

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA**

PUBLIC NOTICE

**ADOPTION OF: FORM OF CHAPTER 13 PLAN AND RELATED MOTIONS; AND
FORM OF SPECIAL NOTICE TO SECURED CREDITOR**

As set forth in and attached to this Notice, Standing Order No. 05-3, *Order Adopting Revised Form of Chapter 13 Plan and Related Motions and Special Notice to Secured Creditor*:

1. On and after October 17, 2005: The only acceptable form for a Chapter 13 Plan shall be that form approved by the Court, which is attached as Exhibit 1 to this Notice. The form of Special Notice to Secured Creditor shall be that form approved by the Court, which is attached as Exhibit 2 to this Notice.

2. Beginning July 11, 2005, through October 16, 2005, inclusive (the “transition period”): The form of Chapter 13 Plan and Related Motions attached to this Notice may be used in lieu of the form of plan previously approved by the court and designated as Exhibit 1 to the Local Bankruptcy Rules, United States Bankruptcy Court for the Eastern District of Virginia. If the form of plan attached to this Notice is used by the debtor, the form of Special Notice to Secured Creditor, which also is attached to this Notice, must be used, as applicable.

3. During the transition period, however, a debtor may continue to elect to use the current Exhibit 1 to the Local Bankruptcy Rules (Bankr. EDVA, July 1, 2004). If a debtor so elects, the debtor must mail to each creditor – and, in addition, must properly serve on each creditor whose collateral is to be valued, whose lien is to be avoided, or whose executory contract is to be assumed or rejected – the Notice of Chapter 13 Plan and Related Motions currently required by LBR 3015-2(A)(4) and attached as Exhibit 2 to the Local Bankruptcy Rules.

Comment on Revised Chapter 13 Form Plan

Since February 15, 1988, the Eastern District of Virginia has required that chapter 13 plans follow a prescribed format. *See In re Walat*, 87 B.R. 408 (Bankr.E.D. Va 1988) (*en banc*), *aff'd* 89 B.R. 11 (E.D. Va. 1988). Following the Fourth Circuit’s decisions in *Piedmont Trust Bank v. Linkous (In re Linkous)*, 990 F.2d 160 (4th Cir. 1993) and *Cen-Pen Corp. v. Hanson*, 58 F.3d 89 (4th Cir. 1995), the form plan was expanded to include “related” motions to value collateral and avoid liens, and a separate “Notice of Chapter 13 Plan and related Motions” was adopted for service on creditors in addition to the plan itself.

In 2003, the National Association of Chapter 13 Trustees recommended a model form of chapter 13 plan which had been drafted at an Advanced Practice Institute by a group of debtors’ counsel, trustees, creditors’ representatives, attorneys and others. After the chapter 13 trustees in the Western District of Virginia proposed a variant of this model plan for adoption in that district, a working group of one judge and one chapter 13 trustee from each district proposed further modifications that would allow the same form of plan to be used in each district. After a period of public comment and a trial use of the model plan at a Virginia CLE Advanced Consumer Bankruptcy Seminar, a redrafted proposal was prepared by the chapter 13 trustees of both districts. This proposal, with some minor changes agreed to by the judges of both districts at two joint meetings, resulted in the current plan.

Adoption of a uniform plan is expected to benefit state-wide and national creditors (who would have only one form of plan from Virginia to decipher) as well as attorneys who practice in both districts and would no longer have to separately configure their form preparation software for each district. Because it is shorter than the existing Eastern District of Virginia plan, it should also be significantly easier for *pro se* parties (many of whom struggle with the current form of plan) to fill out.

The revised plan, like the previous plan, incorporates “related” motions to value collateral and avoid liens. To satisfy the due-process concerns in *Linkous* and *Cen-Pen*, a separate “special” notice must be attached to the copy of the plan mailed to the creditors that are the subject of those motions.

William C. Redden
Clerk of Court

Date: June 27, 2005

Attachments

(Ver. 06/27/05)

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA**

In re:)
)
ADOPTION OF REVISED) Standing Order No. 05-3
FORM OF CHAPTER 13 PLAN)
AND RELATED MOTIONS AND)
FORM OF SPECIAL NOTICE TO)
SECURED CREDITOR)

**ORDER ADOPTING REVISED FORM OF CHAPTER 13 PLAN AND RELATED
MOTIONS AND FORM OF SPECIAL NOTICE TO SECURED CREDITOR**

The court, having previously solicited and considered public comment with respect to a revised form of chapter 13 plan intended for use in both the Eastern and Western Districts of Virginia, and having conferred with the judges of the United States Bankruptcy Court for the Western District of Virginia as to the form and content of such a plan, finds that adoption of a uniform form of Chapter 13 Plan and Related Motions and separate form of Special Notice to Secured Creditor will facilitate the proper and timely administration of chapter 13 cases.

NOW, THEREFORE, IT IS ORDERED that:

1. On and after October 17, 2005, the form of Chapter 13 Plan and Related Motions attached as Exhibit 1 to this order shall be the only permissible form of chapter 13 plan in the Eastern District of Virginia. All chapter 13 plans filed on and after that date, including original or amended plans filed in cases pending on such date, shall conform to such form. Inapplicable sections may be omitted from the plan provided the section number and section heading are retained, followed by the words, “None” or “Not Applicable.”
2. Beginning July 11, 2005, and until October 17, 2005 (“the transition period”), debtors may use either the attached form of Chapter 13 Plan and Related Motions or the form of Chapter 13 Plan and Related Motions previously approved by the court as Exhibit 1 to the Local Bankruptcy Rules (Bankr. E.D. Va., July 1, 2004).
3. If the debtor elects during the transition period to use the form of Chapter 13 Plan and Related Motions previously approved by the court as Exhibit 1 to the Local Bankruptcy Rules, the debtor must also mail to each creditor – and in addition must properly serve on each creditor whose collateral is to be valued, whose lien is to be avoided, or whose executory contract is to be assumed or rejected – the Notice of Chapter 13 Plan and Related Motions currently required by LBR 3015-2(A)(4) and attached as Exhibit 2 to the Local Bankruptcy Rules.

4. If the debtor elects during the transition period to use the new form of Chapter 13 Plan and Related Motions, the debtor must serve on each creditor whose collateral is to be valued or whose lien is to be avoided a Special Notice to Secured Creditor in the form attached as Exhibit 2 to this order and must attach to such notice a copy of the Chapter 13 Plan and Related Motions. The certificate of service must reflect compliance with the service requirements of Rule 7004, Fed.R.Bankr.P.

Dated: June 27, 2005

/s/ Douglas O. Tice, Jr.
DOUGLAS O. TICE, JR.
Chief United States Bankruptcy Judge

/s/David H. Adams
DAVID H. ADAMS
United States Bankruptcy Judge

/s/ Stephen S. Mitchell
STEPHEN S. MITCHELL
United States Bankruptcy Judge

/s/ Stephen C. St. John
STEPHEN C. ST. JOHN
United States Bankruptcy Judge

/s/ Robert G. Mayer
ROBERT G. MAYER
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
_____ **DISTRICT OF VIRGINIA**
_____ **Division**

**CHAPTER 13 PLAN
AND RELATED MOTIONS**

Name of Debtor(s):

Case No:

This plan, dated _____, is:

- the *first* Chapter 13 plan filed in this case.
- a modified plan, which replaces the plan dated _____.

The plan provisions modified by this filing are:

Creditors affected by this modification are:

NOTICE: YOUR RIGHTS WILL BE AFFECTED. You should read these papers carefully. If you oppose any provision of this plan, or if you oppose any included motions to (i) value collateral, (ii) avoid liens, or (iii) assume or reject unexpired leases or executory contracts, you MUST file a timely written objection.

This plan may be confirmed and become binding, and the included motions in paragraphs 3, 6, and 7 to value collateral, avoid liens, and assume or reject unexpired leases or executory contracts may be granted, without further notice or hearing unless written objection is filed on or before _____ and the objecting party appears at the confirmation hearing.

The debtor(s)' schedules list assets and liabilities as follows:

Total Assets:
Total Non-Priority Unsecured Debt:
Total Priority Debt:
Total Secured Debt:

1. **Funding of Plan.** The debtor(s) propose to pay the trustee the sum of \$_____ per _____ for ____ months. Other payments to the Trustee are as follows: _____ . The total amount to be paid into the plan is \$_____.

2. **Priority Creditors.** The Trustee shall pay allowed priority claims in full unless the creditor agrees otherwise.

A. Administrative Claims under 11 U.S.C. § 1326.

1. The Trustee will be paid 10% of all sums disbursed except for funds returned to the debtor(s).
2. Debtor(s)' attorney will be paid \$_____ balance due of the total fee of \$_____ concurrently with or prior to the payments to remaining creditors.

B. Claims under 11 U.S.C. §507.

The following priority creditors will be paid by deferred cash payments pro rata with other priority creditors or in monthly installments as below:

<u>Creditor</u>	<u>Type of Priority</u>	<u>Estimated Claim</u>	<u>Payment and Term</u>
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3. **Secured Creditors and Motions to Value Collateral.**

This paragraph provides for claims of creditors who hold debts that (a) regardless of term, are being bifurcated into secured and unsecured portions, (b) do not have a term longer than the length of this plan, or (c) are not secured solely by the debtor(s)' principal residence.

A. Collateral to be retained. The following creditors shall retain their liens and be paid as indicated below. Insurance will be maintained at the debtor(s)' expense, in accordance with the terms of the contract and security agreement. The debtor(s) move to value the collateral as stated below. The Trustee shall pay allowed secured claims the value stated below or the amount of the claim, whichever is less, with interest at the rate stated below from the date of confirmation until the secured claim is paid in full. The excess of the creditor's claim over the stated value shall be treated as an unsecured claim. Upon completion of the plan, the creditor shall release its lien and deliver any certificate of title to the debtor(s). **Unless a written objection to the value below is timely filed with the Court, the Court may determine that the collateral is worth the value stated.** If a timely objection is filed, the value will be determined by the Court at the confirmation hearing.

<u>Creditor</u>	<u>Collateral Description</u>	<u>Collateral Value</u>	<u>Estimated Claim</u>	<u>Interest Rate</u>	<u>Monthly Payment and term*</u>
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** These secured claims will be paid by the Trustee either on a fixed monthly basis as stated or pro rata with other secured claims.*

- B. Collateral to be surrendered.** Upon confirmation of the plan, or before, the debtor will surrender his or her interest in the collateral securing the claims of the following creditors in satisfaction of the secured portion of such creditors' allowed claims. To the extent that the collateral does not satisfy such creditor's claim, the creditor may hold a non-priority, unsecured claim for a timely filed deficiency claim. The order confirming the plan shall have the effect of terminating the automatic stay as to the collateral surrendered.

<u>Creditor</u>	<u>Collateral Description</u>	<u>Estimated Total Claim</u>
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4. Unsecured Claims.

- A. Not separately classified.** Allowed non-priority unsecured claims shall be paid pro rata from any distribution remaining after disbursement to allowed secured and priority claims. Estimated distribution is approximately ____ %. If this case were liquidated under Chapter 7, the debtor(s) estimate unsecured creditors would receive a dividend of approximately ____ %.

- B. Separately classified unsecured claims.**

<u>Creditor</u>	<u>Basis for Classification</u>	<u>Treatment</u>
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5. Long Term Debts and Claims Secured by the Debtor(s)' Primary Residence.

Creditors listed below are either secured by the debtor(s)' principal residence or hold a debt the term of which extends beyond the term of this plan.

- A. Debtor(s) to pay claim directly.** The creditors listed below will be paid by the debtor(s) pursuant to the contract without modification, except that arrearages, if any, will be paid by the Trustee either pro rata with other secured claims or on a fixed monthly basis as indicated below.

<u>Creditor</u>	<u>Collateral</u>	<u>Regular Contract Payment</u>	<u>Estimated Arrearage</u>	<u>Interest Rate</u>	<u>Estimated Cure Period</u>	<u>Monthly Arrearage Payment</u>
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- B. Trustee to pay the contract payments and the arrearages.** The creditors listed below will be paid by the Trustee the regular contract monthly payments during the term of this plan. The arrearage claims, if any, will be cured by the Trustee by payments made either pro rata with other secured claims or by fixed monthly payments as indicated below.

<u>Creditor</u>	<u>Collateral</u>	<u>Regular Contract Payment</u>	<u>Estimated Arrearage</u>	<u>Interest Rate</u>	<u>Term for Arrearage</u>	<u>Monthly payment</u>
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- 6. Executory Contracts and Unexpired Leases.** The debtor(s) move for assumption or rejection of the executory contracts and leases listed below.

- A. Executory contracts and unexpired leases to be rejected.** The debtor(s) reject the following executory contracts.

<u>Creditor</u>	<u>Type of Contract</u>
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- B. Executory contracts and unexpired leases to be assumed.** The debtor(s) assume the following executory contracts. The debtor agrees to abide by all terms of the agreement. The Trustee will pay the pre-petition arrearages, if any, through payments made pro rata with other priority claims or on a fixed monthly basis as indicated below.

<u>Creditor</u>	<u>Type of Contract</u>	<u>Arrearage</u>	<u>Monthly Payment for arrears</u>	<u>Estimated cure period</u>
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- 7. Motions to Avoid Liens.**

- A. The debtor(s) move to avoid liens pursuant to 11 U.S.C. § 522(f).** The debtor(s) move to avoid the following judicial liens and non-possessory, non-purchase money liens that impair the debtor(s)' exemptions. **Unless a written objection is timely filed with the Court, the Court may grant the debtor(s)' motion and cancel the creditor's lien.** If an objection is filed, the Court will hear evidence and

rule on the motion at the confirmation hearing.

<u>Creditor</u>	<u>Collateral</u>	<u>Exemption Basis</u>	<u>Exemption amount</u>	<u>Value of Collateral</u>
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- B. Avoidance of security interests or liens on grounds other than 11 U.S.C. § 522(f).** The debtor(s) have filed or will file and serve separate pleadings to avoid the following liens or security interests. The creditor should review the notice or summons accompanying such pleadings as to the requirements for opposing such relief. The listing here is for information purposes only.

<u>Creditor</u>	<u>Type of Lien</u>	<u>Description of Collateral</u>	<u>Basis for Avoidance</u>
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8. Treatment of Claims.

- All creditors must timely file a proof of claim to receive payment from the Trustee.
- If a claim is scheduled as unsecured and the creditor files a claim alleging the claim is secured but does not timely object to confirmation of the plan, the creditor may be treated as unsecured for purposes of distribution under the plan. This paragraph does not limit the right of the creditor to enforce its lien, to the extent not avoided or provided for in this case, after the debtor(s) receive a discharge.
- If a claim is listed in the plan as secured and the creditor files a proof of claim alleging the claim is unsecured, the creditor will be treated as unsecured for purposes of distribution under the plan.

9. Vesting of Property of the Estate. Property of the estate shall revert in the debtor(s) upon confirmation of the plan. Notwithstanding such vesting, the debtor(s) may not sell, refinance, or encumber real property without approval of the court.

10. Incurrence of indebtedness. During the term of the plan, the debtor(s) shall not incur additional indebtedness in an amount exceeding \$5,000 without approval of the court.

11. Other provisions of this plan:

Signatures:

Dated: _____

Debtor

Debtor's Attorney

Joint Debtor

Exhibits: **Copy of Debtor(s)' Budget (Schedules I and J);
Matrix of Parties Served with plan**

Certificate of Service

I certify that on _____, I mailed a copy of the foregoing to the creditors and parties in interest on the attached Service List.

Signature

Address

Telephone No.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VIRGINIA
Division

In re:

Case No. _____

Chapter 13

Debtor(s)

SPECIAL NOTICE TO SECURED CREDITOR

To: _____, Attn: _____
Name of creditor

Description of collateral

1. The attached chapter 13 plan filed by the debtor(s) proposes (*check one*):

- To value your collateral. **See Section 3 of the plan.** Your lien will be limited to the value of the collateral, and any amount you are owed above the value of the collateral will be treated as an unsecured claim.
- To cancel or reduce a judgment lien or a non-purchase money, non-possessory security interest you hold. **See Section 7 of the plan.** All or a portion of the amount you are owed will be treated as an unsecured claim.

2. ***You should read the attached plan carefully for the details of how your claim is treated.***

The plan may be confirmed, and the proposed relief granted, unless you file and serve a written objection by the date specified and appear at the confirmation hearing. A copy of the objection must be served on the debtor(s), their attorney, and the chapter 13 trustee.

Date objection due: _____

Date and time of confirmation hearing: _____

Place of confirmation hearing: _____

Name(s) of debtor(s)

By: _____

Signature

- Debtor(s)' Attorney
 Pro se debtor

Name of attorney for debtor(s)

Address of attorney [or pro se debtor]

Tel. # _____

Fax # _____

CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing Notice and attached Chapter 13 Plan and Related Motions were served upon the creditor noted above by

() first class mail in conformity with the requirements of Rule 7004(b), Fed.R.Bankr.P; or

() certified mail in conformity with the requirements of Rule 7004(h), Fed.R.Bankr.P

on this _____ day of _____, 200__.

Signature of attorney for debtor(s)