

**MEMORANDUM**

TO: All Chapter 13 Practitioners

FROM: Judge Pat E. Morgenstern-Clarren

DATE: July 16, 1996

RE: Motions to Incur New Debt/Sell Real Estate; Affidavits of Default; Motions to Reinststate

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This memo is to provide additional guidance on procedures relating to three recurring issues:

1. **Motions to Incur New Debt/Sell Real Estate.** To facilitate review and approval, these motions should include at least this information: a copy of the proposed contract, the reason why the action is proposed, a comparison of the existing cost to the debtor compared to the new cost, an explanation of how any additional cost will be covered by the debtor, and the proposed disposition of the funds.

2. **Affidavits of Default lifting the Automatic Stay.** The long-standing practice in this Court has been to permit the parties to enter into agreements, following debtor's failure to maintain payments to secured creditors and the filing of a motion to lift the automatic stay, to keep the stay in place so long as payments are brought current and maintained. If the debtor defaults, the creditor then has the right to lift the stay by filing an affidavit of default. There is a small but steady problem with affidavits of default being filed by creditors based on incorrect information; this results in both parties incurring additional costs to remedy the situation. To reduce the possibility of incorrect affidavits being filed, all such affidavits should (a) identify the

dates of the missing payments, rather than simply stating that the debtor is in default, and (b) be signed by the creditor who has reviewed the records and made the default determination, rather than being signed by the creditor's lawyer who does not have personal knowledge.

3. **Motions to Reinstate.** Motions to reinstate dismissed cases have become increasingly frequent and in some instances have been abused, imposing an unjustified burden on the *Chapter 13 Trustee, the Court and creditors*. In order to curb these abuses, the following procedures will apply to motions to reinstate Chapter 13 cases:

a. By the time of the hearing on the motion, the debtor must establish that funds are on hand to cure payment defaults and that appropriate actions have been instituted to cure any other condition which led to dismissal. Any such motion failing to meet these criteria may be denied with prejudice.

b. Motions which meet the stated criteria and are filed within 30 days after entry of the dismissal order will ordinarily be granted absent an objection. Motions to reinstate for the purpose of conversion to Chapter 7 filed within such 30-day period and noticed with an appropriate objection clause and served as required by law will be granted without an actual hearing if no objection is filed. Such motions should include the debtor's notice of conversion under § 1307 of the Bankruptcy Code. Motions to reinstate filed more than 30 days after entry of the dismissal order must state specifically the grounds for modifying or revoking the dismissal order under Bankruptcy Rule 9024 (F.R. Civ. P. 60(b)).