

## **APPENDICES**

# **APPENDIX A**

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

August 11, 2022

Ms. Karen S. Mitchell  
Northern District of Texas, Fort Worth  
United States District Court  
501 W. 10th Street  
Room 310  
Fort Worth, TX 76102

No. 20-11035      Burch v. Aurzada  
USDC No. 4:20-CV-1051

Dear Ms. Mitchell,

Enclosed is a copy of the judgment issued as the mandate and a copy of the court's opinion.

Sincerely,

LYLE W. CAYCE, Clerk



By: \_\_\_\_\_  
Casey A. Sullivan, Deputy Clerk  
504-310-7642

cc:

Mr. William Paul Burch  
Ms. Michelle Elaine Shriro



United States Court of Appeals  
for the Fifth Circuit

Certified as a true copy and issued  
as the mandate on Aug 11, 2022

Attest: *Lyle W. Cayce*  
Clerk, U.S. Court of Appeals, Fifth Circuit

No. 20-11035  
Summary Calendar

United States Court of Appeals  
Fifth Circuit

**FILED**

June 10, 2022

Lyle W. Cayce  
Clerk

IN THE MATTER OF: WILLIAM PAUL BURCH

*Debtor,*

WILLIAM PAUL BURCH,

*Appellant,*

*versus*

AREYA HOLDER AURZADA,

*Appellee.*

Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:20-CV-1051

Before ELROD, OLDHAM, and WILSON, *Circuit Judges.*

J U D G M E N T

This cause was considered on the record on appeal and the brief on  
file.

IT IS ORDERED and ADJUDGED that the appeal is  
DISMISSED as frivolous.

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

June 10, 2022

Lyle W. Cayce  
Clerk

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No. 20-11035  
Summary Calendar

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IN THE MATTER OF WILLIAM PAUL BURCH,

*Debtor,*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:20-CV-1051

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Before ELROD, OLDHAM, and WILSON, *Circuit Judges.*

PER CURIAM:\*

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 20-11035

William Paul Burch appeals from the district court's dismissal of his appeal arising from a proceeding in the bankruptcy court for the Northern District of Texas. The bankruptcy appeal was dismissed after Burch did not pay the filing fee.

Burch has moved to remand the case to the district court. He asserts that he is now able to pay the filing fee because his financial situation has improved. Because the record does not establish that the district court issued a statement or indicative ruling in accordance with Federal Rule of Civil Procedure 62.1 and Federal Rule of Appellate Procedure 12.1, upon which Burch relies, his motion to remand so that he can pay the filing fee is denied. *See* FED. R. APP. P. 12.1; FED. R. CIV. P. 62.1; *cf. Moore v. Tangipahoa Par. Sch. Bd.*, 836 F.3d 503, 504 (5th Cir. 2016). His motion to consolidate this appeal with No. 20-11040 likewise is denied.

Also, Burch moves to proceed in forma pauperis (IFP) on appeal. To proceed IFP, a litigant must be economically eligible, and his appeal must not be frivolous. *Carson v. Polley*, 689 F.2d 562, 586 (5th Cir. 1982). If the appeal is frivolous, this court will dismiss it. *See Baugh v. Taylor*, 117 F.3d 197, 202 n.24 (5th Cir. 1997); 5TH CIR. R. 42.2.

Even before Burch's concessions regarding his improved financial situation, we concluded that he was not financially eligible to proceed IFP on appeal. *See Burch v. Freedom Mortg. Corp.*, 850 F. App'x 292, 293 (5th Cir. 2021). Also, his conclusional assertions effectively fail to identify any error in the dismissal of his bankruptcy appeal for failing to pay the filing fee, and he otherwise has not shown a nonfrivolous issue on appeal. *See Carson*, 689 F.2d at 586. Thus, the motion to proceed IFP is denied, and the appeal is dismissed as frivolous. *See Baugh*, 117 F.3d at 202 n.24; 5TH CIR. R. 42.2.

Because Burch failed to heed our prior sanctions warnings and our direction to withdraw any pending appeals that were frivolous, we previously

No. 20-11035

imposed monetary sanctions. *Burch v. Bank of America (Matter of Burch)*, No. 20-10872, 2022 WL 1164804, \*1 (5th Cir. Apr. 19, 2022) (unpublished) (\$500 sanction); *Burch v. Select Portfolio Servicing, Inc. (Matter of Burch)*, No. 20-11171, 2022 WL 212836, \*1 (5th Cir. Jan. 24, 2022) (unpublished) (\$250 sanction); *Burch v. America's Servicing Company (Matter of Burch)*, No. 20-11074, 2021 WL 5286563, \*1 (5th Cir. Nov. 12, 2021) (unpublished) (\$100 sanction).

We again warn Burch that additional frivolous or abusive filings in this court, the district court, or the bankruptcy court will result in the imposition of further sanctions. Burch is once again admonished to review any pending appeals and to withdraw any that are frivolous.

MOTIONS DENIED; APPEAL DISMISSED AS FRIVOLOUS; ADDITIONAL SANCTION WARNING ISSUED.

# **APPENDIX B**



**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

**WILLIAM PAUL BURCH,**

**Plaintiff,**

**v.**

**AREYA HOLDER AURZADA,**

**Defendant.**

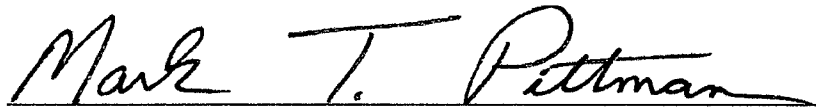
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**Civil Action No. 4:20-cv-01051-P**

**ORDER**

Before the Court is Plaintiff William Paul Burch's Motion to Proceed Informa Pauperis. ECF No. 9. Having considered the Motion, case filings, and docket entries, the Court finds that the Motion should be and is hereby **DENIED**.

**SO ORDERED** on this 3rd day of December, 2020.



Mark T. Pittman

UNITED STATES DISTRICT JUDGE

# **APPENDIX C**



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed August 27, 2020

*Mark X. Mullin*  
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

IN RE:

WILLIAM PAUL BURCH

Debtor

§  
§  
§  
§  
§  
§

CASE NO.: 12-46959-MXM

**ORDER APPROVING NOTICE OF TRUSTEE'S FINAL  
REPORT AND APPLICATION FOR COMPENSATION**

*[Relates to ECF No. 820]*

Before the Court is the *Notice of Trustee's Final Report and Application for Compensation and Deadline to Object (NFR)* ("**Final Report and Application for Compensation**")<sup>1</sup> filed by Areya Holder Aurzada, the chapter 7 trustee (the "**Trustee**") and the *Opposition to Summary of Application for Trustee's Compensation and Expenses and Trustee's Final Report and Application for Compensation and Deadline to Object (NFR)* ("**Objection**")<sup>2</sup> filed by William Paul Burch ("**Debtor**"). The Court has reviewed and considered the Final

<sup>1</sup> ECF No. 820.

<sup>2</sup> ECF No. 856.

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Report and Application for Compensation, the Objection, and has taken judicial notice of the all the pleadings filed in this bankruptcy estate since its conversion to Chapter 7 and the appointment of the Trustee. The Court finds and concludes that the Objection is frivolous and without merit and should be overruled, and that the Final Report and Application for Compensation has merit and should be granted; it is therefore

**ORDERED** that the Objection is **OVERRULED**; and it is further

**ORDERED** that the Final Report and Application for Compensation is **APPROVED** and **GRANTED**.

**###End of Order###**

# **APPENDIX D**

## **U.S. CONST Article Four**

**Section 1:** Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

**Section 2:** The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

**Section 3:** New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

**Section 4:** The United States shall guarantee to every State in this Union a Republican Form of Government and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

## **APPENDIX E**

## U.S. CONST FOURTEENTH AMENDMENT

### Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### Section 2.

Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

### Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

### Section 4.



The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

#### Section 5.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

# APPENDIX F

# CHAPTER 7 BANKRUPTCY

## Background

A chapter 7 bankruptcy case does not involve the filing of a plan of repayment as in chapter 13. Instead, the bankruptcy trustee gathers and sells the debtor's nonexempt assets and uses the proceeds of such assets to pay holders of claims (creditors) in accordance with the provisions of the Bankruptcy Code. Part of the debtor's property may be subject to liens and mortgages that pledge the property to other creditors. In addition, the Bankruptcy Code will allow the debtor to keep certain "exempt" property; but a trustee will liquidate the debtor's remaining assets. Accordingly, potential debtors should realize that the filing of a petition under chapter 7 may result in the loss of property.

## Chapter 7 Eligibility

To qualify for relief under chapter 7 of the Bankruptcy Code, the debtor may be an individual, a partnership, or a corporation or other business entity. 11 U.S.C. §§ 101(41), 109(b). Subject to the means test described above for individual debtors, relief is available under chapter 7 irrespective of the amount of the debtor's debts or whether the debtor is solvent or insolvent. An individual cannot file under chapter 7 or any other chapter, however, if during the preceding 180 days a prior bankruptcy petition was dismissed due to the debtor's willful failure to appear before the court or comply with orders of the court, or the debtor voluntarily dismissed the previous case after creditors sought relief from the bankruptcy court to recover property upon which they hold liens. 11 U.S.C. §§ 109(g), 362(d) and (e). In addition, no individual may be a debtor under chapter 7 or any chapter of the Bankruptcy Code unless he or she has, within 180 days before filing, received credit counseling from an approved credit counseling agency either in an individual or group briefing. 11 U.S.C. §§ 109, 111. There are exceptions in emergency situations or where the U.S. trustee (or bankruptcy administrator) has determined that there are insufficient approved agencies to provide the required counseling. If a debt management plan is developed during required credit counseling, it must be filed with the court.

One of the primary purposes of bankruptcy is to discharge certain debts to give an honest individual debtor a "fresh start." The debtor has no liability for discharged debts. In a chapter 7 case, however, a discharge is only available to individual debtors, not to partnerships or corporations. 11 U.S.C. § 727(a)(1). Although an individual chapter 7 case usually results in a discharge of debts, the right to a discharge is not absolute, and some types of debts are not discharged. Moreover, a bankruptcy discharge does not extinguish a lien on property.

# How Chapter 7 Works

A chapter 7 case begins with the debtor filing a petition with the bankruptcy court serving the area where the individual lives or where the business debtor is organized or has its principal place of business or principal assets. (3) In addition to the petition, the debtor must also file with the court: (1) schedules of assets and liabilities; (2) a schedule of current income and expenditures; (3) a statement of financial affairs; and (4) a schedule of executory contracts and unexpired leases. Fed. R. Bankr. P. 1007(b). Debtors must also provide the assigned case trustee with a copy of the tax return or transcripts for the most recent tax year as well as tax returns filed during the case (including tax returns for prior years that had not been filed when the case began). 11 U.S.C. § 521. Individual debtors with primarily consumer debts have additional document filing requirements. They must file: a certificate of credit counseling and a copy of any debt repayment plan developed through credit counseling; evidence of payment from employers, if any, received 60 days before filing; a statement of monthly net income and any anticipated increase in income or expenses after filing; and a record of any interest the debtor has in federal or state qualified education or tuition accounts. Id. A husband and wife may file a joint petition or individual petitions. 11 U.S.C. § 302(a). Even if filing jointly, a husband and wife are subject to all the document filing requirements of individual debtors. (The Official Forms may be purchased at legal stationery stores or [download](#). They are not available from the court.)

The courts must charge a \$245 case filing fee, a \$75 miscellaneous administrative fee, and a \$15 trustee surcharge. Normally, the fees must be paid to the clerk of the court upon filing. With the court's permission, however, individual debtors may pay in installments. 28 U.S.C. § 1930(a); Fed. R. Bankr. P. 1006(b); Bankruptcy Court Miscellaneous Fee Schedule, Item 8. The number of installments is limited to four, and the debtor must make the final installment no later than 120 days after filing the petition. Fed. R. Bankr. P. 1006. For cause shown, the court may extend the time of any installment, provided that the last installment is paid not later than 180 days after filing the petition. Id. The debtor may also pay the \$75 administrative fee and the \$15 trustee surcharge in installments. If a joint petition is filed, only one filing fee, one administrative fee, and one trustee surcharge are charged. Debtors should be aware that failure to pay these fees may result in dismissal of the case. 11 U.S.C. § 707(a).

If the debtor's income is less than 150% of the poverty level (as defined in the Bankruptcy Code), and the debtor is unable to pay the chapter 7 fees even in installments, the court may waive the requirement that the fees be paid. 28 U.S.C. § 1930(f).

In order to complete the Official Bankruptcy Forms that make up the petition, statement of financial affairs, and schedules, the debtor must provide the following information:

1. A list of all creditors and the amount and nature of their claims;

2. The source, amount, and frequency of the debtor's income;
3. A list of all of the debtor's property; and
4. A detailed list of the debtor's monthly living expenses, i.e., food, clothing, shelter, utilities, taxes, transportation, medicine, etc.

Married individuals must gather this information for their spouse regardless of whether they are filing a joint petition, separate individual petitions, or even if only one spouse is filing. In a situation where only one spouse files, the income and expenses of the non-filing spouse are required so that the court, the trustee and creditors can evaluate the household's financial position.

Among the schedules that an individual debtor will file is a schedule of "exempt" property. The Bankruptcy Code allows an individual debtor (4) to protect some property from the claims of creditors because it is exempt under federal bankruptcy law or under the laws of the debtor's home state. 11 U.S.C. § 522(b). Many states have taken advantage of a provision in the Bankruptcy Code that permits each state to adopt its own exemption law in place of the federal exemptions. In other jurisdictions, the individual debtor has the option of choosing between a federal package of exemptions or the exemptions available under state law. Thus, whether certain property is exempt and may be kept by the debtor is often a question of state law. The debtor should consult an attorney to determine the exemptions available in the state where the debtor lives.

Filing a petition under chapter 7 "automatically stays" (stops) most collection actions against the debtor or the debtor's property. 11 U.S.C. § 362. But filing the petition does not stay certain types of actions listed under 11 U.S.C. § 362(b), and the stay may be effective only for a short time in some situations. The stay arises by operation of law and requires no judicial action. As long as the stay is in effect, creditors generally may not initiate or continue lawsuits, wage garnishments, or even telephone calls demanding payments. The bankruptcy clerk gives notice of the bankruptcy case to all creditors whose names and addresses are provided by the debtor.

Between 21 and 40 days after the petition is filed, the case trustee (described below) will hold a meeting of creditors. If the U.S. trustee or bankruptcy administrator (5) schedules the meeting at a place that does not have regular U.S. trustee or bankruptcy administrator staffing, the meeting may be held no more than 60 days after the order for relief. Fed. R. Bankr. P. 2003(a). During this meeting, the trustee puts the debtor under oath, and both the trustee and creditors may ask questions. The debtor must attend the meeting and answer questions regarding the debtor's financial affairs and property. 11 U.S.C. § 343. If a husband and wife have filed a joint petition, they both must attend the creditors' meeting and answer questions. Within 10 days of the creditors' meeting, the U.S. trustee will report to the court whether the case should be presumed to be an abuse under the means test described in 11 U.S.C. § 704(b).

It is important for the debtor to cooperate with the trustee and to provide any financial records or documents that the trustee requests. The Bankruptcy Code requires the trustee to ask the debtor questions at the meeting of creditors to ensure that the debtor is aware of the potential consequences of seeking a discharge in bankruptcy such as the effect on credit history, the ability to file a petition under a different chapter, the effect of receiving a discharge, and the effect of reaffirming a debt. Some trustees provide written information on these topics at or before the meeting to ensure that the debtor is aware of this information. In order to preserve their independent judgment, bankruptcy judges are prohibited from attending the meeting of creditors. 11 U.S.C. § 341(c).

In order to accord the debtor complete relief, the Bankruptcy Code allows the debtor to convert a chapter 7 case to a case under chapter 11, 12, or 13 (6) as long as the debtor is eligible to be a debtor under the new chapter. However, a condition of the debtor's voluntary conversion is that the case has not previously been converted to chapter 7 from another chapter. 11 U.S.C. § 706(a). Thus, the debtor will not be permitted to convert the case repeatedly from one chapter to another.

## Role of the Case Trustee

When a chapter 7 petition is filed, the U.S. trustee (or the bankruptcy court in Alabama and North Carolina) appoints an impartial case trustee to administer the case and liquidate the debtor's nonexempt assets. 11 U.S.C. §§ 701, 704. If all the debtor's assets are exempt or subject to valid liens, the trustee will normally file a "no asset" report with the court, and there will be no distribution to unsecured creditors. Most chapter 7 cases involving individual debtors are no asset cases. But if the case appears to be an "asset" case at the outset, unsecured creditors (7) must file their claims with the court within 90 days after the first date set for the meeting of creditors. Fed. R. Bankr. P. 3002(c). A governmental unit, however, has 180 days from the date the case is filed to file a claim. 11 U.S.C. § 502(b)(9). In the typical no asset chapter 7 case, there is no need for creditors to file proofs of claim because there will be no distribution. If the trustee later recovers assets for distribution to unsecured creditors, the Bankruptcy Court will provide notice to creditors and will allow additional time to file proofs of claim. Although a secured creditor does not need to file a proof of claim in a chapter 7 case to preserve its security interest or lien, there may be other reasons to file a claim. A creditor in a chapter 7 case who has a lien on the debtor's property should consult an attorney for advice.

Commencement of a bankruptcy case creates an "estate." The estate technically becomes the temporary legal owner of all the debtor's property. It consists of all legal or equitable interests of the debtor in property as of the commencement of the case, including property owned or held by another person if the debtor has an interest in the property. Generally speaking, the debtor's creditors are paid from nonexempt property of the estate.

The primary role of a chapter 7 trustee in an asset case is to liquidate the debtor's nonexempt assets in a manner that maximizes the return to the debtor's unsecured creditors. The trustee accomplishes this by selling the debtor's property if it is free and clear of liens (as long as the property is not exempt) or if it is worth more than any security interest or lien attached to the property and any exemption that the debtor holds in the property. The trustee may also attempt to recover money or property under the trustee's "avoiding powers." The trustee's avoiding powers include the power to: set aside preferential transfers made to creditors within 90 days before the petition; undo security interests and other prepetition transfers of property that were not properly perfected under nonbankruptcy law at the time of the petition; and pursue nonbankruptcy claims such as fraudulent conveyance and bulk transfer remedies available under state law. In addition, if the debtor is a business, the bankruptcy court may authorize the trustee to operate the business for a limited period of time, if such operation will benefit creditors and enhance the liquidation of the estate. 11 U.S.C. § 721.

Section 726 of the Bankruptcy Code governs the distribution of the property of the estate. Under § 726, there are six classes of claims; and each class must be paid in full before the next lower class is paid anything. The debtor is only paid if all other classes of claims have been paid in full. Accordingly, the debtor is not particularly interested in the trustee's disposition of the estate assets, except with respect to the payment of those debts which for some reason are not dischargeable in the bankruptcy case. The individual debtor's primary concerns in a chapter 7 case are to retain exempt property and to receive a discharge that covers as many debts as possible.

## The Chapter 7 Discharge

A discharge releases individual debtors from personal liability for most debts and prevents the creditors owed those debts from taking any collection actions against the debtor. Because a chapter 7 discharge is subject to many exceptions, debtors should consult competent legal counsel before filing to discuss the scope of the discharge. Generally, excluding cases that are dismissed or converted, individual debtors receive a discharge in more than 99 percent of chapter 7 cases. In most cases, unless a party in interest files a complaint objecting to the discharge or a motion to extend the time to object, the bankruptcy court will issue a discharge order relatively early in the case – generally, 60 to 90 days after the date first set for the meeting of creditors. Fed. R. Bankr. P. 4004(c).

The grounds for denying an individual debtor a discharge in a chapter 7 case are narrow and are construed against the moving party. Among other reasons, the court may deny the debtor a discharge if it finds that the debtor: failed to keep or produce adequate books or financial records; failed to explain satisfactorily any loss of assets; committed a bankruptcy crime such as perjury; failed to obey a lawful order of the bankruptcy court; fraudulently transferred, concealed, or destroyed property that would have

become property of the estate; or failed to complete an approved instructional course concerning financial management. 11 U.S.C. § 727; Fed. R. Bankr. P. 4005.

Secured creditors may retain some rights to seize property securing an underlying debt even after a discharge is granted. Depending on individual circumstances, if a debtor wishes to keep certain secured property (such as an automobile), he or she may decide to "reaffirm" the debt. A reaffirmation is an agreement between the debtor and the creditor that the debtor will remain liable and will pay all or a portion of the money owed, even though the debt would otherwise be discharged in the bankruptcy. In return, the creditor promises that it will not repossess or take back the automobile or other property so long as the debtor continues to pay the debt.

If the debtor decides to reaffirm a debt, he or she must do so before the discharge is entered. The debtor must sign a written reaffirmation agreement and file it with the court. 11 U.S.C. § 524(c). The Bankruptcy Code requires that reaffirmation agreements contain an extensive set of disclosures described in 11 U.S.C. § 524(k). Among other things, the disclosures must advise the debtor of the amount of the debt being reaffirmed and how it is calculated and that reaffirmation means that the debtor's personal liability for that debt will not be discharged in the bankruptcy. The disclosures also require the debtor to sign and file a statement of his or her current income and expenses which shows that the balance of income paying expenses is sufficient to pay the reaffirmed debt. If the balance is not enough to pay the debt to be reaffirmed, there is a presumption of undue hardship, and the court may decide not to approve the reaffirmation agreement. Unless the debtor is represented by an attorney, the bankruptcy judge must approve the reaffirmation agreement.

If the debtor was represented by an attorney in connection with the reaffirmation agreement, the attorney must certify in writing that he or she advised the debtor of the legal effect and consequences of the agreement, including a default under the agreement. The attorney must also certify that the debtor was fully informed and voluntarily made the agreement and that reaffirmation of the debt will not create an undue hardship for the debtor or the debtor's dependants. 11 U.S.C. § 524(k). The Bankruptcy Code requires a reaffirmation hearing if the debtor has not been represented by an attorney during the negotiating of the agreement, or if the court disapproves the reaffirmation agreement. 11 U.S.C. § 524(d) and (m). The debtor may repay any debt voluntarily, however, whether or not a reaffirmation agreement exists. 11 U.S.C. § 524(f).

An individual receives a discharge for most of his or her debts in a chapter 7 bankruptcy case. A creditor may no longer initiate or continue any legal or other action against the debtor to collect a discharged debt. But not all of an individual's debts are discharged in chapter 7. Debts not discharged include debts for alimony and child support, certain taxes, debts for certain educational benefit overpayments or loans made or guaranteed by a governmental unit, debts for willful and malicious injury by the debtor to another entity or to the property of another entity, debts for death or personal injury caused by



the debtor's operation of a motor vehicle while the debtor was intoxicated from alcohol or other substances, and debts for certain criminal restitution orders. 11 U.S.C. § 523(a). The debtor will continue to be liable for these types of debts to the extent that they are not paid in the chapter 7 case. Debts for money or property obtained by false pretenses, debts for fraud or defalcation while acting in a fiduciary capacity, and debts for willful and malicious injury by the debtor to another entity or to the property of another entity will be discharged unless a creditor timely files and prevails in an action to have such debts declared nondischargeable. 11 U.S.C. § 523(c); Fed. R. Bankr. P. 4007(c).

The court may revoke a chapter 7 discharge on the request of the trustee, a creditor, or the U.S. trustee if the discharge was obtained through fraud by the debtor, if the debtor acquired property that is property of the estate and knowingly and fraudulently failed to report the acquisition of such property or to surrender the property to the trustee, or if the debtor (without a satisfactory explanation) makes a material misstatement or fails to provide documents or other information in connection with an audit of the debtor's case. 11 U.S.C. § 727(d).

## Notes

1. The "current monthly income" received by the debtor is a defined term in the Bankruptcy Code and means the average monthly income received over the six calendar months before commencement of the bankruptcy case, including regular contributions to household expenses from nondebtors and including income from the debtor's spouse if the petition is a joint petition, but not including social security income or certain payments made because the debtor is the victim of certain crimes. 11 U.S.C. § 101(10A).
2. To determine whether a presumption of abuse arises, all individual debtors with primarily consumer debts who file a chapter 7 case must complete Official Bankruptcy Form B22A, entitled "Statement of Current Monthly Income and Means Test Calculation - For Use in Chapter 7." (The Official Forms may be purchased at legal stationery stores or downloaded from the internet at [www.uscourts.gov/bkforms/index.html](http://www.uscourts.gov/bkforms/index.html). They are not available from the court.)
3. An involuntary chapter 7 case may be commenced under certain circumstances by a petition filed by creditors holding claims against the debtor. 11 U.S.C. § 303.
4. Each debtor in a joint case (both husband and wife) can claim exemptions under the federal bankruptcy laws. 11 U.S.C. § 522(m).
5. In North Carolina and Alabama, bankruptcy administrators perform similar functions that U.S. trustees perform in the remaining 48 states. These duties

include establishing a panel of private trustees to serve as trustees in chapter 7 cases and supervising the administration of cases and trustees in cases under chapters 7, 11, 12, and 13 of the Bankruptcy Code. The bankruptcy administrator program is administered by the Administrative Office of the United States Courts, while the U.S. trustee program is administered by the Department of Justice. For purposes of this publication, references to U.S. trustees are also applicable to bankruptcy administrators.

6. A fee is charged for converting, on request of the debtor, a case under chapter 7 to a case under chapter 11. The fee charged is the difference between the filing fee for a chapter 7 and the filing fee for a chapter 11. 28 U.S.C. § 1930(a). Currently, the difference is \$922. Id. There is no fee for converting from chapter 7 to chapter 13.
7. Unsecured debts generally may be defined as those for which the extension of credit was based purely upon an evaluation by the creditor of the debtor's ability to pay, as opposed to secured debts, for which the extension of credit was based upon the creditor's right to seize collateral on default, in addition to the debtor's ability to pay.

## **APPENDIX G**

# **Chapter 11 bankruptcy**

Chapter 11 bankruptcy is the formal process that allows debtors and creditors to resolve the problem of the debtor's financial shortcomings through a reorganization plan; see *Tamir v. United States Trustee*. Accordingly, the central goal of chapter 11 is to create a viable economic entity by reorganizing the debtor's debt structure. Unlike chapter 7, chapter 11 is not a liquidation of the debtor's assets. Rather, it is a reorganization of existing assets, principally as debt. The confirmed chapter 11 plan becomes a contract between the debtor and creditors, governing their rights and obligations; see *In re Nylon Net Company*.

When a company can no longer pay its debts, it generally creates a relationship between two stakeholders—the debtor and creditors. The debtor seeks relief from the debt they cannot repay, while the creditors seek to recollect their debts, quickly and efficiently. Through the “chapters” in the Bankruptcy Code, Congress created the rules governing the relationship between creditors and the debtor during bankruptcy in order to systematically, effectively, and efficiently satisfy the often countervailing interests of each side.

The premise behind a chapter 11 reorganization is that a debtor is more valuable as an operating entity than in liquidation (i.e., through a chapter 7 bankruptcy). Hence, chapter 11 bankruptcy is generally chosen when the continuation of a debtor's business generates more value than a closure and piecemeal sale of its assets. This often occurs when the debtor's financial troubles are a product of temporary issues, such as low cash flow and diminishing demand. A bankruptcy judge will confirm a chapter 11 plan only when creditors are satisfied that they will receive at least as much as they would under a liquidation.

As such, chapter 11 is generally intended to provide business debtors, like corporations and limited liability companies, the opportunity to reorganize their debt. Conspicuous examples of chapter 11 bankruptcy include Lehman Brothers in 2008, General Motors in 2009, and Kmart in 2002. However, Section 109 of the Code permits and courts agree that individual debtors not engaged in business may file for relief under chapter 11. This usually occurs when an individual's debt exceeds the statutory debt ceiling (see: 11 U.S. Code § 109) for chapter 13 of the Bankruptcy Code.

## Procedure

Generally, a debtor initiates their bankruptcy by filing a bankruptcy “petition” with the clerk of the bankruptcy court. Most debtors must also file schedules stating the debtor’s assets and liabilities, current income and expenditures, and business and financial affairs. According to the Bankruptcy Court for the Eastern District of New York, these filings “are carefully designed to elicit certain information necessary to the proper administration and adjudication of the case.” In turn, creditors gain information to make possible a fair and efficient distribution of the debtor’s assets.

When a debtor files for bankruptcy, the court creates a bankruptcy estate, composed of the debtor’s property owned at the commencement of the case; see *Westmoreland Human Opportunities v. Walsh*. Section 541(a)(1) defines “property of the estate” to include “all legal or equitable interests of the debtor in property as of the commencement of the case.” The Supreme Court noted in *United States v. Whiting Pools, Inc.* (1983), § 541(a)’s legislative history demonstrates that this provision was intended to be broad and include “all kinds of property, including tangible or intangible property, causes of action . . . and all other forms of property currently specified in” the Bankruptcy Act. According to *Butner v. United States*, a Supreme Court case from 1979, bankruptcy courts look to state law to ascertain the existence and scope of the debtor’s “legal or equitable interests” for purposes of § 541(a)(1).

## Reorganization Plan

The reorganization plan is the central feature of chapter 11 bankruptcy. As noted in *Tamir v. U.S. Trustee*, “the primary goal of Chapter 11...[is] to formulate a comprehensive reorganization plan that will ultimately rehabilitate financially distressed debtors.” Ideally, chapter 11 should “be...a negotiated process; a system to induce compromise.” See *In re AG Consultants Grain Division, Inc.*

Accordingly, the requirements for a proposed reorganization plan reflect the pursuit of order and fairness. A proposed plan must:

Designate classes of claims among similarly situated debt- and equity- holders.

Identify if the plan will “impair” claims of discrete classes. According to *In re Woodbrook Assocs.*, (7th Cir. 1994), impairment occurs when there is any alteration of a creditor’s rights, “no matter how minor.”

Explain how the plan will alter the claims held by the impaired classes.

Treat every entity in each class the same as all class members.

Provide sufficient measures to implement the plan by, for example, selling debtor's property, satisfying liens, or waiving a default by the debtor, among other means.

Creditors that are adversely affected by the plan can vote for or against it. However, as *In re Edgefield Inn, LLC* (Bankr. D.S.C. 2014), accurately states, "unimpaired classes...have no vote in the reorganization process." The statute limits voting power only to impaired classes; indeed, classes not impaired under the plan are "conclusively presumed to have accepted the plan."

Under 11 U.S.C. Section 1125, a proponent of the plan is generally required to submit a disclosure statement. Such disclosure allows potentially affected parties to make an informed judgment on whether to vote for the plan. § 1126(c) states that a class of creditors accepts the plan if "creditors ... that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such a class" vote to accept the plan. Section 1126(c), (e) authorizes the court to disregard the vote of any creditor whose acceptance or rejection of the plan was not in good faith.

Subsequently, the court will hold a hearing to "confirm" the plan. For the plan to be confirmed, a court must find that creditor classes either accept the plan or are not impaired and that the plan satisfies additional criteria listed in Section 1129 of the Bankruptcy Code. A chapter 11 reorganization plan may not be confirmed unless it satisfies several statutory requirements, principally the following three:

#### Best Interests of Creditors.

Under Section 1129(a)(7)(A), a reorganization plan must satisfy the "best interests of creditors" test. According to the Supreme Court in *United States v. Reorganized CF&I Fabricators of Utah, Inc.* (1996), this test requires that each holder of an impaired claim or interest either accept the plan or receive under it at least as much as they would receive in a chapter 7 liquidation. Unless a creditor consents to otherwise, this requirement means that a creditor must receive property that has a present value equal to what that participant would have received in a chapter 7 distribution, had the debtor been liquidated on the plan's effective date.

#### Feasibility.

The "feasibility requirement" requires the court to find that a plan is workable, but success need not be guaranteed. A plan is workable under the statute if the court finds that the debtor is unlikely to liquidate or need further financial

reorganization. The debtor bears the burden of establishing the feasibility of the plan by showing that the plan has a reasonable probability of success. The court in *In re Apex Oil Co.* (Bankr. E.D. Mo. 1990) notes that to determine whether the plan has a reasonable probability of success, the court may compare the debtor's future income and expenses to actual performance, considering the capability of management, the adequacy of capital resources, and reasonably anticipated liquidity.

#### Cram-down.

Under certain circumstances, the Code permits a court to confirm a plan over a creditor's dissent. This non-consensual confirmation is called a "cram-down" and the Code requires the debtor to show that the plan "does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan." According to *In re Hoffinger Indus., Inc.* (Bankr. E.D. Ark. 2005), the plan may only treat similar claims differently when the debtor has a reasonable basis for the disparate treatment. There is generally a reasonable basis for treating secured claims differently from each other since secured claims are usually secured by different collateral, therefore warranting disparate treatment.

When a plan is confirmed, it becomes a binding contract on the debtor, the creditors, and other parties. The effect of a confirmation vests all the property of the estate in the debtor, "except as otherwise provided in the plan or the order confirming the plan." In turn, "confirmation generally discharges the debtor from its pre-confirmation debt, "substituting the obligations of the plan for the debtor's prior indebtedness. The Bankruptcy Court retains jurisdiction to "interpret, enforce, or aid" the management of the reorganization plan.

#### Debtor-In-Possession

Under a chapter 11 bankruptcy, the debtor generally holds possession of its assets throughout the proceeding and administers them for the benefit of the creditor class. This feature, termed "debtor-in-possession," reflects a key distinction between the bankruptcy rules under chapter 7 and chapter 11.

Under chapter 7, a trustee administers the debtor's assets to satisfy creditors' claims. By contrast, chapter 11 reflects Congress' view that "current management is generally best suited to orchestrate the process of rehabilitation" to benefit creditors and other interests of the estate. In turn, the debtor generally retains its control over its assets and business operations, acting as a "debtor-in-possession." Such

status explains why managers of the debtor prefer chapter 11 over chapter 7: chapter 7 displaces the managers' control over the firm vis-a-vis the appointed trustee, while chapter 11 does not require such an appointment.

In practice, chapter 11 permits the debtor-in-possession to use property and transact in the ordinary course of business, without preapproval from the court. For acts taken outside the ordinary course of business, notice, hearing and court approval is generally required in advance. According to the District of Utah Bankruptcy Court, an action "outside the ordinary course of business" encompasses any transaction "that might be considered unusual, controversial, or questionable for the debtor to undertake during its chapter 11 case." The same court in another proceeding found a sale of "substantially all the debtor's assets" to satisfy that standard. As such, this standard balances the efficiency of permitting the debtor-in-possession to perform ordinary business functions without onerous oversight of creditors and the court with the need to protect creditors from unordinary transactions.



## **APPENDIX H**

# Chapter 13 Bankruptcy

This chapter of the Bankruptcy Code provides for adjustment of debts of an individual with regular income. Chapter 13 allows a debtor to keep property and pay debts over time, usually three to five years.

## Background

A chapter 13 bankruptcy is also called a wage earner's plan. It enables individuals with regular income to develop a plan to repay all or part of their debts. Under this chapter, debtors propose a repayment plan to make installments to creditors over three to five years. If the debtor's current monthly income is less than the applicable state median, the plan will be for three years unless the court approves a longer period "for cause." (1) If the debtor's current monthly income is greater than the applicable state median, the plan generally must be for five years. In no case may a plan provide for payments over a period longer than five years. 11 U.S.C. § 1322(d). During this time the law forbids creditors from starting or continuing collection efforts.

This chapter discusses six aspects of a chapter 13 proceeding: the advantages of choosing chapter 13, the chapter 13 eligibility requirements, how a chapter 13 proceeding works, making the plan work, and the special chapter 13 discharge.

## Advantages of Chapter 13

Chapter 13 offers individuals a number of advantages over liquidation under chapter 7. Perhaps most significantly, chapter 13 offers individuals an opportunity to save their homes from foreclosure. By filing under this chapter, individuals can stop foreclosure proceedings and may cure delinquent mortgage payments over time. Nevertheless, they must still make all mortgage payments that come due during the chapter 13 plan on time. Another advantage of chapter 13 is that it allows individuals to reschedule secured debts (other than a mortgage for their primary residence) and extend them over the life of the chapter 13 plan. Doing this may lower the payments. Chapter 13 also has a special provision that protects third parties who are liable with the debtor on "consumer debts." This provision may protect co-signers. Finally, chapter 13 acts like a consolidation loan under which the individual makes the plan payments to a chapter 13 trustee who then distributes payments to creditors. Individuals will have no direct contact with creditors while under chapter 13 protection.

## Chapter 13 Eligibility

Any individual, even if self-employed or operating an unincorporated business, is eligible for chapter 13 relief as long as the individual's combined total secured and unsecured debts are less than \$2,750,000 as of the date of filing for bankruptcy relief. 11 U.S.C. § 109(e).

An individual cannot file under chapter 13 or any other chapter if, during the preceding 180 days, a prior bankruptcy petition was dismissed due to the debtor's willful failure to appear before the court or comply with orders of the court or was voluntarily dismissed after creditors sought relief from the bankruptcy court to recover property upon which they hold liens. 11 U.S.C. §§ 109(g), 362(d) and (e). In addition, no individual may be a debtor under chapter 13 or any chapter of the Bankruptcy Code unless he or she has, within 180 days before filing, received credit counseling from an approved credit counseling agency either in an individual or group briefing. 11 U.S.C. §§ 109, 111. There are exceptions in emergency situations or where the U.S. trustee (or bankruptcy administrator) has determined that there are insufficient approved agencies to provide the required counseling. If a debt management plan is developed during required credit counseling, it must be filed with the court.

## How Chapter 13 Works

A chapter 13 case begins by filing a petition with the bankruptcy court serving the area where the debtor has a domicile or residence. Unless the court orders otherwise, the debtor must also file with the court: (1) schedules of assets and liabilities; (2) a schedule of current income and expenditures; (3) a schedule of executory contracts and unexpired leases; and (4) a statement of financial affairs. Fed. R. Bankr. P. 1007(b). The debtor must also file a certificate of credit counseling and a copy of any debt repayment plan developed through credit counseling; evidence of payment from employers, if any, received 60 days before filing; a statement of monthly net income and any anticipated increase in income or expenses after filing; and a record of any interest the debtor has in federal or state qualified education or tuition accounts. 11 U.S.C. § 521. The debtor must provide the chapter 13 case trustee with a copy of the tax return or transcripts for the most recent tax year as well as tax returns filed during the case (including tax returns for prior years that had not been filed when the case began). *Id.* A husband and wife may file a joint petition or individual petitions. 11 U.S.C. § 302(a). (The Official

Forms may be purchased at legal stationery stores or downloaded from the Internet at [www.uscourts.gov/bkforms/index.html](http://www.uscourts.gov/bkforms/index.html). They are not available from the court.)

The courts must charge a \$235 case filing fee and a \$75 miscellaneous administrative fee. Normally the fees must be paid to the clerk of the court upon filing. With the court's permission, however, they may be paid in installments. 28 U.S.C. § 1930(a); Fed. R. Bankr. P. 1006(b); Bankruptcy Court Miscellaneous Fee Schedule, Item 8. The number of installments is limited to four, and the debtor must make the final installment no later than 120 days after filing the petition. Fed. R. Bankr. P. 1006(b). For cause shown, the court may extend the time of any installment, as long as the last installment is paid no later than 180 days after filing the petition. *Id.* The debtor may also pay the \$75 administrative fee in installments. If a joint petition is filed, only one filing fee and one administrative fee are charged. Debtors should be aware that failure to pay these fees may result in dismissal of the case. 11 U.S.C. § 1307(c)(2).

In order to complete the Official Bankruptcy Forms that make up the petition, statement of financial affairs, and schedules, the debtor must compile the following information:

A list of all creditors and the amounts and nature of their claims;

The source, amount, and frequency of the debtor's income;

A list of all of the debtor's property; and

A detailed list of the debtor's monthly living expenses, i.e., food, clothing, shelter, utilities, taxes, transportation, medicine, etc.

Married individuals must gather this information for their spouse regardless of whether they are filing a joint petition, separate individual petitions, or even if only one spouse is filing. In a situation where only one spouse files, the income and expenses of the non-filing spouse is required so that the court, the trustee and creditors can evaluate the household's financial position.

When an individual files a chapter 13 petition, an impartial trustee is appointed to administer the case. 11 U.S.C. § 1302. In some districts, the U.S. trustee or bankruptcy administrator (2) appoints a standing trustee to serve in all chapter 13 cases. 28 U.S.C. § 586(b). The chapter 13 trustee both evaluates the case and serves

as a disbursing agent, collecting payments from the debtor and making distributions to creditors. 11 U.S.C. § 1302(b).

Filing the petition under chapter 13 "automatically stays" (stops) most collection actions against the debtor or the debtor's property. 11 U.S.C. § 362. Filing the petition does not, however, stay certain types of actions listed under 11 U.S.C. § 362(b), and the stay may be effective only for a short time in some situations. The stay arises by operation of law and requires no judicial action. As long as the stay is in effect, creditors generally may not initiate or continue lawsuits, wage garnishments, or even make telephone calls demanding payments. The bankruptcy clerk gives notice of the bankruptcy case to all creditors whose names and addresses are provided by the debtor.

Chapter 13 also contains a special automatic stay provision that protects co-debtors. Unless the bankruptcy court authorizes otherwise, a creditor may not seek to collect a "consumer debt" from any individual who is liable along with the debtor. 11 U.S.C. § 1301(a). Consumer debts are those incurred by an individual primarily for a personal, family, or household purpose. 11 U.S.C. § 101(8).

Individuals may use a chapter 13 proceeding to save their home from foreclosure. The automatic stay stops the foreclosure proceeding as soon as the individual files the chapter 13 petition. The individual may then bring the past-due payments current over a reasonable period of time. Nevertheless, the debtor may still lose the home if the mortgage company completes the foreclosure sale under state law before the debtor files the petition. 11 U.S.C. § 1322(c). The debtor may also lose the home if he or she fails to make the regular mortgage payments that come due after the chapter 13 filing.

Between 21 and 50 days after the debtor files the chapter 13 petition, the chapter 13 trustee will hold a meeting of creditors. If the U.S. trustee or bankruptcy administrator schedules the meeting at a place that does not have regular U.S. trustee or bankruptcy administrator staffing, the meeting may be held no more than 60 days after the debtor files. Fed. R. Bankr. P. 2003(a). During this meeting, the trustee places the debtor under oath, and both the trustee and creditors may ask questions. The debtor must attend the meeting and answer questions regarding his or her financial affairs and the proposed terms of the plan. 11 U.S.C. § 343. If a husband and wife file a joint petition, they both must attend the creditors' meeting

and answer questions. In order to preserve their independent judgment, bankruptcy judges are prohibited from attending the creditors' meeting. 11 U.S.C. § 341(c). The parties typically resolve problems with the plan either during or shortly after the creditors' meeting. Generally, the debtor can avoid problems by making sure that the petition and plan are complete and accurate, and by consulting with the trustee prior to the meeting.

In a chapter 13 case, to participate in distributions from the bankruptcy estate, unsecured creditors must file their claims with the court within 90 days after the first date set for the meeting of creditors. Fed. R. Bankr. P. 3002(c). A governmental unit, however, has 180 days from the date the case is filed file a proof of claim.<sup>11</sup> U.S.C. § 502(b)(9).

After the meeting of creditors, the debtor, the chapter 13 trustee, and those creditors who wish to attend will come to court for a hearing on the debtor's chapter 13 repayment plan.

### The Chapter 13 Plan and Confirmation Hearing

Unless the court grants an extension, the debtor must file a repayment plan with the petition or within 14 days after the petition is filed. Fed. R. Bankr. P. 3015. A plan must be submitted for court approval and must provide for payments of fixed amounts to the trustee on a regular basis, typically biweekly or monthly. The trustee then distributes the funds to creditors according to the terms of the plan, which may offer creditors less than full payment on their claims.

There are three types of claims: priority, secured, and unsecured. Priority claims are those granted special status by the bankruptcy law, such as most taxes and the costs of bankruptcy proceeding. (3) Secured claims are those for which the creditor has the right take back certain property (i.e., the collateral) if the debtor does not pay the underlying debt. In contrast to secured claims, unsecured claims are generally those for which the creditor has no special rights to collect against particular property owned by the debtor.

The plan must pay priority claims in full unless a particular priority creditor agrees to different treatment of the claim or, in the case of a domestic support obligation,

unless the debtor contributes all "disposable income" - discussed below - to a five-year plan. 11 U.S.C. § 1322(a).

If the debtor wants to keep the collateral securing a particular claim, the plan must provide that the holder of the secured claim receive at least the value of the collateral. If the obligation underlying the secured claim was used to buy the collateral (e.g., a car loan), and the debt was incurred within certain time frames before the bankruptcy filing, the plan must provide for full payment of the debt, not just the value of the collateral (which may be less due to depreciation). Payments to certain secured creditors (i.e., the home mortgage lender), may be made over the original loan repayment schedule (which may be longer than the plan) so long as any arrearage is made up during the plan. The debtor should consult an attorney to determine the proper treatment of secured claims in the plan.

The plan need not pay unsecured claims in full as long it provides that the debtor will pay all projected "disposable income" over an "applicable commitment period," and as long as unsecured creditors receive at least as much under the plan as they would receive if the debtor's assets were liquidated under chapter 7. 11 U.S.C. § 1325. In chapter 13, "disposable income" is income (other than child support payments received by the debtor) less amounts reasonably necessary for the maintenance or support of the debtor or dependents and less charitable contributions up to 15% of the debtor's gross income. If the debtor operates a business, the definition of disposable income excludes those amounts which are necessary for ordinary operating expenses. 11 U.S.C. § 1325(b)(2)(A) and (B). The "applicable commitment period" depends on the debtor's current monthly income. The applicable commitment period must be three years if current monthly income is less than the state median for a family of the same size - and five years if the current monthly income is greater than a family of the same size. 11 U.S.C. § 1325(d). The plan may be less than the applicable commitment period (three or five years) only if unsecured debt is paid in full over a shorter period.

Within 30 days after filing the bankruptcy case, even if the plan has not yet been approved by the court, the debtor must start making plan payments to the trustee. 11 U.S.C. § 1326(a)(1). If any secured loan payments or lease payments come due before the debtor's plan is confirmed (typically home and automobile payments), the debtor must make adequate protection payments directly to the secured lender or lessor - deducting the amount paid from the amount that would otherwise be paid to the trustee. *Id.*

No later than 45 days after the meeting of creditors, the bankruptcy judge must hold a confirmation hearing and decide whether the plan is feasible and meets the standards for confirmation set forth in the Bankruptcy Code. 11 U.S.C. §§ 1324, 1325. Creditors will receive 28 days' notice of the hearing and may object to confirmation. Fed. R. Bankr. P. 2002(b). While a variety of objections may be made, the most frequent ones are that payments offered under the plan are less than creditors would receive if the debtor's assets were liquidated or that the debtor's plan does not commit all of the debtor's projected disposable income for the three or five year applicable commitment period.

If the court confirms the plan, the chapter 13 trustee will distribute funds received under the plan "as soon as is practicable." 11 U.S.C. § 1326(a)(2). If the court declines to confirm the plan, the debtor may file a modified plan. 11 U.S.C. § 1323. The debtor may also convert the case to a liquidation case under chapter 7. (4) 11 U.S.C. § 1307(a). If the court declines to confirm the plan or the modified plan and instead dismisses the case, the court may authorize the trustee to keep some funds for costs, but the trustee must return all remaining funds to the debtor (other than funds already disbursed or due to creditors). 11 U.S.C. § 1326(a)(2).

Occasionally, a change in circumstances may compromise the debtor's ability to make plan payments. For example, a creditor may object or threaten to object to a plan, or the debtor may inadvertently have failed to list all creditors. In such instances, the plan may be modified either before or after confirmation. 11 U.S.C. §§ 1323, 1329. Modification after confirmation is not limited to an initiative by the debtor, but may be at the request of the trustee or an unsecured creditor. 11 U.S.C. § 1329(a).

### Making the Plan Work

The provisions of a confirmed plan bind the debtor and each creditor. 11 U.S.C. § 1327. Once the court confirms the plan, the debtor must make the plan succeed. The debtor must make regular payments to the trustee either directly or through payroll deduction, which will require adjustment to living on a fixed budget for a prolonged period. Furthermore, while confirmation of the plan entitles the debtor to retain property as long as payments are made, the debtor may not incur new debt without consulting the trustee, because additional debt may compromise the debtor's ability to complete the plan. 11 U.S.C. §§ 1305(c), 1322(a)(1), 1327.



A debtor may make plan payments through payroll deductions. This practice increases the likelihood that payments will be made on time and that the debtor will complete the plan. In any event, if the debtor fails to make the payments due under the confirmed plan, the court may dismiss the case or convert it to a liquidation case under chapter 7 of the Bankruptcy Code. 11 U.S.C. § 1307(c). The court may also dismiss or convert the debtor's case if the debtor fails to pay any post-filing domestic support obligations (i.e., child support, alimony), or fails to make required tax filings during the case. 11 U.S.C. §§ 1307(c) and (e), 1308, 521.

### The Chapter 13 Discharge

The bankruptcy law regarding the scope of the chapter 13 discharge is complex and has recently undergone major changes. Therefore, debtors should consult competent legal counsel prior to filing regarding the scope of the chapter 13 discharge.

A chapter 13 debtor is entitled to a discharge upon completion of all payments under the chapter 13 plan so long as the debtor: (1) certifies (if applicable) that all domestic support obligations that came due prior to making such certification have been paid; (2) has not received a discharge in a prior case filed within a certain time frame (two years for prior chapter 13 cases and four years for prior chapter 7, 11 and 12 cases); and (3) has completed an approved course in financial management (if the U.S. trustee or bankruptcy administrator for the debtor's district has determined that such courses are available to the debtor). 11 U.S.C. § 1328. The court will not enter the discharge, however, until it determines, after notice and a hearing, that there is no reason to believe there is any pending proceeding that might give rise to a limitation on the debtor's homestead exemption. 11 U.S.C. § 1328(h).

The discharge releases the debtor from all debts provided for by the plan or disallowed (under section 502), with limited exceptions. Creditors provided for in full or in part under the chapter 13 plan may no longer initiate or continue any legal or other action against the debtor to collect the discharged obligations.

As a general rule, the discharge releases the debtor from all debts provided for by the plan or disallowed, with the exception of certain debts referenced in 11 U.S.C. § 1328. Debts not discharged in chapter 13 include certain long term obligations (such

as a home mortgage), debts for alimony or child support, certain taxes, debts for most government funded or guaranteed educational loans or benefit overpayments, debts arising from death or personal injury caused by driving while intoxicated or under the influence of drugs, and debts for restitution or a criminal fine included in a sentence on the debtor's conviction of a crime. To the extent that they are not fully paid under the chapter 13 plan, the debtor will still be responsible for these debts after the bankruptcy case has concluded. Debts for money or property obtained by false pretenses, debts for fraud or defalcation while acting in a fiduciary capacity, and debts for restitution or damages awarded in a civil case for willful or malicious actions by the debtor that cause personal injury or death to a person will be discharged unless a creditor timely files and prevails in an action to have such debts declared nondischargeable. 11 U.S.C. §§ 1328, 523(c); Fed. R. Bankr. P. 4007(c).

The discharge in a chapter 13 case is somewhat broader than in a chapter 7 case. Debts dischargeable in a chapter 13, but not in chapter 7, include debts for willful and malicious injury to property (as opposed to a person), debts incurred to pay nondischargeable tax obligations, and debts arising from property settlements in divorce or separation proceedings. 11 U.S.C. § 1328(a).

### The Chapter 13 Hardship Discharge

After confirmation of a plan, circumstances may arise that prevent the debtor from completing the plan. In such situations, the debtor may ask the court to grant a "hardship discharge." 11 U.S.C. § 1328(b). Generally, such a discharge is available only if: (1) the debtor's failure to complete plan payments is due to circumstances beyond the debtor's control and through no fault of the debtor; (2) creditors have received at least as much as they would have received in a chapter 7 liquidation case; and (3) modification of the plan is not possible. Injury or illness that precludes employment sufficient to fund even a modified plan may serve as the basis for a hardship discharge. The hardship discharge is more limited than the discharge described above and does not apply to any debts that are nondischargeable in a chapter 7 case. 11 U.S.C. § 523.

### Notes

The "current monthly income" received by the debtor is a defined term in the Bankruptcy Code and means the average monthly income received over the six calendar months before commencement of the bankruptcy case, including regular contributions to household expenses from nondebtors and including income from the

debtor's spouse if the petition is a joint petition, but not including social security income or certain payments made because the debtor is the victim of certain crimes. 11 U.S.C. § 101(10A).

In North Carolina and Alabama, bankruptcy administrators perform similar functions that U.S. trustees perform in the remaining forty-eight states. The bankruptcy administrator program is administered by the Administrative Office of the United States Courts, while the U.S. trustee program is administered by the Department of Justice. For purposes of this publication, references to U.S. trustees are also applicable to bankruptcy administrators.

Section 507 sets forth 10 categories of unsecured claims which Congress has, for public policy reasons, given priority of distribution over other unsecured claims.

A fee of \$25 is charged for converting a case under chapter 13 to a case under chapter 7.

# **APPENDIX I**

## 11 U.S. Code § 105

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

(b) Notwithstanding subsection (a) of this section, a court may not appoint a receiver in a case under this title.

(c) The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28. This subsection shall not be interpreted to exclude bankruptcy judges and other officers or employees appointed pursuant to chapter 6 of title 28 from its operation.

(d) The court, on its own motion or on the request of a party in interest—

(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and

(2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, may issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that—

(A) sets the date by which the trustee must assume or reject an executory contract or unexpired lease; or

(B) in a case under chapter 11 of this title—

(i) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;

(ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;

(iii) sets the date by which a party in interest other than a debtor may file a plan;

(iv) sets a date by which a proponent of a plan, other than the debtor, shall solicit acceptances of such plan;

(v) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or

(vi) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.

## **APPENDIX J**

## **28 U.S. Code § 157 - Procedures**

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

(b)

(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, but are not limited to—

(A) matters concerning the administration of the estate;

(B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;

(C) counterclaims by the estate against persons filing claims against the estate;

(D) orders in respect to obtaining credit;

(E) orders to turn over property of the estate;

(F) proceedings to determine, avoid, or recover preferences;

(G) motions to terminate, annul, or modify the automatic stay;

(H) proceedings to determine, avoid, or recover fraudulent conveyances;

(I) determinations as to the dischargeability of particular debts;

(J) objections to discharges;

(K) determinations of the validity, extent, or priority of liens;

(L) confirmations of plans;

(M) orders approving the use or lease of property, including the use of cash collateral;

(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate;



(O)other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims; and

(P)recognition of foreign proceedings and other matters under chapter 15 of title 11.

(3)The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.

(4)Non-core proceedings under section 157(b)(2)(B) of title 28, United States Code, shall not be subject to the mandatory abstention provisions of section 1334(c)(2).

(5)The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

(c)

(1)A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

(2)Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

(d)The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

(e)If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if

especially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.

# **APPENDIX K**

## 28 U.S. Code § 455

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;

(2) the degree of relationship is calculated according to the civil law system;

(3)“fiduciary” includes such relationships as executor, administrator, trustee, and guardian;

(4)“financial interest” means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

(i)Ownership in a mutual or common investment fund that holds securities is not a “financial interest” in such securities unless the judge participates in the management of the fund;

(ii)An office in an educational, religious, charitable, fraternal, or civic organization is not a “financial interest” in securities held by the organization;

(iii)The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a “financial interest” in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv)Ownership of government securities is a “financial interest” in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(e)No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

(f)Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate judge, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate judge, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

# **APPENDIX L**

## 28 U.S. Code § 1367

- (a)** Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.
- (b)** In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.
- (c)** The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

  - (1)** the claim raises a novel or complex issue of State law,
  - (2)** the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
  - (3)** the district court has dismissed all claims over which it has original jurisdiction, or
  - (4)** in exceptional circumstances, there are other compelling reasons for declining jurisdiction.
- (d)** The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.
- (e)** As used in this section, the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

## **APPENDIX M**



## **TBCC 3.501**

### **Sec. 3.501. PRESENTMENT.**

(a) "Presentment" means a demand made by or on behalf of a person entitled to enforce an instrument to:

(1) pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank; or

(2) accept a draft made to the drawee.

(b) The following rules are subject to Chapter 4, agreement of the parties, and clearing-house rules and the like:

(1) Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States. Presentment may be made by any commercially reasonable means, including an oral, written, or electronic communication. Presentment is effective:

(A) when the demand for payment or acceptance is received by the person to whom presentment is made; and

(B) if made to any one of two or more makers, acceptors, drawees, or other payors.

(2) On demand of the person to whom presentment is made, the person making presentment must:

(A) exhibit the instrument;

(B) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so; and

(C) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.

(3) Without dishonoring the instrument, the party to whom presentment is made may:

(A) return the instrument for lack of a necessary indorsement; or

(B) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule.

(4) The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cutoff hour not earlier than 2 p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cutoff hour

# APPENDIX N

# **Texas Business and Commerce Code Title 3 Insolvency, Fraudulent Transfers, and Fraud, Chapter 26 Statute of frauds (TBCC)**

## **Sec. 26.01. PROMISE OR AGREEMENT MUST BE IN WRITING.**

(a) A promise or agreement described in Subsection (b) of this section is not enforceable unless the promise or agreement, or a memorandum of it, is

- (1) in writing; and
- (2) signed by the person to be charged with the promise or agreement or by someone lawfully authorized to sign for him.

(b) Subsection (a) of this section applies to:

- (1) a promise by an executor or administrator to answer out of his own estate for any debt or damage due from his testator or intestate;
- (2) a promise by one person to answer for the debt, default, or miscarriage of another person;
- (3) an agreement made on consideration of marriage or on consideration of nonmarital conjugal cohabitation;
- (4) a contract for the sale of real estate;
- (5) a lease of real estate for a term longer than one year;
- (6) an agreement which is not to be performed within one year from the date of making the agreement;
- (7) a promise or agreement to pay a commission for the sale or purchase of:
  - (A) an oil or gas mining lease;
  - (B) an oil or gas royalty;
  - (C) minerals; or
  - (D) a mineral interest; and
- (8) an agreement, promise, contract, or warranty of cure relating to medical care or results thereof made by a physician or health care

provider as defined in Section 74.001, Civil Practice and Remedies Code. This section shall not apply to pharmacists.

TBCC Section 26.02 provides:

**Sec. 26.02. LOAN AGREEMENT MUST BE IN WRITING.**

(a) In this section:

(1) "Financial institution" means a state or federally chartered bank, savings bank, savings and loan association, or credit union, a holding company, subsidiary, or affiliate of such an institution, or a lender approved by the United States Secretary of Housing and Urban Development for participation in a mortgage insurance program under the National Housing Act (12 U.S.C. Section 1701 et seq.).

(2) "Loan agreement" means one or more promises, promissory notes, agreements, undertakings, security agreements, deeds of trust or other documents, or commitments, or any combination of those actions or documents, pursuant to which a financial institution loans or delays repayment of or agrees to loan or delay repayment of money, goods, or another thing of value or to otherwise extend credit or make a financial accommodation. The term does not include a promise, promissory note, agreement, undertaking, document, or commitment relating to:

(A) a credit card or charge card; or

(B) an open-end account, as that term is defined by Section 301.002, Finance Code, intended or used primarily for personal, family, or household use.

(b) A loan agreement in which the amount involved in the loan agreement exceeds \$50,000 in value is not enforceable unless the agreement is in writing and signed by the party to be bound or by that party's authorized representative.

(c) The rights and obligations of the parties to an agreement subject to Subsection (b) of this section shall be determined solely from the written loan agreement, and any prior oral agreements between the parties are superseded by and merged into the loan agreement.

(d) An agreement subject to Subsection (b) of this section may not be varied by any oral agreements or discussions that occur before or contemporaneously with the execution of the agreement.

(e) In a loan agreement subject to Subsection (b) of this section, the financial institution shall give notice to the debtor or obligor of the provisions of Subsections (b) and (c) of this section. The notice must be in a separate document signed by the debtor or obligor or incorporated into one or more of the documents constituting the loan agreement. The notice must be in type that is boldface, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous. The notice must state substantially the following:

"This written loan agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties.

"There are no unwritten oral agreements between the parties.

---

"Debtor or Obligor      Financial Institution"

(f) If the notice required by Subsection (e) of this section is not given on or before execution of the loan agreement or is not conspicuous, this section does not apply to the loan agreement, but the validity and enforceability of the loan agreement and the rights and obligations of the parties are not impaired or affected.

(g) All financial institutions shall conspicuously post notices that inform borrowers of the provisions of this section. The notices shall be located in such a manner and in places in the institutions so as to fully inform borrowers of the provisions of this section. The Finance Commission of Texas shall prescribe the language of the notice.

# APPENDIX O

# **TPCR CHAPTER 11**

## **CIVIL PRACTICE AND REMEDIES CODE TITLE 2. TRIAL, JUDGMENT, AND APPEAL SUBTITLE A. GENERAL PROVISIONS CHAPTER 11. VEXATIOUS LITIGANTS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 11.001. DEFINITIONS. In this chapter:

- (1) "Defendant" means a person or governmental entity against whom a plaintiff commences or maintains or seeks to commence or maintain a litigation.
- (2) "Litigation" means a civil action commenced, maintained, or pending in any state or federal court.
- (3) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1224, Sec. 10, eff. September 1, 2013.
- (4) "Moving defendant" means a defendant who moves for an order under Section 11.051 determining that a plaintiff is a vexatious litigant and requesting security.
- (5) "Plaintiff" means an individual who commences or maintains a litigation pro se.

Sec. 11.002. APPLICABILITY. (a) This chapter does not apply to an attorney licensed to practice law in this state unless the attorney proceeds pro se.

(b) This chapter does not apply to a municipal court.

### **SUBCHAPTER B. VEXATIOUS LITIGANTS**

Sec. 11.051. MOTION FOR ORDER DETERMINING PLAINTIFF A VEXATIOUS LITIGANT AND REQUESTING SECURITY. In a litigation in this state, the defendant may, on or before the 90th day after the date the defendant files the original answer or makes a special appearance, move the court for an order:

- (1) determining that the plaintiff is a vexatious litigant; and



- (2) requiring the plaintiff to furnish security.

Sec. 11.052. STAY OF PROCEEDINGS ON FILING OF MOTION. (a) On the filing of a motion under Section 11.051, the litigation is stayed and the moving defendant is not required to plead:

- (1) if the motion is denied, before the 10th day after the date it is denied; or
  - (2) if the motion is granted, before the 10th day after the date the moving defendant receives written notice that the plaintiff has furnished the required security.
- (b) On the filing of a motion under Section 11.051 on or after the date the trial starts, the litigation is stayed for a period the court determines.

Sec. 11.053. HEARING. (a) On receipt of a motion under Section 11.051, the court shall, after notice to all parties, conduct a hearing to determine whether to grant the motion.

(b) The court may consider any evidence material to the ground of the motion, including:

- (1) written or oral evidence; and
- (2) evidence presented by witnesses or by affidavit.

Sec. 11.054. CRITERIA FOR FINDING PLAINTIFF A VEXATIOUS LITIGANT. A court may find a plaintiff a vexatious litigant if the defendant shows that there is not a reasonable probability that the plaintiff will prevail in the litigation against the defendant and that:

- (1) the plaintiff, in the seven-year period immediately preceding the date the defendant makes the motion under Section 11.051, has commenced, prosecuted, or maintained at least five litigations as a pro se litigant other than in a small claims court that have been:
  - (A) finally determined adversely to the plaintiff;
  - (B) permitted to remain pending at least two years without having been brought to trial or hearing; or
  - (C) determined by a trial or appellate court to be frivolous or groundless under state or federal laws or rules of procedure;

(2) after a litigation has been finally determined against the plaintiff, the plaintiff repeatedly relitigates or attempts to relitigate, pro se, either:

(A) the validity of the determination against the same defendant as to whom the litigation was finally determined; or

(B) the cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the final determination against the same defendant as to whom the litigation was finally determined; or

(3) the plaintiff has previously been declared to be a vexatious litigant by a state or federal court in an action or proceeding based on the same or substantially similar facts, transition, or occurrence.

Sec. 11.055. SECURITY. (a) A court shall order the plaintiff to furnish security for the benefit of the moving defendant if the court, after hearing the evidence on the motion, determines that the plaintiff is a vexatious litigant.

(b) The court in its discretion shall determine the date by which the security must be furnished.

(c) The court shall provide that the security is an undertaking by the plaintiff to assure payment to the moving defendant of the moving defendant's reasonable expenses incurred in or in connection with a litigation commenced, caused to be commenced, maintained, or caused to be maintained by the plaintiff, including costs and attorney's fees.

Sec. 11.056. DISMISSAL FOR FAILURE TO FURNISH SECURITY. The court shall dismiss a litigation as to a moving defendant if a plaintiff ordered to furnish security does not furnish the security within the time set by the order.

Sec. 11.057. DISMISSAL ON THE MERITS. If the litigation is dismissed on its merits, the moving defendant has recourse to the security furnished by the plaintiff in an amount determined by the court.

## **SUBCHAPTER C. PROHIBITING FILING OF NEW LITIGATION**

Sec. 11.101. PREFILING ORDER; CONTEMPT. (a) A court may, on its own motion or the motion of any party, enter an order prohibiting a person from filing, pro se, a new litigation in a court to which the order applies under this section without permission of the appropriate local administrative judge described by Section 11.102(a) to file the litigation if the court finds, after notice and hearing as provided by Subchapter B, that the person is a vexatious litigant.

(b) A person who disobeys an order under Subsection (a) is subject to contempt of court.

(c) A litigant may appeal from a prefiling order entered under Subsection (a) designating the person a vexatious litigant.

(d) A prefiling order entered under Subsection (a) by a justice or constitutional county court applies only to the court that entered the order.

(e) A prefiling order entered under Subsection (a) by a district or statutory county court applies to each court in this state.

Sec. 11.102. PERMISSION BY LOCAL ADMINISTRATIVE JUDGE. (a) A vexatious litigant subject to a prefiling order under Section 11.101 is prohibited from filing, pro se, new litigation in a court to which the order applies without seeking the permission of:

(1) the local administrative judge of the type of court in which the vexatious litigant intends to file, except as provided by Subdivision (2); or

(2) the local administrative district judge of the county in which the vexatious litigant intends to file if the litigant intends to file in a justice or constitutional county court.

(b) A vexatious litigant subject to a prefiling order under Section 11.101 who files a request seeking permission to file a litigation shall provide a copy of the request to all defendants named in the proposed litigation.

(c) The appropriate local administrative judge described by Subsection (a) may make a determination on the request with or without a hearing. If the judge determines that a hearing is necessary, the judge may require that the vexatious litigant filing a request under Subsection (b) provide notice of the hearing to all defendants named in the proposed litigation.

(d) The appropriate local administrative judge described by Subsection (a) may grant permission to a vexatious litigant subject to a prefiling order under Section 11.101 to file a litigation only if it appears to the judge that the litigation:

(1) has merit; and

(2) has not been filed for the purposes of harassment or delay.

(e) The appropriate local administrative judge described by Subsection (a) may condition permission on the furnishing of security for the benefit of the defendant as provided in Subchapter B.

(f) A decision of the appropriate local administrative judge described by Subsection (a) denying a litigant permission to file a litigation under Subsection (d), or conditioning permission to file a litigation on the furnishing of security under Subsection (e), is not grounds for appeal, except that the litigant may apply for a writ of mandamus with the court of appeals not later than the 30th day after the date of the decision. The denial of a writ of mandamus by the court of appeals is not grounds for appeal to the supreme court or court of criminal appeals.

Sec. 11.103. DUTIES OF CLERK. (a) Except as provided by Subsection (d), a clerk of a court may not file a litigation, original proceeding, appeal, or other claim presented, pro se, by a vexatious litigant subject to a prefiling order under Section 11.101 unless the litigant obtains an order from the appropriate local administrative judge described by Section 11.102(a) permitting the filing.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1224, Sec. 10, eff. September 1, 2013.

(c) If the appropriate local administrative judge described by Section 11.102(a) issues an order permitting the filing of the litigation, the litigation remains stayed and the defendant need not plead until the 10th day after the date the defendant is served with a copy of the order.

(d) A clerk of a court of appeals may file an appeal from a prefiling order entered under Section 11.101 designating a person a vexatious litigant or a timely filed writ of mandamus under Section 11.102.

Sec. 11.1035. MISTAKEN FILING. (a) If the clerk mistakenly files litigation presented, pro se, by a vexatious litigant subject to a prefiling order under Section 11.101 without an order from the appropriate local administrative judge described by Section 11.102(a), any party may file with the clerk and serve on the plaintiff and the other parties to the litigation a notice stating that the plaintiff is a vexatious litigant required to obtain permission under Section 11.102 to file litigation.

(b) Not later than the next business day after the date the clerk receives notice that a vexatious litigant subject to a prefiling order under Section 11.101 has filed, pro se, litigation without obtaining an order from the appropriate local administrative judge described by Section 11.102(a), the clerk shall notify the court that the litigation was mistakenly filed. On receiving notice from the clerk, the court shall immediately stay the litigation and shall dismiss the litigation unless the plaintiff, not later than the 10th day after the date the notice is filed, obtains an order from the appropriate local administrative judge described by Section 11.102(a) permitting the filing of the litigation.

(c) An order dismissing litigation that was mistakenly filed by a clerk may not be appealed.

Sec. 11.104. NOTICE TO OFFICE OF COURT ADMINISTRATION; DISSEMINATION OF LIST. (a) A clerk of a court shall provide the Office of Court Administration of the Texas Judicial System a copy of any prefiling order issued under Section 11.101 not later than the 30th day after the date the prefiling order is signed.

(b) The Office of Court Administration of the Texas Judicial System shall post on the agency's Internet website a list of vexatious litigants subject to prefiling orders under Section 11.101. On request of a person designated a vexatious litigant, the list shall indicate whether the person designated a vexatious litigant has filed an appeal of that designation.

(c) The Office of Court Administration of the Texas Judicial System may not remove the name of a vexatious litigant subject to a prefiling order under Section 11.101 from the agency's Internet website unless the office receives a written order from the court that entered the prefiling order or from an appellate court. An order of removal affects only a prefiling order entered under Section 11.101 by the same court. A court of appeals decision reversing a prefiling order entered under Section 11.101 affects only the validity of an order entered by the reversed court.

# **APPENDIX P**

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

IN RE:	}	CASE NO. 12-46959-MXM
	}	
WILLIAM PAUL BURCH	}	
	}	CHAPTER 11
DEBTOR	}	

**WILLIAM PAUL BURCHS' AMENDED PLAN OF REORGANIZATION**

**SUMMARY**

This Plan of Reorganization (the "Plan") under chapter 11 of the Bankruptcy Code (the "Code") proposes to pay creditors of William Paul Burch, (the "Debtor") through several sources, including cash on hand and future income from Debtors business.

This plan provides for thirteen classes of secured claims and one class of unsecured claims. Unsecured creditors holding allowed claims will receive distributions, which the proponent of this Plan has valued at approximately twenty-five cents on the dollar. This Plan also provides for the payment of administrative and priority claims.

A disclosure statement that provides more detailed information regarding this Plan and the rights of creditors and equity security holder has been circulated with this Plan. **Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)**

**DEFINITIONS AND INTERPRETATION**

"Administrative Claim" means a Claim for any cost or expense of administration of the Bankruptcy Case under section 503(b) of the Bankruptcy Code,

including, without limitation, any fees or charges assessed against the Estate pursuant to 28 U.S.C. § 1930, and further including a Professional Claim.

**"Administrative Claims Bar Date"** means the day that is thirty (30) days after the Effective Date.

**"Administrative Tax Claim"** means a Claim of an ad valorem taxing authority against the Debtors, Estate, or property of either, solely on account of year 2010 or later taxes. The term excludes any Claim for ad valorem taxes for any year prior to the year 2010, including any such Claim that became payable no later than January 30, 2010 without interest.

**"Allowed"** as it relates to any type of Claim provided for under the Plan, means a Claim: (i) which has been scheduled as undisputed, non-contingent and liquidated in the Schedules in an amount other than zero or unknown, and as to which: (a) no proof of Claim has been timely filed, and (b) no objection has been timely filed (as determined by applicable deadlines contained in the Plan, including the Claims Objection Deadline); (ii) as to which a proof of Claim has been timely filed and either: (a) no objection thereto has been timely filed (as determined by applicable deadlines contained in the Plan, including the Claims Objection Deadline), or (b) such Claim has been allowed (but only to the extent allowed) by a Final Order of the Bankruptcy Court; (iii) which has been expressly allowed under the provisions of the Plan; or (iv) which has been expressly allowed by Final Order of the Bankruptcy Court.

**"Allowed Administrative Claim"** means: (i) an Administrative Claim that has been Allowed (but only to the extent Allowed), if approval from the Bankruptcy Court is required in order to Allow same; and (ii) an Administrative Claim which: (a) is incurred by the Debtors after the Petition Date in the ordinary course of business operations or pursuant to an order entered by the Bankruptcy Court granting automatic Administrative Claim status; (b) is not disputed by the Debtors or the Reorganized Debtors; and (c) does not require approval from the Bankruptcy Court to become Allowed.

**"Allowed Priority Claim"** means a Priority Claim that has been Allowed (but only to the extent Allowed).

**"Allowed Secured Claim"** means a Secured Claim that has been Allowed (but only to the extent Allowed).

**"Allowed Unsecured Claim"** means an Unsecured Claim that has been Allowed (but only to the extent Allowed).

**"Avoidance Actions"** means any and all rights, claims or actions which the Debtors may assert on behalf of the Estate under chapter 5 of the Bankruptcy Code, including actions under one or more provisions of sections 542, 544, 545, 546, 547, 548, 549, 550, 551 and/or 553 of the Bankruptcy Code, except to the extent that any such rights, claims, or actions are released or waived in the Plan.



**"Ballot"** means the ballot, the form of which has been approved by the Bankruptcy Court, accompanying the Disclosure Statement provided to each holder of a Claim entitled to vote to accept or reject the Plan.

**"Bankruptcy Case"** means the bankruptcy case of the Debtors, pending in the Bankruptcy Court under Case Number 13-42587-dml.

**"Bankruptcy Code"** means 11 U.S.C. §§ 101, et. seq., in effect as of the Petition Dates and as may have been or may be amended or supplemented since, to the extent that any such amendment or supplement is automatically applicable to the Bankruptcy Case by operation of law and not by operation of any election or choice.

**"Bankruptcy Court"** means the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division or, if such court ceases to exercise jurisdiction, the court or adjunct thereof that exercises jurisdiction over the Bankruptcy Case.

**"Bankruptcy Rules"** means the Federal Rules of Bankruptcy Procedure, together with the local bankruptcy rules for the Bankruptcy Court as now in effect or as the same may from time to time hereafter be amended.

**"Bar Date"** means, with respect to each of the Debtors, the date(s) set by the Bankruptcy Court as the deadline for timely filing proofs of claim against the Debtors, including any such date(s) applicable to the timely filing of an Unsecured Claim and governmental Claim.

**"Business Day"** means any day which is not a Saturday, a Sunday, or a "legal holiday" within the meaning of Bankruptcy Rule 9006(a).

**"Claim"** means a claim against the Debtors, the Estate of the Debtors as such term is otherwise defined in section 101(5) of the Bankruptcy Code, arising prior to the Effective Date.

**"Claims Objection Deadline"** means the date by which parties authorized by the Plan may file any objection to a Claim, which date shall be sixty (60) days after the Effective Date, except with respect to Administrative Claims as otherwise provided for herein.

**"Class"** means one of the categories of Claims established under Article II of the Plan.

**"Confirmation Date"** means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on its docket.

**"Confirmation Hearing"** means the hearing(s) before the Bankruptcy Court

pursuant to section 1128 of the Bankruptcy Code to consider confirmation of the Plan, as such hearing(s) may be continued, rescheduled or delayed.

**"Confirmation Order"** means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code, as such order may be amended, modified, or supplemented.

**"Convenience Claim"** is an Unsecured Claim, otherwise subject to becoming Allowed as provided for in the Plan, either: (i) scheduled or filed in an amount of \$500 or less; or (ii) as to which the holder thereof affirmatively elects, on the Ballot it votes on the Plan, to reduce its Unsecured Claim to the amount of \$500.

**"Creditor"** means the holder of any Claim entitled to distributions with respect to such Claim.

**"Cure Claim"** shall refer to the payment or other performance required to cure any existing default under an Executory Contract in accordance with section 365 of the Bankruptcy Code.

**"Disallowed Claim"** means, as it relates to any type of Claim provided for under the Plan, a Claim or portion thereof that: (i) has been disallowed by a Final Order of the Bankruptcy Court; (ii) is identified in the Schedules in an amount of zero dollars, unknown dollars, or as contingent, unliquidated, and/or disputed, and as to which a proof of Claim was not filed by the Bar Date; or (iii) is not identified in the Schedules and as to which no proof of Claim has been filed or deemed filed by the Bar Date, if the filing of such proof of Claim is otherwise required.

**"Disclosure Statement"** means the Disclosure Statement with respect to this Plan, approved by the Bankruptcy Court as containing adequate information for the purpose of dissemination and solicitation of votes on confirmation of the Plan, or as it may be altered, amended or modified from time to time in accordance with sections 1125, 1126(b) and 1145 of the Bankruptcy Code and Bankruptcy Rule 3018.

**"Disputed Claim"** means any Claim or any portion thereof which is neither Allowed nor is a Disallowed Claim as of the close of the Claims Objection Deadline. In the event that any part of a Claim is a Disputed Claim, such Claim in its entirety shall be deemed to constitute a Disputed Claim for purposes of distribution under the Plan unless the party responsible for the payment thereof, the objecting party, and the holder thereof agree otherwise or unless otherwise ordered by the Bankruptcy Court; provided, however, that nothing in this definition of "Disputed Claim" is intended to or does impair the rights of the Debtors or of any holder of a Disputed Claim to pursue its rights under section 502(c) of the Bankruptcy Code. Without limiting any of the foregoing, but subject to the provisions of the Plan, a Claim that is the subject of a pending application, motion, complaint, objection, or any other legal proceeding seeking to disallow, limit, subordinate, or estimate such Claim, as of the Claims Objection Deadline, shall be a Disputed Claim unless and until the entry of a Final Order

providing otherwise.

**"Effective Date"** means the first Business Day fourteen (14) days after the entry of the Confirmation Order, if the Confirmation Order is not stayed or, if the Confirmation Order is stayed, the first Business Day following the lifting, dissolution, or removal of such stay, and upon which the conditions to the effectiveness of the Plan, as provided for in the Plan, are satisfied.

**"Estate"** means the estate created for the Debtors pursuant to section 541 of the Bankruptcy Code and any other applicable provision thereof. Estate refers to the Debtors estate prior to the Effective Date.

**"Executory Contract"** means, collectively, "executory contracts" and "unexpired leases" of the Debtors as of the Petition Date as such terms are used within section 365 of the Bankruptcy Code.

**"Final Decree"** means the final decree entered by the Bankruptcy Court on or after the Effective Date pursuant to Bankruptcy Rule 3022.

**"Final Order"** means a judgment, order, ruling, or other decree issued and entered by the Bankruptcy Court or by any state or other federal court or other tribunal having jurisdiction over the subject matter thereof which judgment, order, ruling, or other decree has not been reversed, stayed, modified, or amended and as to which: (i) the time to appeal or petition for review, rehearing or certiorari has expired and as to which no appeal or petition for review, rehearing or certiorari is pending; or (ii) any appeal or petition for review, rehearing or certiorari has been finally decided and no further appeal or petition for review, rehearing or certiorari can be taken or granted.

**"Governmental Unit"** means a governmental unit as such term is defined in section 101(27) of the Bankruptcy Code.

**"Person"** means and includes natural persons, corporations, limited partnerships, general partnerships, joint ventures, trusts, land trusts, business trusts, unincorporated organizations, or other legal entities, irrespective of whether they are governments, agencies or political subdivisions thereof.

**"Petition Date"** means, with respect to any Debtors, the date on which such Debtors filed their respective Bankruptcy Case.

**"Plan"** means the Debtors Plan of Reorganization, either in its present form or as it may be altered, amended or modified from time to time in accordance with the provisions of the Bankruptcy Code and the Bankruptcy Rules, and all exhibits hereto.

**"Post Petition Fees Claim"** means, with respect to any Secured Claim, the amount, other than for post petition interest, allowed by the Bankruptcy Court on account of the Secured Claim under section 506(b) of the Bankruptcy Code, which shall

be governed as follows: (a) no later than twenty (20) days after the Effective Date, the holder of the Secured Claim may file an application with the Bankruptcy Court for the allowance of the same, and shall serve the same as otherwise appropriate; (b) if said application is not timely filed, such Post Petition Fees Claim shall be zero, without prejudice to any other Claim or right of the holder thereof; (iii) said application shall contain negative notice language informing all parties that any objection thereto must be filed, and served as otherwise appropriate, no later than twenty (20) days after service of the application; (iv) if no objection thereto is timely filed and served as otherwise appropriate, said application shall be automatically allowed by the Bankruptcy Court without need for any order therefrom, and the Post petition Fees Claim shall be the amount identified in said application; and (v) if an objection to said application is timely filed and served, the Bankruptcy Court shall determine the amount of the Post Petition Fees Claim as is otherwise appropriate

**"Priority Claim"** means a Claim entitled to priority in payment under section 507(a) of the Bankruptcy Code, excluding any Claim that is an Administrative Claim.

**"Professional"** means any Person employed or to be compensated pursuant to sections 327, 328, 330, 331, 503(b), or 1103 of the Bankruptcy Code.

**"Professional Claim"** means a Claim by a Professional for compensation and/or reimbursement of expenses pursuant to sections 327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code in connection with an application made to the Bankruptcy Court in the Bankruptcy Case.

**"Reelection Claim"** means a Claim arising under section 502(g) of the Bankruptcy Code as a consequence of the rejection of any Executory Contract.

**"Reorganized Debtors"** means the Debtors after the Effective Date.

**"Schedules"** means the Schedules of Assets and Liabilities and the Statements of Financial Affairs filed by the Debtors with the clerk of the Bankruptcy Court pursuant to Bankruptcy Rule 1007, as they have been or may be amended or supplemented from time to time in accordance with Bankruptcy Rule 1009.

**"Secured Claim"** means a Claim that is alleged to be secured, in whole or in part, (i) by a lien against an asset of the Debtors or the Estate to the extent such lien is valid, perfected and enforceable under applicable non-bankruptcy law and is not subject to avoidance or subordination under the Bankruptcy Code or applicable non-bankruptcy law, but only to the extent that such Claim is secured within the meaning of section 506(a) of the Bankruptcy Code; or (ii) as a result of rights of setoff under section 553 of the Bankruptcy Code.

**"Secured Tax Claim"** means a Claim of a Governmental Unit for the payment of ad valorem taxes that is secured by property of the Debtors or the Estate, but that is not an Administrative Tax Claim.

**"Unsecured Claim"** means any alleged Claim against one or both of the Debtors that is not secured by a valid, enforceable, and unavoidable lien against any asset of the Debtors or the Estate, but excluding any Administrative Claim, Priority Claim, Secured Claim, but including a Secured Claim to the extent not an Allowed Secured Claim but otherwise an Allowed Claim.

**"Voting Deadline"** means the period established by the Bankruptcy Court within which Ballots may be cast on the Plan.

### **CLASSIFICATION OF CLAIMS AND INTERESTS**

The Plan separates Claims against the Debtor, the Estate, and their property into Unclassified Claims and classified Claims.

Unclassified Claims are generally post-petition Claims which must be paid in full and which do not vote on the Plan, and consist of the following: (i) Allowed Administrative Claims; (ii) the Comptroller Claim, to the extent Allowed; and (iii) Allowed Administrative Tax Claims.

Classified Claims and Interests are classified in the Plan under the provisions of section 1122 of the Bankruptcy Code into following fourteen (14) separate Classes:

- (1) JPMorgan Chase Bank;
- (2) Specialized Loan Servicing, LLC;
- (3) Deutsche;
- (4) Specialized Loan Servicing LLC;
- (5) Wells Fargo;
- (6) Freedom Mortgage;
- (7) Bosco Credit II Trust Series 2010-1;
- (8) American Home Mortgage;
- (9) Seterus, Inc.;
- (10) Litton Loan Servicing;
- (11) Nationstar;
- (12) Secured Tax Claims;
- (13) Internal Revenue Service;
- (14) General Unsecured Claims;

### **TREATMENT OF ADMINISTRATIVE EXPENSE CLAIMS, U.S. TRUSTEE FEES, AND PRIORITY TAX CLAIMS**

#### **Unclassified Claims**

Under section § 1123(a)(1), administrative expense claims, and priority tax claims

are not in classes.

### **Administrative Expense Claims**

Each holder of an administrative expense claim allowed under § 503 of the Code will be paid in full on the effective date of this Plan (as defined in Article XI), in cash, or upon such other terms as may be agreed upon by the holder of the claim and the Debtor.

The U.S. Trustee is not required by this Plan to file an application with the Court for approval of administrative claims.

Steve Stasio, Counsel for William Paul Burch in this matter intends to make application to the Court for approval of the fees he has incurred in representing the Debtor in this Chapter 11 case. The amount of those fees is subject to Court approval but they are expected to be less than \$10,000.00. Fees for the services of Steve Stasio that are approved by the Court will be paid directly to Steve Stasio by the Debtor.

### **United States Trustee Fees**

All fees required to be paid by 28 U.S.C. § 1930(a)(6) ("U.S. Trustee Fees") will accrue and be timely paid until the case is closed, dismissed, or converted to another chapter of the Code. Any U.S. Trustee Fees owed on or before the effective date of this Plan will be paid on the effective date. The Debtor will file with the Court and serve on the U.S. Trustee post-confirmation quarterly operating reports until the case is closed, dismissed or converted to another chapter under the Code.

### **PROVISIONS FOR THE TREATMENT OF CLASSIFIED CLAIMS; IDENTIFICATION OF IMPAIRED CLASSES**

#### *1. Secured claims*

JPMorgan Chase Bank, N.A. filed the following secured claims:

<b>Class</b>	<b>Claim No.</b>	<b>Collateral</b>	<b>Amount of claim</b>
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1	3	707 N. Hunters Glen	\$9,668.20
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<b>Class</b>	<b>Claim No.</b>	<b>Collateral</b>	<b>Amount of claim</b>
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1	4	2809 Harvest Lake	\$17,576.64
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<b>Class</b>	<b>Claim No.</b>	<b>Collateral</b>	<b>Amount of claim</b>
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1	5	1937 Bolingbroke Ct	\$15,769.94
<b>Class</b>	<b>Claim No.</b>	<b>Collateral</b>	<b>Amount of claim</b>

1	6	3007 Sunnybrook	\$20,663.83
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All of the above claims were included in Debtors prior confirmed Chapter 11 Plan. The claims were treated as unsecured as there was no equity in the properties subject to the liens.

In this bankruptcy case JPMorgan Chase Bank, N.A. filed a proof of claim in which it alleges a lien on 707 N. Hunters Glen, Arlington, Tarrant County, Texas. This property has a current value of \$70,300.00. The JPMorgan Chase Bank, N.A. lien is inferior to the lien for unpaid property taxes and the first mortgage. The amount owed on the property taxes and first lien mortgage exceed \$95,000.00. There is no equity in the collateral to treat this claim as a secured claim. The claim is an unsecured debt and will be treated in this plan as a Class 14 general unsecured claim.

In this bankruptcy case JPMorgan Chase Bank, N.A. filed a proof of claim in which it alleges a lien on 2809 Harvest Lake, Irving, Dallas County, Texas. This property has a current value of \$86,250.00. The JPMorgan Chase Bank, N.A. lien is inferior to the lien for unpaid property taxes and the first mortgage. The amount owed on the property taxes and first lien mortgage exceed \$108,000.00. There is no equity in the collateral to treat this claim as a secured claim. The claim is an unsecured debt and will be treated in this plan as a Class 14 general unsecured claim.

In this bankruptcy case JPMorgan Chase Bank, N.A. filed a proof of claim in which it alleges a lien on 1937 Bolingbroke, Fort Worth, Tarrant County, Texas. This property has a current value of \$75,700.00. The JPMorgan Chase Bank, N.A. lien is inferior to the lien for unpaid property taxes and the first mortgage. The amount owed on the property taxes and first lien mortgage exceed \$75,700.00. There is no equity in the collateral to treat this claim as a secured claim. The claim is an unsecured debt and will be treated in this plan as a Class 14 general unsecured claim.

In this bankruptcy case JPMorgan Chase Bank, N.A. filed a proof of claim in which it alleges a lien on 3007 Sunnybrook, Arlington, Tarrant County, Texas. This property has a current value of \$88,000.00. The JPMorgan Chase Bank, N.A. lien is inferior to the lien for unpaid property taxes and the first mortgage. The amount owed on the property taxes and first lien mortgage exceed \$88,000.00. There is no equity in the collateral to treat this claim as a secured claim. The claim is an unsecured debt and will be treated in this plan as a Class 14 general unsecured claim.

America's Servicing Company filed the following secured claims:

<b>Class</b>	<b>Claim No.</b>	<b>Collateral</b>	<b>Amount of claim</b>
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2                      16                      2809 Harvest Lake                      \$108,583.39

<b>Class</b>	<b>Claim No.</b>	<b>Collateral</b>	<b>Amount of claim</b>
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2                      17                      707 Hunters Glen                      \$91,507.33

<b>Class</b>	<b>Claim No.</b>	<b>Collateral</b>	<b>Amount of claim</b>
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2                      15                      1937 Bolingbroke                      \$90,506.34

<b>Class</b>	<b>Claim No.</b>	<b>Collateral</b>	<b>Amount of claim</b>
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2                      18                      503 W. 8<sup>th</sup> Street                      \$43,319.47

The Class 2 Allowed Secured Claim of Specialized Loan Servicing LLC (hereinafter "SLS"), on the Effective Date, the property located at 2809 Harvest Lake Drive, Irving, Texas 75060 (the "Harvest Lake Property") shall be surrendered to the holder of the Class 2 Allowed Secured Claim and shall be deemed paid in full. Upon the Effective Date the automatic stay shall lift without further order of this Court to allow SLS, or its assigns or successors in interest, to take any and all steps necessary to exercise any and all rights it may have in the Harvest Lake Property.

The Class 2 Allowed Secured Claim of Specialized Loan Servicing LLC (hereinafter "SLS") shall retain its lien on the property located at 707 N. Hunters Glen Circle, Arlington, Texas 76015 (the "Hunters Glen Property"). Debtor shall retain the Hunters Glen Property by paying the sum of \$101,000.00 with four and one-half percent (4.5%) interest per annum in 360 equal monthly payments with the first being made on the first day of the month after the effective date of the Plan. Debtor is required to pay the ad valorem property taxes on the Hunters Glen Property direct when they come due. Failure to pay the ad valorem taxes will result in a default under the plan if not cured within 15 days. Debtor shall also maintain insurance on the Hunters Glen Property with SLS listed as the loss payee. SLS shall retain the right to declare a default, accelerate payments and foreclose its lien should the Debtor fail to make any payment within thirty (30) days of its due date.

Within six months from the effective date of the plan Debtor shall sell the property located at 1937 Bolingbroke Court, Fort Worth, Tarrant County, Texas subject to the lien and pay America's Servicing Company the sum of \$58,960.00. Any proceeds from the sale that exceed the amount paid to the mortgage company, less the closing costs and property taxes shall be paid to Debtor to compensate Debtor for repairs, stating costs, marketing of the property and other miscellaneous expenses.



If the property is not sold within six months of the effective date of the plan the mortgage company shall be allowed to take all actions necessary to foreclose its lien on the property and to take possession of the property. The foreclosure shall be considered payment in full satisfaction of its lien.

If the property is not sold and the mortgage company has failed to exercise its right to foreclose its lien on the property as set out above for a period of one year after the expiration of the six month sale period, Debtor shall have the option to retain the property by paying the sum of \$58,960.00 with four percent (4%) interest per annum in 360 equal monthly payments with the first being made on the first day of the month, eighteen (18) months after the effective date of the Plan. The mortgage company would retain the right to declare a default, accelerate payments and foreclose its lien should the Debtor fail to make any payment within thirty (30) days of its due date.

If the mortgage company refuses to accept the payments for a period of six months from the date the first payment becomes due then the mortgage company shall forfeit its lien on the subject property and its debt shall be satisfied in full and the mortgage company shall have no further claims against the Debtor or the subject property.

Within six months from the effective date of the plan Debtor shall sell the property located at 503 W. 8<sup>th</sup> Street, Lancaster, Texas subject to the lien and pay America's Servicing Company the sum of \$32,401.00. Any proceeds from the sale that exceed the amount paid to the mortgage company, less the closing costs and property taxes shall be paid to Debtor to compensate Debtor for repairs, stating costs, marketing of the property and other miscellaneous expenses.

If the property is not sold within six months of the effective date of the plan the mortgage company shall be allowed to take all actions necessary to foreclose its lien on the property and to take possession of the property. The foreclosure shall be considered payment in full satisfaction of its lien.

If the property is not sold and the mortgage company has failed to exercise its right to foreclose its lien on the property as set out above for a period of one year after the expiration of the six month sale period, Debtor shall have the option to retain the property by paying the sum of \$32,401.00 with four percent (4%) interest per annum in 360 equal monthly payments with the first being made on the first day of the month, eighteen (18) months after the effective date of the Plan. The mortgage company would retain the right to declare a default, accelerate payments and foreclose its lien should the Debtor fail to make any payment within thirty (30) days of its due date.

If the mortgage company refuses to accept the payments for a period of six months from the date the first payment becomes due then the mortgage company shall forfeit its lien on the subject property and its debt shall be satisfied in full and the mortgage company shall have no further claims against the Debtor or the subject property.

Bank of America filed the following secured claims:

Class	Claim No.	Collateral	Amount of claim
3	34	713 Timberline	\$140,258.62
Class	Claim No.	Collateral	Amount of claim

3      No claim filed    1053 Briarwood      No claim filed

The Class 3 Allowed Secured Claim of Deutsche Bank National Trust Company, as Trustee under the Pooling and Servicing Agreement Relating to Impac Secured Assets Corp., Mortgage Pass-Through Certificates, Series 2006-5 (hereinafter "Deutsche") shall retain its lien on the property located at 713 Timberline Drive, Kennedale, Texas 76060 (the "Timberline Property"). Debtor shall retain the Timberline Property by paying the sum of \$89,000.00 with four and one-half percent (4.5%) interest per annum in 360 equal monthly payments with the first being made on the first day of the month after the effective date of the Plan. Debtors shall resume making payment to Deutsche for escrow of taxes for the Timberline Property. The Debtor shall maintain physical damage insurance covering the Timberline Property with Deutsche as the loss payee. Deutsche shall retain the right to declare a default, accelerate payments and foreclose its lien should the Debtor fail to make any payment within thirty (30) days of its due date.

Within six months from the effective date of the plan Debtor shall sell the property located at 1053 Briarwood, DeSoto, Texas subject to the lien and pay Bank of America the sum of \$74,060.00. Any proceeds from the sale that exceed the amount paid to the mortgage company, less the closing costs and property taxes shall be paid to Debtor to compensate Debtor for repairs, stating costs, marketing of the property and other miscellaneous expenses.

If the property is not sold within six months of the effective date of the plan the mortgage company shall be allowed to take all actions necessary to foreclose its lien on the property and to take possession of the property. The foreclosure shall be considered payment in full satisfaction of its lien.

If the property is not sold and the mortgage company has failed to exercise its right to foreclose its lien on the property as set out above for a period of one year after the expiration of the six month sale period, Debtor shall have the option to retain the property by paying the sum of \$74,060.00 with four percent (4%) interest per annum in 360 equal monthly payments with the first being made on the first day of the month, eighteen (18) months after the effective date of the Plan. The mortgage company would retain the right to declare a default, accelerate payments and foreclosure its lien should the Debtor fail to make any payment within thirty (30) days of its due date.

If the mortgage company refuses to accept the payments for a period of six

months from the date the first payment becomes due then the mortgage company shall forfeit its lien on the subject property and its debt shall be satisfied in full and the mortgage company shall have no further claims against the Debtor or the subject property.

Specialized Loan Servicing LLC filed the following secured claim:

<b>Class</b>	<b>Claim No.</b>	<b>Collateral</b>	<b>Amount of claim</b>
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4	33	2811 Galemeadow	\$71,664.11
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The Class 4 Allowed Secured Claim of Specialized Loan Servicing LLC, as servicing agent for CSAB Mortgage-Backed Pass-Through Certificates, Series 2007-1, U.S. Bank Association, as Trustee (hereinafter "SLS"), on the Effective Date, the property located at 2811 Galemeadow Drive, Fort Worth, Texas 76123 (the "Galemeadow Property") shall be surrendered to the holder of the Class 4 Allowed Secured Claim and the claim shall be deemed paid in full. Upon the Effective Date the automatic stay shall lift without further order of this Court to allow SLS, or its assigns or successors in interest, to take any and all steps necessary to exercise any and all rights it may have in the Galemeadow Property

Wells Fargo filed the following secured claim:

<b>Class</b>	<b>Claim No.</b>	<b>Collateral</b>	<b>Amount of claim</b>
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5	14	7118 Chambers Creek	\$143,428.75
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Debtor shall retain the property by paying the sum of \$118,000.00 with four percent (4%) interest per annum in 360 equal monthly payments with the first being made on the first day of the month after the effective date of the Plan. The mortgage company shall retain the right to declare a default, accelerate payments and foreclosure its lien should the Debtor fail to make any payment within thirty (30) days of its due date. Debtor shall resume making payment to Wells Fargo for escrow of taxes for the Chambers Property. The Debtor shall maintain physical damage insurance covering the Chambers Property with Wells Fargo as the loss payee.

Freedom Mortgage filed the following secured claim:

<b>Class</b>	<b>Claim No.</b>	<b>Collateral</b>	<b>Amount of claim</b>
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The Class 6 Allowed Secured Claim of Freedom Mortgage Corporation, Its Successors and Assigns (hereinafter "Freedom") shall retain its lien on the property located at 1713 Enchanted Lane, Lancaster, Texas 75146 (the "Enchanted Property"). Debtor shall retain the Enchanted Property by paying the sum of \$77,547.51 with four and one-half percent (4.5%) interest per annum in 360 equal monthly payments with the first being made on the first day of the month after the effective date of the Plan. Debtors shall resume making payment to Freedom for escrow of taxes for the Enchanted Property. The Debtor shall maintain physical damage insurance covering the Enchanted Property with Freedom as the loss payee. Freedom shall retain the right to declare a default, accelerate payments and foreclosure its lien should the Debtor fail to make any payment within thirty (30) days of its due date.

Franklin Credit Management filed the following secured claim:

Class	Claim No.	Collateral	Amount of claim
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7	8	2811 Galemeadow	\$26,889.47
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The Class 7 Allowed Secured Claim of Bosco Credit II Trust Series 2010-1 (hereinafter "Bosco"), on the Effective Date, the property located at 2811 Galemeadow Drive, Fort Worth, Texas 76123 (the "Galemeadow Property") shall be surrendered to the holder of the Class 7 Allowed Secured Claim and the claim shall be deemed paid in full. Upon the Effective Date the automatic stay shall lift without further order of this Court to allow SLS, or its assigns or successors in interest, to take any and all steps necessary to exercise any and all rights it may have in the Galemeadow Property.

American Home Mortgage holds the following secured claim:

Class	Claim No.	Collateral	Amount of claim
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8	No claim filed	3007 Sunnybrook	No claim filed
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Within six months from the effective date of the plan Debtor shall sell the property located at 3007 Sunnybrook, Arlington, Texas subject to the lien and pay American Home Mortgage the sum of \$67,760.00. Any proceeds from the sale that exceed the amount paid to the mortgage company, less the closing costs and property taxes shall be paid to Debtor to compensate Debtor for repairs, stating costs, marketing of the property and other miscellaneous expenses.

If the property is not sold within six months of the effective date of the plan the

mortgage company shall be allowed to take all actions necessary to foreclose its lien on the property and to take possession of the property. The foreclosure shall be considered payment in full satisfaction of its lien.

If the property is not sold and the mortgage company has failed to exercise its right to foreclose its lien on the property as set out above for a period of one year after the expiration of the six month sale period, Debtor shall have the option to retain the property by paying the sum of \$67,760.00 with four percent (4%) interest per annum in 360 equal monthly payments with the first being made on the first day of the month, eighteen (18) months after the effective date of the Plan. The mortgage company would retain the right to declare a default, accelerate payments and foreclosure its lien should the Debtor fail to make any payment within thirty (30) days of its due date.

If the mortgage company refuses to accept the payments for a period of six months from the date the first payment becomes due then the mortgage company shall forfeit its lien on the subject property and its debt shall be satisfied in full and the mortgage company shall have no further claims against the Debtor or the subject property.

Seterus, Inc. holds the following secured claim:

Class	Claim No.	Collateral	Amount of claim
9	35	203 Hemlock	\$104,027.36

The Class 9 Allowed Secured Claim of Seterus, Inc., as the Authorized Subservicer for Federal National Mortgage Association ("Fannie Mae"), Creditor c/o Seterus, Inc, on the Effective Date, the property located at 203 Hemlock Drive, Arlington, Texas 76018 (the "Hemlock Property") shall be surrendered to the holder of the Allowed Class 9 Claim and the claim shall be deemed paid in full. Upon the Effective Date the automatic stay shall lift without further order of this Court to allow the Class 9 claimant, or its assigns or successors in interest, to take any and all steps necessary to exercise any and all rights it may have in the Hemlock Property

Litton Loan Servicing holds the following secured claim:

Class	Claim No.	Collateral	Amount of claim
10	No claim filed	2531 Gerry Way	No claim filed

Within six months from the effective date of the plan Debtor shall sell the property located at 2531 Gerry Way, Lancaster, Texas subject to the lien and pay Litton Loan Servicing the sum of \$33,765.00. Any proceeds from the sale that exceed the

amount paid to the mortgage company, less the closing costs and property taxes shall be paid to Debtor to compensate Debtor for repairs, stating costs, marketing of the property and other miscellaneous expenses.

If the property is not sold within six months of the effective date of the plan the mortgage company shall be allowed to take all actions necessary to foreclose its lien on the property and to take possession of the property. The foreclosure shall be considered payment in full satisfaction of its lien.

If the property is not sold and the mortgage company has failed to exercise its right to foreclose its lien on the property as set out above for a period of one year after the expiration of the six month sale period, Debtor shall have the option to retain the property by paying the sum of \$33,765.00 with four percent (4%) interest per annum in 360 equal monthly payments with the first being made on the first day of the month, eighteen (18) months after the effective date of the Plan. The mortgage company would retain the right to declare a default, accelerate payments and foreclose its lien should the Debtor fail to make any payment within thirty (30) days of its due date.

If the mortgage company refuses to accept the payments for a period of six months from the date the first payment becomes due then the mortgage company shall forfeit its lien on the subject property and its debt shall be satisfied in full and the mortgage company shall have no further claims against the Debtor or the subject property.

Nationstar filed the following secured claim:

<b>Class</b>	<b>Claim No.</b>	<b>Collateral</b>	<b>Amount of claim</b>
11	25	5947 Waterford	\$130,500.00

The Class 11 Allowed Secured Claim of Nationstar Mortgage LLC (hereinafter "Nationstar") shall retain its lien on the property located at 5947 Waterford Drive, Grand Prairie, Texas 75052 (the "Waterford Property"). Debtor shall retain the Waterford Property as his homestead by paying the full amount of their claim with the first payment being made on the first day of the month after the effective date of the Plan. Debtors shall cure the arrears on the Waterford Property by making sixty (60) equal monthly installments with the first payment being made on the first day of the month after the effective date of the Plan. Debtors shall resume making payment to Nationstar for escrow of taxes for the Waterford Property. The Debtor shall maintain physical damage insurance covering the Waterford Property with Nationstar as the loss payee. Waterford shall retain the right to declare a default, accelerate payments and foreclose its lien should the Debtor fail to make any payment within thirty (30) days of its due date.

Mansfield ISD filed the following secured claims:

Class	Claim No.	Collateral	Amount of claim
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12	1	Multiple pieces of real property	\$4,856.17
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Class	Claim No.	Collateral	Amount of claim
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12	31	Multiple pieces of real property	\$4,417.91
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Within six months from the effective date of the plan Debtor shall sell the properties subject to the tax liens and pay Mansfield ISD the sum of \$9,274.08. Any proceeds from the sale that exceed the amount paid to the taxing authority, less the amount paid to the mortgage company shall be paid to Debtor to compensate Debtor for repairs, stating costs, marketing of the property and other miscellaneous expenses.

If the property is not sold within six months of the effective date of the plan the taxing authority shall be allowed to take all actions necessary to foreclose its lien on the properties and to take possession of the properties. The foreclosure shall be considered payment in full satisfaction of its lien.

If the property is not sold and the taxing authority has failed to exercise its right to foreclose its lien on the properties as set out above for a period of one year after the expiration of the six month sale period, Debtor shall have the option to retain the property by paying the sum of \$9,274.08 with twelve percent (12%) interest per annum in 60 equal monthly payments with the first being made on the first day of the month, eighteen (18) months after the effective date of the Plan. The taxing authority would retain the right to declare a default, accelerate payments and foreclosure its lien should the Debtor fail to make any payment within thirty (30) days of its due date.

The treatment of Mansfield ISD's prepetition claim and its administrative expense claim is supplemented as follows: Mansfield ISD is the holder of an administrative expense claim for ad valorem real property taxes. Mansfield ISD shall receive payment of its administrative expense claim in the ordinary course of business prior to the state law delinquency date without filing and serving an administrative expense claim and request for payment as a condition of allowance. Mansfield ISD's administrative expense claim shall not be discharged. Mansfield ISD shall retain the liens that secure all amounts ultimately owed on its prepetition claim for unpaid ad valorem real property taxes and its administrative expense claim. Those liens shall retain their state law statutory priority with regard to all consensual and nonconsensual lienholders. The deadline to object to Mansfield ISD's claim and its administrative expense claim shall be 60 days from the Effective Date of the plan. If no objection to

Mansfield ISD's claim and/or administrative expense claim is filed by this deadline, the claims shall be deemed allowed. In the event of a default under the plan, Mansfield ISD shall provide notice of the default to the Debtor/Reorganized Debtor to counsel for the Debtor. The Debtor/Reorganized Debtor shall have 14 days from the date of the notice to cure the default. In the event the default is not cured, Mansfield ISD shall be entitled to collect all amounts owed pursuant to state law outside of the Bankruptcy Court. The Debtor/Reorganized Debtor shall only be entitled to two notices of default. Upon a third event of default, Mansfield ISD shall be entitled to collect all amounts owed pursuant to state law without further notice. Failure to timely pay post-petition taxes prior to the state law delinquency date shall be an event of default under the plan only as to Mansfield ISD.

Arlington ISD filed the following secured claims:

<b>Class</b>	<b>Claim No.</b>	<b>Collateral</b>	<b>Amount of claim</b>
12	7	Multiple pieces of real property	\$9,782.47
<b>Class</b>	<b>Claim No.</b>	<b>Collateral</b>	<b>Amount of claim</b>
12	32	Multiple pieces of real property	\$5,883.83

Within six months from the effective date of the plan Debtor shall sell the properties subject to the tax liens and pay Arlington ISD the sum of \$15,666.30. Any proceeds from the sale that exceed the amount paid to the taxing authority, less the amount paid to the mortgage company shall be paid to Debtor to compensate Debtor for repairs, stating costs, marketing of the property and other miscellaneous expenses.

If the property is not sold within six months of the effective date of the plan the taxing authority shall be allowed to take all actions necessary to foreclose its lien on the properties and to take possession of the properties. The foreclosure shall be considered payment in full satisfaction of its lien.

If the property is not sold and the taxing authority has failed to exercise its right to foreclose its lien on the properties as set out above for a period of one year after the expiration of the six month sale period, Debtor shall have the option to retain the property by paying the sum of \$15,666.30 with twelve percent (12%) interest per annum in 60 equal monthly payments with the first being made on the first day of the month, eighteen (18) months after the effective date of the Plan. The taxing authority would retain the right to declare a default, accelerate payments and foreclosure its lien should the Debtor fail to make any payment within thirty (30) days of its due date.

The treatment of Arlington ISD's prepetition claim and its administrative



expense claim is supplemented as follows: Arlington ISD is the holder of an administrative expense claim for ad valorem real property taxes. Arlington ISD shall receive payment of its administrative expense claim in the ordinary course of business prior to the state law delinquency date without filing and serving an administrative expense claim and request for payment as a condition of allowance. Arlington ISD's administrative expense claim shall not be discharged. Arlington ISD shall retain the liens that secure all amounts ultimately owed on its prepetition claim for unpaid ad valorem real property taxes and its administrative expense claim. Those liens shall retain their state law statutory priority with regard to all consensual and nonconsensual lienholders. The deadline to object to Arlington ISD's claim and its administrative expense claim shall be 60 days from the Effective Date of the plan. If no objection to Arlington ISD's claim and/or administrative expense claim is filed by this deadline, the claims shall be deemed allowed. In the event of a default under the plan, Arlington ISD shall provide notice of the default to the Debtor/Reorganized Debtor to counsel for the Debtor. The Debtor/Reorganized Debtor shall have 14 days from the date of the notice to cure the default. In the event the default is not cured, Arlington ISD shall be entitled to collect all amounts owed pursuant to state law outside of the Bankruptcy Court. The Debtor/Reorganized Debtor shall only be entitled to two notices of default. Upon a third event of default, Arlington ISD shall be entitled to collect all amounts owed pursuant to state law without further notice. Failure to timely pay post-petition taxes prior to the state law delinquency date shall be an event of default under the plan only as to Arlington ISD.

Dallas County filed the following secured claims:

<b>Class</b>	<b>Claim No.</b>	<b>Collateral</b>	<b>Amount of claim</b>
12	9	Multiple pieces of real property	\$9,054.33
<b>Class</b>	<b>Claim No.</b>	<b>Collateral</b>	<b>Amount of claim</b>
12	27	Multiple pieces of real property	\$10,064.90

For the avoidance of doubt, nothing in the Plan treating the liens of any Secured Creditor whose liens and interests are of a priority lower than the Tax Authorities shall be deemed to grant said creditors any higher lien priority with respect to the Tax Authorities than exists under applicable non-bankruptcy law, and nothing in the Plan primes or extinguishes any such higher priority liens held by the Tax Authorities for prepetition or post-petition ad valorem taxes, including all applicable interest, fees, and penalties.

Dallas County is the holder of a prepetition claim in the amount of \$9,054.33.

Notwithstanding any other provision in the Plan, in the event the Debtors sell any property that is subject to Dallas County's ad valorem property tax liens, Dallas County shall receive payment in full of their prepetition claim for ad valorem property taxes in connection with the property at the sale closing with interest that has accrued from the petition date through the effective date with statutory interest of 1% per month pursuant to 11 U.S.C. Sections 506(b) and 511 and posteffective date interest at the statutory rate of 12 % per annum pursuant to 11 U.S.C. Sections 511 and 1129 as well as all amounts ultimately owed for postpetition ad valorem taxes which shall include all penalties and interest that have accrued through the date of payment. In the event the Debtors do not sell one or more properties and Dallas County do not foreclose their liens, pursuant to the terms of the Plan, the Debtors shall make monthly payments to Dallas County on their prepetition claims with interest that has accrued from the petition date through the effective date with statutory interest of 1% per month pursuant to 11 U.S.C. Sections 506(b) and 511 and posteffective date interest at the statutory rate of 12 % per annum pursuant to 11 U.S.C. Sections 511 and 1129 in monthly installments in an amount and duration calculated to pay all amounts owed in full no later than the fifth anniversary of the filing of their petition for relief and shall pay all amounts owed for postpetition ad valorem property taxes, including, but not limited to, all accrued penalties and interest.

The Reorganized Debtor shall pay the 2015 ad valorem taxes timely pursuant to applicable non-bankruptcy law and, for the avoidance of doubt, it is not necessary for any of the Tax Authorities, or for any other ad valorem taxing authority, to file an administrative expense claim or request for payment in order for the 2015 taxes to be deemed an allowed administrative expense, for the further avoidance of doubt, no such 2015 taxes are discharged by the Plan or by this Order. A failure by the Debtor or Reorganized Debtor to timely pay post-petition taxes by the deadline provided in the Plan shall be a default under the Plan.

In the event of an objection to claim of any of the Tax Authorities, the Reorganized Debtor shall make the plan payments which will be applied to the undisputed amount of the claim.

The Tax Authorities shall retain their liens for pre- and post-petition taxes with the same validity, extent and priority until all taxes and related interest, penalties, and fees (if any) have been paid in full and that, in the event of the sale of any assets that are subject to the Tax Authorities' liens, the Tax Authorities shall receive payment from the gross proceeds of sale prior to the payment of any creditor whose liens are junior.

That, "Administrative Tax Claim" means a Claim of an ad valorem tax authority against the Debtors, Estate or property of either, solely on account of year 2013 or later taxes. The term excludes any claim for ad valorem taxes for any year prior to 2013.

Debtor is required to pay the 2014 and 2015 ad valorem tax claims owed to Dallas County and Tarrant County within sixty days of entry of the confirmation order. Failure to pay these taxes is an event of default if not cured within 15 days.

Tarrant County filed the following secured claims:

<b>Class</b>	<b>Claim No.</b>	<b>Collateral</b>	<b>Amount of claim</b>
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12	10	Multiple pieces of real property	\$834.06
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<b>Class</b>	<b>Claim No.</b>	<b>Collateral</b>	<b>Amount of claim</b>
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12	28	Multiple pieces of real property	\$15,664.45
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For the avoidance of doubt, nothing in the Plan treating the liens of any Secured Creditor whose liens and interests are of a priority lower than the Tax Authorities shall be deemed to grant said creditors any higher lien priority with respect to the Tax Authorities than exists under applicable non-bankruptcy law, and nothing in the Plan primes or extinguishes any such higher priority liens held by the Tax Authorities for prepetition or post-petition ad valorem taxes, including all applicable interest, fees, and penalties.

Tarrant County is the holder of a prepetition claim in the amount of \$834.06. Notwithstanding any other provision in the Plan, in the event the Debtors sell any property that is subject to Tarrant County's ad valorem property tax liens, Tarrant County shall receive payment in full of their prepetition claim for ad valorem property taxes in connection with the property at the sale closing with interest that has accrued from the petition date through the effective date with statutory interest of 1% per month pursuant to 11 U.S.C. Sections 506(b) and 511 and posteffective date interest at the statutory rate of 12 % per annum pursuant to 11 U.S.C. Sections 511 and 1129 as well as all amounts ultimately owed for postpetition ad valorem taxes which shall include all penalties and interest that have accrued through the date of payment. In the event the Debtors do not sell one or more properties and Tarrant County do not foreclose their liens, pursuant to the terms of the Plan, the Debtors shall make monthly payments to Tarrant County on their prepetition claims with interest that has accrued from the petition date through the effective date with statutory interest of 1% per month pursuant to 11 U.S.C. Sections 506(b) and 511 and posteffective date interest at the statutory rate of 12 % per annum pursuant to 11 U.S.C. Sections 511 and 1129 in monthly installments in an amount and duration calculated to pay all amounts owed in full no later than the fifth anniversary of the filing of their petition for relief and shall pay all amounts owed for postpetition ad valorem property taxes, including, but not limited to, all accrued penalties and interest.

The Reorganized Debtor shall pay the 2015 ad valorem taxes timely pursuant to applicable non-bankruptcy law and, for the avoidance of doubt, it is not necessary for

any of the Tax Authorities, or for any other ad valorem taxing authority, to file an administrative expense claim or request for payment in order for the 2015 taxes to be deemed an allowed administrative expense, for the further avoidance of doubt, no such 2015 taxes are discharged by the Plan or by this Order. A failure by the Debtor or Reorganized Debtor to timely pay post-petition taxes by the deadline provided in the Plan shall be a default under the Plan.

In the event of an objection to claim of any of the Tax Authorities, the Reorganized Debtor shall make the plan payments which will be applied to the undisputed amount of the claim.

The Tax Authorities shall retain their liens for pre- and post-petition taxes with the same validity, extent and priority until all taxes and related interest, penalties, and fees (if any) have been paid in full and that, in the event of the sale of any assets that are subject to the Tax Authorities' liens, the Tax Authorities shall receive payment from the gross proceeds of sale prior to the payment of any creditor whose liens are junior.

That, "Administrative Tax Claim" means a Claim of an ad valorem tax authority against the Debtors, Estate or property of either, solely on account of year 2013 or later taxes. The term excludes any claim for ad valorem taxes for any year prior to 2013.

Debtor is required to pay the 2014 and 2015 ad valorem tax claims owed to Dallas County and Tarrant County within sixty days of entry of the confirmation order. Failure to pay these taxes is an event of default if not cured within 15 days.

The Internal Revenue Service filed the following secured claim:

Class	Creditor	Collateral	Impaired?	Treatment
13	IRS	Real and personal Property	Yes	*Paid in equal monthly installments over 6 years

The IRS filed a secured claim in the amount of \$48,366.11. This claim shall be paid in full satisfaction with 3% interest amortized over a seventy two (72) month period beginning thirty (30) days after the Effective Date. The occurrence of any of the following shall constitute an event of default under the plan: (1) Failure to Make Payments. (2) Failure on the part of Debtor to pay fully when due any payment required to be made in respect of the Plan Debt. However, due to the size and ongoing nature of the IRS's claim, upon default under the plan, the administrative collection powers and the rights of the IRS shall be reinstated as they existed prior to the filing of the bankruptcy petition, including, but not limited to, the assessment of taxes, the filing

of a notice of Federal (or state) tax lien and the powers of levy, seizure, and as provided under the Internal Revenue Code. As to the IRS: (a) If the Debtor or its successor in interest fails to make any plan payment, or deposits of any currently accruing employment or sales tax liability; or fails to make payment of any tax to the Internal Revenue Service within 10 days of the due date of such deposit or payment, or if the Debtor or its successor in interest failed to file any required federal or state tax return by the due date of such return, then the United States may declare that the Debtor is in default of the Plan. Failure to declare a default does not constitute a waiver by the United States of the right to declare that the successor in interest or Debtor is in default; (b) If the United States declares the Debtor or the successor in interest to be in default of the Debtor's obligations under the Plan, then the entire imposed liability, together with any unpaid current liabilities, may become due and payable immediately upon written demand to the Debtor or the successor in interest; (c) If full payment is not made within 14 days of such demand, then the Internal Revenue Service may collect any unpaid liabilities through the administrative collection provisions of the Internal Revenue Code. The IRS shall only be required to send two notices of default, and upon the third event of Default the IRS may proceed to collect on all amounts owed without recourse to the Bankruptcy Court and without further notice to the Debtor. The collection statute expiration date will be extended from the Petition Date until substantial default under the Plan. All payments will be sent to: IRS, 1100 Commerce Street, Mail Code 5026 DAL, Dallas, Texas 75242; (d) The Internal Revenue Service shall not be bound by any release provisions in the Plan that would release any liability of the responsible persons of the Debtor to the IRS. The Internal Revenue Service may take such actions as it deems necessary to assess any liability that may be due and owing by the responsible persons of the Debtor to the Internal Revenue Service; but the Internal Revenue Service shall not take action to actually collect from such persons unless and until there is a default under the Plan and as set forth above.

## *2. Classes of Unsecured Claims*

General unsecured claims are not secured by property of the estate and are not entitled to priority under § 507(a) of the Code. **General Unsecured Claims will not receive full satisfaction of their claim.**

The following chart identifies the Plan's proposed treatment of Class 10 which contain the unsecured claims against the Debtor:

Class	Description	Impaired?	Treatment
14	General Unsecured Claims	Yes	*Debtor will pay the general unsecured creditors the sum of \$600.00 per quarter for twenty (20) quarters

			beginning ninety (90) days after the effective date of the plan.
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The general unsecured claims are believed to be approximately \$50,000.00.

### **INSURANCE CHECKS**

Several mortgage companies are the loss-payee of the insurance policies insuring the property of the Debtor. Property was damaged, an insurance claim was filed and a check issued to pay for the repairs. The mortgage company shall endorse the insurance check and return the check to Debtor. Debtor shall use the insurance proceeds to make repairs to the subject property.

### **ACCEPTANCE OR REJECTION OF PLAN**

Impairment Controversies. If a controversy arises as to whether any Class is impaired under this Plan, such Class shall be treated as specified in this Plan unless the Bankruptcy Court shall determine such controversy differently upon motion of the party challenging the characterization of a particular Class under this Plan.

Classes and Claims Entitled to Vote. Unclassified Claims and Interests are not impaired under this Plan and are therefore deemed to have accepted the Plan without the necessity of voting. All other Classes are impaired under the this Plan and are entitled to vote on the Plan to the extent that a Claim in such Class is not the subject of a pending objection as to allowance, or the holder of any such objected-to Claim has obtained an order from the Bankruptcy Court permitting such holder to vote on the Plan. Ballots for the acceptance or rejection of the Plan shall be mailed to holders of such impaired Classes only and to holders of such Claims within such Classes only.

Class Acceptance Requirement. A Class of Claims shall have accepted the Plan if it is accepted by at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the Allowed Claims in such Class that have voted on the Plan and that are otherwise entitled to vote on the Plan. If no Ballots are properly returned for any particular Class, such Class shall be deemed to have voted to accept this Plan.

Cramdown. This Section shall constitute the request by the Debtors, pursuant to section 1129(b) of the Bankruptcy Code, that the Bankruptcy Court confirm the Plan notwithstanding the fact that the requirements of section 11 29(a)(8) may not be met.

### **PROVISIONS FOR EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

There are no executory contracts or unexpired leases except leases of current tenants

of the rental properties. Debtor shall accept all current tenant leases upon confirmation of the Plan.

### **MEANS FOR IMPLEMENTATION OF THE PLAN**

Payments and distributions under the Plan will be funded by the business income of the Debtor and the sale of assets.

### **ALLOWANCE AND DISALLOWANCE OF CLAIMS**

#### **Disputed Claims**

A disputed claim is a claim that has not been allowed or disallowed, and as to which either: (i) a proof of claim has been filed or deemed filed, and the Debtor or another party in interest has filed an objection; or (ii) no proof of claim has been filed, and the Debtor has scheduled such claim as disputed, contingent, or unliquidated.

#### **Delay of Distribution on a Disputed Claim**

No distribution will be made on account of a disputed claim unless such claim is allowed.

#### **Settlement of Disputed Claims**

The Debtor will have the power and authority to settle and compromise a disputed claim with court approval and compliance with Rule 9019 of the Federal Rules of Bankruptcy Procedure.

### **THE REORGANIZED DEBTOR AND POSTCONFIRMATION OPERATIONS**

The Plan will be funded through several sources, including cash on hand and future income from Debtors business.

The claims will be paid from the Debtors' future cash flow and income as a result of the continuing and future profits from Debtors business. Attached to this Disclosure Statement is a financial breakdown containing data in the form of future projections demonstrating that the Debtor will have sufficient resources and ability to make these future payments and to fully fund the Plan. In the event that the Debtor defaults under the same, secured creditors will retain their liens and unsecured creditors will retain their bankruptcy and non-bankruptcy rights against the Debtor.

Under the Plan, the Debtor will be reorganized and is referred to as the "Reorganized Debtor." The Reorganized Debtor is responsible for making payments under the Plan. All property of the Debtor and the Estate will vest in the Reorganized Debtor; thus, the Reorganized Debtor will have the funds and the ability to make all payments and distributions required by the Plan.

## **GENERAL PROVISIONS**

### **Definitions and Rules of Construction**

The definitions and rules of construction set forth in §§ 101 and 102 of the Code shall apply when terms defined or construed in the Code are used in this Plan, and they are supplemented by the following definitions:

1. Effective Date of Plan. "Effective Date" means the first Business Day fourteen (14) days after Confirmation Date if the Confirmation Order is not stayed or, if the Confirmation Order is stayed, the first Business Day following the lifting, dissolution, or removal of such stay which is at least fourteen (14) days after the Confirmation Date.
2. Captions. The headings contained in this Plan are for convenience of reference only and do not affect the meaning or interpretation of this Plan.
3. Controlling Effect. Unless a rule of law or procedure is supplied by federal law (including the Code or the Federal Rules of Bankruptcy Procedure), the laws of the State of Texas govern this Plan and any agreements, documents, and instruments executed in connection with this Plan, except as otherwise provided for in this Plan.
4. Sale of Assets. Debtor shall retain the power to sell any Assets of the Estate upon motion and notice to all Creditors pursuant to Bankruptcy Code § 363.
5. Tax Consequences of the Plan. Creditors concerned with how the Plan may affect their tax liability should consult with their own accountants, attorneys and/or advisors.

## **DISCHARGE**

Except as otherwise provided in the Plan, the terms, covenants and consideration under the Plan shall be in exchange for and in complete satisfaction, discharge, and release of all Claims of any nature whatsoever against the Debtors or the Estate, or any of their assets, including, without limitation, all Secured Claims and all Unsecured Claims. Except as otherwise expressly provided in this Plan, after notice and a hearing the Court deems that all payments under the Plan have been completed, the Reorganized Debtors and their successors-in-interest and assigns shall be deemed discharged and released pursuant to section 1141 (d)(5) of the Bankruptcy Code from any and all Claims, demands and liabilities that arose before the Effective Date, and all debts of any kind specified in section 502(g), 502(h), or 502(1) of the Bankruptcy Code, whether or not: (a) a proof of Claim based upon such debt is filed or deemed filed under section 501 of the Bankruptcy Code; (b) a Claim based upon such debt is Allowed under section 502 of the Bankruptcy Code; (c) the holder of a Claim based upon such debt has accepted this Plan; or (d) the Claim has been Allowed, Disallowed, or estimated pursuant to section 502(c) of the Bankruptcy Code. Except as otherwise provided in the Plan, the Confirmation Order shall be a judicial determination of discharge of all liabilities of the Debtor and his successors-in-interest and assigns other



than those obligations specifically set forth pursuant to this Plan. For the avoidance of doubt, nothing in this Plan releases or discharges the Debtor, Estate, or Reorganized Debtor from any obligation imposed by, or preserved under, this Plan.

### **MODIFICATION OF THE PLAN**

#### **Amendments Prior to Confirmation Date**

Debtor may modify the Plan prior to Confirmation, and the Plan, as amended shall become the new Plan of Reorganization.

#### **Amendments after Confirmation Date**

Debtor may modify the Plan before its substantial consummation, provided that the Plan, as modified, meets the requirements of the Bankruptcy Code, and the Court, after notice and hearing, confirms this Plan, as modified.

#### **Effect on Claims**

A Holder of a Claim that has accepted or rejected this Plan shall be deemed to have accepted or rejected, as the case may be, this Plan, as modified, unless, within the time fixed by the Court, such holder changes its previous acceptance or rejection.

### **RETENTION OF JURISDICTION**

Notwithstanding entry of the Confirmation Order, this Court shall retain jurisdiction over this Chapter 11 case for the following purposes:

1. To determine any and all objections to the allowance of Claims or Interests, both before and after the Confirmation Date, including any objections to the classification of any claim or interest;
2. To determine any and all applications for fees and expenses authorized to be paid or reimbursed in accordance with section 503(b) of the Bankruptcy Code or this Plan;
3. To determine any and all pending applications for the assumption or rejection of executory contracts or for the rejection or assumption and assignment, as the case may be, of unexpired leases to which any Debtors is a party or with respect to which it may be liable; to hear and determine any actions to void or terminate unexpired contracts or leases; and to hear and determine and, if need be, to liquidate any and all claims arising therefrom;
4. To hear and determine any and all actions initiated by the reorganized debtor, whether by motion, complaint or otherwise;
5. To determine any and all applications, motions, adversary proceedings and contested matters pending before the Court on the Confirmation Date or filed or instituted after the Confirmation Date;
6. To modify this Plan, the Disclosure Statement or any document created in connection with this Plan or remedy any defect or omission or reconcile any

- inconsistency in any Order of the Court, this Plan, the Disclosure Statement or any document created in connection with this Plan, in such manner as may be necessary to carry out the purposes and effects of this Plan to the extent authorized by the Bankruptcy Code;
7. To ensure that the distribution is accomplished in accordance with the provisions of this Plan;
  8. To allow, disallow, determine, liquidate or estimate any claim or interest and to enter or enforce any order requiring the filing of any such claim or interest before a particular date;
  9. To enter such orders as may be necessary to interpret, enforce, administer, consummate, implement and effectuate the operative provisions of this Plan and all documents and agreements provided for herein or therein or executed pursuant hereto and thereto including, without limitations, entering appropriate orders to protect the Debtors from creditor actions;
  10. To hear any other matter not inconsistent with Chapter 11 of the Bankruptcy Code;
  11. To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked or vacated;
  12. To determine such other matters as may arise in connection with this Plan, the Disclosure Statement or the Confirmation Order;
  13. To authorize the sale of any Assets as provided by this Plan;
  14. To enforce all orders, judgments, injunctions, and ruling entered in connection with the Case;
  15. To determine all issues relating to the Claims of the IRS, and other taxing authorities, state or federal;
  16. To determine any avoidance actions brought pursuant to the provisions of the Bankruptcy Code;
  17. To enter a Final Order and final decree closing the Chapter 11 case.

William Paul Burch asks that you vote in favor of this Plan.

Respectively submitted,

/s/ Steve Stasio  
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United States Court of Appeals  
for the Fifth Circuit

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No. 20-11035

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IN THE MATTER OF: WILLIAM PAUL BURCH

*Debtor,*

WILLIAM PAUL BURCH,

*Appellant,*

*versus*

AREYA HOLDER AURZADA,

*Appellee.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:20-CV-1051

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ON PETITION FOR REHEARING

Before ELROD, OLDHAM, and WILSON, *Circuit Judges*.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.