

UNITED STATES TRUSTEE
REGION 8

GUIDELINES FOR DEBTORS-IN-POSSESSION

1. GENERAL REQUIREMENTS

- A. **Compliance with Laws & Rules** - The debtor is required to comply in all respects with the Bankruptcy Code, Federal Rules of Bankruptcy Procedure (FRBP), and applicable Local Rules.
- B. **Post Petition Debts** - The debtor must pay all obligations arising after the filing of the petition ("post petition") in full when due. This includes not only general business expenses, but all post petition obligations including but not limited to wages, payroll taxes, sales taxes, and other taxes (property, ad valorem, etc.).
- C. **Pre-petition Debts** - The debtor MAY NOT pay pre-petition obligations except as allowed by the Bankruptcy Code or by order of the Court.
- D. **Tax Returns** - The debtor shall file all Federal, state and local tax returns when due.
- E. **Sale or Transfer of Assets** - NO assets may be sold or disposed of, other than in the ordinary course of business, except as allowed by the court and upon compliance with Section 363 of the Code and FRBP Section 4001.
- F. **Professional Employment & Compensation** - The debtor may not pay any professionals without an order of the Bankruptcy Court, even though these may constitute general expenses which arise post petition. Applications for employment of professionals must be submitted to and approved by the Court prior to rendering of any service by such persons. Further, applications for compensation of professionals must be submitted to and approved by the Court prior to any payment by the debtor to such professional. For cases filed in Knoxville and Greeneville applications for employment and compensation of professionals must be served upon the U.S. Trustee before they are filed with the Court.
- G. **Cash Collateral** - Section 363(c)(2) of the Bankruptcy Code provides that the debtor may not use cash collateral without the consent of the secured Creditor or the approval of the Court. Any application for use of cash collateral or approval of a cash collateral agreement must comply with FRBP 4001.

- H. **Borrowing Money** - The debtor may not obtain credit or incur secured or unsecured debt other than in the ordinary course of business. The debtor must comply with Section 364 of the Bankruptcy Code and FRBP 4001.
- I. **Address & Telephone** - The debtor must provide the U.S. Trustee with a current mailing address, physical address, and phone number of the debtor, as well as a current mailing address, email address and phone number of debtor's counsel, responsible individual, and responsible financial individual. Any changes to this information must be reported to the U.S. Trustee immediately.

2. INSURANCE REQUIREMENTS

- A. All debtors **MUST** maintain insurance and make all premium payments thereon when due. Further, the U.S. Trustee is to be identified as a party to be notified of any change, cancellation, or expiration of each policy.
- B. Unless the U.S. Trustee otherwise directs, the following types of insurance must be maintained:
 - 1) If the debtor has tangible assets susceptible to casualty loss (fire, weather, theft, vandalism, etc.), casualty insurance must be maintained;
 - 2) If the debtor has employees, he must maintain workers' compensation insurance;
 - 3) If the debtor conducts business operations, general liability and, if appropriate, product liability insurance must be maintained; and
 - 4) Any other insurance customary in the debtor's business.
- C. Immediately upon filing the Chapter 11 case the U.S. Trustee's office must be provided with proof that the required insurance is being maintained. A Certificate of Insurance from the debtor's insurance agent(s) with the U. S. Trustee as the "Certificate Holder" must be provided. The U. S. Trustee's address or fax number must be listed in the Certificate. This insures the U. S. Trustee will be notified in the event of cancellation.
- D. Upon expiration, termination, or renewal of any coverage, the debtor shall immediately provide the U.S. Trustee with adequate proof of renewal or replacement coverage.

3. INFORMATION REGARDING BANK ACCOUNTS

- A. The debtor shall immediately upon the filing of the petition close any bank account over which the debtor has possession or control at the time of filing.
- B. The debtor shall open a minimum of one (1) new debtor-in-possession bank account. If the debtor has a separate payroll account pre-petition, this account should also be closed and a new payroll account should be opened. The new account signature cards shall indicate that the debtor is a "Chapter 11 Debtor-in-Possession".
- C. The debtor should deposit all receipts and make all disbursements only through the debtor-in-possession account(s). Any funds in excess of that required for current operations should be maintained in an interest-bearing account.
- D. All funds held by the bankruptcy estate must be deposited into an account with a financial institution that agrees to comply with the reporting and collateralization requirements of the United States Trustee. The debtor-in-possession accounts shall not exceed the insured or collateralized limits of that approved depository. A copy of the list of depositories who have agreed to comply with the U. S. Trustee's requirements is included.

4. LISTS OF CREDITORS, SCHEDULES AND STATEMENT OF AFFAIRS

- A. The debtor must comply fully with FRBP 1007 and applicable Local Rules regarding the filing of schedules and statements of financial affairs.
- B. Pursuant to FRBP 1007(d), you must also file a list containing the name, address, phone number and amount of claims of your twenty (20) largest unsecured creditors. This list should not contain the names of any creditors who are "insiders" as that term is defined in Section 101(31) of the Bankruptcy Code.
- C. In connection with the Local Rules, all debtors are required to provide the clerk with a proper master address list for notification of all creditors and parties in interest.

5. INITIAL DEBTOR CONFERENCE

- A. The debtor and counsel for the debtor must attend an Initial Debtor Conference. This meeting will be scheduled by the United States Trustee generally within seven (7) working days after the filing of the petition. Should counsel for the debtor be unable to appear, substitute counsel must attend.
- B. The debtor is required to produce the following documents at the Initial Debtor Conference, which may be obtained on the U. S. Trustee website (Chattanooga cases - http://www.usdoj.gov/ust/r08/tennessee/chattanooga_staff.htm - Knoxville cases - http://www.usdoj.gov/ust/r08/tennessee/knoxville_staff.htm):
- 1) Completed "Information for Initial Debtor Conference" (form on website).
 - 2) Completed "Certification of Receipt of Operating Guidelines and Designation of Specific Individuals" (form on website).
 - 3) Completed "Bank Account Declaration" verifying the closing of all pre-petition bank accounts and stating the date each account was closed and that all monies were transferred to the new debtor-in-possession bank accounts (form on website).
 - 4) Completed "Insurance Expiration Statement" (form on website) and proof of the following insurance coverage:
 - a) General comprehensive public liability;
 - b) Fire and theft;
 - c) Workers' compensation;
 - d) Vehicle;
 - e) Product liability; and
 - f) Any other coverage customary in the debtor's business.
 - 5) Most recent Federal Income Tax Returns with all schedules and attachments.
 - 6) Most recent financial statements, audited as well as unaudited (balance sheet and income statement), as follows: (a) Year-end, (b) Year-to-date, and (c) Monthly.

6. CREDITORS MEETINGS

Section 341 of the Bankruptcy Code requires a meeting of creditors in each case. Notice of the meeting is sent to all creditors. A representative of the debtor and debtor's counsel are required to attend. The debtor's representative should have knowledge of and be familiar with the operation of the debtor's business and the bankruptcy proceeding. In addition, the

debtor-in-possession's accountant/ bookkeeper should be available for examination at the Section 341 meeting. The U.S. Trustee may also request, through debtor's counsel, that additional representatives of the debtor attend the Section 341 meeting and be available for examination.

If the debtor's first month operating reports are due prior to the Section 341 meeting, the debtor must file the operating reports by the due date. It is recommended that the debtor prepare and file the first month operating reports prior to the Section 341 meeting, even though the first month operating reports may not be due until after the date of the meeting.

After notice of the Section 341 meeting has been mailed, the meeting cannot be cancelled or rescheduled to accommodate conflicting schedules. If a Section 341 meeting must be rescheduled, debtor's counsel or his representative must appear at the scheduled meeting and request that the meeting be rescheduled.

The U.S. Trustee or a member of the staff will preside at the Section 341 meeting, administer the oaths, and examine the debtor and/or other appropriate person(s). No written minutes will be kept at the meeting, but the meeting will be recorded. All recordings will be stored by the U.S. Trustee for a period of not less than two (2) years, at which time they will be erased, absent any requests to the contrary. Requests for copies of the Section 341 meetings must be made in writing to the United States Trustee. The request must include: case name, case number, date and time of 341 meeting and email address.

7. OPERATING REPORTS

Pursuant to FRBP 2015 (a)(3), monthly operating reports must be electronically filed with the Clerk of the Court.

8. QUARTERLY FEES

A. Debtors-in-possession and trustees in Chapter 11 cases are required to pay a quarterly fee pursuant to 28 U.S.C. Section 1930(a)(6). Quarterly fees must be paid for every calendar quarter, commencing with the filing of Chapter 11 until the date of entry of an order dismissing the case, converting the case to Chapter 7, or issuing a final decree. If a case is pending as a Chapter 11 without a confirmed plan for even one day during a quarter, payment of the fee for that quarter is required. The amount of the quarterly fee depends upon the dollar amount of the debtor's disbursements during each calendar quarter. A minimum fee of \$325 is due each quarter even if no disbursements are made during that quarter. The fee amounts are as follows:

<u>Disbursement Range</u>	<u>Quarterly Fee (Eff. 1st Qtr 2008)</u>
\$0 to \$14,999.99	\$325
\$15,000 to \$74,999.99	\$650
\$75,000 to \$149,999.99	\$975
\$150,000 to \$224,999.99	\$1,625
\$225,000 to \$299,999.99	\$1,950
\$300,000 to \$999,999.99	\$4,875
\$1,000,000 to \$1,999,999.99	\$6,500
\$2,000,000 to \$2,999,999.99	\$9,750
\$3,000,000 to \$4,999,999.99	\$10,400
\$5,000,000 to \$14,999,999.99	\$13,000
\$15,000,000 to \$29,999,999.99	\$20,000
\$30,000,000 or more	\$30,000

Fees are to be paid according to the following schedule:

<u>Quarter</u>		<u>Due Date</u>	
		<u>Ending</u>	<u>for Payment</u>
1st Quarter	Jan-Feb-Mar	Mar. 31	April 30
2nd Quarter	Apr-May-June	June 30	July 31
3rd Quarter	July-Aug-Sept	Sept. 30	Oct. 31
4th Quarter	Oct-Nov-Dec	Dec. 31	Jan. 31

- B. Pursuant to Section 1129(a)(12) of the Bankruptcy Code, a plan of reorganization must provide for payment of all unpaid quarterly fees prior to the entry of a final decree or upon the entry of an order dismissing or converting the case, or it cannot be confirmed.
- C. The debtor will receive a statement regarding the fee prior to each of the due dates. Each statement contains a payment stub which must be returned along with the debtor's check, MADE PAYABLE TO "UNITED STATES TRUSTEE" to the following address: United States Trustee, P.O. Box 70937, Charlotte, North Carolina 28272-0937. The debtor's account number, which can be obtained from the statement, or by contacting the U.S. Trustee's Office, should be written on the face of the check. If you do not receive the proper form or a bill from the Executive Office of the United States Trustee, contact the United States Trustee's office in Chattanooga or Knoxville, Tennessee. Direct all correspondence and questions regarding your account to the office of the U.S. Trustee, Chattanooga or Knoxville, Tennessee.
- D. **THE CHARLOTTE ADDRESS IS A LOCK BOX AT A BANK. IT MAY NOT BE USED FOR SERVICE OF PROCESS, CORRESPONDENCE, OR FOR ANY PURPOSE OTHER THAN PAYMENT OF QUARTERLY FEES. SEND ONLY**

THE CHECK AND THE PAYMENT STUB TO THE LOCK BOX. ANY OTHER DOCUMENTS WILL BE DESTROYED.

- E. If a check is returned for insufficient funds, all future quarterly payments must be made by cashier's check, certified funds, or money order.
- F. If the case is converted to a proceeding under Chapter 7, 12, or 13 of the Bankruptcy Code, quarterly fees will nevertheless be required for the period the case was pending as a Chapter 11 proceeding through the date the order of conversion is entered. After conversion, the debtor will be required to file a schedule of unpaid obligations incurred after the commencement of the Chapter 11 case, pursuant to Bankruptcy Rule 1019(5) and Section 348(d) of the Bankruptcy Code. Accrued U.S. Trustee quarterly fees which are considered administrative expenses under Section 507(a)(1) should be included on the schedule of unpaid debts..
- G. If the case is dismissed, quarterly fees to the U.S. Trustee will nevertheless be required for the period the case was pending as a Chapter 11 proceeding through the date the dismissal order is entered. The U.S. Trustee will oppose dismissal unless the dismissal order includes provision for payment of unpaid quarterly fees with language substantially similar to that set forth below:

"It is ORDERED that the debtor shall pay to the United States Trustee the appropriate sum required pursuant to 28 U.S.C. Section 1930(a)(6) within ten (10) days from the entry of this Order and provide the United States Trustee an appropriate affidavit indicating the cash disbursements for the relevant period(s). The Court shall retain jurisdiction to enforce the payment of these fees."

- H. **FAILURE TO PAY THE QUARTERLY FEE IS CAUSE FOR CONVERSION OR DISMISSAL OF YOUR CHAPTER 11 CASE UNDER SECTION 1112(b)(4)(K) OF THE BANKRUPTCY CODE. FILING A FALSE REPORT MAY SUBJECT YOU TO CIVIL LIABILITY UNDER 31 U.S.C. SECTION 3729(A)(7) AND TO CRIMINAL PENALTIES UNDER 18 U.S.C. SECTION 1001 AND 18 U.S.C. SECTION 1621.**

I. NOTICE - DISCLOSURE OF INTENT TO USE TAXPAYER IDENTIFYING NUMBER FOR THE PURPOSE OF COLLECTING AND REPORTING DELINQUENT QUARTERLY FEES OWED TO THE U. S. TRUSTEE PURSUANT TO 28 U.S.C. 1930(A)(6)

Please be advised that, pursuant to the Debt Collection Improvements Act of 1996, Public Law 104-134, Title III, § 31001(i)(3)(A), 110 Stat. 1321-365, codified at 31 U.S.C. § 3701, the United States Trustee intends to use the debtor's Taxpayer Identifying Number ("TIN") as reported by the debtor or debtor's counsel in connection with the chapter 11 bankruptcy proceedings for the purpose of collecting and reporting on any delinquent debt, including chapter 11 quarterly fees, that are owed to the United States Trustee.

The United States Trustee will provide the debtor's TIN to the Department of Treasury for its use in attempting to collect overdue debts. Treasury may take the following steps: (1) submit the debt to the Internal Revenue Service Offset Program so that the amount owed may be deducted from any payment made by the federal government to the debtor, including but not limited to tax refunds; (2) report the delinquency to credit reporting agencies, (3) send collection notices to the debtor, (4) engage private collection agencies to collect the debt, and (5) engage the United States Attorney's office to sue for collection. Collection costs will be added to the total amount of the debt.

9. NOTICE REQUIREMENTS ON U.S. TRUSTEE

FRBP 9034(k) requires the debtor to serve the U. S. Trustee with a copy of certain pleadings filed by the debtor. However, whenever any pleading or order is filed in a Chapter 11 case (or any other Chapter), the U. S. Trustee automatically receives a copy through the Court's Electronic Case Filing system. Therefore there is no need for debtors or their counsel to send copies of any pleadings or orders to the U. S. Trustee, either by mail or email.

Should the debtor need to send something other than a pleading, this can be done by email. For cases filed in Chattanooga, contact:

Thomas A. DuBose
(423) 752-5153
tom.dubose@usdoj.gov

For cases filed in Knoxville, contact:

Becky H. Halsey
(865) 545-4324
becky.h.halsey@usdoj.gov

For more information, see the U. S. Trustee website (Chattanooga cases - http://www.usdoj.gov/ust/r08/tennessee/chattanooga_staff.htm - Knoxville cases - http://www.usdoj.gov/ust/r08/tennessee/knoxville_staff.htm):

10. EFFECT OF NON COMPLIANCE

Failure to comply with the U.S. Trustee Guidelines, including timely filing of operating reports, may result in conversion, dismissal, or other appropriate relief.

THE UNITED STATES TRUSTEE MAY MODIFY, OR AMEND THESE GUIDELINES AND REQUIREMENTS FROM TIME TO TIME, AND AS IS APPROPRIATE IN AN INDIVIDUAL CASE. COMMENTS OR SUGGESTIONS REGARDING THESE GUIDELINES OR OTHER POLICIES AND PROCEDURES OF THE OFFICE OF THE UNITED STATES TRUSTEE MAY BE DIRECTED TO UNITED STATES TRUSTEE FOR REGION 8 AT OFFICE OF U. S. TRUSTEE, 200 JEFFERSON AVENUE, SUITE 400, MEMPHIS, TENNESSEE 38103.

RICHARD F. CLIPPARD
UNITED STATES TRUSTEE