

Outline Of Some Highlights Related To General Order [G.O.] #05-1

From: Bankruptcy "Saturday Session"
February 25, 2006

[NOTE: Review of this document does not obviate the need to thoroughly review the General Order! *Please note in particular* that while most changes mandated by G.O. #05-1 apply only to cases filed on or after 10/17/05, some changes relate to all cases.]

1. Older cases filed within 8 years of a current filing must be listed on the current petition ([G.O. 05-1](#), pt. 4).
2. New rules on discharge in current case filed on or after 10/17/05 following discharge in prior case (§§727(a)(8), 727(a)(9), 1328(f)(1), and 1328(f)(2)). Discharge will not be granted under the following circumstances:
 - A. New Chapter 7 filed when Debtor received a discharge in an old Chapter 7 or 11 case filed within **eight** years of the date of filing of the new case.
 - B. New case converted from Chapter 11, 12, or 13 to Chapter 7 (or simply new Chapter 7 case) when Debtor received a discharge in a Chapter 12 or 13 case filed within **six** years of the date of filing of the new case, or a discharge in a Chapter 11 case filed within **eight** years of the filing of the new case.

Note: A debtor can receive a discharge in a subsequent Chapter 7 if he or she paid either (a) 100% of the allowed unsecured claims in the previous Chapter 12 or 13 case, **or** (b) at least 70% of the allowed unsecured claims in the previous Chapter 12 or 13 case if the plan was proposed in good faith and was the debtor's best effort. However, the Court will still issue a *Notice of Intent Not to Grant a Discharge* in the new Chapter 7 case, and it will be up to the debtor or debtor's attorney to object to the notice, and prove to the Court that the debtor is entitled to a discharge.

- C. New Chapter 13 filed when Debtor received a discharge in an old Chapter 7, 11, or 12 case filed within **four** years of the date of filing of the new case.

Note: A Chapter 13 case can still be filed in this instance to, for example, save a home from foreclosure, but a discharge of any unpaid debts will not be granted upon the completion of the case.

- D. New Chapter 13 filed when Debtor received a discharge in an old Chapter 13 case filed within **two** years of the date of filing of the new case.

Note: As stated above regarding a Chapter 13 case filed within four years of the filing of a discharged Chapter 7 case, a new Chapter 13 case can be filed, but a discharge will not be granted upon the completion of the case.

3. *Individual Debtor's Statement of Intention (s) Per 11 U.S.C. §521(a)*. Newly created [LBF #521.05](#) must be used in all cases filed on or after 10/17/05 ([G.O. 05-01](#), pt. 5). Major change in form requires statement regarding leased property in addition to secured collateral.

Note: As in prior practice, the Court will take no action if debtor fails to file the form or fails to take action in accordance with debtor's stated intent if filed. See also §§362(h), 521(a)(2), 521(a)(6), and 521(d).

4. Payment advices required by §521(a)(1)(B)(iv) are not to be filed with the Court, but must be served on the U.S. Trustee and not to the case trustee at the same time that Schedules A-J are filed with the Court in a new case, or within 15 days following a conversion from one Chapter to another. [G.O. 05-1](#), pt. 7.

Note: In addition to the above requirement, FRBP 4002(b)(2) requires the debtor to bring the following information to the §341(a) hearing: (1) evidence of current income such as the most recent payment advice, (2) unless otherwise instructed by the case trustee or U.S. Trustee, statements for all depository and/or investment accounts for the time period that includes the date of filing of the petition, and (3) documentation of expenses when required by §§707(b)(2)(A) or (B) (See also pt. 5 below).

5. Any documents supporting the *Statement of Current Monthly Income* ([OBF #B22A](#) and [OBF #B22C](#)) under §707(b)(2)(B)(ii) and/or expenses related to protection from family violence under §707(b)(2)(A)(ii)(I) are not to be filed with the Court, but must be filed with either the U.S. Trustee (Chapter 7 cases) or the Chapter 13 case trustee (Chapter 13 cases). [G.O. 05-01](#), pt. 7.

6. In order to receive a discharge in a Chapter 7 or 13 case, the debtor must file with the Court a *Debtor's Certification Of Completion Of Instructional Course Concerning Personal Financial Management* ([OBF #23](#)) within 45 days following the first date set for the meeting of creditors. §§727(a)(11) and 1328(g)(1), FRBP 1007(b)(7) and (c), and [G.O. 05-1](#), pt. 7.

Note: If the debtor fails to file this required certificate, the case may be closed without entry of a discharge. If after the case closure the debtor obtains the required certificate, the Court will entertain a motion to reopen for the purpose of obtaining a discharge, but the filing fee for reopening a case must be paid.

7. In order to receive a discharge in a Chapter 12 or 13 case, the debtor must file an *Individual Debtor's Certification Regarding Payment Of Domestic Support*

Obligations, And Statement Re 11 USC §522(q)(1) Applicability ([LBF #525](#)) when requested by the Court following debtor's completion of plan payments. §1328(a) and [G.O. 05-1](#), pt. 7. [**NOTE:** Chapter 11 debtors should see §1129(a)(14).]

Note: As with the financial management course certification referenced above, if the debtor fails to file this required certificate, the case may be closed without entry of a discharge. If after the case closure the debtor obtains the required certificate, the Court will entertain a motion to reopen for the purpose of obtaining a discharge, but the filing fee for reopening a case must be paid.

8. Debtor must provide to the case trustee a copy of the federal tax return (or transcript thereof) if filed for the most recent tax year ending immediately before the commencement of the bankruptcy case within 7 days prior to the first date set for the meeting of creditors. §521(e)(2)(A)(I).

Note: While not codified, in Chapter 13 cases, copies of the most recent state and federal tax returns (in addition to pay stubs) must be provided to the Chapter 13 Trustee at the time of the meeting of creditors. Failure to do so will result in an objection to confirmation from the Chapter 13 Trustee. If there are unfiled tax returns, IRS and/or ODR will likely object to confirmation.

Query: Section 521(e)(2)(B) provides that if debtor fails to provide the tax returns to the case trustee as required, "the [C]ourt shall dismiss the case unless the debtor demonstrates that the failure to so comply is due to circumstances beyond the control of the debtor." However, the statute is silent as to how the case gets dismissed, and if a motion for dismissal is required, who has standing to file the motion. For example, can a debtor in a Chapter 7 case where the trustee discovers non-exempt assets refuse to provide the returns to the trustee, and then file a motion for dismissal?

9. Creditors (or other parties) seeking copies of debtor's tax information under §521(g) must file a motion (a paper copy of the motion must be presented to the Court if the original is filed electronically) conforming to the requirements of the [Director's Interim Guidance Regarding Tax Information Under 11 U.S.C. §521](#) published by the Administrative Office of the United States Courts, and must provide to the Court a 9" x 12" envelope with \$5.00 postage for each tax year requested. In addition, the recipient of any tax information must limit circulation of the information, not post or store it in any publicly accessible manner, and destroy the information within 60 days of the case closure unless required for further use by the U.S. Department of Justice. [G.O. 05-1](#), pt. 7.

Note: It is the responsibility of debtor or counsel to redact any tax returns submitted to a trustee or to the Court to remove social security numbers and the names of any minor children. Otherwise, such information could possibly be obtained by third parties.

10. A Chapter 11 small business debtor seeking (1) a determination that no separate Disclosure Statement need be filed, or (2) conditional approval of a Disclosure Statement must comply with the following:
 - A. Service of the Plan of Reorganization and/or the Disclosure Statement upon the U.S. Trustee, chairperson of any Creditors' Committee, any involved taxing authority, major secured creditors, any entity that has requested special notice, and their respective attorneys. Such parties have 10 days following mailing to inform debtor of any objections or comments to the Plan and/or Disclosure Statement.
 - B. A debtor seeking conditional approval of a Disclosure Statement must use a form mutually agreed upon with the U.S. Trustee.
 - C. The Plan and/or Disclosure Statement filed with the Court must be accompanied by a *Certificate Regarding Circulation of Disclosure Statement and Plan of Reorganization* ([LBF #1165.5](#)).
 - D. If no objections or comments are filed, or if such objections or comments have been resolved, the Court may determine that a Disclosure Statement is not necessary or conditionally approve a Disclosure Statement, and issue an order to such effect setting a date and time for a confirmation hearing.

[G.O. 05-1](#), pt. 9. **Note:** Applies to both pre- and post-10/17/05 cases.

11. A motion seeking authority to sell property free and clear of liens under §363(f) cannot be filed using [LBF #760.5](#) if the motion seeks to sell personally identifiable information about individuals (e.g., sale of a customer or client list containing personally identifiable information). In such a case, the procedures set forth in §§332 and 363(b)(1) must be followed. [G.O. 05-1](#), pt. 12.
12. Motions for hardship discharge can now be filed by individual Chapter 11 debtors under §1141(d)(5)(B), and must be filed using [LBF #1378](#). In order to obtain a hardship discharge, the value of the property distributed under the plan of reorganization must equal or exceed the value of the property had the estate been liquidated under Chapter 7 as of the effective date of the plan. [G.O. 05-1](#), pts. 13 and 26.
13. ECF participants are required to maintain e-mail capacity and an updated e-mail address in the ECF system for service and notices of electronic filing. [G.O. 05-1](#), pt. 16. **Note:** Applies to both pre- and post-10/17/05 cases.
14. Creditors seeking to register notice of a preferred address per §342(f) must register the preferred address with the National Creditor Registration Service (www.ncrsuscourts.com or 877/837-3424). Creditors seeking an "override" to have

a particular address used in a particular case under §342(e) can do so using the ECF event “Notice of Override of Preferred Address 342(e)” or by a paper filing indicating that it is “Notice For Use of Specified Address in This Case Only.” [G.O. 05-1](#), pt. 16.

15. Chapter 12 Plans in cases commenced on or after 10/17/05 must be filed using [LBF #1200.05](#). Similarly, for cases commenced on or after 10/17/05, [LBF #1250.05](#) must be used for the confirmation hearing notice, and [LBF #1255.05](#) must be used for the confirmation order. [G.O. 05-1](#), pts. 19-21.
16. Chapter 13 Plans in cases commenced on or after 10/17/05 must be filed using [LBF #1300.05](#). Similarly, for cases commenced on or after 10/17/05, [LBF #1350.05](#) must be used for the confirmation order. [G.O. 05-1](#), pts. 22-23.
17. Wage/support orders in Chapter 13 cases must be filed using the appropriate version of [LBF #1351](#) unless the Chapter 13 Trustee orally waives the requirement at the meeting of creditors. If the debtor does not obtain a waiver and does not file the wage/support order within 7 days after the meeting of creditors, the Chapter 13 Trustee is directed to object to confirmation of the Chapter 13 Plan. [G.O. 05-1](#), pt. 23. **Note:** Applies to both pre- and post-10/17/05 cases.
18. New Procedure Re Confirmation Of Chapter 13 Cases Administered In Eugene:
 - A. Any party objecting to debtor’s Chapter 13 Plan must deliver a written objection to Trustee/Debtor/Debtor’s Attorney (**but not file it with the Court**) not less than 5 days prior to the first date set for the meeting of creditors and/or attend the meeting and state the objection on the record.
 - B. Any party still objecting to debtor’s Chapter 13 Plan after the first date set for the meeting of creditors must file a written objection (accompanied by proof of service) with the Court within 8 days following the meeting.
 - C. If no objections to the Chapter 13 Plan are raised/filed, within 16 days following the first date set for the meeting of creditors, debtor/debtor’s attorney must submit a proposed confirmation order to the Chapter 13 Trustee using [LBF #1350.05](#). If the Chapter 13 Trustee recommends confirmation and approves the form of the confirmation order, he must submit it to the Court within 7 days of receipt. Such an order may be entered by the Court without hearing.
 - D. If the Chapter 13 Trustee recommends confirmation but objects to the form of the confirmation order, the Chapter 13 Trustee must (1) immediately notify debtor/debtor’s counsel regarding proposed changes to the order (with the possibility of revision and resubmission to the Court), and (2) promptly file a written objection.

- E. If an objection is filed regarding debtor's failure to file tax returns, debtor must file such returns no less than 8 days prior to the confirmation hearing.
- F. A final hearing on confirmation will be held at 9:30 a.m. on the date stated in the meeting of creditors notice unless the Court has previously entered a confirmation order. Evidence may be taken at the hearing.

[G.O. 05-1](#), pt. 23.

- 19. Payment of personal property leases under §1326(a)(1)(B) in Chapter 13 cases are to be made directly to the lessor only if debtor's Chapter 13 Plan provides for such payment, or if the Chapter 13 Plan is silent concerning such lease. If the Chapter 13 Plan provides for payment of such leases through the Chapter 13 Trustee, debtor's Plan payment must include the payment for the lease obligation. The Chapter 13 Trustee will make payments to the creditor in the normal disbursement cycle once there are available funds and once the lessor has filed a proof of claim. [G.O. 05-1](#), pt. 24.
- 20. Any adequate protection payments in Chapter 13 cases shall be made through the Chapter 13 Trustee. Debtor is required to pay the Chapter 13 Trustee an amount sufficient to cover the payment and the Trustee's administrative fee. As with personal property leases, the Chapter 13 Trustee will make payments to the creditor in the normal disbursement cycle once there are available funds and once the lessor has filed a proof of claim. [G.O. 05-1](#), pt. 24.
- 21. A debtor seeking to cure a pre-petition delinquency owing to a residential lessor and to extend the automatic stay regarding an eviction judgment under §§362(b)(22) and (l) must file the petition only in paper, and must submit to the Court with the petition a cashier's check or money order payable to the landlord to cover rent that would become due for the 30-day period after the filing of the petition (with a stamped envelope addressed to the landlord). The Court will then promptly forward the rental payment to the landlord. If the landlord wishes to resist debtor's efforts to cure and keep the stay in effect, he or she must file an objection using the procedures set forth in [LBF #721.3](#) (including obtaining a hearing date from the [Court's web site](#), and filing/serving a *Notice of Hearing* using [LBF #721.5](#)). [G.O. 05-1](#), pt. 25.

Note/Query: Under §362(l)(2), in addition to depositing rent for 30 days with the petition, the debtor must cure the entire delinquency which gave rise to the eviction judgment within 30 days following the filing of the petition in order to continue the automatic stay. However, under §362(l)(1)(A), a debtor can utilize this procedure only if "under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered." The question then becomes whether under Oregon law a tenant, after a judgment for possession of the premises for the landlord has

been entered, can cure the rental delinquency to, in essence, reinstate the rental agreement.

22. In a case filed under Chapter 7, 11, or 13, if that debtor had one prior case dismissed within one year prior to the filing of the new case (except for a dismissal and refiling under §707(b)), the automatic stay is only in effect for 30 days. In a case filed under any chapter, if that debtor had two or more prior cases dismissed within one year prior to the filing of the new case (except for a dismissal and refiling under §707(b)), no automatic stay goes into effect upon the filing of the new case.

In order to either continue or impose the stay, the debtor must file a motion using the procedures set forth in [LBF #721.3](#) and use [LBF #721.5](#) for the *Notice of Motion* within 10 days following the filing of the case (if a motion to extend stay) or 30 days following the filing of the case (if a motion to impose stay). If the debtor does not timely file such a motion, an interested party may file a motion using [LBF #720.95](#) seeking an *Order Confirming That Automatic Stay Is Not In Effect Per §362(j)*. [G.O. 05-1](#), pt. 25.

23. A trustee's motion under either §362(h)(2) or 521(a)(6) seeking an order continuing the automatic stay as to personal property must state under which section the trustee is proceeding, and must include the name and service address of any affected creditor. If the motion is filed under §362(h)(2), the stay shall continue in effect until the Court rules on the motion. [G.O. 05-1](#), pt. 25.
24. An individual Chapter 11 debtor, on the completion of plan payments, must file and serve a *Motion For Entry of Discharge and Statement Re §522(q)(1) Applicability* ([LBF #1191.3](#)). [G.O. 05-1](#), pt. 30.
25. If a case is filed on or after 10/17/05, all debtors seeking to reaffirm a debt under §524(c) must file a cover sheet using [LBF #718.05](#) and a reaffirmation agreement using [LBF #718.5](#) within 60 days following the first date set for the meeting of creditors. If the debtor is pro se, if the cover sheet discloses a presumption of undue hardship, or if the reaffirmation agreement is not accompanied by an attorney's declaration under §524(k), the Court will schedule a hearing to approve or disapprove the agreement. Otherwise, the agreement will become effective upon filing with the Court, subject to debtor's right of rescission. [G.O. 05-1](#), pt. 30.

Note: Under §524(c)(6)(B), the requirements that the Court find that the reaffirmation agreement not impose an undue hardship and be in the debtor's best interest do not apply to consumer debts secured by real property. In addition, under §524(m)(2), if the creditor is a credit union as defined in §19(b)(1)(A)(iv) of the Federal Reserve Act, the Court cannot disapprove a reaffirmation agreement even if undue hardship is presumed so long as the debtor signs the certification set forth in §524(k)(6)(B). Nonetheless, if otherwise required, a hearing concerning the reaffirmation agreement will still be scheduled.

26. Only the paper originals of electronically filed documents that are verified per FRBP 1008 or include an unsworn declaration (signed under penalty of perjury) must be maintained for ten years, except as otherwise provided for trustees by the U.S. Department of Justice. [G.O. 05-1](#), pt. 35. **Note:** Applies to both pre- and post-10/17/05 cases.

27. A paper copy of **any** document filed (either electronically or conventionally) within three **business** days of a hearing to which the document pertains must be **clearly marked** as “JUDGE’S COPY” and promptly delivered to the Clerk’s Office. [G.O. 05-1](#), pt. 37. **Note:** Applies to both pre- and post-10/17/05 cases.