



This is an educational presentation. If there is a conflict between this presentation and the official procedures, the procedures control.

# New Chapter 13 Procedures

United States Bankruptcy Court  
for the Southern District of Texas

# Executive Summary

- Effective date is ~~September 1, 2005~~ October 17, 2005
- Use of procedures is mandatory.
- Procedures include use of required form plan and other required forms.
- Relief from mandatory usage may be sought by motion.
- Focus is on §341 creditors' meeting and early confirmation of plans.

# New Filing Requirements

- Plan summary must be filed as separate document.
- It must NOT be filed as an attachment to the petition, schedules or other documents.
- Plan summary will be utilized to notify creditors of confirmation hearing.

# New Filing Requirements (New M/ECF Codes)

- New CM/ECF coding available 9/1/05.
- More coding will be added as needed.
- New coding includes:

Category	Event
Plan	Plan summary and statistical cover sheet
Trustee/US Trustee	Chapter 13 trustee recommends confirmation
Trustee/US Trustee	Chapter 13 trustee does not recommend confirmation
Trustee/US Trustee	Trustee withdraws recommendation in favor of confirmation
Motions/Applications	Motion for relief from requirement to use uniform plan/plan summary
Motions/Applications	Motion for rule 4001 abandonment
Miscellaneous	Debtor's acknowledgement regarding use of vehicle
Miscellaneous	Objection to chapter 13 initial adequate protection order



# Section 341 Creditors' Meeting

- By conclusion of meeting, chapter 13 trustee will recommend for or against confirmation.
- You and client must be fully prepared at §341 meeting. Bring your entire file: tax returns, expense documentation, wage documentation, mortgage information, etc.
- Prepare your client in advance that changes may be required.
- Plan may be amended at § 341 meeting.

# Tax Information

- New Bankruptcy Act requires tax returns or tax transcripts to be provided at least 7 days before § 341 meeting.
- Complete 2 IRS Forms 4506-T when client signs petition and mail them to IRS.
- File certification with Court that 4506-T has been mailed to IRS.
- Court will order in every case that IRS timely provide a copy of the transcript.

TIP: Use new Form 4506-T to order a transcript or other return information free of charge. See the product list below. You can also call 1-800-829-1040 to order a transcript. If you need a copy of your return, use Form 4506, Request for Copy of Tax Return. There is a fee to get a copy of your return.

1a Name shown on tax return. If a joint return, enter the name shown first.	1b First social security number on tax return or employer identification number (see instructions)
2a If a joint return, enter spouse's name shown on tax return	2b Second social security number if joint tax return

3 Current name, address (including apt., room, or suite no.), city, state, and ZIP code

4 Address, (including apt., room, or suite no.), city, state, and ZIP code shown on the last return filed if different from line 3

5 If the transcript or tax information is to be mailed to a third party (such as a mortgage company), enter the third party's name, address, and telephone number. The IRS has no control over what the third party does with the tax information.

CAUTION: Lines 6 and 7 must be completed if the third party requires you to complete Form 4506-T. Do not sign Form 4506-T if the third party requests that you sign Form 4506-T and lines 6 and 7 are blank.

6 Product requested. Most requests will be processed within 10 business days. If the product requested relates to information from a return filed more than 4 years ago, it may take up to 30 days. Enter the return number here and check the box below. ▶

- a Return Transcript, which includes most of the line items of a tax return as filed with the IRS. Transcripts are generally available for the following returns: Form 1040 series, Form 1065, Form 1120, Form 1120A, Form 1120H, Form 1120L, and Form 1120S. Return transcripts are available for the current year and returns processed during the prior 3 processing years . . . . .
- b Account Transcript, which contains information on the financial status of the account, such as payments made on the account, penalty assessments, and adjustments made by you or the IRS after the return was filed. Return information is limited to items such as tax liability and estimated tax payments. Account transcripts are available for most returns . . . . .
- c Record of Account, which is a combination of line item information and later adjustments to the account. Available for current year and 3 prior tax years . . . . .
- d Verification of Nonfiling, which is proof from the IRS that you did not file a return for the year . . . . .
- e Form W-2, Form 1099 series, Form 1098 series, or Form 5498 series transcript. The IRS can provide a transcript that includes data from these information returns. State or local information is not included with the Form W-2 information. The IRS may be able to provide this transcript information for up to 10 years. Information for the current year is generally not available until the year after it is filed with the IRS. For example, W-2 information for 2003, filed in 2004, will not be available from the IRS until 2005. If you need W-2 information for retirement purposes, you should contact the Social Security Administration at 1-800-772-1213 . . . . .

CAUTION: If you need a copy of Form W-2 or Form 1099, you should first contact the payer. To get a copy of the Form W-2 or Form 1099 filed with your return, you must use Form 4506 and request a copy of your return, which includes all attachments.

7 Year or period requested. Enter the ending date of the year or period, using the mm/dd/yyyy format. If you are requesting more than four years or periods, you must attach another Form 4506-T.

\_\_\_\_/\_\_\_\_/\_\_\_\_      \_\_\_\_/\_\_\_\_/\_\_\_\_      \_\_\_\_/\_\_\_\_/\_\_\_\_      \_\_\_\_/\_\_\_\_/\_\_\_\_

Signature of taxpayer(s). I declare that I am either the taxpayer whose name is shown on line 1a or 2a, or a person authorized to obtain the tax information requested. If the request applies to a joint return, either husband or wife must sign. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute Form 4506-T on behalf of the taxpayer.

Sign Here	Signature (see instructions)	Date	Telephone number of taxpayer on line 1a or 2a ( )
	Title (if line 1a above is a corporation, partnership, estate, or trust)		
	Spouse's signature	Date	

Complete two forms—1 with chapter 13 trustee's name and address as recipient and 1 with your name and address as recipient

Forms available at [www.irs.gov](http://www.irs.gov)

Must have original signature by debtor and spouse



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

**In re:**

§  
§

**Case No.**

**NOTICE OF TAX TRANSCRIPT REQUEST**

On \_\_\_\_\_, the undersigned counsel mailed a copy of IRS form 4506-T requesting that a copy of the debtor's tax transcript for the most recent four tax years be mailed to the chapter 13 trustee.

July 27, 2005

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Debtor's Counsel

# If Trustee Recommends Confirmation

- If trustee recommends confirmation, attendance at confirmation hearing is not required unless:
  - Party in interest has filed timely objection.
  - Court has issued separate order requiring attendance.
  - Debtor has objected to a claim or claim valuation, which will be heard at confirmation.
- Court will normally enter order confirming plan without a hearing.

# If Trustee Recommends Against Confirmation

- Your client's case will be heard at scheduled confirmation hearing.
- Hearing will be evidentiary.
- Your client must be present at confirmation.
- Burden of proof is on the Debtor.





# Use of Vehicles

- Debtors will be authorized to use vehicles ONLY if adequate protection is provided.
- Normally, adequate protection consists of:
  - A wage order for employees and an ACH order (automatic bank account debit) for others.
  - Proof of insurance.
  - §507(b) rights granted to vehicle lenders—paid first if there is a dismissal.
- Other forms of adequate protection may be ordered on motion of Debtor or lender.
  - New act requires direct adequate protection. See new §1326(a)(1)(C). Question: what amount of adequate protection is required if there are adequate reserves?<sub>12</sub>

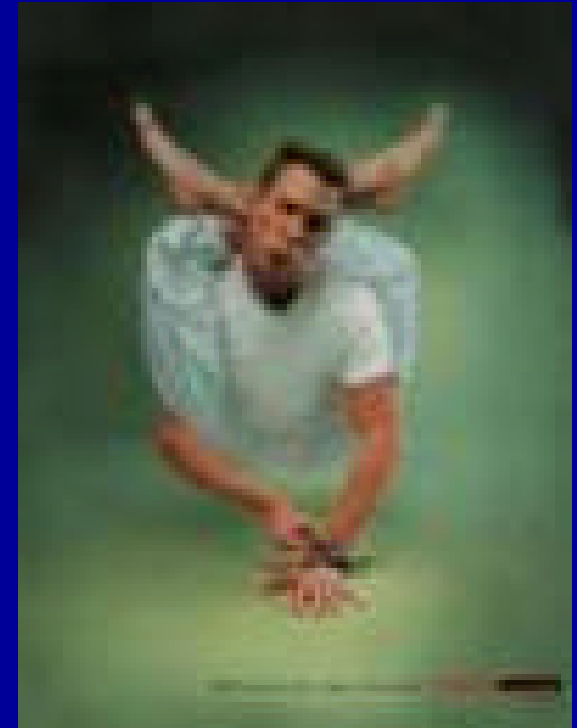
# Wage Orders

- Wage orders mandatory for employees.
- ACH orders (automatic bank account debit) mandatory for non-employees.
- Wage and ACH orders should be filed immediately after the trustee is appointed.
- Client must make payments directly until wage order kicks in.
- If Debtor fails to comply with wage or ACH requirement, must sign acknowledgement that Court has not authorized use of vehicle.
- Section 1303 does not give consumer debtor rights under §363(c). Section 363(b)(1) gives rights to use vehicles only after notice and hearing.



# Streamlined Plan Features

- Plan flexible enough to pay allowed claims without amendment.
  - Assumes that plan base is large enough to pay claims.
  - No amendment needed if mortgage arrearage is in error.
  - No amendment needed if tax claims are filed.
- These flexible features are all contained in the uniform plan.



# More Streamlined Features

- Collateral valuation is set at confirmation.
- Assets may be abandoned (post-confirmation) by agreed orders without plan amendment.
- Exempt property may be sold (post-confirmation) without court order. Court order is available, without hearing, if required by title company.

# Minor Changes to Valuation Procedures

In conjunction with the plan, the Debtor moves for the valuation of secured claims in the amount set forth in paragraph 5. The debtor(s) propose to pay the holder of the Secured Claim only the amounts set forth in the debtor(s)' Plan. The Court will conduct a scheduling conference on this contested matter on the date set for the hearing on confirmation of the debtor(s)' plan. You must file a response to this objection, in writing, not less than 5 days (including weekends and holidays) before the hearing on confirmation of the plan or the valuation set forth in the plan may be adopted by the Court. If no response is filed, the Debtor's sworn declaration at the conclusion of this plan may be submitted as summary evidence at the hearing (pursuant to Rule 7056) and 28 U.S.C. § 1746. If no timely answer is filed, the Court may conduct a final hearing on the objection at the hearing on confirmation of the plan.

## Debtor's Declaration Pursuant to 28 U.S.C. § 1746

I declare under penalty of perjury that the foregoing statements of value contained in this document are true and correct.

Dated:

\_\_\_\_\_  
Signature of Debtor

\_\_\_\_\_  
Signature of Debtor

\_\_\_\_\_  
Name, Address, and Signature of Debtor(s)' Attorney



# Detailed Instructions on Plan Drafting

1. **Payments.** The debtors hereby submit all or such portion of their future earnings or other future income to the supervision and control of the chapter 13 Trustee ("Trustee") as is necessary for the execution of the plan. The submission of income shall be accomplished by making monthly payments to the Trustee in amounts equal to all of the projected disposable income of the debtor, as defined in § 1325(b). Schedules I and J of the debtor's schedules contain the debtor's good faith estimate of the current amount of available projected disposable income for purposes of this requirement. Significant changes in the debtor's financial condition during the first three years of the plan may provide cause for the Trustee or any unsecured creditor to seek a modification of the plan pursuant to § 1329. The amount, frequency, and duration of the payments, is as follows:

Beginning Month	Ending Month	Amount of Monthly Payment	Total
		Grand Total	

The first monthly payment is due not later than 30 days after the date this Plan was filed.

Beginning Month	Ending Month	Amount of Monthly Payment	Total
		Grand Total	

- This section details payments to trustee.
- Variable payments are allowed.
- “Grand total” equals sum of all plan payments.
- Use actual dates (i.e., “July, 2005”) for beginning month and ending month.

2. **Priority Claims.** From the payments made by the debtor to the Trustee, the Trustee shall pay in full, all claims entitled to priority under § 507. Payments shall be made in the order of priority set forth in § 507(a) and § 507(b). Payments of equal priority shall be made *pro rata* to holders of such claims. Priority claims arising under § 503(b)(2) shall be paid only after entry of an order by the Bankruptcy Court approving payment of the claim. If this case is dismissed, no priority claim arising under § 503(b)(2) shall be allowed unless an application for allowance is filed on or before 20 days after entry of the order of dismissal.

<b>Name of Holder of Priority Claim</b>	<b>Amount of Priority Claim</b>	<b>Interest Rate Under Plan</b>	<b>Amount of Estimated Periodic Payment</b>	<b>First Payment of this Amount in Month #</b>	<b>Last Payment of this Amount in Month #</b>

- The amount of the priority claim and the amount of the payment are estimates. Actual payments will be based on allowed claims.

**3. Secured Claims for which Collateral is to be Abandoned.** The debtor abandons the following collateral:

Name of Creditor	Description of Collateral

- Plan controls abandonment.
- Additional assets may be abandoned by agreed order without plan amendment (see paragraph 10 of plan).

**4. Secured Claim For Claim Secured Only by a Security Interest in Real Property That is the Debtor(s)' Principal Residence (Property to be Retained) or Other § 1322(b)(5) Claim.** The following table sets forth the treatment of each class of secured creditors holding a claim secured only by a security interest in real property that is the debtor(s)' principal residence or other claim treated under § 1322(b)(5). The amount listed as the "principal amount of claim for arrearage" is the amount proposed by the debtor(s) in this Plan. If the actual allowed claim is in a different amount, the amount paid pursuant to this Plan shall be the amount due on the actual amount of the allowed claim without the need of an amended plan. The amount listed as "amount of estimated periodic payment" will be adjusted to reflect the actual amount of the allowed claim.

<b>Name of Holder of Secured Claim</b>	<b>Principal Amount of Claim for Arrearage</b>	<b>Interest Rate Under Plan</b>	<b>Security for Claim</b>	<b>Amount of Estimated Periodic Payment</b>	<b>First Payment of this Amount in Month #</b>	<b>Last Payment of this Amount in Month #</b>

- Arrearage claims must be cured over term of plan. Actual arrearage based on claims allowance and not amount listed above.
- Mortgage payments (current payment and arrearage) will be paid through trustee for the duration of plan.
- Monthly statements may be sent by lenders.
- Mortgages without pre-petition defaults may be treated under paragraph 5.

# Mortgage Payments Through Trustee

Payment of the arrearage amounts shall constitute a cure of all defaults (existing as of the petition date) of the debtor(s)' obligations to the holder of the secured claim.

The Secured Claims held by secured creditors holding a claim secured only by a security interest in real property that is the debtor(s)' residence (other than the arrearage claims set forth in the above table) and other claims treated under § 1322(b)(5) will be paid in accordance with the pre-petition contract held by the holder of the secured claim. The first such payment is due on the first payment due date under the promissory note (after the date this bankruptcy case was filed). During the term of the plan, these payments will be made through the chapter 13 trustee in accordance with procedures adopted from time to time by the chapter 13 trustee and approved by the Court. Each holder of a claim that is paid pursuant to this paragraph must elect to either (i) apply the payments received by it to the next payment due without penalty under the terms of the holder's pre-petition note; or (ii) waive all late charges that accrue after the order for relief in this case. Any holder that fails to file an affirmative election within 30 days of entry of the order confirming this plan has waived all late charges that accrue after the order for relief in this case. Notwithstanding the foregoing, the holder may impose any late charge that accrues following an event of default of a payment due under paragraph 1 of this Plan.

The automatic stay is modified to allow holders of secured claims to send only monthly statements (but not demand letters) to the Debtor(s).

5. **All Other Secured Claims (Property to be Retained).** Each secured claimant is hereby designated to be in a class by itself. Subject to disposition of a timely filed motion to avoid a lien under § 522, or a complaint to determine the validity of a lien filed under FED. R. BANKR. P. 7001, each secured creditor shall retain the lien securing its claim. The lien shall be enforceable to secure payment of the claim the lien secures, as that claim may be modified by the plan. The holder of a claim secured by a valid lien may enforce its lien only pursuant to § 362.

The secured claims held by the following secured creditors will be paid in accordance with the pre-petition contracts between the debtor(s) and the holder of the secured claim:

Name of Holder	Collateral for Claim	Total Claim	Collateral Value	Contract Interest Rate

- Allows for payment of secured claims, not in default, to be paid directly and not through trustee.

The following table sets forth the treatment of each class of secured creditors whose claims are modified by the Plan. The amount of secured claim to be paid under this plan is the lesser of the amount listed below as the Collateral Value and the allowed amount of the holder's claim. If the Court allows a different amount than is shown below, the Plan shall be deemed amended without the requirement of the filing of an amended plan. The amount listed as "estimated payment" will be adjusted to reflect the actual amount of the allowed claim.

Valuations are binding and set at confirmation

If § 506 does not apply to collateral (see last paragraph of new §1325(a)), "collateral value" must be not less than allowed claim.

Class of Secured Claim	Security for	Principal Amount of Claim (without regard to Value of Collateral)	Collateral Value	Int. Rate per Plan	Est. Amount Periodic Pmt.	First Pmt. of this Amt. in Mth. #	Final Pmt. in Mth. #

Payment of the amounts required in this section constitutes a cure of all defaults (existing as of the date this plan is confirmed) of the debtor(s)' obligations to the holder of the secured claim. If the monthly payment in the proposed in the plan is less than the amount of the adequate protection payment ordered in this case, the actual payment will be the amount of the monthly adequate protection payment.

Adequate protection payments set payment floor



6. **Specially Classified Unsecured Claims.** The following unsecured claims will be treated as described below:

Name of Unsecured Creditor	Treatment

7. **Unsecured Claims.** Unsecured creditors not entitled to priority shall comprise a single class of creditors, and those whose claims are allowed, shall be paid a pro rata share of the amount remaining after payment of all secured, priority, and specially classified unsecured claims. The debtor estimates that unsecured creditors will receive a \_\_\_\_\_% dividend.

8. **Executory Contracts.** Except as set forth elsewhere in this Plan or in the following sentence, all executory contracts are rejected. The following contracts are assumed:\_\_\_\_\_.

- Special classification may be made.
- Unsecured dividend percentage is estimated only.
- Executory contracts are presumed rejected unless specifically listed.

# Modifications

- Must file revised plan. Form is same as regular plan.
- Side-by-side comparison of payments required.
- Reasons for modification (see paragraph 8(D)).
- New schedules I and J.

Exhibit C

## DEBTOR(S)' MOTION TO MODIFY CONFIRMED PLAN

The Debtor(s) file this Motion to Modify their confirmed plan.

1. **HISTORY OF CASE.** This case was filed on \_\_\_\_\_. The plan was confirmed on \_\_\_\_\_. The plan has been modified on the following dates \_\_\_\_\_.

2. **REASON FOR MODIFICATION.** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

3. **PLAN PAYMENTS.** The current plan (as modified through this date) requires payments as follows:

- a. Months: \_\_\_\_\_ Payment: \$ \_\_\_\_\_
- b. Months: \_\_\_\_\_ Payment: \$ \_\_\_\_\_
- c. Months: \_\_\_\_\_ Payment: \$ \_\_\_\_\_

4. **CURRENT DEFAULTS.** The Debtor(s) are currently in default on payments to the chapter 13 trustee as follows: \_\_\_\_\_.

5. **PROPOSED PLAN MODIFICATIONS:**

- a. All payment defaults set forth in paragraph 3 are cured by this modification.
- b. Future payments to the chapter 13 trustee shall be in the amount set forth on the attached exhibit "A".
- c. \_\_\_\_\_
- d. \_\_\_\_\_
- e. \_\_\_\_\_

6. **INTERIM PAYMENTS.** Payments due under this modification will commence on the first due date after this modification is filed, whether or not the modification has yet been approved by the Court.

7. **BUDGET.** The Debtor's schedules "I" and "J" that the Debtor(s) request to be considered with this modification are attached as exhibit "B".

8. **ATTORNEYS' FEES** (Optional Paragraph. This paragraph may not be utilized if the modification is first filed within 120 days of confirmation regardless of whether counsel is compensated on a fixed or an hourly basis.) Debtor(s)' counsel shall be paid \$400.00 as a fixed fee for this modification.

Interim modification payments commence on filing.

Optional \$400 fixed fee without need for application

# Non-Payment Dismissals

- Trustees must file motions if debtors are behind two or more payments.
- Trustees may file motions for lesser defaults.
- Responses due not later than 20 days after service. Responses must comply with Fed. R. Bankr. P. 9011.
- Default relief may be granted.

# Dismissed Cases

- Distributions will be made after disposition of all timely filed administrative applications.
- Deadline for administrative applications is 20 days after dismissal.
- Approved fixed fee agreements do not require application, but will be paid according to terms.
- If no application is filed and not on fixed fee, trustee will distribute balance of funds and no reserve will be held for counsel.

# Summary

- New procedures effective in all courts in Southern District on October 17, 2005.
- Procedures do not modify substantive law. Changes may be required as implications of new act become apparent.
- Prepare for the §341 meeting.
- This session is adjourned.

