

Summary of Major Changes Handbook for Chapter 7 Trustees

Chapter 1 – Introduction	
<u>1998 Handbook</u>	<u>2001 Handbook</u>
<p>A. Purpose</p> <p>B. The Bankruptcy Laws</p> <p>C. Jurisdiction and Venue</p> <p>D. Role of the United States Trustee</p>	<p>No changes.</p>
Chapter 2 – Appointment to the Panel of Trustees	
<u>1998 Handbook</u>	<u>2001 Handbook</u>
<p>A. Eligibility</p> <p>B. Qualifications</p> <p>C. Term</p> <p>D. Performance Review</p> <p>E. Training</p>	<p>A. Eligibility</p> <ul style="list-style-type: none"> ▶ Added information on the eligibility of former USTP employees to serve on the panel and other general information about the eligibility to serve on the panel. <p>B. Qualifications</p> <p>C. Term</p> <ul style="list-style-type: none"> ▶ Added the purpose and description of appointments for less than one year. ▶ Added a reference to 28 C.F.R. § 58.6. <p>D. Performance Review</p> <ul style="list-style-type: none"> ▶ Added two performance review factors: the trustee’s judgment in determining whether to administer assets and the trustee’s demeanor in administering cases. <p>E. Training</p>

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Chapter 3 – Appointment of Panel Trustees to Cases <i>(Sub-headings were added)</i>	
<p style="text-align: center;"><u>1998 Handbook</u></p> <p>A. Method of Case Assignment</p> <p>B. Time and Duration of Interim Appointment</p> <p>C. Involuntary Cases</p>	<p style="text-align: center;"><u>2001 Handbook</u></p> <p>A. Appointment and Qualification of Interim Trustees</p> <ul style="list-style-type: none"> ▶ Clarified the role and qualifications for interim trustees. <p>B. Assignment of Cases</p> <ul style="list-style-type: none"> ▶ Clarified the blind rotation system. <p>C. Time and Duration of Interim Appointment</p> <ul style="list-style-type: none"> ▶ Added information about accepting and rejecting appointments. <p>D. Non-Panel Trustees in Converted Cases</p> <ul style="list-style-type: none"> ▶ Clarified the role of the prior chapter trustee when a case converts to chapter 7. <p>E. Involuntary Cases</p> <ul style="list-style-type: none"> ▶ Added information about the appointment of an interim trustee. <p>F. Successor Trustees</p> <ul style="list-style-type: none"> ▶ Described what happens when a trustee dies, resigns, fails to qualify under § 322 or is removed from a case under § 324. ▶ Included the obligation of the successor trustee to file an accounting for the prior trustee’s estate administration.
Chapter 4 – Election of a Trustee <i>(Sub-headings were added)</i>	
<p style="text-align: center;"><u>1998 Handbook</u></p>	<p style="text-align: center;"><u>2001 Handbook</u></p> <p><u>Provided additional guidance and sub-headings as follows:</u></p> <p>A. Eligibility to Request an Election and to Vote</p> <p>B. Trustee Election Procedure</p> <p>C. Disputed Elections</p> <p>D. Qualification of Elected Trustees</p> <p>E. Duties and Responsibilities of Elected Trustees</p>

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Chapter 5 – Qualifications and Acceptance	
<u>1998 Handbook</u>	<u>2001 Handbook</u>
A. Qualifications	A. Qualifications <ul style="list-style-type: none"> ▶ Specified the qualifications a person must have to serve in a case. ▶ Discussed the issue of corporations serving as trustees.
B. Acceptance upon Appointment	B. Acceptance upon Appointment
C. Conflicts of Interest	C. Conflicts of Interest <ul style="list-style-type: none"> ▶ Added that the trustee should have a procedure in place to screen for possible conflicts. ▶ Clarified the procedures to be followed upon discovery of actual or potential conflicts. ▶ Added examples of actual and potential conflicts.
D. Solicitation of Gratuities, Gifts, or Other Remuneration or Thing of Value	D. Solicitation of Gratuities, Gifts, or Other Remuneration or Thing of Value
E. Bonds	E. Bonds <ul style="list-style-type: none"> ▶ Clarified the bonding procedures. ▶ Described the most common types of bonds. ▶ Incorporated the 1992 Handbook language regarding the proration of the bond premium.

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Chapter 6 – Duties of a Trustee *(Sub-headings were moved, added or modified as needed)*

<u>1998 Handbook</u>	<u>2001 Handbook</u>
<p>A. Statutory and General Duties</p> <p>B. Transmission of Documents (moved to 6.G)</p> <p>C. Initial Review of Petition and Schedules</p> <p>D. Property of the Estate and Review for Assets (moved to 6.B.1 under discussion of § 704(1))</p> <p>E. Initial Review for Exemptions (moved to 6.B.3 under discussion of § 704(3))</p>	<p>A. Introduction</p> <p>B. Statutory and General Duties (incorporated a description for each § 704 duty). Note specifically:</p> <ul style="list-style-type: none"> ▶ § 704(1) – Relocated “Property of the Estate and Review for Assets.” ▶ § 704(2) – Relocated “Control and Preservation of Property” and clarified or added (new language in italics): <ul style="list-style-type: none"> ✓ “In those cases where the property appears to have value for the estate, the trustee should obtain control over the property...and <i>determine the extent and value of the property.</i>” ✓ “The trustee also should immediately obtain insurance <i>in an amount sufficient to protect</i> the estate property....” Expanded the discussion of casualty insurance and the options available when estate property cannot be insured. ▶ § 704(2) – Added a new section on “Inventorying Property,” noting various methods for documenting the inventory. ▶ § 704(2) – Relocated “Environmental Considerations” and added consultation with appropriate federal, state, and local authorities. ▶ § 704(3) – Incorporated “Initial Review of Exemptions” and “Review of Statement of Intention.” ▶ § 704(6) – Incorporated “Objections to Discharge.” <p>C. Review of Petition, Schedules and Statements</p> <ul style="list-style-type: none"> ▶ Added that the trustee should notify the United States Trustee if fewer than all general partners of a partnership consent to the bankruptcy. ▶ Added guidance for the trustee in the event that no individual is performing the duties of the corporate or partnership debtor.

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Chapter 6 – Duties of a Trustee, cont. *(Sub-headings were moved, added or modified as needed)*

<u>1998 Handbook</u>	<u>2001 Handbook</u>
F. Review of Debtor’s Attorney Fees	D. Review of Debtor’s Attorney Fees <ul style="list-style-type: none"> ▶ Added case citations regarding compensation of the chapter 7 debtor’s attorney for post-petition services.
G. Review of Statement of Intention (moved to 6.B.3 under discussion of § 704(3))	
H. Review for Petition Preparers	E. Review for Petition Preparers
I. Review for Substantial Abuse Under § 707(b)	F. Review for Substantial Abuse Under § 707(b) <ul style="list-style-type: none"> ▶ Added citation to <u>In re Krohn</u>
J. Objection to Discharge (moved to 6.B.6 under discussion of 703(6))	G. Transmission of Documents (formerly 6.B)
K. Bankruptcy Crimes (moved to 8.W)	
L. Control and Preservation of Property (moved to 6.B.2 under discussion of § 704(2))	
M. Environmental Issues (moved to 6.B.2 under discussion of § 704(2))	
N. Case Progress (moved to 8.T)	

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Chapter 7. Section 341(a) Meeting <i>(Sub-headings were added or modified as needed)</i>	
<u>1998 Handbook</u>	<u>2001 Handbook</u>
<p>A. Conducting the Meeting</p> <p>B. Rescheduling and Continuances</p> <p>C. Non-Attendance by Attorneys</p> <p>D. Non-Attendance by Debtors</p>	<p>Introductory Paragraphs</p> <ul style="list-style-type: none"> ▶ Expanded the discussion governing a debtor’s inability to personally appear at the meeting of creditors. <p>A. Conducting the Meeting</p> <ul style="list-style-type: none"> ▶ Clarified that the first 10 questions in Handbook Appendix A are required and that the trustee shall ensure that the debtor answers the substance of each of the questions on the § 341(a) meeting tape. ▶ Discussed the purpose and use of a questionnaire to supplement the information obtained from the debtor. ▶ Discussed paraprofessionals. <p>B. Rescheduling and Continuances</p> <p>C. Non-Attendance by Attorneys</p> <p>D. Non-Attendance by Debtors</p>

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Chapter 8. Administration of a Case <i>(Sub-headings were added or modified as needed)</i>	
<u>1998 Handbook</u>	<u>2001 Handbook</u>
A. Determination and Administration of No-Asset Cases	A. <u>Determination and Administration of No-Asset Cases</u> <ul style="list-style-type: none"> ▶ Incorporated the Amended Memorandum of Understanding.
B. Claims Bar Date	B. Claims Bar Date
C. Exemptions	C. Exemptions
D. Abandonments	D. Abandonments
E. Tax Considerations	E. Tax Considerations <ul style="list-style-type: none"> ▶ Added 26 U.S.C. § 121 regarding taxation of the gain on the sale of an individual debtor's residence (see "Individual Chapter 7 Debtors" and "Sales and Abandonments"). ▶ Updated the discussion concerning 1099's (see "Employment Taxes and Other Tax Forms"). ▶ Added a reference and case citations concerning the trustee's obligation to file appropriate returns and pay tax liabilities on behalf of the estate (see "Failure to Pay").
F. Turnover Demands	F. Turnover Demands
G. Executory Contracts and Unexpired Leases	G. Executory Contracts and Unexpired Leases
H. Avoidance Powers	H. Avoidance Powers <ul style="list-style-type: none"> ▶ Expanded the discussion of avoiding transfers made after the commencement of a case and when to notify the United States Trustee (see "Section 549 - Post-Petition Transfers").
I. Contested Matters and Adversary Proceedings	I. Contested Matters and Adversary Proceedings

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Chapter 8. Administration of a Case *(Sub-headings were added or modified as needed)*

<u>1998 Handbook</u>	<u>2001 Handbook</u>
J. Operating the Debtor's Business	J. Operating the Debtor's Business <ul style="list-style-type: none"> ▶ Expanded the discussion of when to operate a debtor's business in chapter 7. ▶ Clarified that the trustee must consult with the UST prior to seeking authority to operate the business to discuss the nature of the business and cash management controls, and to obtain the appropriate format for the monthly operating report required per § 704(8). ▶ Clarified that the trustee should make sure the business is insured against all normal business risks. ▶ Added that the trustee should consider filing a motion to convert the case to chapter 11 if it is apparent that the estate would benefit from an extended period of operation.
K. Sale of Assets	K. Sale of Assets
1. General Standards	1. General Standards <ul style="list-style-type: none"> ▶ Noted that the UST will object to any proposed sale of estate property to either a trustee or a professional person regularly employed by the case trustee, a family member of the trustee, or an employee of the trustee.
2. Sale Free and Clear of Liens	2. Sale Free and Clear of Liens
3. Sale of Jointly Owned Property	3. Sale of Jointly Owned Property
4. Sale of Secured Property	4. Sale of Secured Property <ul style="list-style-type: none"> ▶ Clarified that the trustee must consider all of the costs associated with the sale, including possible adverse tax consequences, in determining whether the sale of secured property is appropriate.
5. Conduct of Sales	5. Conduct of Sales
L. Periodic Payments	L. Periodic Payments

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Chapter 8. Administration of a Case *(Sub-headings were added or modified as needed)*

<u>1998 Handbook</u>	<u>2001 Handbook</u>
<p>M. Employments and Supervision of Professionals</p> <ol style="list-style-type: none"> 1. Definition of Professionals 2. Employment Standards 3. Employment Procedures 4. Supervision of Professionals 5. Trustee as Attorney or Accountant for the Estate 6. Auctioneers <p>N. Professional and Trustee Fee Applications</p> <p>O. Review of Claims</p> <p>P. Subordination of Claims</p> <p>Q. Unpaid Quarterly Fees (moved to 8.O.2)</p>	<p>M. Employments and Supervision of Professionals</p> <ol style="list-style-type: none"> 1. Definition of Professionals 2. Employment Standards <ul style="list-style-type: none"> ▸ Described the customary services provided by accountants for chapter 7 estates. 3. Employment Procedures 4. Supervision of Professionals 5. Trustee as Attorney or Accountant for the Estate <ul style="list-style-type: none"> ▸ Expanded the discussion of the trustee acting as attorney or accountant for the estate. 6. Auctioneers 7. Appraisers <ul style="list-style-type: none"> ▸ Added a new section that also discusses some alternative means of valuing estate assets, noting that the basis for asset valuation must be documented. <p>N. Compensation of Trustees and Professionals</p> <ol style="list-style-type: none"> 1. Compensation of Trustees <ul style="list-style-type: none"> ▸ Added a new section describing various trustee compensation topics, including joint cases and time records. 2. Interim Compensation of Trustees 3. Compensation of Professionals 4. Applications for Compensation <p>O. Review of Claims</p> <ol style="list-style-type: none"> 1. Objections to Claims 2. Unpaid Quarterly Fees (formerly 8.Q) <p>P. Subordination of Claims</p>

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Chapter 8. Administration of a Case *(Sub-headings were added or modified as needed)*

<u>1998 Handbook</u>	<u>2001 Handbook</u>
<p>R. Order of Payment (now under 8.S.1)</p> <p>S. Asset Case Closings</p> <p>1. Trustee's Final Report (TFR or Pre-Distribution Report)</p> <p>2. Distribution of Funds</p> <p>3. Trustee's Final Account (TDR or Post-Distribution Report)</p>	<p>Q. Redemption</p> <ul style="list-style-type: none"> ▶ Added a new section on an individual debtor's right to redeem tangible personal property. § 722. <p>R. Reaffirmation</p> <ul style="list-style-type: none"> ▶ Added a new section on reaffirmation agreements and efforts the trustee can take to combat abuses in the reaffirmation process. <p>S. Asset Case Closings</p> <p>1. Trustee's Final Report (TFR or Pre-Distribution Report)</p> <ul style="list-style-type: none"> ▶ Updated this section based on the Amended Memorandum of Understanding. ▶ Added the new policy regarding the investment of estate funds in an interest-bearing account until the trustee is ready to disburse funds to creditors. ▶ Incorporated "Order of Payment" (formerly 8.R). <p>2. Distribution of Funds</p> <ul style="list-style-type: none"> ▶ Updated this section based on the Amended Memorandum of Understanding. <p>3. Trustee's Final Account (TDR or Post-Distribution Report)</p> <ul style="list-style-type: none"> ▶ Updated this section based on the Amended Memorandum of Understanding, including the requirement that the TDR must be submitted to the UST within 125 days after the entry of an order allowing final compensation and expenses. <p>4. Distribution Report for Closed Asset Cases (Form 4)</p> <ul style="list-style-type: none"> ▶ Added a new section on Form 4. <p>T. Case Progress (formerly 6.N)</p>

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Chapter 8. Administration of a Case <i>(Sub-headings were added or modified as needed)</i>	
<p style="text-align: center;"><u>1998 Handbook</u></p> <p>T. Dismissals and Conversions 1. Dismissals or Conversions of a Chapter 7 Case 2. Conversion of Cases from Another Chapter to Chapter 7</p> <p>U. Reopening Closed Cases</p>	<p style="text-align: center;"><u>2001 Handbook</u></p> <p>U. Dismissals and Conversions 1. Dismissals or Conversions of a Chapter 7 Case 2. Conversion of Cases from Another Chapter to Chapter 7</p> <p>V. Reopening Closed Cases</p> <p>W. Referral of Potential Bankruptcy Crimes (formerly 6.K) 1. Detecting Criminal Activity 2. Types of Criminal Conduct 3. Compliance with the Trustee’s Duty to Report Criminal Conduct</p>
Chapter 9. Financial Policies, Procedures and Reporting Requirements <i>(Sub-headings were added or modified as needed)</i>	
<p style="text-align: center;"><u>1998 Handbook</u></p> <p>A. Deposit and Investment of Estate Funds</p>	<p style="text-align: center;"><u>2001 Handbook</u></p> <p>A. Deposit and Investment of Estate Funds</p> <ul style="list-style-type: none"> ▶ Clarified the requirements for the cash receipts log: it must be used exclusively for the chapter 7 operation; entries should be handwritten, preferably in pen (unless a computerized log meets the requirements set forth in the Handbook); and it should be maintained by the person who opens the mail and endorses the incoming checks. ▶ Clarified that copies of the incoming checks, along with other supporting documentation, should be kept in the appropriate estate files. ▶ Incorporated an exception to the requirement that funds be deposited promptly (generally within two business days). See also 9.D.6. ▶ Clarified that, in general, a trustee should use a single banking institution and should initially deposit estate funds to an interest-bearing account to maximize the return to creditors.

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Chapter 9. Financial Policies, Procedures and Reporting Requirements

(Sub-headings were added or modified as needed)

<p>C. Special Considerations for Computer Systems</p> <ol style="list-style-type: none"> 1. Selection of Computer Service Provider 2. Provision of Computer Hardware and Software 3. Security 4. Emerging Technological Issues <p>D. Other Record Keeping Procedures and Internal Controls</p> <ol style="list-style-type: none"> 1. Segregation of Duties 	<p>C. Special Considerations for Computer Systems</p> <ol style="list-style-type: none"> 1. Selection of Computer Service Provider 2. Provision of Computer Hardware and Software <ul style="list-style-type: none"> ▶ Deleted the statement that the “computer system may not be used for extraneous applications unrelated to the chapter 7 operation,” pending further study by the Chapter 7 Subcommittee. 3. Security <ul style="list-style-type: none"> ▶ Clarified that the ability to open an account and access or transfer funds electronically should be limited to the trustee and, at most, one authorized employee. ▶ Added that estate accounts may not be closed electronically. ▶ Distinguished between blank check stock with pre-printed bank information and blank check stock that is completely blank. ▶ Clarified and expanded the discussion regarding the deletion and revision of amounts and items on Forms 1 and 2. 4. Emerging Technological Issues <p>D. Other Record Keeping Procedures and Internal Controls</p> <ol style="list-style-type: none"> 1. Segregation of Duties <ul style="list-style-type: none"> ▶ Clarified the minimum duties that the trustee must perform, as follows: initialing the cash receipts log to document the comparison of the log to the bank statements and deposit slips; authorizing both stop payment requests and cancellations; and reviewing and initialing the monthly bank reconciliations.
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Chapter 9. Financial Policies, Procedures and Reporting Requirements

(Sub-headings were added or modified as needed)

<u>1998 Handbook</u>	2001 Handbook
<p>2. Monitoring Bank Accounts and Check Stock</p> <p>3. Receipts</p> <p>4. Handling Currency</p> <p>5. Earnest Monies</p> <p>6. Accounts Receivable</p> <p>7. Disbursements</p> <p>8. Maintaining Estate Records</p>	<p>2. Monitoring Bank Accounts and Check Stock</p> <ul style="list-style-type: none"> ▶ Added language on handling voided checks. ▶ Revised the procedure for stop payments, incorporating both stop payment requests and stop payment cancellations: either the trustee or an employee may initiate the request for a stop payment or cancellation thereof, but the request must be authorized by the trustee in writing, either in a letter to the bank or by initialing and dating the computer transmission log that evidences the stop payment action. <p>3. Receipts</p> <p>4. Handling Currency</p> <ul style="list-style-type: none"> ▶ Clarified the handling of service charges for money orders or cashier's checks. <p>5. Earnest Monies</p> <p>6. Handling of Funds Which Cannot, or Should Not, Be Deposited Immediately</p> <ul style="list-style-type: none"> ▶ Described several situations when funds cannot or should not be immediately deposited. ▶ Provided the procedures that apply in such situations: record the item in the cash receipts log, store it in a secure place until deposited/resolved; deposit or dispose of the funds within 30 days (or, if applicable, 21 days after entry of a final order); record the final disposition in the cash receipts log; and retain a copy of the item with the cash receipts log (unless the copy is kept with the estate file for an asset case). <p>7. Accounts Receivable</p> <p>8. Disbursements</p> <ul style="list-style-type: none"> ▶ Provided examples of "extraordinary circumstances" that may warrant use of a cashier's check or wire transfer. ▶ Clarified that supporting documentation should contain: (1) the trustee's initials and the date to indicate review and approval, and (2) an indication of payment, such as a "PAID" stamp or an attached copy of the check, to prevent duplicate payment. <p>9. Maintaining Estate Records</p>

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Chapter 9. Financial Policies, Procedures and Reporting Requirements <i>(Sub-headings were added or modified as needed)</i>	
<u>1998 Handbook</u>	<u>2001 Handbook</u>
<p>E. Audits, Examinations and Reviews</p> <p>1. Resolution of OIG Audits and UST Field Examinations</p> <p>2. Resolution of Case Administration Reviews</p>	<p>No change.</p>
Chapter 10. Compliance Measures	
<u>1998 Handbook</u>	<u>2001 Handbook</u>
<p>A. Remedial and Enforcement Actions</p> <p>B. Procedures for Suspension and Termination</p>	<p>A. Remedial and Enforcement Actions</p> <ul style="list-style-type: none"> ▶ Provided three examples and additional guidance for voluntary suspensions. <p>B. Procedures for Suspension and Termination</p>

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Forms and Instructions	
<u>1998 Handbook</u>	<u>2001 Handbook</u>
General Instructions	<p>General Instructions</p> <ul style="list-style-type: none"> ▶ Clarified the Form 3 reporting requirements. ▶ Referred to FRBP 2012(b) which requires a successor trustee to file an accounting of the prior trustee's case administration.
Instructions for Form 1	<p>Instructions for Form 1</p> <ul style="list-style-type: none"> ▶ Described the successor trustee's Form 1. ▶ Corrected the instructions for Column 6.
Instructions for Form 2	<p>Instructions for Form 2</p> <ul style="list-style-type: none"> ▶ Added discretion for the trustee to seek approval from the UST to limit the transactions reported in a Form 2 submission involving a very large or older case to the transactions that occurred during semi-annual reporting period. ▶ Described the successor trustee's Form 2.
Instructions for Form 3	<p>Instructions for Form 3</p> <p>Instruction and Q's and A's for Form 4</p> <ul style="list-style-type: none"> ▶ Revised the Sample Form 4 to show a sub-total for "Total Priority Claims: Wages § 507(a)(3) through Other § 507(a)(2), (5), (6) & (9)." <i>(Note: This change is not yet effective for trustee Form 4 submissions during 2001.)</i>