

**MEMORANDUM FROM THE TRUSTEE TO THE DEBTORS AND, IF APPLICABLE, THEIR ATTORNEYS
COVERING THE PROCEDURES FROM DATE OF FILING THROUGH THE DATE OF CONFIRMATION**

The purpose of this Memorandum is to outline the Trustee's expectations and procedures with respect to cases from filing through the confirmation process with respect to Chapter 13 bankruptcies that are pending in the Tyler, Marshall, Lufkin, and Beaumont Divisions of the Eastern District of Texas. This Memorandum is addressed to the debtors and their attorneys. If a particular debtor does not have an attorney, then references to the debtor's attorney is actually to the debtor in that such a debtor is, in effect, acting as his or her own attorney.

This information is being provided only as a courtesy to the debtors and their attorneys in order to assist in the administration of their cases. The debtors must rely upon the advice and assistance of their attorneys through the pendency of their bankruptcy.

--Trustee cannot give Debtors legal advice: The Trustee does not represent either the debtors or the creditors in these cases. **The Trustee and his staff are prohibited under the Bankruptcy Code from giving the debtors (and their attorneys) legal advice concerning their legal rights in their bankruptcy case.** The debtors must direct any such questions to their attorney. If the debtors have any problems with a creditor, the debtors must rely upon their attorney for assistance. The Trustee cannot "take sides" in any such dispute.

--Timely file the Chapter 13 plan, schedules, and other documents with the Court. Unless the Court gives the debtors more time, all documents required to be filed with the Court must be filed within the time deadlines as set forth in the Bankruptcy Code and the Bankruptcy Rules. Failure to do so may result in either the dismissal of the case or a delay in the prosecution of the case. **If the Trustee files a motion to dismiss the bankruptcy due to late filed schedules or other documents, the Trustee will not withdraw such a motion until there is a Court order entered allowing the late filing of such documents.** In the event the debtors' file a motion to allow late filed schedules and/or other documents, the Court has held that the standard of proof for such a motion is excusable neglect supported by an affidavit.

The debtors should timely provide all of the information as requested by their attorney in order to assure that these documents will be timely filed.

--Do Not Incur Any New Debt Without Court or Trustee Approval. Prior to the time the proposed Chapter 13 plan is confirmed by the Court, the debtors are **not** to incur any new debt without the approval of the Bankruptcy Court. After the Chapter 13 plan is confirmed by the Court, the debtors are **not** to incur any new debt without the approval of the Trustee or the Bankruptcy Court.

--Follow the terms of the proposed Chapter 13 Plan. The debtors have filed or will be filing a proposed Chapter 13 plan which in turn sets out how the debtors intend to reorganize their finances and pay their creditors. **The debtors must follow the terms of their plan.** The debtors

must use the form Chapter 13 plan as adopted by the Bankruptcy Court and as set forth on its website.

--Pay All Direct Payments pursuant to the proposed Chapter 13 Plan. If the debtors' Chapter 13 plan provides for the debtors to pay certain creditors direct (such as the on-going mortgage payments), the debtors must continue to make these payments to these creditors. If such a creditor refuses to accept the debtors' payment, the debtors should save the funds (don't spend it elsewhere) and immediately contact their attorney.

--Certification that all post-petition mortgage payments from the date of filing through the date of the confirmation hearing have been made direct. Starting with cases filed after March 1, 2011, the Trustee will be requesting that the debtors execute and file with the Court a certification confirming that they have made all of their post-petition mortgage payments from the date of the filing of their petition through the date of the hearing on the confirmation of their proposed Chapter 13 plan. The Trustee will object to the confirmation of the debtors' proposed Chapter 13 plan if the debtors have failed to make all of their post-petition mortgage payments. At the time of confirmation, the Trustee and/or the Court may require the debtors to provide proof or other certification that the debtors have in fact made these direct payments.

--Make the Scheduled Plan Payments to this Office each and every month as set forth in the Chapter 13 Plan. The first plan payment is due 30 days after the debtors filed their bankruptcy. Plan payments must be made by **certified check, cashier's check, or money order** and must contain the debtors' printed name and case number. Plan payments must be made payable to "John Talton, Trustee," and mailed to the Trustee's payment address as follows:

John J. Talton, Trustee
P. O. Box 734
Tyler, TX 75710

PERSONAL CHECKS ARE NOT ACCEPTABLE AND WILL BE RETURNED TO THE DEBTORS. PAYMENTS MAILED TO AN ADDRESS OTHER THAN THE ONE SHOWN HEREIN WILL BE RETURNED TO THE DEBTORS.

--Wage Withholding Orders. If the debtors are wage earners, the Court will, of all likelihood, require the debtors' employer to deduct their monthly plan payments from their paycheck. A Debtor's Request for Employer Wage Deduction is included as a "Form" in the Trustee's website and should be completed and returned to the Trustee at the Trustee's correspondence address as follows:

John J. Talton, Trustee
110 N. College Suite 1200
Tyler, TX 75702

Such a wage withholding order may take several weeks before the debtors see the payroll deductions actually showing up in their checks. Until such a wage deduction begins, the debtors are required to make their plan payments to the Trustee's payment address as set forth above until such time the deductions begin. ONCE THE WAGE WITHHOLDING GOES INTO EFFECT AND THE EMPLOYER BEGINS TO DEDUCT PAYMENTS FROM THE DEBTORS' PAYCHECK, THE DEBTORS SHOULD CONFIRM THAT THE PROPER AMOUNT IS BEING WITHHELD AND THAT THEIR EMPLOYER IS IN FACT FORWARDING SUCH TO THE TRUSTEE. MAKING THEIR CHAPTER 13 PLAN PAYMENTS IS ULTIMATELY THE DEBTORS' RESPONSIBILITY.

--Debtors must live within the budget that they file with the Court. If the debtors are unable to live within the budget, make their on-going direct payments that the debtors are required to pay through their plan, and make their on-going plan payments to this office, the debtors should immediately contact their attorney to discuss their options. THE TRUSTEE CANNOT GIVE THE DEBTORS PERMISSION TO NOT MAKE THEIR PLAN PAYMENTS.

--Debtors must provide certain documents and information to the Trustee prior to their scheduled 341 meeting. The Trustee requests that the documents as set forth in the Trustee's memorandum on his website (www.ch13tyler.com) entitled "Debtor Documents to be Provided Prior to 341 Meetings" be provided to him at least **one week** prior to the debtors' scheduled 341 meeting. Failure to timely provide these documents may cause a delay in the prosecution of the bankruptcy and, in some cases, may cause the dismissal of their bankruptcy. At the 341 meeting, the Trustee and/or his staff may request additional information or documents to be provided to the Trustee.

--Section 341 Creditors' Meeting for Beaumont and Lufkin Division Cases: The debtors **must** attend the scheduled 341 Creditor's meeting.

If the case is pending in the **Beaumont or Lufkin Division** of the Eastern District of Texas, the 341 creditors' meeting will, of all probability, be conducted by video with the Trustee and/or his staff being located in his office in Tyler, Texas while the debtors and their attorney will be at the Trustee's Beaumont office located at **5681 Eastex Freeway (Highway 69), Beaumont Texas.**

If the case is pending in the **Tyler or Marshall Division** of the Eastern District of Texas, the 341 creditors' meeting will, of all probability, be conducted at the Trustee's Tyler office located at **110 North College Avenue, 12th Floor, Tyler, Texas.**

The meeting will be presided over by the Trustee or a member of his staff as the presiding officer of the meeting. The debtors should be prepared to answer questions from the Trustee and/or his staff (and maybe from any of the creditors that choose to attend) concerning the terms of the debtors' proposed Chapter 13 plan, their schedules, and other documents that the debtors have filed with the Court. The Trustee and/or his staff may also be asking the debtors questions concerning the documentation that debtors provided to the Trustee in accordance to the attached

list. The debtors' failure to timely file their plan, schedules and other documents with the Court and their failure to provide the Trustee with the documentation as set forth herein may result in their 341 creditors' meeting being reset and other delays in the prosecution of their bankruptcy case.

--Personal Financial Management Instructional Course: The debtors must attend a Personal Financial Management Instructional Course. The Trustee offers such a course without charge to the debtors scheduled on the day their initial 341 Creditors' Meeting. If the debtors are unable to attend, the debtors may also take such a course offered by a third party (usually on the internet) but there is usually a fee for such a course. The debtors' attorney can assist the debtors in the event that they are unable to attend the Trustee's course.

Upon completion of the Course, the debtors will be issued a certificate indicating that they have successfully completed such a course and such Certificate should be filed with the Bankruptcy Court.

--The Confirmation Process: The debtors' proposed Chapter 13 plan will be set by the Court for a confirmation hearing.

In accordance to the Court's Local Bankruptcy Rules, the Court has set up a "two strike" confirmation process, meaning that the debtors have two opportunities to confirm a plan. Generally, if the debtors fail to confirm their proposed Chapter 13 plan on the first try, the Court will enter an "Initial Denial Order" thereby giving the debtors a second opportunity to file and confirm a plan. Such a second plan must be filed within thirty (30) days of the entry of the Initial Denial Order.

If the debtors fail to file a new plan within thirty (30) days of the entry of the Initial Denial Order, the Bankruptcy Court will, without further notice or hearing, enter an order dismissing the case with prejudice thereby preventing the debtors from refiling a bankruptcy under any Chapter of the Bankruptcy Code for a period of 120 days.

If the debtors must continue the confirmation hearing at the initial hearing (primarily for the purpose of allowing the notice period for an amended plan to run), such a continuance will count the same as if an Initial Denial Order was entered, meaning that the debtors will only have one last time to confirm a plan at the rescheduled confirmation hearing. If the debtors and/or their attorney do not want a continuance of the initial confirmation hearing to count as an "Initial Denial", the debtors and/or their attorney will need to be in Court to convince the Bankruptcy Court why the continuance should not be counted as an "Initial Denial".

If the debtors file a new plan within thirty (30) days of the entry of the Initial Denial Order, the Bankruptcy Court will set the new plan for a confirmation hearing. If the debtors fail to confirm a plan at the second confirmation hearing, the Bankruptcy Court

will, without further notice or hearing, enter an order dismissing the case with prejudice thereby preventing the debtors from refiling a bankruptcy under any Chapter of the Bankruptcy Code for a period of 120 days.

For cause shown by the debtors, the Court may grant the debtors relief from the Initial Denial Order and give the debtors a third opportunity to confirm a plan. However, such relief is generally given only in rare instances.

The Trustee, creditors, and any other party in interest have the right to object to confirmation of the proposed Chapter 13 plan. The Trustee's objections, if any, will generally pertain to the debtors' failure to provide the requested documentation at the 341 meeting. Creditor objections, if any, will generally pertain to the proposed treatment of its claim under the plan (for example, value of the collateral, if any; interest rate; term; etc.).

Upon resolution of all of the objections to the proposed Chapter 13 plan, if any, the Bankruptcy Court will, of all probability, enter a Court order confirming the proposed Chapter 13 plan (the confirmation order). The Court, through its Local Rules, has promulgated a form confirmation order that must be used by the debtors for confirming their plans in the Eastern District of Texas.