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Overview of Recent Changes in Chapter 13 Procedures in The Southern District of Texas

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Houston, Galveston, Victoria and Laredo Divisions

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In response to the national form Chapter 13 Plan (Official Form 113) and accompanying Bankruptcy Rule changes that became effective on 12/01/2017, The Southern District of Texas, like many other districts throughout the country, opted to create its own alternative form chapter 13 plan. The plan that was adopted is different from the previous plan in several ways. The website of the Bankruptcy Court for the Southern District of Texas currently displays *35 new local forms* that have become effective since 12/01/2017. Including the new Uniform Plan Versions 1.1 and 1.2, Uniform Plan Summary Versions 1.1 and 1.2, Uniform Modification of Confirmed Plan and Motion for Valuation of Collateral Versions 1.1 and 1.2, and Uniform Modification of Confirmed Plan Summaries Versions 1.1 and 1.2, there are 49 "new" chapter 13 forms. These forms are available on the website of the Court (https://www.txs.uscourts.gov/bankruptcy/bankruptcy-forms-filing-fees), and a directory of the forms is included in this material. There are also new local rules regarding the procedure to be followed when dealing with the surrender of collateral in chapter 13 cases. Following is a brief description of certain key features of the Southern District of Texas form plan.

1. The Plan permits payment of a secured or priority debt provided for in the plan without the necessity of the filing of a proof of claim (Uniform Plan and Motion for Valuation of Collateral ¶25). If a proof of claim is timely filed, the

amount of the claim, the amount necessary to cure any default, and the amount of any contractual installment that must be paid on the claim will be determined by reference to the proof of claim subject to the claims objection process. If no proof of claim is timely filed, the payment amounts will be as specified in the plan subject to adjustment under the Court's Home Mortgage Payment Procedures and paragraphs 8 and 11 of the plans. Generally, the provisions of paragraphs 8 and 11 permit adjustments to payments due to escrow and interest rate fluctuations on long term debts treated under 11 U.S.C.§1322(b)(5), and post-petition claims asserted under Bankruptcy Rule 3002.1. The adjustments are applicable only to claims treated pursuant to 11 U.S.C.§1322(b)(5). For secured claims treated in the plan pursuant to §1325(a)(5), the "cramdown" provisions, the plan determines the value of collateral securing the claim, the interest rate, and the length of the payout. A creditor must object to confirmation of the plan to litigate those issues.

2. Paragraph 14 of the Plan is new and is a specific "Dirt for Debt" provision. This paragraph, if utilized, purports to enable the debtor to transfer title to real property to the holder of a lien for credit against an existing secured claim against the property in an amount specified in the plan. The plan provides for specific notices and for the recordation of certified copies of the plan and the order confirming the plan in the deed records of the applicable county. The intent of this provision is to enable a debtor to terminate his or her liability for post-petition costs of ownership of property that is of no value to the debtor or the debtor's creditors.

3. Paragraph 15 contains provides for the avoidance of liens on exempt property that are voidable pursuant to 11 U.S.C. §522(f). This provision of the plan is intended to eliminate the necessity of the filing of a separate motion.

4. Paragraph 20 of the form plan is a revision of earlier form plan procedures to be followed when the debtor elects to surrender an interest in property after confirmation of the plan. This provision enables a debtor to surrender

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