



U.S. DEPARTMENT OF JUSTICE

*United States Trustee
Districts of South Dakota,
North Dakota, Iowa and Minnesota*

Sioux Falls Field Office

400 S. Phillips Ave., Rm. B-14 Ph. 605-330-4450
Sioux Falls, South Dakota 57104

Date:

RE:

Dear

You have filed a petition for relief for a family farmer under Chapter 12 of the Bankruptcy Code on behalf of the above-named Debtors. As you may be aware, the Code sets forth certain requirements and imposes a variety of duties upon your client that must be satisfied to obtain prompt confirmation of a plan and to assist in the resolution of all Chapter 12 matters. Please be advised of the following:

1. Pursuant to § 521 of the Bankruptcy Code, Federal Rule of Bankruptcy Procedure 1007, and applicable Local Bankruptcy Rules, Debtor is required to cooperate with the United States Trustee and the Chapter 12 Trustee appointed in this case. Debtor is also required to furnish information requested by the United States Trustee and the Chapter 12 Trustee in supervising the administration of Debtor's estate, including regular reports on the operation of Debtor's farming enterprise. Finally, Debtor is required to give the United States Trustee and the Chapter 12 Trustee notice and copies of all motions and other pleadings.

2. Debtor must provide the Chapter 12 Trustee (NOT THE UNITED STATES TRUSTEE) with the following financial and informational reports:

a. SUMMARY OF OPERATIONS FOR CHAPTER 12 CASE: Enclosure No. 1 is an informational report reflecting Debtor's farm operation, including total acreage, tillable acreage, results of past year's operation and estimates or projections for the current or next crop year. This form must be completed and received in the Chapter 12 Trustee's office at least five (5) days prior to the first meeting of creditors. Failure to submit the completed Summary of Operations at least five (5) days prior to the first meeting of creditors may result in the first meeting of creditors being continued to another date.

(REV'D 8/95)

b. MONTHLY CASH RECEIPTS AND DISBURSEMENTS STATEMENT:

This report is contained in Enclosure No. 2. Debtor must report not later than the tenth (10th) day following the end of the month all of his/her income in cash, check or otherwise (including government program payments of any nature), received during the month. This report must be filed with the Chapter 12 Trustee. The receipts should be itemized by kind, quantity, and dollar amount [for example: "Sold 2,000 bu. corn to Co-op Elevator at \$1/bu. -- \$2000", "Sold 10 beef cattle to Acme Sale Barn for \$59 per hundred-weight -- \$4000", "Sold 5 tons of hay to Joe Smith -- \$275"]. Likewise, all expenses paid in cash or by check must be itemized. Operating expenses must be itemized under appropriate headings such as fuel, feed, veterinarian expense, repairs, etc. Be certain that the part of the form which calls for monthly cash reconciliation is properly completed. When the first report is filed, include all receipts and disbursements since the filing of the Petition. Debtors must attach to each monthly report a copy of the monthly statement for every bank account he/she maintains. (See paragraph 2(e) below.)

c. TAX DEPOSIT STATEMENT: If Debtor is a family farm corporation or if Debtor has employees who are subject to withholding or Social Security taxes, Debtor must complete the Tax Deposit Statement contained in Enclosure No. 3 and provide evidence of payment.

d. INSURANCE STATEMENT: Within ten (10) days after the date of this letter, Debtor must provide the Chapter 12 Trustee with documentation of liability, fire and extended coverage on Debtor's buildings, equipment and motor vehicles. If no such insurance is currently in effect, Debtor must explain why it is not in force. Debtor shall immediately notify the Chapter 12 Trustee of any lapse, cancellation, or proposed cancellation of any insurance coverage.

e. REPORTING OF DEBTOR-IN-POSSESSION BANK ACCOUNTS-- (Enclosure 4). ALL pre-petition bank accounts/investments open on the day of filing in which the Debtor has an interest, possession, custody, control, ownership or access, and ALL bank accounts opened or maintained by the Debtor subsequent to the filing of the bankruptcy (including general checking and savings, payroll, tax escrow accounts, cash collateral and certificates of deposit) must be reported to the Chapter 12 Trustee on the **BANK ACCOUNT REPORTING FORM** enclosed herewith (Enclosure No. 4). The Debtor must also attach to Enclosure No. 4 a copy of the most recent bank statement received by the Debtor for EACH pre-petition account/investment reported. This form, with the attached bank statements, must be submitted to the Chapter 12 Trustee within ten (10) days after receipt of this letter and again within ten (10) days of the opening or closing of any post-petition accounts. In addition, the Debtor must attach to the monthly receipts and disbursements statement copies of ALL monthly bank statements for EACH account/investment corresponding or relating to the month and/or period for which the financial report is being filed.

The Debtor must inform all banks in which the Debtor has debtor-in-possession accounts that the Debtor is in Chapter 12. Within ten (10) days of receipt of this letter, the Debtor must submit to the Chapter 12 Trustee copies of bank signature cards for ALL accounts bearing the inscription "Chapter 12 Debtor-In-Possession".

Pursuant to 11 U.S.C. § 345, all deposits must be invested in accounts fully insured the United States (FDIC insured) or in instruments backed by full faith and credit of the United States. All accounts and investments in a particular bank are only insured for \$100,000 in the aggregate by the FDIC. If the aggregate amount of funds on deposit in a particular bank or savings institution exceeds the \$100,000 FDIC insurance coverage, such funds may only be deposited if the bank of savings institution has either posted a bond in favor of the United States or deposited sufficient securities with the Federal Reserve Bank. A Debtor may not deposit funds in excess of \$100,000 in any particular bank without the prior approval of the United States Trustee. If deposits are expected to exceed \$100,000 at any time, you should contact this office to confirm that the subject bank is an authorized depository.

3. DEBTOR'S DUTY TO FILE TAX RETURNS:

a. The specific mandate found in Internal Revenue Code Sections 6012(b)(4) and 1398(a) fails to include estates under Chapter 12 and therefore frees the Chapter 12 Trustee from any obligation to file Federal returns on behalf of the estate. Further, since the separate entity rules and Internal Revenue Code § 1398 do not apply to estates under Chapter 12, it is clearly the responsibility and duty of Debtor to prepare and file his/her own federal tax returns.

b. It is advisable in this complex area of bankruptcy and taxation that Debtor retain a qualified tax preparer to file his/her federal return. Neither the United States Trustee nor the Standing Trustee are permitted to give any tax advice to Debtor.

Copies of the federal tax returns which are filed by Debtor for any period commencing with the filing of the Chapter 12 Petition through the completion of the confirmed Plan must be provided to the Chapter 12 Trustee.

4. You will receive a separate notice of the date, time, and place for the first meeting of creditors under § 341 of the Bankruptcy Code. Both Debtor and Debtor's attorney must attend the § 341 meeting, at which time Debtor will be examined under oath by the Chapter 12 Trustee and any creditors who may attend. Debtor must bring to that meeting a copy of his/her last year's federal tax return, Form 1040 and all schedules filed with the return, including Schedule F. A copy of the income tax return must also be sent to the Chapter 12 Trustee at least five (5) days prior to the § 341 meeting.

5. Chapters 1, 3 (except for § 361), and 5 of the Bankruptcy Code also apply to cases under Chapter 12 of the Bankruptcy Code. Therefore, Debtor may not:

a. Retain or employ attorneys, accountants, appraisers, auctioneers or other professional person without Court approval. This includes employing the attorney who filed the Petition to provide services after the filing. See 11 U.S.C. § 327.

b. Compensate any attorney, accountant, appraiser, auctioneer or other professional person except as allowed by the Court. See 11 U.S.C. § 330.

c. Use, sell or lease property of the estate out of the ordinary course of business without prior Court authorization. See 11 U.S.C. § 363(b)(1).

d. Use, sell or lease cash collateral (or cash equivalents) without the consent of the secured creditor or Court authorization. See 11 U.S.C. § 363(c)(2), (4). Cash collateral includes proceeds, products, offspring, rents or profits of property subject to a security interest when reduced to cash.

e. Obtain credit or incur unsecured debt other than in the ordinary course of business without Court authorization. See 11 U.S.C. § 364(b).

f. Incur secured debt without Court authorization. See 11 U.S.C. § 364(c).

g. Pay any creditor for goods or services provided before the filing of the Petition except as provided in a confirmed plan. See 11 U.S.C. § 549.

6. A Chapter 12 Plan must be filed within 90 days of the date the petition was filed, unless Debtor seeks an extension before the 90 days has run out and only if the Court determines that an extension is substantially justified. See 11 U.S.C. § 1221. Failure to comply is cause for dismissal under 11 U.S.C. § 1208. Schedules I ("Current Income") and J ("Current Expenditures") should be accurate and should be reviewed and modified if necessary prior to the § 341 meeting. Failure to provide accurate schedules may result in denial of confirmation, dismissal or conversion to a Chapter 7 Liquidation.

7. A copy of the Chapter 12 Plan as well as all other motions and pleadings must be served upon the Chapter 12 Trustee and the United States Trustee.

8. LIQUIDATION ANALYSIS: Under § 1225(a)(4) of Chapter 12, Debtor must be able to prove at the confirmation hearing that the amount to be distributed under the Plan for each allowed unsecured claim is not less than that amount that would be paid on such claim if Debtor were liquidated under Chapter 7. A claim filed by an unsecured creditor is allowed unless Debtor or the Chapter 12 Trustee files an objection to it which the Court sustains.

Therefore, I suggest that you give consideration to the early preparation of an accurate analysis of the liquidation value of all of the property of Debtor's estate which you must be prepared to offer as an exhibit at the confirmation hearing, or the Court may not be able to confirm Debtor's Plan. The liquidation analysis must be attached as an exhibit to Debtor's Plan.

9. CASH FLOWS: Under § 1225(a)(6) of Chapter 12, Debtor must be able to make all payments called for under the proposed Plan. Therefore, Debtor must attach cash flow statements which project income and expenses during the life of the Plan. In the absence of such cash flow statements, feasibility under § 1225(a)(6) cannot be established, and the Trustee will file an objection to the confirmation of the Plan until such cash flows are provided.

10. CHAPTER 12 TRUSTEE'S PERCENTAGE FEE: If a standing trustee is serving in your case, pursuant to 28 U.S.C. § 586(e), the Chapter 12 Trustee's percentage fee has been set at 10% of all payments made under the Plan on the first \$450,000 and 3% on any overage. **THE CHAPTER 12 TRUSTEE HAS NO AUTHORITY TO NEGOTIATE ANY OTHER PERCENTAGE FEE.** A payment is considered to be made under the Plan when it is paid through the Chapter 12 Trustee. Further, § 1226(b)(2) requires that the payments of the Trustee's percentage fee be tendered simultaneously with the monies that are delivered to the Trustee for disbursement to the creditors whose claims are impaired under the Plan. For example, if on a certain date, \$20,000 is to be paid to Creditor A on its impaired claim, the Debtor would divide \$20,000 by 90 percent and would arrive at \$22,222.22, which would be tendered to the Trustee for distribution at that time. \$2,222.22 represents the percentage fee owing to the Standing Trustee as provided by 28 U.S.C. § 586(e). The remaining \$20,000 will then be distributed to the creditor as provided by the Plan. The cash flows statements required to be attached to the Plan should include the payment of the Trustee's fee. Debtor and Debtor's counsel will be notified if the Attorney General (pursuant to 28 U.S.C. § 586(e)) adjusts the Trustee's percentage fee. If the percentage fee is lowered, the lower percentage will apply to all payments yet to be made by Debtor under the confirmed Plan.

11. PLAN PAYMENTS THROUGH TRUSTEE: Plan payments on impaired claims, together with the Trustee's statutory percentage fee, must be tendered in a timely fashion to the Chapter 12 Trustee. Payments may be made by cash, check or money order. Checks and money orders must be made payable to the Chapter 12 Trustee. Payment to the Chapter 12 Trustee by Debtor's personal check will delay the Trustee's payments to creditors. This is because the Chapter 12 Trustee is not allowed to disburse funds to creditors until Debtor's check clears the bank. Personal checks normally take 10 days excluding weekends and holidays to clear the bank. Therefore, it is suggested that Debtor make payment to the Chapter 12 Trustee by cash, certified check, bank draft or money order to avoid the delay for the check clearance process.

12. DUTY TO FILE SCHEDULE OF PLAN PAYMENTS: Upon or immediately following confirmation of a Plan, Debtor should prepare and file with the Court, with a copy served on both the Chapter 12 Trustee and the United States Trustee, a schedule of payments required to be made by Debtor under the confirmed Plan. This schedule should detail all payments including the name of the creditor to be paid, the due date of payments, the amount of each payment, a breakdown of each payment as to principal and interest, and the amount of the Trustee's fee on each payment. This will assist the Chapter 12 Trustee in making a prompt and correct distribution to creditors and will serve as a helpful reminder to Debtor of his/her obligation to make payments under the confirmed Plan.

13. FAILURE TO COMPLY: Debtor's failure to comply with the instructions contained in this letter may be grounds for dismissal of this Chapter 12 case under § 1208 of the Bankruptcy Code. I am providing Debtor with a copy of this letter. If you or Debtor have any questions about its contents or the enclosed instructions, please call, or write, the appointed Chapter 12 Trustee in this case, whose name, address, and telephone number appear below:

Dale A. Wein
Chapter 12 Trustee
P.O. Box 1329
Aberdeen, SD 57402
605-725-5005

Sincerely,

JAMES L. SNYDER
Acting United States Trustee
Region 12

BY: _____
Ashley Zubal, Trial Attorney

Enclosures

cc: Chapter 12 Trustee
Debtors w/enclosures

P.S. USE THE ENCLOSED FORMS FOR MONTHLY CASH RECEIPTS AND DISBURSEMENTS STATEMENT (Enclosure No. 2), TAX DEPOSIT STATEMENT (Enclosure No. 3), AND BANK ACCOUNT REPORTING FORM (Enclosure No. 4) AS MASTER COPIES AND MAKE ADDITIONAL COPIES AS NEEDED.