

# **GUIDELINES FOR CHAPTER 11 DEBTORS-IN-POSSESSION**

## **REGION VI**

### **NORTHERN DISTRICT OF TEXAS**

**These guidelines have been promulgated by the United States Trustee pursuant to his statutory duty to administer bankruptcy cases. Failure to abide by these guidelines will result in an application to the Court for appropriate relief.**



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**REGION VI**  
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**Revised 7/30/99**

# **GENERAL REQUIREMENTS**

**A. The debtor-in-possession is required to comply in all respects with the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules.**

**B. The debtor-in-possession must pay all obligations arising after the filing of the petition (“post-petition”) in full when due. This includes quarterly fee payments to the United States Trustee, which are payable until the case has been converted to a case under another chapter of the Code, dismissed by the Court, or closed by Court order. The Debt Collection Improvement Act of 1996, PL 104-134, states that in the event of non-payment of quarterly fees, the United States Trustee has the option of referring the matter to the Department of the Treasury to attempt collection. Treasury Department collection efforts will include: (a) sending dunning notices to the debtor; (b) withholding any government payment to the debtor, including tax refunds, in the amount of the indebtedness; (c) employing collection agencies to enforce collection, and (d) reporting the indebtedness to credit bureaus.**

**C. The debtor-in-possession may not pay pre-petition obligations except as allowed by the Bankruptcy Code or by order of the Court.**

**D. The debtor-in-possession shall file all federal, state and local tax returns when due or shall procure an extension from the appropriate taxing authority, unless otherwise provided by the Bankruptcy Code or by order of the Court. All post-petition taxes are to be paid timely.**

**E. Notices and copies of pleadings must be sent to the United States Trustee as required by Bankruptcy Rules 1007, 2002, 2014, 2015, 2016, and by applicable Local Bankruptcy Rules.**

# **INSURANCE REQUIREMENTS**

**A. All debtors-in-possession must maintain insurance coverage and make all premium payments thereon when due.**

**B. Unless the United States Trustee otherwise directs, the following types of insurance coverage must be maintained.**

**1. Casualty insurance for tangible assets susceptible to loss (fire, weather, theft, vandalism, etc.).**

**2. Worker's Compensation insurance and unemployment insurance if the debtor-in-possession has employees.**

**3. General liability and, if appropriate, product liability insurance must be maintained if the debtor-in-possession conducts business operations.**

**C. The United States Trustee must be provided with proof that the required insurance is being maintained throughout the pendency of the Chapter 11 case. To fulfill this requirement, the debtor-in-possession shall deliver to the United States Trustee at the debtor interview the first page of each insurance policy exhibiting the expiration date of the policy, together with such addenda as are necessary to clearly identify the insured properties. A Certificate of Insurance is acceptable so long as it clearly identifies the insured properties and the expiration date of the policy.**

**Should any insurance policy lapse during the pendency of the Chapter 11 case, the debtor-in-possession must forward proof of the renewal of that policy to the United States Trustee. Such a renewal policy should contain the new expiration date and clearly identify the properties insured under the new policy. If any of the properties covered by previous policies are no longer a part of bankruptcy estate, the United States Trustee should be so advised at the time that the renewal policies are tendered.**

## **OPERATING REPORTS**

**The debtor-in-possession must file monthly operating reports with both the United States Trustee and the Clerk of the Bankruptcy Court. In addition, the debtor must provide a copy of the report to their attorney and to the chair of any creditors' committee appointed in the case. All operating reports must be filed no later than the twentieth day of the month following the end of the month covered by the report. The debtor must file a report every month. The debtor must use the report forms designated for the case by the United States Trustee.**

**After confirmation of the plan of reorganization, the reorganized debtor is required to file quarterly operating reports with the Clerk of the Bankruptcy Court and with the United States Trustee twenty days after the conclusion of each calendar quarter; (i.e., April 20<sup>th</sup>, July 20<sup>th</sup>, October 20<sup>th</sup> and January 20<sup>th</sup>.) The quarterly operating reports are required until such time as substantial consummation of the Plan has occurred and the Court has entered a final decree closing the case pursuant to Federal Rule of Bankruptcy Procedure 3022 and Section 350 of the Bankruptcy Code.**

# **BANK ACCOUNTS AND MONEY OF ESTATES**

**A. Section 345 of the Bankruptcy Code governs the investment and protection of funds of bankruptcy estates. Section 345(b) provides that, unless the Court orders otherwise, a debtor-in-possession must require that all financial institutions in which estate monies exceeding federal deposit insurance limits are deposited or invested have either posted a bond or pledged securities of a type specified in the statute. This requirement is imposed to insure that all estate fund balances exceeding federal deposit insurance limits are protected against loss in the event of the failure of the financial institution. The United States Trustee maintains a list of financial institutions that have agreed to pledge securities with the Federal Reserve or post a bond in order to insure their bankruptcy accounts. These institutions are monitored by the United States Trustee to insure that the requirements of Section 345(b) are met with regard to all bankruptcy accounts which they maintain.**

**Financial institutions not appearing on the list are not part of the United States Trustee's reporting and monitoring system. A debtor-in-possession choosing to use such a financial institution is solely responsible for insuring that the requirements of Section 345(b) are met, either by securing the posting of a bond or a pledge of securities from the financial institution, or by obtaining a court order excusing compliance with this requirement for cause.**

**B. If the debtor-in-possession utilizes a financial institution that is not a part of the United States Trustee's reporting and monitoring system, a copy of the current monthly bank statement for each account must be submitted to the United States Trustee as an attachment to the monthly operating report.**

**C. Each debtor-in-possession must insure that their checks are imprinted with the full name of the debtor-in-possession exactly as shown on their voluntary petition, (Official Bankruptcy Form 1). [If the debtor-in-possession is an individual or an individual and their spouse, the petition must include the first, middle and last names (not initials) of all petitioners.] If use of a d/b/a is desired in the styling of the check, the d/b/a must have been recorded in the box on their petition labeled "All other Names used by the Debtor in the last 6 years (including married, maiden and trade names)." The designation "Debtor-In-Possession" (Not DIP) and the case number must also be imprinted on all checks. (See the following sample check as an illustration.)**

AMERICAN HOLDING COMPANY, INC. d/b/a USA Goods Debtor-In-Possession, Case # 96-61001 1499 Every Street Anytown, TX 75702	No <b>1001</b>  19
PAY TO THE ORDER OF _____	\$ _____
	Dollars
<small>XYZ Bank Dallas Banking Center 014</small> <b>XYZB</b> <small>1100 Commerce Suite 9C60 Dallas, Texas 75242</small>	
%%&(1119047523 %(& 720000003238773 ** (1001	

**Voided samples of permanent checks from each account must be provided to the United States Trustee.**

**D. All receipts and disbursements of estate funds must be made through the debtor-in-possession account(s). Any funds in excess of those required for current operations should be invested in accordance with the provisions of Section 345(a).**

**E. Earnings from services performed by an individual debtor-in-possession after the commencement of a Chapter 11 case should not be deposited into a debtor-in-possession bank account. These funds are not considered property of the bankruptcy estate. However, monies earned by the individual pre-petition are property of the estate and must be deposited into a debtor-in-possession account. Should the individual's post-petition earnings be derived from services rendered to a related entity which is also a Chapter 11 debtor-in-possession, the total amounts paid to the individual must be disclosed on each monthly operating report submitted by the related entity.**

**F. Once the Chapter 11 plan has been confirmed by the Bankruptcy Court, the debtor-in-possession account(s) must be closed and regular accounts re-established. The United States Trustee exercises no responsibility with respect to monitoring accounts once a plan of reorganization is confirmed, or the case is dismissed or converted. A copy of the Bankruptcy Court's order must be presented to the financial institution when seeking to close a debtor-in-possession account.**

# **SCHEDULES AND STATEMENT OF FINANCIAL AFFAIRS**

**A. The debtor-in-possession must comply fully with Bankruptcy Rules 1002 and 1007. These rules require the debtor-in-possession to file schedules and a statement of financial affairs with the Clerk of the Bankruptcy Court. Either the schedules or a complete list of all creditors and their addresses must be filed with the petition.**

**B. Pursuant to Bankruptcy Rule 1007(d), you must file a separate list containing the name, address, phone number and amount of claim of the twenty largest unsecured creditors. This list must not contain the names of any creditors who are "insiders" as that term is defined in Section 101(31) of the Bankruptcy Code. This list is utilized by the United States Trustee to attempt to form a creditors' committee to serve in the case.**

## **CREDITORS MEETINGS**

**Section 341 of the Bankruptcy Code requires a meeting of creditors in each case. This meeting is scheduled by the United States Trustee and notice of the meeting is sent to all creditors by counsel for the debtor-in-possession. A representative of the debtor-in-possession is required to attend the meeting and submit to examination under oath. Counsel for the debtor-in-possession should also attend this meeting. After notice has been sent, a meeting cannot be canceled or rescheduled to accommodate scheduling conflicts of parties or attorneys. After the initial creditors meeting the United States Trustee may decide to continue the meeting from time to time until a plan is confirmed, or the case is dismissed or converted.**

## **QUARTERLY FEES**

**Pursuant to the provisions of chapter 123 of Title 28 of the United States Code, each debtor in a case pending under the provisions of Chapter 11 is responsible for paying a fee to the United States Trustee. Failure to pay the fee is cause for the dismissal or conversion of the case.**

**The amount of the fee will vary based upon the amount of money disbursed by the debtor during a quarter. The scale used to calculate the fee is as follows:**

<u>DISBURSEMENT CATEGORY</u>			<u>QUARTERLY FEE DUE</u>
\$ 0	TO	\$14,999.99	\$ 250
15,000.	TO	74,999.99	500
75,000.	TO	149,999.99	750
150,000.	TO	224,999.99	1,250
225,000.	TO	299,999.99	1,500
300,000.	TO	999,999.99	3,750
1,000,000.	TO	1,999,999.99	5,000
2,000,000.	TO	2,999,999.99	7,500
3,000,000.	TO	4,999,999.99	8,000
5,000,000.		AND MORE	10,000

Note that a minimum payment of \$250 is due each quarter even if no disbursements are made in the case during the period.

Fees are to be paid pursuant to the following schedule:

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

The fee due is based on disbursements made during the days of the quarter that the Chapter 11 case is open, and is not prorated for a partial quarter. The minimum fee applies even if the case is open for only one day of the quarter. The obligation to pay any further fee ends when the court enters an order closing or dismissing the case or the case is converted to a case under another chapter of the Bankruptcy Code. A plan must provide for payment of all unpaid quarterly fees, or it cannot be confirmed by the Court. In addition, all unpaid quarterly fees should be paid prior to the dismissal or conversion of a case.

Each debtor will receive a statement regarding the fee prior to each of the due dates noted above. Each statement contains a "tear off" payment stub which should be returned along with the debtor's check to the following address:

U.S. Trustee  
P.O. Box 198246  
Atlanta, Georgia 30394

Please make all checks payable to "U.S. Trustee." The debtor's account number, which can be obtained from the statement, should be written on the face of the check. Direct all correspondence and questions regarding your account to your local U.S. Trustee Office, 1100 Commerce, Suite 9C60, Dallas, TX 75242. 214/767-8967

# **INSTRUCTIONS FOR DEBTOR INTERVIEW**

**Please bring the following information to the debtor interview:**

- 1. The FULLY COMPLETED "Information for Initial Debtor Interview" form. No time has been allotted to allow the form to be completed at the meeting.**
- 2. Proof that required insurance is being maintained. This should be in the form of a photocopy of the first page of the binder or a certificate of insurance.**
- 3. A list of all the existing bank accounts and breakdown of all checks written on the accounts since the filing date with a description of the purpose of the withdrawal.**

**Please review the attachments concerning financial reports and operating guidelines prior to the interview so that any questions you may have can be addressed at that time.**



# STATEMENT REGARDING COMPLIANCE WITH 11 U.S.C. §345(b)

DATE: \_\_\_\_\_

CASE NAME: \_\_\_\_\_

CASE NO: \_\_\_\_\_

The debtor-in-possession in the above-referenced case has reported that an account or accounts for estate funds will be maintained in the following financial institution(s):

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Check one of the following:

The financial institution(s) listed above submits periodic reports to the United States Trustee regarding balances on hand in bankruptcy estate accounts, and pledges securities with the Federal Reserve or posts a bond in order to insure that estate funds balances exceeding federal deposit insurance limits are protected against loss in the event of the failure of the institution. The United States Trustee will monitor the reports submitted by the institution(s) to assist the debtor-in-possession in insuring compliance with the provisions of 11 U.S.C. §345.

- or -

The financial institution(s) listed above is not part of the United States Trustee's reporting system. As regards all bankruptcy estate accounts maintained in the institution(s), the debtor-in-possession is solely responsible for insuring compliance with the provisions of 11 U.S.C. §345, either by securing the posting of a bond or a pledge of securities from the institution(s), or by obtaining a court order excusing compliance with this requirement for cause. **FAILURE TO COMPLY WITH THE REQUIREMENTS OF 11 U.S.C. §345 CONSTITUTES GROUNDS FOR THE UNITED STATES TRUSTEE TO SEEK APPROPRIATE RELIEF FROM THE COURT, INCLUDING THE APPOINTMENT OF A TRUSTEE OR THE DISMISSAL OR CONVERSION OF THE CASE.**

RECEIPT ACKNOWLEDGED BY:

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For the Debtor-In-Possession

# DEBTOR-IN-POSSESSION BANK ACCOUNT AGREEMENT

NAME OF DEBTOR: \_\_\_\_\_

CASE NUMBER: \_\_\_\_\_

The undersigned being the duly authorized representative of the above named Chapter 11 debtor-in-possession hereby represents that the debtor-in-possession has *no cash* which is property of this estate in his custody or control with which to establish an authorized debtor-in-possession bank account as required by the Administrative Guidelines of the United States Trustee for the Northern and Eastern Districts of Texas.

The undersigned agrees that should the debtor-in-possession receive or obtain control over, an cash which constitutes property of the estate during the pendency of this chapter 11 case, the debtor-in-possession will immediately cause such cash to be deposited in an authorized debtor-in-possession bank account through arrangements with the Office of the United States Trustee for the Northern and Eastern Districts of Texas, 1100 Commerce Street, Room 9C60, Dallas, Texas 75242.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Representative of the Debtor-In-Possession

\_\_\_\_\_  
Please Print Name

**Direction of Attorney for the Debtor concerning Contacts  
with Client  
Regarding Administrative Matters**

**Case Name:** \_\_\_\_\_

**Case Number:** \_\_\_\_\_

Part I: Purpose

The United States Trustee is responsible for supervising the administration of cases under chapters 7, 11, 12 and 13 of the United States Bankruptcy code, 28 U.S.C. §586. To fulfill this responsibility, the U.S. Trustee has issued Guidelines for Debtors-In-Possession. The Guidelines impose certain administrative and reporting responsibilities on Chapter 11 debtors-in-possession. In addition, there are other requirements imposed by law, including a requirement to pay U.S. Trustee quarterly fees. The U.S. Trustee's staff is available to assist debtors-in-possession in fulfilling these requirements. In addition, it is frequently necessary for members of the U.S. Trustee's staff to contact debtors concerning missing documents, incomplete forms, and other administrative matters. Many debtors-in-possession and attorneys prefer that these administrative matters be handled directly between the debtor and the U.S. Trustee's staff. Others prefer that all such contacts be made through counsel. We need to know how you and your client would like these matters to be handled.

Part II: Direction

\_\_\_\_\_ We direct that all contacts between the U.S. Trustee's staff concerning the administrative requirements of the U.S. Trustee, including completion of operating reports, insurance, banking arrangements, payments and calculation of quarterly fees, may be made directly between the U.S. Trustee and the debtor-in-possession.

\_\_\_\_\_ We direct that all contacts between the U.S. Trustee's staff concerning this case, including all administrative matters, be conducted through counsel for the debtor-in-possession.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Attorney for debtor-in-possession

INFORMATION FOR INITIAL DEBTOR INTERVIEW

DATE \_\_\_\_\_

1. CASE NAME \_\_\_\_\_ CASE NO. \_\_\_\_\_

2. DESCRIPTION OF THE BUSINESS (INCLUDING START-UP DATE AND DATE OF INCORPORATION IF APPLICABLE)

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

3. NUMBER OF EMPLOYEES \_\_\_\_\_

4. IDENTIFICATION OF CORPORATE OFFICERS OR PARTNERS (IF BUSINESS IS A SOLE PROPRIETORSHIP, SO INDICATE)

NAME/TITLE	% OF OWNERSHIP	SALARY (PAST 12 MONTHS)
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5. WHY WAS THE CHAPTER 11 PETITION FILED?

\_\_\_\_\_  
 \_\_\_\_\_

6. PROPOSED PLAN     REORGANIZATION     LIQUIDATION

7. ESTIMATED VALUE OF ASSETS AS OF FILING DATE

a. CASH \_\_\_\_\_

b. ACCTS RECEIVABLE (TOTAL) \_\_\_\_\_ OF WHICH \_\_\_\_\_% IS UNCOLLECTIBLE.

c. FIXTURES AND EQUIPMENT \_\_\_\_\_

d. INVENTORY \_\_\_\_\_

e. VEHICLES \_\_\_\_\_

f. REAL ESTATE

LOCATION/DESCRIPTION	VALUE	DEBT	LIENHOLDER
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g. ACCOUNTS/NOTES RECEIVABLE FROM OFFICERS

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h. OTHER ASSETS

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8. ESTIMATED LIABILITIES AS OF FILING DATE

a. UNSECURED/TRADE ACCOUNTS PAYABLE:

TOTAL \_\_\_\_\_ NUMBER OF ACCOUNTS \_\_\_\_\_

b. TAXES

TAXING AUTHORITY	AMOUNT	QUARTERS
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c. WAGES OWED \_\_\_\_\_

d. RENT OWED \_\_\_\_\_ MONTHS IN ARREARS

e. ACCOUNTS OR NOTES PAYABLE TO OFFICERS

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f. SECURED DEBTS (DO NOT REPEAT OBLIGATIONS LISTED UNDER REAL ESTATE)

SECURED PARTY	AMOUNT	COLLATERAL
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g. OTHER LIABILITIES, INCLUDING UNLIQUIDATED, CONTINGENT OR DISPUTED LIABILITIES

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9. COMMENTS \_\_\_\_\_

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# INFORMATION FOR INITIAL DEBTOR INTERVIEW APARTMENT COMPLEXES

DATE \_\_\_\_\_

1. CASE NAME \_\_\_\_\_ CASE NO. \_\_\_\_\_

2. NAME OF APARTMENT COMPLEX \_\_\_\_\_

3. ADDRESS OF COMPLEX (STREET & CITY) \_\_\_\_\_

4. NUMBER OF UNITS \_\_\_\_\_ OCCUPANCY RATE \_\_\_\_\_  
RENT RANGE \_\_\_\_\_

5. DATE CORPORATION OR PARTNERSHIP FORMED \_\_\_\_\_  
DATE COMPLEX PURCHASED \_\_\_\_\_

GENERAL PARTNERS OR CORPORATE OFFICERS:

NAME	TITLE	% OWNERSHIP	SALARY
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_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

6. NAME OF MANAGEMENT COMPANY \_\_\_\_\_

7. MANAGEMENT CO. FEE \_\_\_\_\_  
% OF RENTS OR \$ \_\_\_\_\_ FIXED AMOUNT \_\_\_\_\_

8. REPRESENTATIVE OF MANAGEMENT CO: \_\_\_\_\_  
PHONE \_\_\_\_\_

9. IS MANAGEMENT CO. RESPONSIBLE FOR SALARIES OF ALL EMPLOYEES?  
IF NO, LIST EXCEPTIONS

\_\_\_\_\_

\_\_\_\_\_

10. IS MANAGEMENT CO. RELATED TO DEBTOR IN ANY MANNER? (IF YES,  
EXPLAIN)

\_\_\_\_\_

\_\_\_\_\_

11. REASON FOR FILING \_\_\_\_\_  
PROPOSED PLAN OF REORGANIZATION \_\_\_\_\_

\_\_\_\_\_

12. VALUE OF PROPERTY (REAL ESTATE & IMPROVEMENTS) \$ \_\_\_\_\_  
13. SECURED LIEN HOLDERS: \_\_\_\_\_

NAME OF LIENHOLDER	AMOUNT OF NOTE	POSITION OF LIENHOLDER
_____		
_____		
_____		

14. OTHER ASSETS \_\_\_\_\_

15. UNSECURED DEBT/TRADE ACCOUNTS (TOTAL) \$ \_\_\_\_\_  
# OF ACCOUNTS \_\_\_\_\_

16. ARE ALL PAYMENTS TO UTILITY COMPANIES CURRENT? (IF NO, LIST  
EXCEPTIONS)

\_\_\_\_\_

\_\_\_\_\_

17. TAXES

TAXING AUTHORITY (SCHOOL, COUNTY, ETC.)	AMOUNT
_____	
_____	

18. ACCOUNTS OR NOTES PAYABLE TO GENERAL PARTNERS OR OFFICERS

\_\_\_\_\_

19. DOES THE MANAGEMENT CO. OPERATE ANY OTHER PROPERTIES  
CURRENTLY IN CHAPTER 11? (IF YES, PLEASE LIST)

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**20. COMMENTS**\_\_\_\_\_

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