



**LIST OF CHANGES AND UPDATES TO THE
HANDBOOK FOR CHAPTER 7 TRUSTEES
September 2016**

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- Chapter 6.E, Death or Incapacity of Trustee, new section added

Chapter 2, Appointment to the Panel of Trustees

E. Appointment of Panel Trustees to Cases

- Fourth paragraph is revised to read as follows:
“The interim trustee serves until a trustee is elected under section 702 and qualifies under section 322, or until the interim trustee becomes the permanent trustee under section 702(d). Advance notice of an intent to request an election is not required by the Bankruptcy Code and Rules. If the interim trustee anticipates or receives a request for an election, the trustee shall immediately contact the United States Trustee, and the United States Trustee shall preside over the election. 28 U.S.C. § 586. [Language amended September 8, 2016.]”
- New final paragraph:
“If a trustee dies or resigns, fails to qualify under section 322, or is removed under section 324, a successor trustee may be appointed by the United States Trustee. 11 U.S.C. §§ 703(b) and (c). Successor trustees ensure that case administration continues in an efficient manner and estate assets are accounted for and secured for the benefit of creditors. Further guidance for successor trustees is provided in Chapter 2.I (Successor Trustees), Chapter 4.C.10.c (Employment of Professionals – Employment Standards), and Chapter 4.C.11 (Compensation and Expenses of Trustees). [Added September 8, 2016.]”

I. Successor Trustees

- First paragraph is revised to read as follows:
“When a trustee dies, resigns, fails to qualify under section 322, is removed from a case under section 324, or otherwise ceases to hold office, and until creditors elect a new trustee, the United States Trustee will appoint an interim successor trustee under section 703(b) to preserve or prevent loss to the estate. The successor trustee must be a disinterested person who is a member of the panel of private trustees. 11 U.S.C. § 703(c)(1). If no member of the panel is willing to serve, the United States Trustee may serve as successor trustee. [Language amended September 8, 2016.]”

- New second paragraph:
 “The successor trustee must promptly take control of the cases and ensure that the estate files, accounting records, and estate funds are expeditiously transferred to the successor trustee. If the prior trustee is not available due to death or incapacity, the successor trustee will need to work with the prior trustee’s staff, family, or law firm; the prior trustee’s bank and computer software vendor; the United States Trustee; and the estate’s professionals to assure a smooth transition of the records and bank accounts. The successor trustee must consult with the estate’s professionals to identify pending court hearings involving adversary proceedings and contested matters, sales and auctions, and other important issues. See also Chapter 4.C.10.c (Employment of Professionals – Employment Standards). In addition, the successor trustee must consider whether it is in the best interests of the estate to continue the employment of the current professionals where, for example, the retention of new counsel would lower the cost of administration or increase the dividend for creditors. [Added September 8, 2016.]”
- Third paragraph is revised to read as follows:
 “Fed. R. Bankr. P. 2012(b) requires a successor trustee to file with the court and transmit to the United States Trustee an accounting of the prior trustee’s administration of the estate. This accounting must be a separate and distinct record of the activities which were solely within the control of the prior trustee. Rule 2012(b) does not specify a deadline for submission of the accounting or a form of accounting to be used. Absent some evidence of defalcation or other harm to the estate, the successor trustee should include an accounting of the prior trustee’s administration as part of his or her next scheduled Trustee Interim Report (TIR). The accounting filed with the court can be the standard Form 1 and Form 2 required by the United States Trustee, even in jurisdictions where they are not normally filed with the court, or a form approved by the United States Trustee or the local bankruptcy court. See Forms and Instructions under Supplementary Materials on the Program’s web site. [Language amended September 8, 2016.]”

Chapter 4, Duties of a Trustee in the Administration of a Case

C.10.c. Employment Standards

- New final paragraph:
 “Also, in those instances in which the successor trustee does not continue the employment of current professionals, the United States Trustee will review any new retention applications to ensure that the replacement of professionals is likely to lower the cost of administration, increase the dividend for creditors, or otherwise is necessary or appropriate. [Added September 8, 2016.]”

C.11 Compensation and Expenses of Trustees

- New third paragraph:
 “A trustee who has been appointed as a successor trustee should work with the prior trustee or the prior trustee’s representative to propose an equitable division of compensation for consideration and approval by the court. [Added September 8, 2016.]”

Chapter 5, Financial Policies, Procedures and Reporting Requirements

B. Control Procedures to be Personally Performed by Trustee

- New paragraph 8:
“Maintain a current business interruption plan (see Chapter 5.G.4), a current list of contacts (e.g., staff, professionals, bank, vendor), and current records on the status of open cases (e.g., quarterly case progress reviews – see Chapter 4.C.13) to help ensure a prompt and effective recovery or transition in the event of a natural disaster or the incapacity or death of the trustee or a key staff person. [Added September 8, 2016.]”

G.4 Business Interruption Plan

- Revised to read as follows:
“Interruptions of a trustee operation can occur under almost any conceivable scenario. Interruptions can be technology-related, natural, man-made, accidental, or intentional. Precaution, preparation, and planning are critical to minimizing the impact of any occurrence, and may even prevent a minor event from becoming a major one. The trustee must develop and maintain a written business interruption (or disaster recovery) plan for the estate financial and administrative records, as well as for the computer system and data. 28 U.S.C. § 586. A sample plan is in the Supplementary Materials. A printed copy of the plan should be stored in the trustee’s office and at an offsite location known to the trustee and staff. A copy of the business interruption or disaster recovery plan should be provided to the United States Trustee.

The business interruption plan should:

- a. Identify areas of vulnerability such as incapacity or death of the trustee or an employee; sudden personnel changes; major computer malfunction; and natural or man-made disasters, and provide guidelines for addressing them.
- b. Describe the appropriate safeguards to prevent or minimize interruptions and downtime. The trustee should consider installing security alarms, smoke detectors, fire extinguishers, fire proof cabinets, surge protectors, an uninterruptible power supply, and other safety and protective equipment. Follow the computer security and back-up procedures listed in Chapter 5.G.3.e.
- c. Identify an alternate location where business operations can be resumed in the event the trustee and staff cannot access the office, and provide procedures for arranging for mail to be delivered to the alternate work site.
- d. Identify other appropriate actions to take in the event that a disaster or other business interruption occurs.
- e. If applicable, include information regarding the trustee’s business interruption, valuable-papers, key employee, and other applicable coverage.

- f. Include a current list of key telephone numbers (e.g., insurance, police, fire, trustee, employees, computer vendors, landlord, utilities, vendors, UST).
- g. Designate a place for staff to meet (or phone number to call) after the disaster.

The trustee should ensure that all employees are aware of the disaster recovery procedures, and should assign key tasks to staff members. The trustee and at least one other employee (if any) should keep a copy of the plan off-site.

The business interruption plan and contingency plans should be discussed with the trustee's family members. This should include a discussion of the United States Trustee's role in the event of incapacity and death of the trustee.

The business interruption plan should be reviewed annually. When systems and circumstances change, update the plan as appropriate.

A trustee should notify the United States Trustee as soon as possible after a business interruption occurs, particularly when the computer system crashes or has been breached, if there has been a fire or other major catastrophe, and when there has been a break-in at the office.”

Chapter 6, United States Trustee Oversight

E. Death or Incapacity of Trustee (new)

- Added new section:
“When a trustee dies or becomes permanently incapacitated, the United States Trustee must immediately secure the bank accounts, assets, files, and computer equipment. The United States Trustee will contact the trustee's staff, estate professionals, and family. These actions, which are necessary to assure the continued administration of cases and the seamless transition to successor trustees, are to be undertaken with professionalism and compassion.

The United States Trustee will review the allocation of the compensation between the former trustee and the successor trustee to ensure there is an equitable division under the circumstances and the total amount does not exceed the compensation cap established by section 326(a). See 11 U.S.C. § 326(c).

Also, in those instances in which the successor trustee does not continue the employment of current professionals, the United States Trustee will review any new retention applications to ensure that the replacement of professionals is likely to lower the cost of administration, increase the dividend for creditors, or otherwise is necessary or appropriate.”