the Trustee, a Debtor(s)' Proposed Notice of Plan Payment Adjustment, in the form set forth on the Court's website, must be filed as an exhibit to the Surrender Notice. If the Trustee determines that the Debtor's Proposed Notice of Payment Adjustment is materially inconsistent with the following Paragraph, the Trustee must file a Trustee's Corrected Notice of Plan Payment Adjustment. Any such Corrected Notice must be filed within 30 days after the filing of the Debtor(s)' Proposed Notice of Plan Adjustment. The Trustee's Corrected Notice of Plan Payment Adjustment will be binding unless a party-in-interest files a motion and obtains an order to the contrary.

E. If the payment on the debt secured by the surrendered property was made through the Trustee, the Plan payment will be adjusted. The adjusted payment will be effective with the next payment due to the Trustee after the Effective Date. The Plan payment adjustment will be a reduction equal to (i) the sum of (a) all remaining principal, interest and escrow payments that are due under this Plan after the Effective Date and payable to the holder of the secured debt; plus (b) any Reserves required by Paragraph 23 for the payment of ad valorem taxes pertaining to the surrendered property; plus (c) the Posted Chapter 13 trustee fee applicable to the sum of such remaining payments of principal, interest, escrow and reserves; divided by (ii) the remaining number of monthly payments due under the Plan after the Effective Date. No further ad valorem tax reserves will be established on surrendered property.

F. On the Effective Date, no additional direct or Trustee payments will be made on the claim secured by the surrendered property. The rights of a secured creditor to a deficiency claim will be determined (i) in accordance with the creditor's allowed unsecured claim in any timely filed proof of claim; or (ii) by separate Court order.

G. Within 14 days of the Effective Date, the Debtor(s) must file an amended Schedule I and J.



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
\_\_\_\_\_ DIVISION**

**In re:** §  
§ **Case No.** \_\_\_\_\_  
[Debtor(s)' Names], § **(Chapter 13)**  
§  
Debtor(s). §

**NOTICE OF SURRENDER OF COLLATERAL**

Pursuant to paragraph 20A confirmed chapter 13 plan in this case, the Debtor(s) file this Notice of Surrender of Collateral. Unless an objection is filed within 21 days of the date that this Notice of Surrender is filed, the surrender will become effective without the requirement of a Court Order.

1. Description of collateral: \_\_\_\_\_.

2. Creditors with a lien or other security interest in the collateral:

a. (Creditor name and address)

\_\_\_\_\_  
\_\_\_\_\_

b. (Creditor name and address)

\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

[SIGNATURE BLOCK]

# Local Rule 6007

- Applies only in Chapter 13 cases
- If you surrender **SEND AN EMAIL** (fax or paper) to opposing counsel and make sure you get a response, if not see Rule 6007 chart.
- Remember no agreement can impose personal liability on debtor or limit a debtor's discharge
- The Debtors may use the collateral (if insured) pending retrieval
- Both Debtor and Creditor can seek an order to compel compliance
- Impose a monthly storage fee 0.5% of FMV secured by first priority lien and enforce such lien, essentially get title to personal property after 228 days from surrender

## Separate table in the handouts that attempts to layout the time frame for actions that must be taken when something is Surrendered

PARAGRAPH OF PLAN	TYPE OF PROPERTY	TIME FRAME FOR DEBTOR'S INITIAL DISCLOSURE	DEBTOR MUST COMPLETE THE FOLLOWING DISCLOSURE	TIME FRAME FOR CREDITOR	CREDITOR MUST COMPLETE THE FOLLOWING	TIME FRAME FOR DEBTOR'S RESPONSE/ACTION	DEBTOR MUST COMPLETE THE FOLLOWING
7	Real property	Within 7 days of confirmation order	1) Send Letter Offering Immediate Possession under 6007(e)(1) [on court's website] 2) Serve via 1 <sup>st</sup> class mail on <i>all security interest holders*</i> at <ul style="list-style-type: none"> <li>- last known address or</li> <li>- address on <u>poc</u> or</li> <li>- to <u>atty</u> who filed an appearance</li> </ul>	Anytime immediately following the 7 days post entry of confirmation order	Send a written request for possession that sets forth date to deliver real property (that may not be before the 14 <sup>th</sup> day after delivery) to: <ul style="list-style-type: none"> <li>1) Debtors' counsel via email; and</li> <li>2) to Debtor served in accordance with 7004</li> </ul>	No sooner than 14 days following deliver of request for possession and no later than date set forth in request (written request date of delivery may not be sooner than 14 days from receipt)	Vacate property upon receipt of request from a secured interest holder or in the case of a dispute between interest holders
7	Vehicle	Within 7 days of confirmation order	Keep vehicle insured if Debtor is using  (Practice tip: If applicable, send an Impossibility Notice right away)	Anytime immediately following the 7 days post entry of confirmation order	File a Delivery Notice in the Case, on the docket that sets forth <ul style="list-style-type: none"> <li>1) location where vehicle is to be delivered (designated location must conform with 6007(f)(ii))</li> <li>2) disposition of the keys at the time of delivery</li> </ul>	Within 14 days of the filing of a delivery notice	Must deliver the vehicle to the specific location set forth in the notice, and turn over keys as set forth in notice (delivery must conform with 6007(f)(ii))
						OR  Within 7 days of the filing of a delivery notice	Send impossibility notice [on court's website] Informing creditor that vehicle cannot be delivered because uninsured, does not run, debtor doesn't have possession, etc.
7	Other property			Within the 28 days following confirmation of a plan	Make reasonable efforts to take possession of the surrendered property		

\*If the United States or its agencies (e.g. IRS) is a party then additional notice must be sent to US Attorney in Houston, or give the US notice according to 7004

**LETTER OFFERING IMMEDIATE POSSESSION**

[Addressed to each holder of a security interest against property to be surrendered as determined from schedule D and from filed proofs of claim, with copies to counsel].

Dear:

We are the Debtor(s) in the bankruptcy case styled “In re \_\_\_\_\_”, case number \_\_\_\_\_, pending in the United States Bankruptcy Court for the Southern District of Texas. This letter is sent pursuant to Bankruptcy Local Rule 6007-2(e)(i). This letter concerns the real estate described on the attached Exhibit “A” (the “Property”).

We offer immediate possession of the Property. If you wish to take possession, you must notify us and our lawyer with the manner and date on which you wish to take possession. Pursuant to Bankruptcy Local Rule 6007-2(e)(iv), this date may be as soon as 14 days following your request. Please advise us and our counsel, in writing, with the date on which we should vacate the premises. You should address your notice to:

[List Notice Addresses]

Date: \_\_\_\_\_

[SIGNATURE BLOCK]



**NOTICE OF INABILITY TO DELIVER VEHICLE**

**[TO BE DELIVERED TO ALL PERSONS SET FORTH IN BANKRUPTCY LOCAL RULE 6007-2(f)(ii)(D)(1)]**

1. This Notice is sent pursuant to Bankruptcy Local Rule 6007-2(f)(ii)(D)(1).

2. Under the confirmed plan in this case, the Debtor(s) surrendered a vehicle described as \_\_\_\_\_. Based on the surrender, the Debtor(s) were required to deliver the vehicle to the holder of the secured claim.

3. The last known location of the vehicle is \_\_\_\_\_.

4. The Debtor(s) are unable to deliver the vehicle because:

\_\_\_\_\_ The vehicle is not insured.

\_\_\_\_\_ The vehicle is not operable.

\_\_\_\_\_ The Debtor(s) do not have possession of the vehicle. Attached as Exhibit "A" is a description of (i) why the debtor does not have possession of the vehicle; (ii) the last known location of the vehicle; (iii) the name, address and contact information for the last person believed to have been in possession of the vehicle.

Date: \_\_\_\_\_

\_\_\_\_\_  
[Debtor's Signature]

# New Noticing Requirements

- See Chart of Noticing Cheat Sheet
- If the plan takes advantage of certain provisions, additional notice is necessary to make those provisions effective.
  - Paragraph 8(c) Strip Liens
  - Paragraph 14 “Dirt for Debt”
- What notice is needed for amended plans and modifications?

Pleading Type	Method of Service <sup>1</sup>	Time <sup>2</sup>	Rule
PLAN	*if filed with petition, clerk will serve *if not filed with petition, Debtor must mail out to matrix	21 days notice required of deadline to object to confirmation of plan; 28 days notice required for confirmation hearing	*3015(d) *2002(g) *2002(a)(9) *2002(b) *BLR 2002-1(c)
Plan with cramdown; creditor not insured depository institution	*first-class mail to an officer of the company or an agent authorized to receive service of process	Same as time for confirmation	*3012(b) *7004(b)(3)
Plan w/ cram- down; creditor is insured depository institution	*certified mail to an officer of the institution; or by first-class mail to atty who has entered an appearance	Same as time for confirmation	*3012(b) *7004(h)
Plan with lien avoidance; creditor not insured depository institution	*first-class mail to an officer of the company or an agent authorized to receive service of process	Same as time for confirmation	*3012(b) *7004(b)(3)
Plan w/ lien avoidance; creditor is insured depository institution	*certified mail to an officer of the institution; or by first-class mail to atty who has entered an appearance	Same as time for confirmation	*3012(b) *7004(h)
Amended plan	*as above. to any secured creditor whose <u>treatment is changed</u>	Notice for next Chapter 13 panel; judge will determine if additional time is needed for notice.	*§1323(c)

# Noticing Tips & Traps

- Rule 9006(f). When notice is by first-class mail, add 3 days to all deadlines & notice requirements.
- Rule 9036. Service on ECF filers may be accomplished by electronic notice rather than personal service or service by mail (except for summons, 7004 compliant, or subpoena)

## **CERTIFICATE OF SERVICE AND NOTICE OF OBJECTION DEADLINE**

On \_\_\_\_\_, the Debtor(s) filed a Uniform Modification of Confirmed Plan and Motion for Valuation of Collateral seeking to modify the confirmed chapter 13 plan in this case. **A copy of the proposed modification is attached as Exhibit "A". The following notice is given:**

**Objection Deadline:** Objections to the proposed modification must be received by the Clerk of the Court or electronically filed not later than **[INSERT DATE THAT IS AT LEAST 24 DAYS AFTER THE MODIFICATION IS MAILED]**.

**Hearing Date:** An evidentiary hearing to consider the proposed modification is scheduled for [INSERT HEARING DATE AND TIME]. If no objection is timely filed, the modification may be approved without a hearing.

This Certificate of Service and Notice of Objection Deadline was (i) mailed by United States first class mail on [DATE] to each of the entities listed on Exhibit "B"; or (ii) served through the Court's electronic noticing system. In addition, this Certificate of Service and Notice of Objection Deadline were served by certified mail, return receipt requested, to the following:

Any attorney representing the holder of a security interest against the property treated under paragraph 8C or under paragraph 14 of the proposed modification who has filed a request for notice in this bankruptcy case; and

The holder of any claim secured by a security interest against the property treated under paragraph 8C or under paragraph 14 of the proposed modification at (i) an address in accordance with FED. R. BANKR. P. 7004; and (ii) the address for notice shown on the last filed proof of claim filed by such holder.

Attached as Exhibit "C" is a listing of the names and addresses of each entity to whom notice was sent by certified mail, return receipt requested.



# Reserves (Paragraph 23)

**23. Reserves for Post-Petition Ad Valorem Taxes, Homeowners Association Fees or Other Periodic Post-Petition Obligations. (Check One or More):**

The Debtor(s) do not invoke this provision.

The Debtor(s) will reserve for post-petition ad valorem taxes. The amount of each monthly reserve is shown on Schedule 23<sup>12</sup>.

The Debtor(s) will reserve for post-petition homeowners' association fees. The amount of each monthly reserve is shown on Schedule 23.

The Debtor(s) will reserve for post-petition federal income tax payments. The amount of each monthly reserve is shown on Schedule 23.

The Debtor(s) will reserve for: \_\_\_\_\_.<sup>13</sup> The amount of each monthly reserve is shown on Schedule 23.

A. The Debtor(s)' expense budget shown on Schedule J includes a monthly provision for the payment of the post-petition Reserves identified above. The Debtor(s) must deposit the monthly amount shown on Schedule J for each of the designated Reserve items with the Trustee. Not less than 45 days before the date on which the payment is due to the taxing authority, homeowner's association or other person, the Debtor(s) must send a request to the Trustee, on a form promulgated by the Trustee, requesting a disbursement from the Reserves. Copies of the appropriate invoices or tax statements must be attached to the request. Not later than 45 days after receipt of an appropriate request, the Trustee must pay the lesser of (i) the amount shown on the invoices or tax statements; or (ii) the balance in the applicable Reserve. If the balance in the applicable Reserve is less than the amount due, then the Debtor(s) are responsible for payment of the balance due on the invoice or tax statements. The Chapter 13 Trustee's Fee will apply to any disbursements from the Reserves.

B. The Debtor(s) must file a Notice reflecting any change of the projected disbursement amount from the applicable Reserve. Unless a party-in-interest objects within 14 days thereafter, the Trustee must file a Notice of Plan Payment Adjustment to reflect the change.

C. Funds paid to the Trustee will not be credited to Reserves unless, at the time of receipt by the Trustee, the Debtor(s) are current on payments provided for in the Plan that are to be distributed to the holders of claims. If the monthly amount credited to Reserves is less than the total of all monthly Reserves shown above, the Trustee will apply the credits to the Reserves pro rata. After funds have been credited to an applicable Reserve, they may only be withdrawn in accordance with this Paragraph.

D. If this Plan provides for payment of a "Total Debt Claim" on real property and no lender-established escrow account is maintained, the Debtor(s) must establish Reserves under this Paragraph for the payment of ad valorem taxes. If the Debtor(s) subsequently surrender the real property, or if the automatic stay is terminated as to the real property, the amount of Reserves for taxes on such property will be paid by the Trustee, without further Court Order, to the holder of the claim secured by the most senior security interest against the real property.

E. Upon completion of all payments under this Plan, the remaining balance on hand in the Reserves will be paid to the Debtor(s).|

<sup>12</sup> A Schedule 23 must be attached unless no Reserves are established.

<sup>13</sup> Reserves may not be established under this Paragraph for the payment of insurance premiums.

# Reserves (continued)

## – Ad Valorem Taxes

- When is it required?
- Only reserve that may not be returned to Debtor upon dismissal

## – Homeowners Associations

- Different from Condominium Fee

## – Post-petition federal income taxes

## – Other

- What qualifies?
- Insurance is never allowed

## Plan Payment Adjustments (continued)

- Plan/Mod paragraph 23: Debtor requested changes to Reserves

B. [The Debtor(s) must file a Notice reflecting any change of the projected disbursement amount from the applicable Reserve. Unless a party-in-interest objects within 14 days thereafter, the Trustee must file a Notice of Plan Payment Adjustment to reflect the change.

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
\_\_\_\_\_ DIVISION**

**In re:** §  
§ **Case No.** \_\_\_\_\_  
**[Debtor(s)' Names],** § **(Chapter 13)**  
§  
**Debtor(s).** §

**NOTICE OF CHANGE IN PROJECTED RESERVE FUND DISBURSEMENT**

This Notice of Change in Projected Reserve Fund Disbursement is filed pursuant to paragraph 23B of the confirmed plan in this case. Unless a party in interest objects, this Notice is effective 14 days after it is filed.

1. The projected disbursement from reserves for the payment of [DESCRIBE PURPOSE OF PROJECTED DISBURSEMENT] under the confirmed plan is \$ \_\_\_\_\_.
2. The Debtor(s) have determined that the projected disbursement amount should be \$ \_\_\_\_\_. The date for the projected disbursement is not later than [date].
3. Attached as Exhibit "A" is a document (such as a statement from a taxing authority or other entity to whom disbursements are required) reflecting the increase or the decrease in the projected disbursement and the date on which the disbursement is due.

# Changes to Attorney Fees

- New Fixed Fee Agreement changes not only the dollar amount of the fees, but what items get paid.
  - For unconfirmed cases that were filed under the previous fixed fee, remember that the \$100 wage order fee was not in the fixed fee, only the previous version of the plan. Make sure you obtain an order or other assurance of your payment, if applicable.
- The non-standard fixed fee of \$5,600 includes a provision for Debtors with 3 or more parcels of real property valued at \$50,000.00 or more each and that one or more require implementation of conduit payments or mortgage procedures



# Traps/Practice Tips

- Remember that the rules were changed now to require the entire plan (not just the plan summary) to be noticed for confirmation. Failure to timely file the plan will mean Trustee will not notice the plan and Debtor will have to cover that cost
- Many of the new forms (mandatory and suggested) do not yet have CM/ECF codes. Please note that filing anything as a Generic Motion/Application/Notice, etc. means the Court and the Trustee's office are not as able to quickly address them. You may want to notify the Trustee and the Judge's case manager if there is something that needs immediate attention.

# Traps/Practice Tips (continued)

- How small is too small? Noticing out the plan, Send it creditors double sided 4 pages per side
- Make sure to look up registered agent address to have proper notice to secured creditors at time of filing. If the creditor matrix is incomplete, Rule 3002(c)(6) gives creditors right to file a motion for additional time to file their claim.
- New objection notice language, negative notice is sufficient for default on objection to claim. Make sure your motions, declarations and orders are updated and straightforward

# Traps/Practice Tips (continued)

- Rule 5009 (d) Provides that via a motion (not an adversary) a debtor in a chapter 13 may request an order declaring a secured claim satisfied and a lien released under the terms of a confirmed plan.
- Consider objecting to late filed secured proof of claims.
  - Committee Notes from Rule 3002(a) The amendment also clarifies, in accordance with §506(d), that the failure of a secured creditor to file a proof of claim does not render the creditor's lien void. The inclusion of language from §506(d) is not intended to effect any change of law with respect to claims subject to setoff under §553. (Emphasis added.)
  - Is SDTX plan language sufficient to overcome §553 setoff?

# Questions?

We probably don't have answers. 😊