

## **District Wide Uniformity in Chapter 13 Cases**

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The Middle District of Florida Bankruptcy Courts recently implemented uniform procedures in Chapter 13 cases. Through the combined efforts of the District Wide Steering Committee and the District's Chapter 13 Standing Trustees and Judges, an administrative order, a form plan and a form Order Confirming Plan have all been implemented in each division of the Middle District.

This article is not intended to replace the need of every Chapter 13 practitioner from reading and committing to memory the specific provisions of these forms and order. However, I will endeavor to provide the highlights and major changes that have now been implemented.

### **Administrative Order FLMB-2015-8 – Amended Administrative Order Prescribing Procedures For Chapter 13 Cases.**

This administrative order codifies many of the requirements already contained in the bankruptcy code with the varying Chapter 13 practices and procedures that have been developed in each division. Because procedures varied among each division and Chapter 13 trustee case database software also differed among divisions, compromises had to be reached.

1. The Order applies to all Chapter 13 cases filed after September 1, 2015. This should not be confused with the required use of the Chapter 13 form plan and Order Confirming Plan which must be used in all cases that are active on September 1, 2015, regardless of filing date.
2. The Order directs the Debtor's attorney to provide a copy of the Order to the debtor within 7 days of the petition date. If the debtor is pro se, the Chapter 13 trustee must provide a copy of the Order to the debtor.
3. The Order incorporates the required Payments to secured lenders when the Chapter 13 Plan proposes mortgage modification mediation (MMM):
  - a. For homestead property -- the lesser of a) 31% of gross disposable monthly income of the debtor and non-filing spouse, if any (after deducting HOA fees) or b) the normal monthly contractual mortgage payment.
  - b. For non-homestead property, income producing property – 75% of the gross rental income generated from the property.
4. If a Chapter 13 plan proposes to pay a secured creditor directly, the following applies:
  - a. The Debtor must be current without any arrears;
  - b. The claim may not be modified;
  - c. Direct payments must be made through automatic debit/draft from a bank account and proof of such debit/draft must be provided to the Chapter 13 trustee; and

- d. The automatic stay is terminated in rem as to that creditor upon the filing of the Chapter 13 plan proposing such treatment.
5. Adequate Protection Payments – Once again the order provides a uniform procedure for all divisions by uniting the adequate protection procedures that slightly varied among divisions:
  - a. AP payments are to be included in the Plan payment;
  - b. The Chapter 13 trustee will make monthly disbursements of AP payments to secured creditors prior to confirmation if:
    - i. The plan provides for it;
    - ii. A proof of claim is filed;
    - iii. No objection of the claim is filed; and
    - iv. If a secured debt is subject to a pending MMM, the creditor has obtained a court order authorizing the payment by the trustee.

Also in the AP provisions of the Order is a reference to F.R.B.P. Rule 3002.1 – Notice of Payment Changes and Costs and Fees Incurred by Lenders – If a mortgage loan is subject to a pending MMM, the implementation of any notice under Rule 3002.1 is abated until conclusion of the mediation.

6. The Order addresses the recent Supreme Court ruling in Harris v. Viegelahn and directs the Trustee, upon conversion or dismissal of the Chapter 13 case, to pay all undistributed funds to the Debtor and if represented by counsel, mailed to the Debtor in care of Debtor's attorney.
7. Paragraph 9 of the Order has some significant language regarding termination of the Automatic Stay based upon Plan Provisions. If the plan proposes surrender, direct pay or fails to provide for the claim of a secured creditor or lessor, in rem relief from the automatic stay is granted. In personam AND in rem relief against any co-debtor is also granted upon the filing of such plans. Subsequent amendments or modification to the Chapter 13 plan to provide for the secured creditor will require the Debtor to move to re-impose the automatic stay. The Order also modifies the automatic stay to allow for good faith direct communication by mortgage lenders on real property to discuss modification and re-financing options.
8. Documents to be Provided by Debtor – No later than seven (7) days prior to the initial 341 Meeting of Creditors, the debtor must provide to the Chapter 13 Trustee:
  - a. Two (2) years tax returns preceding the petition date or Affidavits of No Requirement to file taxes;
  - b. Six (6) months of pay advices or other documentation of income sources;
  - c. Non filing spouse's income documentation, if requested.

9. The confirmation hearing will also be a preliminary non-evidentiary hearing on all pending Motions or Objections.
10. The Order requires all Amended Chapter 13 Plans, Motions to Avoid Liens, if necessary to obtain confirmation and Motions to Determine Secured Status be filed no later than 28 days after the claims bar date.
11. Debtors' Attorney Fees:
  - a. Debtors' attorneys must represent Debtors in all matters in the main case unless an Order of Withdrawal is granted;
  - b. Legal advice and assistance may not be refused because of lack of payment, nor can services be conditioned upon a demand for payment;
  - c. All attorney fees must be disclosed and post petition fees held in trust until fees are approved; and
  - d. Disgorgement may be a consequence of failure to comply with attorney disclosure requirements and collection of fee requirements.
12. Complete Tax Returns with W-2s and 1099s must be provided within 14 days of filing throughout the pendency of the Chapter 13 case. All tax refunds must be turned over to the Chapter 13 trustee and the IRS may not be directed to apply any tax refund to future year's tax liability. Court approval is needed if the Debtors desire to keep and spend their tax refund. The list of permissive negative notice pleadings has been updated to include Motion to Retain Tax Refunds.
13. Objections to exemptions are extended when a Chapter 13 case is converted to 30 days after the converted case's 341 Meeting and 30 days after any amendment to exemptions.
14. In the event of a dispute over the value of Debtors' real or personal property listed in the bankruptcy schedules, the Chapter 13 Trustee may demand a current appraisal of the disputed property and all costs must be borne by the Debtor.
15. The Order makes it clear that the Debtor has an ongoing duty to supplement the bankruptcy schedules to reflect any change of financial circumstances.

## **Form Chapter 13 Plan and Order Confirming Plan**

A uniform Chapter 13 Plan and Order Confirming Plan were also created and approved by the District's Bankruptcy Judges with the significant assistance of the District Wide Steering Committee and the Chapter 13 Standing Trustees. These efforts resulted in a 5 page form plan that meshes the differing procedures of each division into one uniform practice.

The greatest benefit of this form plan is the bullet that we, as a district were able to dodge. There is currently a Proposed Official National Chapter 13 Form Plan and Related Rules Changes proposed by the Committee of Rules of Practice and Procedure out of Washington, DC. The national form plan consists of 16 pages and is the Committee's attempt to embody the entire nation's Chapter 13 practices into one document. The Committee's proposal also includes an opt out provision to allow for the use of a district wide uniform plan. Therefore, the Middle District of Florida Bankruptcy Court is poised to opt out of the more burdensome and complex national form plan.

The District Wide Chapter 13 Form Plan does not bring many substantive changes, but does offer a standard template which is chiefly designed to insure consistency in treatment of debtors and creditors in a Chapter 13 case. The trick was blending the differing divisional practices and allow the Chapter 13 trustees to consistently and efficiently administer the cases within the parameters of their differing case management software. The form plan provides for consistent and specific treatment of claims in different sub paragraphs as well as provides for the required information for each claim that is listed in the plan.

To address some of the divisional differences the form plan allows the debtors the flexibility of providing a Summary of Disbursement or a Spreadsheet that specifies the monthly disbursements for each allowed claim. Special and unique provisions will no longer be permitted to be listed in the body of the plan or in footnotes, but must now be included only at the end of the plan under the heading of Non Conforming Provisions. Additionally, the plan allows for the debtor to choose when property of the estate will vest in the debtor – either at confirmation of the plan or upon discharge or dismissal.

The Uniform Order Confirming Plan incorporates much of the post confirmation provisions contained in the Administrative Order FLMB-2015-8, as well as provisions of the form plan. Additionally, it requires completion of a personal financial management course within ninety (90) days of the date of the Order and requirement to file the certification within the same timeframe. The Order Confirming Plan also addresses instances where claims are withdrawn by the creditor after partial disbursement by giving the Trustee discretion to seek recovery of the disbursed funds or discontinue future disbursements.

With the increased frequency of debtor and creditor attorneys crossing divisional lines to represent their clients before our bankruptcy judges, these uniformity changes should allow for a greater concentration on substantive issues affecting their clients rather than trying to remember the nuances of each divisions' local practices and procedures. Again, I encourage each practitioner to carefully study these new district wide uniform provisions and incorporate them into your practice before our courts.