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Notice of Requirements For Chapter 11 Debtors In Possession ("Notice of Requirements")

The United States Trustee has extensive monitoring and oversight responsibilities with respect to chapter 11 estates pursuant to 28 U.S.C. §586(a)(3). In order to fulfill these responsibilities, the United States Trustee has delineated certain duties, responsibilities and reporting requirements for chapter 11 debtors in possession. Some must be performed immediately upon the filing of the petition (where the case is converted to chapter 11, upon entry of the order of conversion or, in the case of an involuntary petition, upon entry of the order for relief), a significant number are required within seven days of the date of filing (the "7-Day Package"), others are not required until several weeks after the petition is filed and still others are required on an ongoing basis throughout the pendency of the bankruptcy. All requirements must be met in a complete and timely fashion unless waived in writing by the United States Trustee attorney or analyst assigned to the case.

I. Day-One Requirements

1. Close out all existing books and records. All books and records of the chapter 11 debtor must be closed out as of the date the petition is filed, or an order is entered converting the case to one under chapter 11.

2. Open a new set of books and records. These are the debtor in possession books and records, which must be maintained throughout the pendency of the bankruptcy.

3. Close all existing bank accounts. All accounts that the debtor owns, has access to, or over which the debtor exercises possession, custody or control must be closed immediately upon filing.

4. Open New General, Payroll and Tax Bank Accounts. In business cases, a minimum of three new debtor in possession bank accounts (general, payroll and tax) must be opened in a bank appearing on the United States Trustee list of approved depositories (See www.usdoj.gov/ust/r16).

In some cases, such as those involving individual non-business debtors, the debtor may obtain written permission from the United States Trustee attorney or analyst assigned to the case to maintain fewer debtor in possession accounts. All estate funds (See 11 U.S.C. §§541 and 1115) must be kept in these accounts. The new bank signature cards and pre-printed checks must clearly indicate that the account in question is a “debtor in possession” account and the chapter 11 case number must also appear on the face of the checks. If the debtor is required to segregate cash collateral, additional separate accounts must be established and maintained. (See “II. 7-Day Package” requirements, no. 4, below).

5. Obtain Insurance Coverage. The debtor must maintain appropriate insurance coverage for all estate property, including raw land. Listed below are the types of insurance coverage that are normally required for most bankruptcy estates. If the debtor does not have the required insurance coverage at the time of filing, it must be obtained immediately.

General comprehensive public liability insurance
Fire and theft coverage
Workers’ compensation insurance
Motor vehicle insurance
Product liability insurance
Any other insurance coverage customary in debtor’s business

The debtor must also immediately notify its insurance carrier(s) and/or agent(s) in writing, with a copy to the United States Trustee, that the United States Trustee must be notified of any cancellation of any insurance. **Note: It is an on-going requirement that the debtor provide updated proof of insurance during the pendency of the case. See II.5., below.**

II. The 7-Day Package.

Within seven days of the date the petition is filed, the case is converted, or an order for relief is entered, the debtor must submit a package of required documents (the “7-Day Package”) to the United States Trustee consisting of the following:

1. 7-Day Package Cover Sheet (Form USTLA-2). The 7-Day Package Cover Sheet contains a list of the documents required to be included in the 7-Day Package. The debtor must check the box on the form corresponding to each document that is attached. If any document is not attached, an explanation must be provided. Inadequate explanations may result in the filing of a motion to dismiss or convert the case. If any required document is not included in the 7-Day Package, but is later submitted, the submission must include an additional Cover Sheet indicating which document is being submitted at that time.

2. Real Property Questionnaire (Form USTLA-5). The debtor must submit a separate Real Property Questionnaire (Form USTLA-5) for EACH parcel of real property the debtor leases, owns, has an interest in or is in the process of purchasing.

3. Proof of Closed/Opened Bank Accounts. The debtor must provide the United States Trustee with a copy of a bank statement for EACH pre-petition bank account evidencing that the account has been closed. Additionally, the debtor is to provide a declaration stating that the account was closed. Such declaration must also include the following information:

- (a) the name and address of the institution where the account was maintained;
- (b) the account number;
- (c) the date the account was closed, and
- (d) the amount in the account at the time at closing.

4. Proof of establishment of new debtor in possession accounts. Debtor must submit proof of establishment of the required number of new debtor in possession accounts. Such proof must be in the form of:

(a) **an original pre-printed voided check** for EACH account which clearly indicates that the account in question is a “debtor in possession” account. The chapter 11 case number must also appear on the face of the check(s);

(b) a bank signature card for EACH new account together with evidence of the amounts transferred to the new account(s). The signature card must identify the financial institution where the account is held.

5. Proof of Insurance Coverage. The debtor must submit proof of current insurance coverage (See I.5., above, under “Day-One Requirements”). The proof shall consist of a declaration page or pages containing the following information:

- (a) the type and extent of coverage;
- (b) policy expiration date;
- (c) account number or other identifying information.

The debtor must submit proof that all insurance is current and in full force and effect. Such proof shall be in the form of a declaration signed under penalty of perjury. The declaration of proof of insurance must also show that the debtor in possession is the loss payee/beneficiary of such policy. **If insurance coverage lapses at any time during the pendency of the bankruptcy, the United States Trustee must be advised and proof of new or renewed insurance must be presented at once.**

6. Proof of Required Certificates and Licenses. The debtor must submit proof that the debtor holds all certificates and licenses required by federal, state and local law for the lawful operation of the debtor’s business. The following is a list of licenses and certificates that are typically required:

- City business license*
- Health Department permit*
- Municipal tax or police permits*
- Liquor/tobacco licenses*
- Fictitious Business Name (“DBA”) Statement filed with the county recorder*

7. List of insiders. The debtor must submit a list of all insiders as defined in 11 U.S.C. §101(31).

8. Pre-petition Financial Statements. The debtor must submit copies of its most recent financial statements (audited and unaudited), including but not limited to a balance sheet, income (profit and loss) statement and a cash flow statement. The cash flow statement must contain a detailed statement of all receipts and disbursements.¹

9. Projected Cash Flow Statement. The debtor must submit a projected cash flow statement, covering the first **ninety** days of operation under chapter 11. This statement must contain a detailed income and expense statement (Note: inclusion of bankruptcy schedules “I” and “J” in lieu of a cash flow projection is NOT acceptable).

10. Trust Agreements. The debtor must submit copies of any trust agreements to which the debtor is a party or under which the debtor holds, has possession of, or operates any personal or real property or business as a trustee or otherwise.

11. Proof of recordation of Chapter 11 Petition. The debtor is required to record a copy of the chapter 11 petition (exhibits may be omitted) with the recorder of each county or other applicable political subdivision for each parcel of real property owned by the debtor or in which the debtor has an ownership interest, and provide proof of recordation to the United States Trustee.

12. Physical Inventory of Goods, Machinery and Equipment. The debtor must conduct a physical inventory, including an itemized cost value, of all goods, machinery and equipment on hand as of the date of the petition, and a copy of the inventory must be submitted to the United States Trustee. Although this requirement is included in the 7-Day Package, often the inventory cannot be completed immediately. If this is the case, the expected date for completing the inventory—normally not more than 30 days after filing the petition—should be noted on the Cover Sheet.

13. Statement of Major Issues and Timetable Report. Debtor must set forth a brief description of:

- the structure of the corporation, partnership or business; identification of its officers and shareholders (if a corporation), principals and/or owners and managers, if applicable, with full names, addresses and telephone numbers (if a sole proprietorship);
- the nature of the debtor’s business;
- the major events or circumstances that led to the filing;
- the major issues, problems and/or disputes to be resolved, and with whom;

¹**Small Business Chapter 11 Debtors Note:** If your case is designated as a “Small Business Chapter 11” case, the law requires that certain financial statements be appended to the petition. (11 U.S.C. §1116(1)). This requirement is **in addition** to any requirements imposed by law.

- a proposed timetable to resolve each of the problems described in such report, setting out on a single timetable the date of beginning each task, the date of completion of each step in the task resolution, and expected date of sufficient resolution of each task;
- the expected date for filing the disclosure statement and plan.

14. Federal Income Tax Returns, Federal and State Payroll Tax Returns and State Sales Tax Returns. The debtor must submit copies of all federal income tax returns filed for the two fiscal years immediately preceding the filing of the chapter 11 petition. The debtor must also submit copies of the most recently filed federal and state payroll and state sales tax returns, including all schedules and attachments. All taxes must be timely paid and all tax returns must be timely filed during the pendency of the chapter 11 proceeding. Copies of all future tax returns must be submitted to the United States Trustee within seven days of filing with the taxing authority. Copies of tax returns will be kept in a confidential file that will not be made available for public inspection. To help ensure confidential treatment, tax returns should not be attached to other documents.

15. Employee Benefit Plan Questionnaire (Form USTLA-8). The debtor must submit an Employee Benefit Plan Questionnaire (Form USTLA-8) which identifies whether or not it is a public corporation, and whether it sponsors a group health, dental and/or a pension plan.

III. Additional and Ongoing Requirements.

1. Insider Compensation. Form USTLA-12 should be used for compliance with Local Rule Bankruptcy Rule 2014-1(a).

2. Financial Reports. The debtor must regularly submit Monthly Operating Reports (“MOR”) to the United States Trustee. These reports are described in the United States Trustee’s “Financial Reporting Requirements”.

3. Quarterly Fees. Chapter 11 debtors are required to pay a quarterly fee to the United States Trustee every calendar quarter (including any fraction thereof) as set forth in the United States Trustee’s “Guide to Quarterly Fees”.

4. Maintain Accounts in Approved Depository. It is the debtor’s responsibility to maintain all cash of the estate in debtor in possession bank accounts in an approved depository throughout the pendency of the case. If a depository is acquired by an institution that is not an approved depository or if an institution loses its approved status, the debtor must immediately close accounts at such an institution and re-open the accounts in an approved depository. The United States Trustee website, www.usdoj.gov/ust/r16 has a link to the current list of approved depositories.

5. Preparation and Filing of Income Tax Returns. Income tax returns, whether personal or business, state or federal, must be prepared and filed throughout the pendency of the bankruptcy. Additionally, all quarterly estimated tax payments are to be made timely and in full. Employment taxes are to be timely deposited and paid in full at the appropriate times.

6. On-site Audits and Inspections. The United States Trustee may conduct on-site audits and inspections, which may be unannounced, of the debtor's books, records, and facilities to verify the information provided and to ensure that the estate assets are appropriately safeguarded.

7. Use, Sale or Lease of Estate Property. Where the court has authorized the use, sale, or lease of property of the estate outside the ordinary course of business of the debtor, if an escrow is contemplated, a copy of the escrow instructions must be submitted to the United States Trustee. Within ten days after the close of escrow or completion of the sale, a certified copy of the escrow closing statement, or, where no escrow was utilized, a sworn declaration showing the distribution of the proceeds of any sale of estate property must be submitted to the United States Trustee, and this requirement should be included in the order approving the sale.

8. Notice of Address Change. The debtor must notify the United States Trustee and the bankruptcy court of any change of address or telephone number within seven days after the change occurs.

9. Attendance at the Initial Debtor Interview, first meeting of creditors and other necessary meetings. Debtors are required to attend the Initial Debtor Interview, the first meeting of creditors held pursuant to 11 U.S.C. §341(a), as well as any other meetings required by the United States Trustee.