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Alexander L. Paskay
Memorial Bankruptcy
Seminar

Consumer: Common Consumer Issues

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ABI Paskay 2026

Thursday, February 26, 2026 – 10:15 – 11:15 a.m.

Common Consumer Issues - Outline

- I. Intro by Moderator (Paul) (2 minutes)
 - a. Speakers
 - b. Topics to be covered
- II. Multi-Filer (Lead by Gavin)
 - a. Serial filings are a routine part of consumer practice, particularly in Chapter 13 cases involving mortgage arrears, vehicle repossessions, or tax issues. While repeat filings are not inherently improper, the Bankruptcy Code imposes escalating consequences based on the number of prior dismissals within the preceding one-year period.
 - b. Motions to Extend the Stay
 - i. 11 U.S.C. § 362(c)(3) applies when the debtor had one prior case dismissed within the previous year.
 - ii. The automatic stay terminates after 30 days unless extended by the court
 1. Under 11 U.S.C. § 362(c)(3)(A), the stay terminates “with respect to the debtor” on the 30th day after the filing of the later case, unless extended by the court.
 - a. Is the stay terminated as to property of the estate or the debtor’s property only? What about the stay as to the debtor?
 - i. Majority view – the stay terminates only with respect to the debtor and the debtor’s non-estate property. The stay as to property of the estate remains in effect. (String cite: *In re Morgan*, No. 25-30792, 2025 Bankr. LEXIS 1496, 2025 WL 1742435, at *3 (Bankr. N.D. Ohio June 23, 2025)).
 - ii. Minority view – the stay terminates in its entirety.
 - c. Motions to Impose Stay
 - i. 11 U.S.C. § 362(c)(4) applies when the debtor had two or more cases dismissed within the previous year.
 - ii. No automatic stay goes into effect at all unless the court imposes it.
 - d. Burden of Proof
 - i. The burden is on the debtor to demonstrate that the new case was filed in good faith as to the creditors to be stayed.
 1. Under § 362(c)(3)(C) and § 362(c)(4)(D), a presumption of bad faith arises in several common scenarios, including:

- a. Prior case dismissed for failure to make plan payments;
 - b. Prior case dismissed for failure to file required documents;
 - c. Multiple filings within a short time frame; and/or
 - d. A creditor obtaining stay relief in a prior case.
2. The presumption must be overcome by clear and convincing evidence, not merely a preponderance. Courts look for objective, credible proof of changed circumstances, such as:
- a. A verifiable change in income (new job, increased hours, new business revenue);
 - b. Resolution of issues that caused prior dismissal (insurance, tax filings, domestic support obligations);
 - c. Evidence of feasibility (accurate Schedules I and J, reasonable plan payment);
 - d. Post-petition plan payments made before the hearing; and
 - e. Credible, specific testimony from the debtor;
 - i. More than “things are different now” or “the debtor is more motivated this time” – what specifically changed and what evidence do you have to support the change?
- e. Local Rule/Form
- i. MDFL Local Rule 4001-1(a)
 1. Motions to Extend the Stay under 11 U.S.C. § 362(c)(3) **must be filed and served upon all interested parties within 7 days of the filing of the petition.**
 2. Motions to Impose the Stay under 11 U.S.C. § 362(c)(4) **must be filed and served upon interested parties as soon as practicable after the filing of the petition.**
 - ii. NDFL Local Rule 4001-3 (cases filed on or after January 1, 2026)
 1. Motions must generally be verified and filed within five days of the petition date, absent good cause. The motion must include:
 - a. the number of prior cases within one year of the current case, along with the case number and jurisdiction, the date and reason for the dismissals, a statement whether any presumption of lack of good faith arises, facts that rebuts the presumption and demonstrates that the filing of the latter case is in good faith.
 2. There is a 14-day negative notice period to object.

iii. Mandatory Form (as of August 1, 2025)

1. The form can be found in the External Procedure Manual (and in your handout).
2. Fill-in-the-blank format requiring disclosure of:
 - a. Prior case history;
 - b. Reasons for dismissal;
 - c. Payment history;
 - d. A comparison of Schedules I and J; and
 - e. A statement of what has changed since the prior case (pay close attention to paragraph 9).
3. Sworn under penalty of perjury (verified motion).

f. Motion for Prospective (In Rem) Relief

i. Under 11 U.S.C. § 362(d)(4), the Creditor must prove that the filing of the bankruptcy was part of a scheme to delay, hinder, or defraud creditors.

1. From a creditor's perspective, most serial filings fall into one of one of three practical categories:
 - a. The Mortgage Arrears Filer
 - i. Multiple cases filed around foreclosure sale dates.
 - b. The Vehicle Saver
 - i. Repeat filings to prevent repossession.
 - ii. In the Eleventh Circuit, a vehicle repossessed pre-petition is generally not property of the bankruptcy estate. See *Bell-Tel Fed. Credit Union v. Kalter*, 292 F.3d 1350 (11th Cir. 2002).
 - c. The Feasibility Problem Case
 - i. The debtor's income or expenses never materially change, leading to repeated dismissals.

2. Prospective relief is a significant remedy because, once recorded, it prevents the automatic stay from going into effect in future cases involving the property for two years.

3. Burden of Proof

- a. Courts generally look for:
 - i. A pattern of repeat filings or transfers;
 - ii. An actual scheme, not just isolated events; and
 - iii. Evidence of intent to delay, hinder, or defraud.

- b. Courts generally require a clear record of the filing history and how it relates to the creditor's interest in the property.
 - i. Transfers of fractional interests to third parties who then file bankruptcy.
 - ii. Ping-Pong Filers - A sequence of cases involving different titleholders for the same property.
- g. Motion to Dismiss
 - i. In addition to stay litigation, serial-filer cases often involve motions to dismiss for bad faith under:
 - ii. 11 U.S.C. § 1307(c), or
 - iii. The court's inherent authority to address abusive filings.
 - iv. Factors commonly cited include:
 - 1. Repeated filings with no meaningful change in circumstances
 - 2. Failure to make plan payments in prior cases
 - 3. Filing solely to delay foreclosure or repossession
 - 4. Lack of feasibility from the outset
 - v. In practice, motions to extend or impose the stay often serve as an early test case for whether the new filing will survive a bad-faith dismissal challenge.
 - vi. The Eleventh Circuit proscribed the following non-exhaustive list of factors for consideration of bad faith in *In re Kitchens* 702 F.2d 885, 888 (11th Cir. 1983): (1) the amount of the debtors income from all sources; (2) the living expenses of the debtor and his dependents; (3) the amount of attorney's fees; (4) the probable or expected duration of the debtor's Chapter 13 plan; (5) the motivations of the debtor and his sincerity in seeking relief under the provisions of the Chapter 13; (6) the debtor's degree of effort; (7) the debtor's ability to earn and the likelihood of fluctuation in his earnings; (8) special circumstances such as inordinate medical expense; (9) the frequency with which the debtor has sought relief under the Bankruptcy Reform Act and its predecessors; (10) the circumstances under which the debtor has contracted his debts and his demonstrated bona fides, or lack of same, in dealings with his creditors; and (11) the burden which the plan's administration would place on the trustee.
- h. Best Practice
 - i. You generally have a roadmap to follow from the prior case, so address the prior issue(s) head on (The stay analysis starts before the petition is filed).
 - ii. Reach out to the main creditor as soon as possible to ask for consent to the motion

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1. Mortgages - the change in circumstances may be useful for the lender to consider early on, particularly if a future loss mitigation conference is likely.
 2. Vehicles – if the repossession happened shortly before the second case, you may have the opportunity to convince the creditor to return the vehicle in exchange for treatment/payments (and they may consent to the motion to extend/impose).
 - iii. Prepare for an evidentiary hearing. Meet your burden of proof.
 - iv. Focus on objective changes – what is actually different versus what is promised.
 - v. Be mindful of prospective relief orders that were previously entered. The stay may go into effect for every creditor except the one that mattered.
 - vi. At the end of the day, these motions come down to one question: what is actually different in this case from the last one—and what evidence proves it?
- III. UCC-1 Fixture Filing Issues (Lead by Jeff)
- a. Why Fixture Filing Issues Matter in Consumer Bankruptcy
 - i. Creditors frequently finance home improvements, installed equipment, replacement components.
 - ii. Common creditor assumptions - Installation equals fixture status, fixture filing equals perfected secured claim.
 - iii. Improper classification can result in loss of secured status, claim reclassification as unsecured, exposure to redemption under § 722, reducing leverage in plan negotiations.
 - b. Article 9 Framework Applied by the Courts
 - i. Article 9 applies to transactions creating a security interest in: Personal property, or Fixtures. *See Fla. Stat. § 679.1091(1)(a)*.
 - ii. Fixtures are defined as: “Goods that have become so related to particular real property that an interest in them arises under real property law” *See Fla. Stat. § 679.1021(1)(oo); U.C.C. § 9-102(41)*.
 - iii. Goods are defined as: “All things that are movable when a security interest attaches” *See Fla. Stat. § 679.1021(1)(rr); U.C.C. § 9-102(44)*.
 - iv. Article 9 expressly excludes: Security interests in ordinary building materials incorporated into an improvement on land. *See Fla. Stat. § 679.334(1); U.C.C. § 9-334(a)*.
 - c. *In re Ojeda*, 2020 WL 5746801 (Bankr. M.D. Fla. June 1, 2020) (CED) – case deals with objection to claim with respect to creditor that financed construction of inground swimming pool and granted lender security interest in the pool [is the swimming pool a good that became a fixture]

Relevant Facts

Debtors financed construction of an inground swimming pool; Pool constructed using ordinary building materials: Concrete, Rebar, Plaster, Coping. Retail Installment Contract granted a security interest in the pool. Creditor filed a UCC-1 fixture filing. No mortgage or real property lien recorded.

Issue Presented

Whether an inground swimming pool constituted a “good” that became a “fixture” subject to Article 9.

Court’s Analysis

Article 9 applies only to personal property or fixtures. Fixtures must first qualify as goods. Goods must be movable when the security interest attaches. Ordinary building materials are excluded from Article 9. The pool was not movable once constructed. Because it was not a good, it could not become a fixture

Holding

The swimming pool was neither a good nor a fixture. Article 9 did not apply. Creditor did not hold a secured claim.

Practical Takeaways

Fixture filings cannot create liens where Article 9 does not apply. Financing construction materials is legally distinct from financing goods. Real property security is required for permanent improvements.

- d. *In re Ariman*, 655 B.R. 496 (Bankr. M.D. Fla. 2023) (TPG) – case came up on a motion for reconsideration after Judge Geyer granted debtor’s motion to redeem personal property under § 722 with respect to windows installed in debtor’s home [are windows personalty or fixture].

Relevant Facts

Creditor financed replacement windows installed in debtor’s residence. Windows manufactured off-site and installed after purchase. Security agreement: Treated windows as goods, Included repossession language, Contained an integration clause, Creditor filed a UCC-1 fixture filing, Debtor moved to redeem under 11 U.S.C. § 722.

Issue Presented

Whether installed windows were fixtures or tangible personal property

Court’s Analysis

Court focused on the intent of the parties. Contract language was unambiguous. Contract expressly treated windows as goods. Between the original parties: The chattel is what the parties agreed it to be. Creditor’s reliance on fixture case law was rejected.

Holding

Windows were tangible personal property. Debtor entitled to redeem under § 722. Motion for rehearing denied

Practical Takeaways

Contract drafting can preserve personal property status. Fixture filings may be ineffective if collateral is treated as goods. Filing strategy must align with the contract.

Key Lessons from Ojeda and Ariman

Physical attachment alone is not determinative. Analysis begins at attachment: Was there a movable good? How did the contract characterize the collateral? Article 9 does not apply to all installed improvements. Fixture filings can be ineffective or counterproductive.

IV. When to Consider Filing Under Subchapter V (Lead by Jeff)

a. Debt limits

Eligibility for Subchapter V is determined based on the debtor's aggregate noncontingent, liquidated secured and unsecured debts as of the petition date. For individual debtors, this threshold analysis is often dispositive and must be performed carefully. Unlike Chapter 13, which imposes separate debt limits—approximately \$465,275 in unsecured debt (such as credit cards and personal loans) and \$1,395,875 in secured debt (such as mortgages and vehicle loans) as of 2025—Subchapter V uses a single aggregate debt limit, currently \$3,424,000. As a result, individuals who are ineligible for Chapter 13 due to exceeding one of those limits may nevertheless qualify for Subchapter V.

A debt is considered noncontingent if all events giving rise to liability occurred before the bankruptcy filing. In other words, liability has already attached and is not dependent on a future event that may or may not occur.

Another significant advantage of Subchapter V is its flexibility in dealing with secured business debt tied to a debtor's residence. Unlike Chapter 13, where the anti-modification provision generally prevents modification of claims secured by the debtor's principal residence—limiting relief largely to lien stripping—Subchapter V permits modification and cramdown of business-purpose loans secured by the debtor's homestead. This allows debtors to restructure loan terms, adjust interest rates, and modify payment schedules for business debts secured by a residence in ways that are simply unavailable in Chapter 13, materially expanding reorganization options for business owners.

b. Timing of Discharge (maybe a debtor could be discharged within 3 years in SubV vs 5 years in Ch 13)

A key advantage of Subchapter V is speed. If a plan is confirmed under 11 U.S.C. § 1191(a), discharge is governed by § 1141 and may occur upon confirmation, rather than after years of plan payments. Because a Subchapter V plan may be filed at the outset of the case, confirmation can occur as quickly as the debtor can file and solicit the plan, subject only to notice requirements. In practice, this allows for confirmation and discharge on a compressed timeline measured in weeks, not years.

If a plan cannot be confirmed under § 1191(a), Subchapter V still allows confirmation on a nonconsensual basis under § 1191(b). In that scenario, the debtor may confirm a plan over creditor objection so long as the plan satisfies the Subchapter V cramdown requirements, including that it is fair and equitable and commits projected disposable income over the plan term. Discharge in a nonconsensual Subchapter V case is governed by § 1192 and occurs upon completion of plan payments.

V. Recent Local Trends and Practice Tips (Lead by Richard)

Trend: Uncommon Lienholders on Titled Assets (vehicles, vessels, etc.)

Chapter 7 Trustees are generally skeptical of uncommon lienholders, especially when they are family members. There are certain formalities that need to be adhered to when establishing a valid lien on a titled asset in Florida, and those unaccustomed to the rules are likely not to get it right.

Rules of thumb:

1. There must be a promissory note and a security agreement identifying the specific property intended to serve as collateral.
 - a. (e.g., a car's year, make, model and VIN).
2. The dates on the documents should be contemporaneous.
 - a. A promissory note and security agreement dated in January, but the lien is not added to the title until November right before the Debtor files in December is a problem.
3. The money was actually loaned.
 - a. Trustees often ask for proof that the loan was made (i.e., that value was given to the Debtor). Common requests are for copies of canceled checks, invoices, etc.

Example:

In the case where I serve as chapter 7 trustee the Debtor is claiming that his mother has a lien on his vehicle because he borrowed \$10,000.00 from her a year ago. The loan from the mother to the Debtor was memorialized in a signed document, but there is no mention of giving the mother a lien on the vehicle. It was only four months prior to filing bankruptcy that the mother and son filed the required documents with the state of Florida so that the mother's name was listed on the vehicle's title as a lienholder. Why would the chapter 7 trustee be able to avoid the mother's lien?

Chapter 7 Trustee Panel was asked to submit a short list of local trends and practice tips – anonymously:

1. Trending: Debtors taking out loans, cash advances, etc. w/i 30 days - 90 days to pay attorney's fees. There are articles published on this topic that say this is fraud because they took the \$ w/o any intent to repay.
2. Surrendered homes. Be ready to cooperate.

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- a. If you didn't schedule and claim appliances as exempt, do not remove them.
3. Clarity of the documents provided ahead of the 341 meeting. (legible ID cards, separate PDFs for separate documents, if bank statements provided as one PDF ensure they are in chronological order, document names should describe the document uploaded, etc.)
4. Sloppy schedules. Trustees do a lot of due diligence ahead of the 341 meeting and it is very frustrating to find out that a lot of time was spent on something that isn't accurate.
 - a. Anonymous trustee quote: "if you – the attorney - mislead the trustee, even if unintentionally, the Trustee will not forget your name!"
5. Post-petition transfers.
 - a. Judge McEwen quote: "you don't own the food in your refrigerator when you file for bankruptcy"
6. Tax Transcripts. There are several kinds of transcripts, and some do not give the whole picture. Tax Return Transcripts are better than Tax Account Transcripts, but ideally we are provided with a Record Account Transcript which is the most comprehensive kind.
 - a. Trustees are looking for tax fraud. Most common example is when married couples file separately so as to obtain a refund larger than had they filed jointly.
 - b. Watch for gambling winnings on tax returns.
7. If you are claiming Tenants by the Entireties, please provide the Trustee with a copy of the Debtor's credit report.
8. If the debtor owns more than one vehicle, do not split exemptions claimed under Sec. 222.25(1) between the 2 vehicles.
 - a. Names on Vehicle Registrations do not always match the title.
 - b. Light Stream is an unsecured creditor.
9. Business Cases:
 - a. Call the Trustee to identify or confirm the absence of urgent issues. Especially, if schedules are not filed timely.
 - b. Why was the case filed if there are no assets?

Zoom Meetings

10. UST recently put out updated Interim Procedures on Zoom 341 Meetings are to be conducted. Here's a sample of the updated procedures that you may not be aware of:
 - a. If in the same room, both Debtor and Attorney need to be on screen together
 - b. No coaching the Debtor on or off screen
 - c. No other videos or recordings allowed
11. Interpreter Request.
 - a. Provide requests when submitting 341 documents
 - b. Is one needed? If so, then allow the translation to occur.
12. Cars are ok, but no driving while the 341 is ongoing. This applies to attorneys as well.
13. Practice logging on with the Debtor.
14. No shirt, no service!

Motion to Impose/Reimpose Automatic Stay

Docketing Event

Bankruptcy > Motions/Applications/Objections > Motion to Impose/Reimpose Automatic Stay

Negative Notice: N/A

Accompanying Orders: No.

Code and Rule References:

[11 U.S.C. § 362](#)

[Fed. R. Bankr. P. 4001\(a\)\(1\)](#)

[Local Rule 4001-1](#)

[Administrative Order FLMB-2023-3](#)

Fee: N/A

Applicable Chapters: 7, 11, 12, 13

Implemented: 2/9/2016

Last Revision: 07/30/2025

Description

Upon filing a bankruptcy petition, an automatic stay is imposed in most cases with certain exceptions. The stay requires creditors to cease actions against the debtor, the debtor's property and property of the estate as described in 11 U.S.C. § 362(a). The automatic stay will continue in the case as provided under 11 U.S.C. § 362(c).

Creditors may file a motion pursuant to 11 U.S.C. § 362 requesting the stay be lifted to allow them to pursue a particular piece of property. Those motions are most often titled Motion for Relief from Stay, although other titles may also be used. There are separate procedures on Motions for Relief from Stay.

Interested parties, usually debtors, may file a motion pursuant to 11 U.S.C. § 362 requesting to **extend** the stay when a debtor has filed one prior bankruptcy case that has been dismissed within the preceding one-year period. These motions are often titled Motion to Extend the Automatic Stay, although other titles may be used. Motions to extend are addressed in a separate procedure.

Interested parties, usually debtors, may file a motion pursuant to 11 U.S.C. § 362 requesting to **impose** the stay when a debtor has filed two or more prior bankruptcy cases that have been dismissed within the preceding one-year period. These motions are often titled Motion to Impose the Automatic Stay, although other titles may be used. This procedure addresses a motion to impose the automatic stay.

In a Chapter 13 bankruptcy case, the model plan (Sections C.5(i-k)) states the automatic stay does not apply when a debtor directly pays a secured creditor outside of the Chapter 13 case, surrenders collateral to the secured creditor, or fails to include payments within the Chapter 13 Plan to the secured creditor. Under paragraph 14 of the Chapter 13 Administrative Order FLMB-2023-3, if the Debtor files an amended or modified Chapter 13 Plan that includes payments to a secured creditor or lessor in the Plan payments, then the automatic stay is reimposed as to that secured creditor or lessor automatically upon the filing of the amended or modified Plan *unless* the secured creditor or lessor already has concluded its state law foreclosure or repossession remedies. Debtor

must serve the amended or modified Plan upon the affected creditor or lessor. No motion or order is needed to reimpose the automatic stay.

Filing Checklist

Review the motion to determine if it:

- Is signed;
- Has the attorney's name and address complete and consistent with the filing attorney's name and address in CM/ECF;
- Is properly served and includes a proper certificate of service.

The movant's attorney will be directed to prepare, serve, and docket any notice of hearing unless the debtor is *pro se*. If *pro se*, the Clerk's office will issue the notice to all parties and creditors.

- **Note:** Use of the attached form of motion is mandatory effective August 15, 2025.

Helpful Information

[Motion to Extend or Impose Automatic Stay](#)

[Chapter 13 Model Plan](#)

[Chapter 13 Model Plan \(Non Fillable Form\)](#)

[Chapter 13 Model Plan \(Fillable Form\)](#)

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA

DIVISION
www.flmb.uscourts.gov

In re _____,)
))
) Case No. __: __-bk-____-____
) Chapter ____
Debtor(s).)
_____)

**DEBTOR(S)' VERIFIED
MOTION TO [EXTEND OR IMPOSE] AUTOMATIC STAY**

Debtor(s) seek entry of an order extending [or imposing] the automatic stay under 11 U.S.C. § [362(c)(3)(C) or 362(c)(4)(D)].

1. **Date of Filing.** Debtor(s) filed this bankruptcy case on [insert filing date].
2. [If seeking to extend the stay] **Date on Which the Stay Will Terminate:** Absent an order of the Court, the automatic stay will terminate on [insert date].
3. **Most Recently Filed Prior Case.** On [insert filing date], Debtor(s) previously filed a Chapter __ case, Case No. [insert case number] [if not filed in the Middle District of Florida, add in the _____ District of _____].
4. **Reason for Dismissal of Prior Case.** The most recently filed prior case was dismissed on [insert dismissal date] for the following reasons(s): [check box for all that apply]
 - failure to commence making plan payments.
 - failure to make plan payments.
 - failure to file a plan.
 - failure to confirm a plan.
 - failure to file other required documents (list): [list documents]
 - Other (explain): [provide explanation]

Implemented 05/12/2025

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5. ***History of Previously Filed Bankruptcy Cases.*** (check the box that that applies)

Other than the most recently filed prior case, Debtor(s) has/had had no other pending bankruptcy cases in the preceding one-year period; or

Debtor(s) has/had that following bankruptcy case(s) pending in the one-year period before filing this case, which was/were dismissed for the following reason(s):

Case No.:	
District:	
Date Filed:	
Reason for Dismissal:	(provide explanation and/or other relevant information)

6. ***Comparison of Debtor’s Income and Expenses in Current Case and the Most Recently Filed Prior Case:*** [use the most recent Schedules I/J, as amended, from the prior case]:

	Current Case¹	Prior Case [Insert Case Number]
Schedule I Net income (line 12)		
Schedule J Monthly Expenses (line 22c)		
Schedule J Monthly Net Income (line 23c)		
Plan Payment		
Wage Order	Yes or No	Yes or No

7. ***Plan Payments made in Prior Case(s):***

Case No. [Insert case number] [Insert total plan payments made]

Case No. [Insert case number] [Insert total plan payments made]

¹ If Schedules I and J have not been filed in this case, include estimates based on information available at the time this declaration is filed.

8. *Motions for Relief from the Automatic Stay in Prior Case(s)*. Prior to the dismissal of any case(s) pending in the one-year period before the filing of this case, there were no motions for relief from the automatic stay that (a) the Court granted, or (b) were pending, except:

[None or provide explanation]

9. *Change in Personal or Financial Circumstances*. As set forth below, Debtor(s)' personal or financial circumstances have substantially changed since the filing of the most recent prior case such that the reason for dismissal in that case is not likely to recur:

[Provide explanation]

WHEREFORE, Debtor(s) respectfully request that the Court enter an order extending [or imposing] the automatic stay as to all creditors until such time as the stay would terminate as a matter of law under 11 U.S.C. §§ 362(c)(1) or (c)(2) or until further order of the Court.

/s/ Signature
Attorney for Debtor(s)
Attorney Name
Attorney Bar No.
Attorney E-Mail
Attorney Address
Attorney Phone Number

DEBTOR(S) VERIFICATION STATEMENT AND SIGNATURE

I, [insert debtor name], declare [or certify, verify, or state] under penalty of perjury [if executed outside the U.S., include “under the laws of the Unites States of America”] that the foregoing is true and correct.

[If applicable] I, [insert Joint Debtor's name], declare [or certify, verify, or state] under penalty of perjury [if executed outside the U.S., include “under the laws of the Unites States of America”] that the foregoing is true and correct.

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Signature of Debtor

Dated

Signature of Joint Debtor

Dated

PROOF OF SERVICE

A true and correct copy of the foregoing has been sent by either electronic transmission or U.S. Mail, postage prepaid, on [Insert Date] to:

/s/ Signature
Attorney for Debtor(s)
Attorney Name
Attorney Bar No.
Attorney E-Mail
Attorney Address
Attorney Phone Number

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
www.flnb.uscourts.gov

In re:

Motions to Extend or Impose
the Automatic Stay Under
11 U.S.C. § 362(c)(3) and § 362(c)(4)

Amended
Administrative Order
No. 15-002

AMENDED ADMINISTRATIVE ORDER ADOPTING PROCEDURES
FOR MOTIONS TO EXTEND OR IMPOSE THE AUTOMATIC STAY
UNDER 11 U.S.C. § 362(c)(3) AND § 362(c)(4)

Because of the difficulties inherent in scheduling evidentiary hearings on all motions to impose or extend the automatic stay in the four Divisions within this District, the Court deems it necessary and appropriate to amend procedures for such motions. This Administrative Order supplements Local Rule 4001-3.

The following procedures are adopted effective as to all Motions to Extend or Impose the Automatic Stay Under 11 U.S.C. § 362(c)(3) and § 362(c)(4) (“Motion”) filed on and after January 1, 2026:

1. **DEADLINE TO FILE.** Except for good cause shown in the Motion, a Motion filed pursuant to 11 U.S.C. § 362(c)(3) or § 362(c)(4) shall be filed within five (5) days of the date of the filing of the petition.

2. **CONTENTS OF MOTION:**

a. **Motion.** A Motion to Extend or Impose the Automatic Stay shall include the following information:

- i. the number of previous cases under the Bankruptcy Code involving the debtor and pending within the one-year period preceding the filing of the current case;
- ii. the jurisdiction and case number of each such case;
- iii. the date and reason(s) for dismissal of each such previous case;
- iv. an express statement whether any presumption of lack of good faith arises pursuant to § 362(c)(3)(C) or § 362(c)(4)(D); and
- v. the facts upon which the movant relies to (i) rebut any presumption of bad faith and (ii) demonstrate that the filing of the latter case is in good faith as to any creditors to be stayed.

b. **Verification, Affidavit or Declaration Required.** The movant shall attach or file in support of the Motion a notarized Affidavit signed under penalty of perjury containing the facts upon which the movant relies to rebut any presumption under § 362(c)(3)(C) or § 362(c)(4)(D). In the alternative, the Motion may be Verified or contain an Unsworn Declaration Under Penalty of Perjury pursuant to 28 U.S.C. § 1746.

3. **NOTICE OF HEARING.** Upon the filing of a Motion subject to this Order, the Court will set a hearing.

4. **SERVICE OF THE MOTION AND NOTICE OF HEARING.** The movant shall promptly serve the Motion (and any Affidavit or Declaration) and Notice of Hearing in the manner required by the

Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and this Court's Local Rules upon each party against whom the movant seeks to extend or impose the stay, and creditors and parties in interest as may be required by the applicable rules. The movant shall file a certificate of service with the Motion, or no later than three (3) days after filing the Motion.

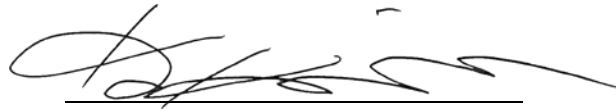
5. **OBJECTION(S) TO THE MOTION.** Unless otherwise ordered, any objection to a Motion subject to this Order shall be filed within 14 days after service of the Motion.

6. **CONSIDERATION OF THE MOTION.**

- a. **The Motion May Be Granted Without a Hearing.** The Court may grant the Motion in accordance with Fed. R. Civ. P. 43(c) and Fed. R. Bankr. P. 9017 without hearing only if:
- i. the movant files and serves the Motion and Notice of Hearing as required by this Order;
 - ii. no objection to the Motion is filed within 14 days subsequent to the service of the Motion (or such shorter time as is ordered); and
 - iii. the Court determines that the Motion complies with this Order and that the information contained in the Verified Motion, Affidavit or Declaration is sufficient to rebut any presumption under § 362(c)(3)(C) or § 362(c)(4)(D).
- b. **No Trustee Approval.** If the Trustee has not objected to the Motion, the Trustee need not have approved the order granting the Motion.

- c. **The hearing will be held as scheduled unless an Order granting the Motion has been entered.** The Movant is responsible for submitting an order granting the Motion prior to the hearing if all other requirements of this Administrative Order are met. Movant's failure to appear at the hearing may result in the Motion being denied. If an objecting party fails to appear at any hearing, its objection will be deemed withdrawn.

DONE and ORDERED on January 9, 2026.



KAREN K. SPECIE
Chief U.S. Bankruptcy Judge

Select Year: 2025 ▼ Go

The 2025 Florida Statutes

[Title XXXIX](#)
COMMERCIAL
RELATIONS

[Chapter 679](#)
UNIFORM COMMERCIAL CODE: SECURED
TRANSACTIONS

[View Entire
Chapter](#)

679.1091 Scope.—

(1) Except as otherwise provided in subsections (3) and (4), this chapter applies to:

(a) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(b) An agricultural lien;

(c) A sale of accounts, chattel paper, payment intangibles, or promissory notes;

(d) A consignment;

(e) A security interest arising under s. [672.401](#), s. [672.502](#), s. [672.711](#), or s. [680.508\(5\)](#), as provided in s. [679.1101](#); and

(f) A security interest arising under s. [674.2101](#) or s. [675.118](#).

(2) The application of this chapter to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this chapter does not apply.

(3) This chapter does not apply to the extent that:

(a) A statute, regulation, or treaty of the United States preempts this chapter; or

(b) The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under s. [675.114](#).

(4) This chapter does not apply to:

(a) A landlord's lien, other than an agricultural lien;

(b) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but s. [679.333](#) applies with respect to priority of the lien;

(c) An assignment of a claim for wages, salary, or other compensation of an employee;

(d) A sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

(e) An assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;

(f) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;

(g) An assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(h) A transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but ss. [679.3151](#) and [679.322](#) apply with respect to proceeds and priorities in proceeds;

(i) An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(j) A right of recoupment or set-off, but:

1. Section [679.340](#) applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and

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2. Section [679.4041](#) applies with respect to defenses or claims of an account debtor;
- (k) The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:
1. Liens on real property in ss. [679.2031](#) and [679.3081](#);
 2. Fixtures in s. [679.334](#);
 3. Fixture filings in ss. [679.5011](#), [679.5021](#), [679.512](#), [679.516](#), and [679.519](#); and
 4. Security agreements covering personal and real property in s. [679.604](#);
- (l) An assignment of a claim arising in tort, other than a commercial tort claim, but ss. [679.3151](#) and [679.322](#) apply with respect to proceeds and priorities in proceeds;
- (m) An assignment of a deposit account, other than a nonnegotiable certificate of deposit, in a consumer transaction, but ss. [679.3151](#) and [679.322](#) apply with respect to proceeds and priorities in proceeds;
- (n) Any transfer by a government or governmental unit; or
- (o) A transfer or pledge of, or creation of a security interest in, any interest or right or portion of any interest or right in any storm-recovery property as defined in s. [366.8260](#).
- History.—s. 1, ch. 2001-198; s. 2, ch. 2005-107; s. 158, ch. 2025-92.

Select Year: 2025

The 2025 Florida Statutes

[Title XXXIX](#)
COMMERCIAL
RELATIONS

[Chapter 679](#)
UNIFORM COMMERCIAL CODE: SECURED
TRANSACTIONS

[View Entire
Chapter](#)

679.1021 Definitions and index of definitions.—

(1) In this chapter, the term:

(a) “Accession” means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(b) “Account,” except as used in “account for,” “account statement,” “account to,” “commodity account” as used in paragraph (o), “customer account,” “deposit account” as used in paragraph (ff), “on account of,” and “statement of account,” means a right to payment of a monetary obligation, regardless of whether earned by performance, for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of; for services rendered or to be rendered; for a policy of insurance issued or to be issued; for a secondary obligation incurred or to be incurred; for energy provided or to be provided; for the use or hire of a vessel under a charter or other contract; arising out of the use of a credit or charge card or information contained on or for use with the card; or as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes controllable accounts and health-care-insurance receivables. The term does not include chattel paper; commercial tort claims; deposit accounts; investment property; letter-of-credit rights or letters of credit; rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card; or rights to payment evidenced by an instrument.

(c) “Account debtor” means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the negotiable instrument evidences chattel paper.

(d) “Accounting,” except as used in the term “accounting for,” means a record:

1. Signed by a secured party;
2. Indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and
3. Identifying the components of the obligations in reasonable detail.

(e) “Agricultural lien” means an interest, other than a security interest, in farm products:

1. Which secures payment or performance of an obligation for:
 - a. Goods or services furnished in connection with a debtor’s farming operation; or
 - b. Rent on real property leased by a debtor in connection with the debtor’s farming operation;
2. Which is created by statute in favor of a person who:
 - a. In the ordinary course of the person’s business furnished goods or services to a debtor in connection with a debtor’s farming operation; or
 - b. Leased real property to a debtor in connection with the debtor’s farming operation; and
 3. Whose effectiveness does not depend on the person’s possession of the personal property.

(f) “As-extracted collateral” means:

1. Oil, gas, or other minerals that are subject to a security interest that:
 - a. Is created by a debtor having an interest in the minerals before extraction; and

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- b. Attaches to the minerals as extracted; or
- 2. Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(g) “Assignee,” except as used in “assignee for benefit of creditors,” means a person:

- 1. In whose favor a security interest that secures an obligation is created or provided for under a security agreement, regardless of whether the obligation is outstanding; or
- 2. To which an account, chattel paper, payment intangible, or promissory note has been sold.

The term includes a person to which a security interest has been transferred by a secured party.

(h) “Assignor” means a person that:

- 1. Under a security agreement creates or provides for a security interest that secures an obligation; or
- 2. Sells an account, chattel paper, payment intangible, or promissory note.

The term includes a secured party that has transferred a security interest to another person.

(i) “Bank” means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(j) “Cash proceeds” means proceeds that are money, checks, deposit accounts, or the like.

(k) “Certificate of title” means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral.

(l) “Chattel paper” means:

- 1. A right to payment of a monetary obligation secured by specific goods, if the right to payment and security agreement are evidenced by a record; or
- 2. A right to payment of a monetary obligation owed by a lessee under a lease agreement with respect to specific goods and a monetary obligation owed by the lessee in connection with the transaction giving rise to the lease, if:
 - a. The right to payment and lease agreement are evidenced by a record; and
 - b. The predominant purpose of the transaction giving rise to the lease was to give the lessee the right to possession and use of the goods.

The term does not include a right to payment arising out of a charter or other contract involving the use or hire of a vessel or a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(m) “Collateral” means the property subject to a security interest or agricultural lien. The term includes:

- 1. Proceeds to which a security interest attaches;
- 2. Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
- 3. Goods that are the subject of a consignment.

(n) “Commercial tort claim” means a claim arising in tort with respect to which:

- 1. The claimant is an organization; or
- 2. The claimant is an individual and the claim:
 - a. Arose in the course of the claimant’s business or profession; and
 - b. Does not include damages arising out of personal injury to or the death of an individual.

(o) “Commodity account” means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(p) “Commodity contract” means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

2026 ALEXANDER L. PASKAY MEMORIAL BANKRUPTCY SEMINAR

1. Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or
 2. Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.
- (q) “Commodity customer” means a person for which a commodity intermediary carries a commodity contract on its books.
- (r) “Commodity intermediary” means a person who:
1. Is registered as a futures commission merchant under federal commodities law; or
 2. In the ordinary course of the person’s business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.
- (s) “Communicate” means:
1. To send a written or other tangible record;
 2. To transmit a record by any means agreed upon by the persons sending and receiving the record; or
 3. In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.
- (t) “Consignee” means a merchant to which goods are delivered in a consignment.
- (u) “Consignment” means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:
1. The merchant:
 - a. Deals in goods of that kind under a name other than the name of the person making delivery;
 - b. Is not an auctioneer; and
 - c. Is not generally known by its creditors to be substantially engaged in selling the goods of others;
 2. With respect to each delivery, the aggregate value of the goods is \$1,000 or more at the time of delivery;
 3. The goods are not consumer goods immediately before delivery; and
 4. The transaction does not create a security interest that secures an obligation.
- (v) “Consignor” means a person who delivers goods to a consignee in a consignment.
- (w) “Consumer debtor” means a debtor in a consumer transaction.
- (x) “Consumer goods” means goods that are used or bought for use primarily for personal, family, or household purposes.
- (y) “Consumer-goods transaction” means a consumer transaction in which:
1. An individual incurs an obligation primarily for personal, family, or household purposes; and
 2. A security interest in consumer goods secures the obligation.
- (z) “Consumer obligor” means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.
- (aa) “Consumer transaction” means a transaction in which an individual incurs an obligation primarily for personal, family, or household purposes; a security interest secures the obligation; and the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.
- (bb) “Continuation statement” means an amendment of a financing statement which:
1. Identifies, by its file number, the initial financing statement to which it relates; and
 2. Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.
- (cc) “Controllable account” means an account evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that has control under s. [669.105](#) of the controllable electronic record.
- (dd) “Controllable payment intangible” means a payment intangible evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that has control under s. [669.105](#) of the controllable electronic record.
- (ee) “Debtor” means:

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1. A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;
2. A seller of accounts, chattel paper, payment intangibles, or promissory notes; or
3. A consignee.

(ff) “Deposit account” means a demand, time, savings, passbook, or similar account maintained with a bank.

The term does not include investment property or accounts evidenced by an instrument.

(gg) “Document” means a document of title or a receipt of the type described in s. [677.201\(2\)](#).

(hh) “Electronic money” means money in an electronic form.

(ii) “Encumbrance” means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(jj) “Equipment” means goods other than inventory, farm products, or consumer goods.

(kk) “Farm products” means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

1. Crops grown, growing, or to be grown, including:
 - a. Crops produced on trees, vines, and bushes; and
 - b. Aquatic goods produced in aquacultural operations;
2. Livestock, born or unborn, including aquatic goods produced in aquacultural operations;
3. Supplies used or produced in a farming operation; or
4. Products of crops or livestock in their unmanufactured states.

(ll) “Farming operation” means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(mm) “File number” means the number assigned to an initial financing statement pursuant to s. [679.519\(1\)](#).

(nn) “Filing office” means an office designated in s. [679.5011](#) as the place to file a financing statement.

(oo) “Filing-office rule” means a rule adopted pursuant to s. [679.526](#).

(pp) “Financing statement” means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(qq) “Fixture filing” means the filing of a financing statement covering goods that are or are to become fixtures and satisfying s. [679.5021\(1\)](#) and (2). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(rr) “Fixtures” means goods that have become so related to particular real property that an interest in them arises under real property law.

(ss) “General intangible” means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes controllable electronic records, payment intangibles, and software.

(tt) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(uu) “Goods” means all things that are movable when a security interest attaches. The term includes fixtures; standing timber that is to be cut and removed under a conveyance or contract for sale; the unborn young of animals; crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes; and manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if the program is associated with the goods in such a manner that it customarily is considered part of the goods, or by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(vv) “Governmental unit” means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a

separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(ww) “Health-care-insurance receivable” means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(xx) “Instrument” means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include investment property, letters of credit, writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card, or writings that evidence chattel paper.

(yy) “Inventory” means goods, other than farm products, which:

1. Are leased by a person as lessor;
2. Are held by a person for sale or lease or to be furnished under a contract of service;
3. Are furnished by a person under a contract of service; or
4. Consist of raw materials, work in process, or materials used or consumed in a business.

(zz) “Investment property” means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(aaa) “Jurisdiction of organization,” with respect to a registered organization, means the jurisdiction under whose law the organization is formed or organized.

(bbb) “Letter-of-credit right” means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(ccc) “Lien creditor” means:

1. A creditor that has acquired a lien on the property involved by attachment, levy, judgment lien certificate, or the like;
2. An assignee for benefit of creditors from the time of assignment;
3. A trustee in bankruptcy from the date of the filing of the petition; or
4. A receiver in equity from the time of appointment.

(ddd) “Manufactured home” means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(eee) “Manufactured-home transaction” means a secured transaction:

1. That creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or
2. In which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(fff) “Money” has the same meaning as in s. [671.201](#), but does not include a deposit account, a central bank digital currency, or money in an electronic form that cannot be subjected to control under s. [679.1052](#).

(ggg) “Mortgage” means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation, which interest was created or derived from an instrument described in s. [697.01](#).

(hhh) “New debtor” means a person who becomes bound as debtor under s. [679.2031\(4\)](#) by a security agreement previously entered into by another person.

(iii) “New value” means money; money’s worth in property, services, or new credit; or release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

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(jjj) “Noncash proceeds” means proceeds other than cash proceeds.

(kkk) “Obligor” means a person who, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, owes payment or other performance of the obligation, has provided property other than the collateral to secure payment or other performance of the obligation, or is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(lll) “Original debtor,” except as used in s. [679.3101\(3\)](#), means a person who, as debtor, entered into a security agreement to which a new debtor has become bound under s. [679.2031\(4\)](#).

(mmm) “Payment intangible” means a general intangible under which the account debtor’s principal obligation is a monetary obligation. The term includes a controllable payment intangible.

(nnn) “Person related to,” with respect to an individual, means:

1. The spouse of the individual;
2. A brother, brother-in-law, sister, or sister-in-law of the individual;
3. An ancestor or lineal descendant of the individual or the individual’s spouse; or
4. Any other relative, by blood or marriage, of the individual or the individual’s spouse who shares the same home with the individual.

(ooo) “Person related to,” with respect to an organization, means:

1. A person directly or indirectly controlling, controlled by, or under common control with the organization;
2. An officer or director of, or a person performing similar functions with respect to, the organization;
3. An officer or director of, or a person performing similar functions with respect to, a person described in subparagraph 1.;
4. The spouse of an individual described in subparagraph 1., subparagraph 2., or subparagraph 3.; or
5. An individual who is related by blood or marriage to an individual described in subparagraph 1., subparagraph 2., subparagraph 3., or subparagraph 4. and shares the same home with the individual.

(ppp) “Proceeds,” except as used in s. [679.609\(2\)](#), means the following property:

1. Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
2. Whatever is collected on, or distributed on account of, collateral;
3. Rights arising out of collateral;
4. To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or
5. To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(qqq) “Promissory note” means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(rrr) “Proposal” means a record signed by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to ss. [679.620-679.622](#).

(sss) “Public organic record” means a record that is available to the public for inspection and that is:

1. A record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States that amends or restates the initial record;
2. An organic record of a business trust consisting of the record initially filed with a state and any record filed with the state that amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or
3. A record consisting of legislation enacted by the Legislature of a state or the Congress of the United States that forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or the United States that amends or restates the name of the organization.

(ttt) “Pursuant to commitment,” with respect to an advance made or other value given by a secured party, means pursuant to the secured party’s obligation, whether or not a subsequent event of default or other event not within the secured party’s control has relieved or may relieve the secured party from its obligation.

(uuu) “Record,” except as used in the terms “for record,” “of record,” “record or legal title,” and “record owner,” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(vvv) “Registered organization” means an organization formed or organized solely under the law of a single state or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or the United States. The term includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust’s organic record be filed with the state.

(www) “Secondary obligor” means an obligor to the extent that:

1. The obligor’s obligation is secondary; or
2. The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(xxx) “Secured party” means:

1. A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;
2. A person who holds an agricultural lien;
3. A consignor;
4. A person to whom accounts, chattel paper, payment intangibles, or promissory notes have been sold;
5. A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or
6. A person who holds a security interest arising under s. 672.401, s. 672.505, s. 672.711(3), s. 680.508(5), s. 674.2101, or s. 675.118.

(yyy) “Security agreement” means an agreement that creates or provides for a security interest.

(zzz) “Software” means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(aaaa) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(bbbb) “Supporting obligation” means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(cccc) “Tangible money” means money in tangible form.

(dddd) “Termination statement” means an amendment of a financing statement which:

1. Identifies, by its file number, or if a fixture filing, by the official records book and page number, the initial financing statement to which it relates; and
2. Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(eeee) “Transmitting utility” means a person primarily engaged in the business of:

1. Operating a railroad, subway, street railway, or trolley bus;
2. Transmitting communications electrically, electromagnetically, or by light;
3. Transmitting goods by pipeline or sewer; or
4. Transmitting or producing and transmitting electricity, steam, gas, or water.

(2) The following definitions in other chapters apply to this chapter:

“Applicant,” s. 675.103.

“Beneficiary,” s. 675.103.

“Broker,” s. 678.1021.

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- “Certificated security,” s. [678.1021](#).
- “Check,” s. [673.1041](#).
- “Clearing corporation,” s. [678.1021](#).
- “Contract for sale,” s. [672.106](#).
- “Control,” s. [677.106](#).
- “Controllable electronic record,” s. [699.102](#).
- “Customer,” s. [674.104](#).
- “Entitlement holder,” s. [678.1021](#).
- “Financial asset,” s. [678.1021](#).
- “Holder in due course,” s. [673.3021](#).
- “Issuer” (with respect to a letter of credit or letter-of-credit right), s. [675.103](#).
- “Issuer” (with respect to a security), s. [678.2011](#).
- “Issuer” (with respect to documents of title), s. [677.102](#).
- “Lease,” s. [680.1031](#).
- “Lease agreement,” s. [680.1031](#).
- “Lease contract,” s. [680.1031](#).
- “Leasehold interest,” s. [680.1031](#).
- “Lessee,” s. [680.1031](#).
- “Lessee in ordinary course of business,” s. [680.1031](#).
- “Lessor,” s. [680.1031](#).
- “Lessor’s residual interest,” s. [680.1031](#).
- “Letter of credit,” s. [675.103](#).
- “Merchant,” s. [672.104](#).
- “Negotiable instrument,” s. [673.1041](#).
- “Nominated person,” s. [675.103](#).
- “Note,” s. [673.1041](#).
- “Proceeds of a letter of credit,” s. [675.114](#).
- “Protected purchaser,” s. [678.3031](#).
- “Prove,” s. [673.1031](#).
- “Qualifying purchaser,” s. [669.102](#).
- “Sale,” s. [672.106](#).
- “Securities account,” s. [678.5011](#).
- “Securities intermediary,” s. [678.1021](#).
- “Security,” s. [678.1021](#).
- “Security certificate,” s. [678.1021](#).
- “Security entitlement,” s. [678.1021](#).
- “Uncertificated security,” s. [678.1021](#).
- (3) Chapter 671 contains general definitions and principles of construction and interpretation applicable throughout this chapter.
- History.—s. 1, ch. 2001-198; s. 1, ch. 2002-242; s. 19, ch. 2005-241; s. 58, ch. 2010-131; s. 1, ch. 2012-59; s. 69, ch. 2025-92.

Select Year: 2025

The 2025 Florida Statutes

[Title XXXIX](#)
COMMERCIAL
RELATIONS

[Chapter 679](#)
UNIFORM COMMERCIAL CODE: SECURED
TRANSACTIONS

[View Entire
Chapter](#)

679.334 Priority of security interests in fixtures and crops.—

(1) A security interest under this chapter may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this chapter in ordinary building materials incorporated into an improvement on land.

(2) This chapter does not prevent creation of an encumbrance upon fixtures under real property law.

(3) A security interest in goods which are or become fixtures is invalid against any person with an interest in the real property at the time the security interest in the goods is perfected or at the time the goods are affixed to the real property, whichever occurs later, unless such person has consented to the security interest or disclaimed an interest in the goods as fixtures.

(4) A security interest in goods which are or become fixtures perfected with a financing statement that is filed as a fixture filing takes priority as to the goods over the conflicting interest of an encumbrancer or owner of the related real property arising subsequent to the perfection of such security interest or the affixing of the goods to the real property, whichever occurs later. A security interest in goods which are or become fixtures perfected only with a financing statement that is not filed as a fixture filing is subject to the rights of an encumbrancer or owner of the related real property under s. [679.3171\(6\)](#) and to the rights of a lien creditor under s. [679.3171\(1\)\(b\)](#), but takes priority as to the goods over the rights of a lien creditor who does not meet the requirements of s. [679.3171\(1\)\(b\)](#).

(5) A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the security interest is:

(a) Created in a manufactured home in a manufactured-home transaction; and

(b) Perfected pursuant to a statute described in s. [679.3111\(1\)\(b\)](#).

(6) A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

(7) Subsection (6) prevails over any inconsistent provisions of the statutes.

History.—s. 3, ch. 2001-198; s. 7, ch. 2002-242.



KeyCite Yellow Flag

Distinguished by [In re Ariman](#), Bankr.M.D.Fla., October 31, 2023
2020 WL 5746801

Only the Westlaw citation is currently available.
United States Bankruptcy Court, M.D. Florida,
Fort Myers Division.

IN RE: Benjamin OJEDA, Jr.
and Nancy Ann Ojeda, Debtors.

Case No. 9:19-bk-06611-FMD
I
Signed June 1, 2020

Attorneys and Law Firms

[David Lampley](#), [David W. Fineman](#), The Dellutri Law Group, PA, [Amanda Downing](#), Dellutri Law Group, Fort Myers, FL, for Debtor.

ORDER SUSTAINING DEBTORS' OBJECTION TO CLAIM NO. 5 OF AQUA FINANCE, INC.

Caryl E. Delano, Chief United States Bankruptcy Judge

*1 Debtors financed the construction of an inground swimming pool at their home and granted the lender a security interest in the swimming pool. The lender has filed a claim in Debtors' Chapter 13 case, asserting that its claim is secured by the swimming pool. The Court finds that under the Florida Uniform Commercial Code, the swimming pool is neither a "good" nor a "fixture" to which the lender's asserted security interest could attach. Therefore, the lender's claim is unsecured.

Background

On May 8, 2015, Debtors entered into a Retail Installment Contract and Security Agreement (the "Contract") with Penguin Pools ("Contractor") to "purchase" an inground swimming pool (the "Swimming Pool"). Under the Contract, Debtors granted Contractor a security interest in the goods purchased under the Contract, i.e., the Swimming Pool.¹ At some point, the Contract was assigned to

Aqua Finance, Inc. ("Creditor"). Evidently, this was the plan all along as the first page of the Contract lists Creditor's name, address, telephone, and fax numbers.²

¹ Claim No. 5, p. 2.

² Claim No. 5, p. 5.

On August 20, 2015, Debtors signed a Certificate of Completion of the Swimming Pool.³ The Certificate of Completion states that the goods and services sold by Contractor have been "delivered and installed" at real estate owned by Debtors. The parties have stipulated that the Swimming Pool is an inground pool, constructed with building materials such as rebar, concrete, plaster, and coping.

³ Claim No. 5, p. 10.

Months later, on January 26, 2016, Creditor filed a Uniform Commercial Code Financing Statement (the "Financing Statement") with the Clerk of Circuit Court for Lee County, Florida.⁴ The Financing Statement lists the collateral as "In Ground Swimming Pool," and states that it "is filed as a fixture filing."⁵

⁴ Claim No. 5, p. 11.

⁵ Claim No. 5, p. 12.

On July 15, 2019, Debtors filed their Chapter 13 bankruptcy petition. Creditor timely filed its claim as a secured claim in the amount of \$50,180.44.

Debtors objected to Creditor's claim, asserting that the Swimming Pool is affixed to their homestead property and that Creditor had not recorded a mortgage.⁶ Creditor responded to Debtors' objection, contending that the Swimming Pool is a fixture and Creditor perfected its security interest when it filed the Financing Statement with the Lee County Clerk of Court.⁷ In reply, Debtors contend that the Swimming Pool is not a fixture because the Contract did not identify any "goods" to which a security interest could attach under the Florida Uniform Commercial Code.⁸

⁶ Doc. No. 30.

⁷ Doc. No. 36.

⁸ Doc. No. 38.

The parties agree that there are no factual issues in dispute, and the matter has been fully briefed.⁹ The Court announced its ruling in open court on March 12, 2020.¹⁰ This order supplements the Court's oral ruling.

⁹ See Doc. Nos. 30, 36, 38, 51, and 57.

¹⁰ Doc. No. 60.

Discussion

[Section 679.1091\(1\)\(a\) of the Florida Statutes](#), Chapter 679 (Article 9 of the Florida Uniform Commercial Code),¹¹ applies to transactions that create a security interest in personal property or fixtures. Section 679.5011 provides that financing statements to perfect security interests in fixtures are filed in the office of the clerk of the circuit court.

¹¹ Unless otherwise stated, statutory references refer to Chapter 679 of the Florida Statutes.

*2 Section 679.1021(1)(oo) defines “fixtures” as “goods that have become so related to particular real property that an interest in them arises under real property law.”¹² The parties here concur that the Swimming Pool has “become so related” to Debtors' home. The issue before the Court is whether the Swimming Pool is a “good” that has, in turn, become a “fixture.”

¹² [Fla. Stat. § 679.1021\(1\)\(oo\)](#); [U.C.C. § 9-102\(41\)](#).

Under [§ 679.1021\(1\)\(rr\)](#), “goods” are defined as “all things that are movable when a security interest attaches.”¹³ The definition of “goods” includes “fixtures.”

¹³ [Fla. Stat. § 679.1021\(1\)\(rr\)](#); [U.C.C. § 9-102\(44\)](#).

However, § 679.334(1) provides that “[a] security interest does not exist under this chapter in *ordinary building materials* incorporated into an improvement on land.”¹⁴

¹⁴ [Fla. Stat. § 679.334\(1\)](#) (emphasis added); [U.C.C. § 9-334\(a\)](#).

In *In re Lipke*, the bankruptcy court held that the creditor did not hold a security interest in items such as the lumber, sheet rock, electrical equipment, insulation, and roofing material used to construct the debtor's home.¹⁵ And in *AUI Const. Grp., LLC v. Vaessen*, in ruling on a subcontractor's effort to foreclose a mechanic's lien on a wind tower, the court agreed with the argument in an amicus brief that under the Uniform Commercial Code, “security interests simply do not exist ‘in ordinary building materials incorporated into an improvement on land,’ ” and because the wind tower was built with “concrete, rebar, electrical conduit, and other ‘ordinary building materials,’ the UCC does not apply.”¹⁶


¹⁵ [124 B.R. 415, 418 \(Bankr. D.R.I. 1991\)](#).

¹⁶ [67 N.E. 3d 500, 512 \(Ill. App. Ct. 2016\)](#).

Here, the parties have stipulated that Contractor used ordinary building materials such as rebar, concrete, plaster, and coping to construct the Swimming Pool. These materials are similar to the ordinary building materials discussed by the courts in the *Lipke* and *AUI* cases, and as in those cases, a security interest does not exist in them under the Florida Uniform Commercial Code.

Finally, the Financing Statement identifies Creditor's collateral as “In Ground Swimming Pool.” But when the Swimming Pool was completed, it was no longer moveable, and thus not a “good.” And because the Swimming Pool is not a “good,” it did not become a “fixture,” and cannot be subject to a security interest under Chapter 679.

Two out-of-state cases have held that inground swimming pools are fixtures, but these cases are neither controlling nor persuasive. In *FGB Realty Advisors v. Bennett*, in connection with a summary judgment motion regarding a lien priority issue, a Connecticut state court observed that the parties did not dispute that an inground swimming pool is a fixture.¹⁷ In other words, the court did not decide the legal issue of whether an inground swimming pool is a fixture, or make a finding to that effect, but instead accepted it as an undisputed material fact.

¹⁷  [44 Conn. Supp. 156, 157 \(Conn. Super. Ct. 1995\).](#)

And in *State Bank of Albany v. Kahn*, a case decided over fifty years ago, a New York state court found an inground swimming pool was a fixture.¹⁸ However, as the court helpfully highlighted, at the time, the Uniform Commercial Code did not define the term “fixture.”¹⁹ As discussed above, “fixtures” is now defined in [§ 679.1021\(1\)\(oo\)](#), and the definition requires that the fixture first meet the definition of a “good.”


¹⁸  [58 Misc. 2d 655, 656 \(N.Y. Sup. Ct. 1969\).](#)

¹⁹ *Id.*

*3 The Court recognizes that some types of inground swimming pools may meet the definitions of “goods” and “fixtures.” If, hypothetically, a preconstructed pool “shell” was “installed” in a hole dug on land, and then connected to water, power, and filtration equipment, the pool “shell” and the related equipment may meet the definition of a moveable good that becomes a fixture. But these are not the facts before the Court.

Finally, the Court does not find the cases cited by Creditor in support of its argument that the Swimming Pool is a “good” to be persuasive. First, in *BMC Industries, Inc. v. Barth Industries, Inc.*,²⁰ an eyeglass manufacturer contracted for the design, manufacture, and installation of equipment to automate its production line. Equipment for a production line is vastly different that the construction of an inground swimming pool. Second, in *Propulsion Technologies, Inc., v. Attwood Corp.*,²¹ the court analyzed the definition of goods under the U.C.C., but it was in the context of the court's determination that unfinished propeller castings were goods. Again, this is vastly different from the construction of a swimming pool. And, third, the bankruptcy court in *In re Alex Castillo*²² determined that “the subject

windows were clearly a fixture in this case, and that the UCC fixture filing perfected the fixture lien on the real property when Aqua Finance recorded the UCC Financing Statement in Broward County, Florida.” The Court concurs with the holding in *Castillo*. However, windows are things that are moveable and meet the definition of “goods” under [§ 679.1021\(1\)\(rr\)](#). Moveable windows are also vastly different from an installed inground swimming pool.

²⁰  [160 F.3d 1322 \(11th Cir. 1998\).](#)

²¹  [369 F.3d 896 \(5th Cir. 2004\).](#)

²² No. 19-20156-JKO, Doc. No. 37 (Bankr. S.D. Fla. Jan. 21, 2020).

Conclusion

Having analyzed the somewhat circular provisions of Chapter 679, the Court finds that the Swimming Pool in this case is not a “good,” and because it is not a “good,” it cannot be a “fixture.” Because the Swimming Pool is neither a “good” nor a “fixture,” the Court concludes that the provisions of Chapter 679 do not apply. Therefore, Creditor does not have a security interest in the Swimming Pool and Creditor's Claim is not secured.

Accordingly, it is

ORDERED:

1. Debtors' Objection to Claim No. 5 of Aqua Finance, Inc., is SUSTAINED, and the Claim is DISALLOWED as a secured claim.
2. Creditor's Claim is ALLOWED as an unsecured claim in the amount of \$50,180.44.

All Citations

Not Reported in B.R. Rptr., 2020 WL 5746801

655 B.R. 496

United States Bankruptcy Court, M.D. Florida,
Orlando Division.

IN RE: Sinem H. ARIMAN, Debtor.

Case No. 6:23-bk-00905-TPG

Signed October 30, 2023

Filed October 31, 2023

Synopsis

Background: Chapter 7 debtor filed motion to redeem windows installed in her home as personal property. Creditor objected. The Bankruptcy Court, Tiffany P. Geyer, J., [653 B.R. 685](#), overruled objection and granted motion. Creditor moved for relief from order or rehearing.

Holdings: The Bankruptcy Court, Geyer, J., held that:

the rule governing relief from judgment or order supplied no basis for relief;

even if the rule governing relief from judgment or order provided a basis for relief from the order, the Court's alleged truncation or omission of certain language of the test used under Florida law to determine debtor's intent as to whether the windows should be goods or fixtures did not merit a different conclusion;

even if the rule governing relief from judgment or order provided a basis for relief from the order, creditor failed to demonstrate that the Court erred in relying on the parties' financing contract to determine debtor's intent; and

cancellation of creditor's Florida fixture filing was appropriate.

Motion denied.

Procedural Posture(s): Motion for Rehearing; Motion for Relief from Order or Judgment.


Attorneys and Law Firms

*498 [Wayne B. Spivak](#), Attorneys Justin Clark & Associates PLLC, Maitland, FL, for Debtor.

ORDER DENYING MOTION FOR RELIEF FROM ORDER, REQUESTING TRIAL, AND FOR REHEARING OF THE ORDER GRANTING MOTION TO REDEEM WINDOWS


[Tiffany P. Geyer](#), United States Bankruptcy Judge





THIS CASE comes on for consideration upon the “Motion by Quantam3 Group, LLC, as Agent of Aqua Finance, Inc. for Relief from Order, Motion Requesting Trial, and Motion for Rehearing of the Court's Order Granting Motion to Redeem Windows as Tangible Personal Property Pursuant to [11 U.S.C. § 722](#)” (the “Motion for Rehearing”), filed on September 6, 2023. (Doc. No. 40.) On August 25, 2023, the Court entered an amended order (the “Order”) (Doc. No. 36) granting the Debtor's “Motion to Redeem Personal Property Per [11 U.S.C. § 722](#)” (the “Motion to Redeem”) (Doc. No. 10). The Court concluded that the Debtor could redeem windows installed in the Debtor's home pursuant to [§ 722](#),¹ finding that the parties agreed to treat the windows as tangible personal property rather than as fixtures in the Retail Installment Contract & Security Agreement (the “Contract”) (Doc. No. 36 at 3-11) supplied by the Creditor (Doc. No. *499 14-1). For the reasons set forth below, the Motion for Rehearing is denied.



¹ Unless specified otherwise, all chapter and section references are to the Bankruptcy Code,  [11 U.S.C. §§ 101–1532](#), all “Rule” references are to the Federal Rules of Bankruptcy Procedure, and all “Civil Rule” references are to the Federal Rules of Civil Procedure.



In the Motion for Rehearing, Quantam3 Group, LLC, as Agent of Aqua Finance, Inc. (the “Creditor”) requests either (i) relief from the Order or (ii) a rehearing or new trial. (Doc. No. 40 at 10.) The former request is brought under Rule 9024, specifically Civil Rule 60(a), (b)(2), and (b)(6),² and the latter request is brought under Rule 9023, specifically Civil Rule 59.





As explained below, these rules provide no basis for relief.


² The Creditor did not request relief under Civil Rule 60(b)(1), which may be used to grant relief from an order for “mistake, inadvertence, surprise, or excusable neglect.”  [Fed. R. Civ. P. 60\(b\)\(1\)](#).

Regarding relief from an order, Civil  [Rule 60\(a\)](#) authorizes a court to “correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record.”  [Fed. R. Civ. P. 60\(a\)](#). The rule is used to correct a mistake that does not reflect the court’s judgment, and it cannot be used to correct errors of law or that affect substantial rights of the parties. [Stansell v. Lopez](#), 40 F.4th 1308, 1312 (11th Cir. 2022) (quoting [Mullins v. Nickel Plate Mining Co.](#), 691 F.2d 971, 973 (11th Cir. 1982)) (“‘Errors that affect substantial rights of the parties ... are beyond the scope of [Civil R]ule 60(a).’”). “[W]here the judgment as written reflects the intent of the court, [Civil]  [Rule 60\(a\)](#) does not permit correction of an error of law.” *Id.* In the Motion for Rehearing, the Creditor disagrees with the Court’s Order and believes the Court erred as a matter of law. (Doc. No. 40 ¶¶ 14-30.) But the Order clearly reflects the Court’s judgment, and altering the Order in the manner sought would affect the substantial rights of the parties. Thus, Civil  [Rule 60\(a\)](#) supplies no basis for relief.

The Creditor next relies on Civil  [Rule 60\(b\)\(2\)](#) which states that relief from an order may be granted if there is “newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)”  [Fed. R. Civ. P. 60\(b\)\(2\)](#). The Creditor fails to note any newly discovered evidence that would merit a different result, so subsection (b)(2) likewise provides no basis for relief from the Order.

The last subsection in Civil  [Rule 60](#) relied upon by the Creditor, subsection (b)(6), states that the court may grant relief from an order for “any other reason that justifies relief.” Relief under Civil  [Rule 60\(b\)](#)

(6) requires extraordinary circumstances; disagreeing with the Court does not suffice. [Cuffy v. Sec’y, Dep’t of Corr.](#), No. 18-62463-CIV, 2023 WL 5487500, at *1 (S.D. Fla. July 5, 2023). Here, as demonstrated below, the Creditor simply disagrees with the Court’s conclusion. Thus, the Creditor states no extraordinary circumstances justifying relief from the Order under Rule 9024 and Civil  [Rule 60](#). Additionally, “[a] motion for reconsideration cannot be used to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment.” [McConico v. Top Golf Int’l Inc.](#), No. 22-11954, 2023 WL 3035381, at *1 (11th Cir. Apr. 21, 2023) (quoting [Cummings v. Dep’t of Corr.](#), 757 F.3d 1228, 1234 (11th Cir. 2014)). Because the Creditor’s arguments do just that, Civil  [Rule 60\(a\)](#),  (b)(2), and  (b)(6) are unavailing.

Even if Civil  [Rule 60](#) provided a basis for relief from the Order, the Creditor’s arguments lack merit. First, the Creditor argues that the Court incorrectly *500 applied one prong of the test in determining whether the Debtor intended the windows to be goods or fixtures, insofar as the Court truncated or omitted certain language used by the Florida Supreme Court in [Commercial Finance Co. vs. Brooksville Hotel Co.](#), 98 Fla. 410, 123 So. 814 (1929) to determine the Debtor’s intent. (Doc. No. 40 ¶¶ 14-19.) Specifically, this Court recited the test as being “the intention of the party who annexed the chattel to the realty” and the Creditor argues that the Court should instead have considered “the intention of the party making the annexation that it shall be a permanent accession to the freehold,” inferring the intent of the annexation by reference to certain facts (*id.* ¶ 17) which the Creditor maintains would demonstrate that the Debtor intended the windows to be a permanent accession. But the omitted language does not merit a different conclusion because the Court ultimately relied upon the Contract — supplied by the Creditor with no argument that the Contract was ambiguous— to determine the Debtor’s intent. [In re Ariman](#), 653 B.R. 685, 690 (Bankr. M.D. Fla. 2023) (“Here, the parties expressed their intention to treat the windows as goods, and not fixtures, in clear contractual terms.”).

Second, the Creditor argues that the Court erred in relying on the Contract to determine the Debtor’s intent

In re Ariman, 655 B.R. 496 (2023)

30 Fla. L. Weekly Fed. B 68

(Doc. No. 40 ¶¶ 23-27), claiming that describing the windows as goods in the Contract does not sufficiently demonstrate an intent to treat the windows as goods because fixtures, by definition, start out as goods. In addition, the Creditor argues that the reference to repossession in the Contract is merely boilerplate language, and that the phrase in the Contract that the Debtor will not permit the windows to become “fixtures to other property” means only that the Debtor is not permitted to allow the windows to become fixtures to property other than the Debtor's residence. (*Id.*) But the Creditor's arguments are just other ways to interpret the Contract, and the Creditor fails to demonstrate why its interpretation is more accurate than the Court's interpretation. At best, the Creditor's interpretation may point to an ambiguity as to whether the parties intended the windows to become fixtures, but contractual ambiguities are construed against the drafter. [Mastrobuono v. Shearson Lehman Hutton, Inc.](#), 514 U.S. 52, 62, 115 S. Ct. 1212, 1219, 131 L.Ed. 2d 76 (1995) (under the “common-law rule of contract interpretation” ... “a court should construe ambiguous language against the interest of the party that drafted it.”). Here, the Court determined the language was clear, and that when a dispute arises “between the original parties to a financing contract or their assigns, then the chattel is what the parties agreed it to be in the contract.” [In re Ariman](#), 653 B.R. at 692. And the Contract expressly states that it, together with any accompanying documents, represents the “entire agreement between the parties and there are no other prior or contemporaneous oral or written agreements or representations on which either party is relying.” (Doc. No. 14-1 at 2 ¶ J.)

Third, the Creditor relies on two cases in which bankruptcy courts concluded that windows are fixtures, but neither case involved a dispute on this issue, much less a dispute regarding whether windows constitute goods or fixtures for the purposes of redemption under [§ 722](#). In *In re Castillo*, No. 19-20156-PDR, Doc. No. 37 at 1 (Bankr. S.D. Fla. Jan. 21, 2020), the court found that the parties *agreed* that windows were fixtures: “The Response agrees with the Motion in part, indicating that Aqua Finance also believes that the windows have become a fixture to the Debtor's real property.” In [*501 In re Ojeda](#), No. 9:19-BK-06611-FMD, 2020 WL 5746801, at *3

([Bankr. M.D. Fla. June 1, 2020](#)), the Court simply relied on *Castillo* to conclude windows were fixtures, but the issue in [Ojeda](#) was whether an inground pool was a good or a fixture, and the Court held that it was neither. And as the Creditor notes, in [Ojeda](#), the court observed that “windows are ... movable and meet the definition of ‘goods’ under § 679.1021(1)(rr).” As such, neither *Castillo* nor [Ojeda](#) support relief from the Order.

Regarding the Creditor's request for a new trial or rehearing under Rule 9023, which incorporates Civil Rule 59 (Doc. No. 40 at 9), Civil Rule 59(a)(1) gives the court discretion to “grant a new trial on all or some of the issues—and to any party—as follows: ... (B) after a nonjury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court.” But Civil Rule 59 only applies if there was a trial, which here there was not. [Guthrie v. Wells Fargo Home Mortg. NA](#), 706 F. App'x 975, 976 (11th Cir. 2017) (holding that the district court did not abuse its discretion in denying a motion for new trial under Civil Rule 59 because there was no trial: “The Federal Rules of Civil Procedure only permit a grant of a new trial if there was a trial in the first place—jury or nonjury.”).³

³ In the Eleventh Circuit, “Unpublished opinions are not considered binding precedent, but they may be cited as persuasive authority.” [11th Cir. R. 36-2](#).

On the merits of the request for a new trial, the Creditor argues that the Court determined the parties' intent without a hearing and asks for a hearing on valuation and to address whether the fixture filing should be canceled because it mentions both doors and windows. (Doc. No. 40 ¶¶ 31-33.) A party “cannot use a Rule 59(e) motion to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment.” [Michael Linet, Inc. v. Vill. of Wellington, Fla.](#), 408 F.3d 757, 763 (11th Cir. 2005). The Court has already discussed its conclusion regarding its determination of the parties' intent herein, and in the Order the Court determined the Creditor waived any argument on valuation by failing to raise it previously. [In re Ariman](#), 653 B.R. at 692 (citing [625 Fusion, LLC v. City of Fort Lauderdale](#),

In re Ariman, 655 B.R. 496 (2023)

30 Fla. L. Weekly Fed. B 68

[526 F. Supp. 3d 1253, 1261 n.3 \(S.D. Fla. 2021\)](#)) (“[B]ecause Quantum3 did not object to the Debtor’s proposed fair market valuation of the collateral at \$500, Quantum3 waived any argument for a different or higher valuation.”).

Finally, regarding the Creditor’s question about whether the fixture filing should be canceled since it mentions both doors and windows, the answer is yes. As the Court noted in the Order, the Contract described the goods as “WINDOWS/DOORS,” but the redemption request was limited to windows. [In re Ariman, 653 B.R. at 692 n.3](#). The Debtor did not seek to redeem any doors, and the Creditor does not argue it supplied any doors to the Debtor. Based upon the use of the virgule (a/k/a forward slash) to separate windows from doors in the Contract and in the financing statement and the lack of any argument by the Creditor that it supplied the Debtor with doors in addition to windows, the Court concludes the Creditor only supplied windows. [Knous v. United States, 683 F. App’x 859, 863–64 \(11th Cir. 2017\)](#) (citing [Matusick v. Erie Cty. Water Auth., 757 F.3d 31, 72 n.5 \(2d Cir. 2014\)](#) (Raggi, Cir. J., concurring in part) (citing *Webster’s New World Dictionary* (3d ed. 1986) to note that a “virgule” indicates that either word separated by the symbol is applicable) (district court did not err in interpreting a forward

slash to mean *502 “or,” noting that “[c]ourts have repeatedly recognized that a slash, solidus, or virgule is used to separate alternatives.”); [Heritage Bank v. Redcom Labs., Inc., 250 F.3d 319, 326 & n.6 \(5th Cir. 2001\)](#) (citing the *American Heritage Dictionary of the English Language 1922* (4th ed. 2000) definition of “virgule” as a mark used to separate alternatives); [Dynalectron Corp. v. Equitable Trust Co., 704 F.2d 737, 739 & n.3 \(4th Cir. 1983\)](#) (noting that a Georgia appellate court relied on the *Webster’s New International Dictionary* definition of “virgule” to declare that the symbol “connotes the disjunctive or the alternative”).

Because the Creditor cites no persuasive grounds supporting the Motion for Rehearing and fails to demonstrate any evidence that was not available prior to entry of the Order, the Motion for Rehearing is denied.

Accordingly, it is **ORDERED** that the Motion for Rehearing (Doc. No. 40) is **DENIED**.

ORDERED.

All Citations

655 B.R. 496, 30 Fla. L. Weekly Fed. B 68

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The 2025 Florida Statutes

[Title XV](#)
HOMESTEAD AND
EXEMPTIONS

[Chapter 222](#)
METHOD OF SETTING APART HOMESTEAD AND
EXEMPTIONS

[View Entire
Chapter](#)

222.25 Other individual property of natural persons exempt from legal process.—The following property is exempt from attachment, garnishment, or other legal process:

- (1) A debtor's interest, not to exceed \$5,000 in value, in a single motor vehicle as defined in s. [320.01\(1\)](#).
- (2) A debtor's interest in any professionally prescribed health aids for the debtor or a dependent of the debtor.
- (3) A debtor's interest in a refund or a credit received or to be received, or the traceable deposits in a financial institution of a debtor's interest in a refund or credit, pursuant to s. 32 of the Internal Revenue Code of 1986, as amended. This exemption does not apply to a debt owed for child support or spousal support.
- (4) A debtor's interest in personal property, not to exceed \$4,000, if the debtor does not claim or receive the benefits of a homestead exemption under s. 4, Art. X of the State Constitution. This exemption does not apply to a debt owed for child support or spousal support.

History.—s. 3, ch. 93-256; s. 1, ch. 2001-129; s. 1, ch. 2007-185; s. 43, ch. 2008-4; s. 1, ch. 2024-110.



Interim Procedures for Trustees to Conduct Virtual § 341(a) Meetings of Creditors in Chapter 7, 12, and 13 Cases

INTRODUCTION

Pursuant to its authority under 11 U.S.C. §§ 341(a), 343, Federal Rule of Bankruptcy Procedure (“FRBP”) 2003, and other authorities, the United States Trustee Program (“USTP”) has adopted these Interim Procedures for Trustees to Conduct Virtual § 341(a) Meetings of Creditors in Chapter 7, 12, and 13 Cases (“Interim Procedures”). Upon the effective date¹, and until further notice, the 341(a) meeting of creditors for chapter 7, 12, and 13 cases² will be held by video conference. The purpose of these Interim Procedures is to facilitate access to 341 meetings by all parties in interest while promoting efficiency by reducing travel costs and time commitments for participants and enhancing fact-finding over telephonic meetings. Nothing in these Interim Procedures should be construed to limit the authority or discretion of the United States Trustee (“UST”) to require the in-person appearance of any debtor at the 341 meeting, and in-person 341 meetings may only be conducted after consultation with and approval by the UST. In addition, the trustee, in accordance with USTP guidance, may approve other alternative arrangements for 341 meetings such as telephonic appearances or interrogatories in extenuating circumstances, including active military duty, serious illness, disability, incarceration, or other unique circumstances. These Interim Procedures are subject to change at the discretion of the UST.

This document provides information and procedures for the trustee to conduct virtual 341 meetings in the cases to which they are appointed in the following areas:

- ◆ United States Trustee’s designation
- ◆ Presiding at virtual 341 meetings
- ◆ Conducting 341 meetings via Zoom
- ◆ Verifying the debtor’s identity and social security number
- ◆ Virtual 341 meeting protocols
- ◆ Limited trustee discretion for adjournment to conduct 341 meetings other than by video
- ◆ Recordkeeping
- ◆ Other questions

These Interim Procedures supplement the Handbook for Chapter 7 Trustees (“Chapter 7 Handbook”), Handbook for Chapter 12 Standing Trustees (“Chapter 12 Handbook”), and the Handbook for Chapter 13 Standing Trustees (“Chapter 13 Handbook”) (collectively referred to as the “Handbooks”).

In addition, the USTP has created a separate document, Best Practices for Debtors, Debtor Attorneys, and Other Parties in Interest for Attending Virtual § 341(a) Meetings of Creditors in Chapter 7, 12, and 13 Cases (“Best Practices”), which provides information and suggested best practices for debtors and other stakeholders who participate in virtual 341 meetings. The trustee is expected to conduct the virtual 341 meeting consistent with the Interim Procedures and the Best Practices.

¹ Effective dates for each federal judicial district will be posted on their USTP district website “Local Section 341 Meeting Information” page when available. A list of these sites can be found here: <https://www.justice.gov/ust/moc>.

² Hereafter, the 341(a) meeting of creditors is referred to as the “341 meeting” or “341 meetings.”



U.S. Department of Justice
United States Trustee Program

UNITED STATES TRUSTEE'S DESIGNATION

The UST appoints chapter 7, 12, and 13 trustees who reside or have an office in the judicial district in which the case is pending, or in any judicial district adjacent to such district, and who are otherwise competent to serve. 11 U.S.C. § 321. The trustee, as designee of the UST, is the presiding officer at the 341 meeting in chapter 7, 12, and 13 cases in which they are appointed. *See* 11 U.S.C. §§ 102(9), 341; FRBP 9001(12), 2003. Pursuant to their supervisory authority, the UST authorizes the trustee to conduct the 341 meeting in their cases by video conference with limited discretion to conduct the meeting by other alternative means, as necessary or appropriate, to complete the administration of their cases. *See* 28 U.S.C. §§ 586(a)(1), (b); 11 U.S.C. § 102(9); FRBP 9001(12).

PRESIDING AT VIRTUAL 341 MEETINGS

FRBP 2003(a) provides that “[t]he meeting may be held at a regular place for holding court or at any other place designated by the United States trustee within the district convenient for the parties in interest.” For purposes of conducting virtual 341 meetings, the trustee generally should be physically located within their applicable judicial district or an adjacent district, and the meeting should be conducted at the trustee’s primary business location.³ The UST may approve the trustee’s conduct of the meeting at their residence or such other location, provided the trustee is competent to serve as trustee in the case, appropriate decorum and professionalism are maintained, there is a stable and secure internet connection, and the Zoom technical requirements (set forth below) are otherwise met. The UST may provide such approval on a recurring basis or on a calendar-by-calendar basis, depending on the circumstances. Trustees may also seek approval on a recurring basis or on a calendar-by-calendar basis to conduct meetings at their primary residence provided it is located within a two-hour (one way) commuting distance of the trustee’s primary business location. Preapproval is not required if the trustee seeks to conduct a virtual meeting at an alternative location when necessitated by weather, health and safety reasons, or other exigent circumstances.⁴ With this added flexibility, it is anticipated that UST approval for the trustee to conduct virtual meetings from a location other than the trustee’s office or primary residence should otherwise be in limited circumstances and on a non-routine basis. To facilitate requests, trustees should use the request form set forth in Appendix A.

CONDUCTING 341 MEETINGS VIA ZOOM

Technology

The USTP will provide each trustee with a Zoom license for their use in conducting virtual 341 meetings on their computer.⁵ The trustee should use the Zoom platform and license to conduct all virtual 341 meetings – video or telephonic – and for no other purpose. Activation of the Zoom license will establish a unique meeting ID, passcode, and phone number for each trustee, which will be used in connection with the noticing of their virtual 341 meetings. The participant limit is 300 per meeting.⁶ A third-party vendor, Telespace, will provide Zoom technical support for the trustee. The trustee should digitally record all 341 meetings on digital audio recorders provided or approved by the USTP.⁷ **The**

³ The physical presence requirement applies to both telephonic and video 341 meetings.

⁴ As noted previously, these Interim Procedures supplement the Handbooks, including the requirements for UST approval for trustees to designate another person to conduct the 341 meeting. To the extent the trustee is permitted to designate another person to conduct 341 meetings (e.g., a staff attorney), the Interim Procedures apply equally to such designee.

⁵ The trustee should not use a tablet or smartphone to conduct the Zoom 341 meeting.

⁶ The trustee should contact their local UST office if they anticipate the number of 341 meeting participants will exceed the limit.

⁷ *See* FRBP 2003(c).



global settings for the Zoom license provided by the USTP will not permit the 341 meeting to be recorded via the Zoom platform, and the trustee should not attempt to record the 341 meeting through the Zoom platform.

As part of the regular conduct of their duties, the trustee should comply with system requirements for use of Zoom found at support.zoom.us, which requirements may be updated from time to time but as of February 17, 2023 include, but are not limited to, the following:

- ◆ Minimum internet connection of 3G or 4G/LTE;
- ◆ Computer with built-in camera, speakers, and a microphone, or a webcam to perform these functions;
- ◆ Dual-core 2Ghz or higher processor with 4 GB of RAM;
- ◆ Reasonable steps for cybersecurity, including, but not limited to, maintaining up to date antivirus software on the computer hardware used to conduct 341 meetings; and
- ◆ Such other features, technology, hardware, software, or security protections as the USTP requires for the trustee to conduct video 341 meetings.

The USTP has established Zoom settings and features, including a Zoom login page with FBI warning and a formal virtual background that the trustee must use when conducting their video 341 meetings. Trustees should not change these features or settings without express prior approval by the UST, and the background should not be used for any purpose other than 341 meetings. From time to time the Zoom platform may be updated, and these software updates may affect the functionality of certain Zoom settings and features. If any functionality issues or problems arise by reason of any update, the trustee should contact Telespace for assistance.

Examination of Debtor

The Interim Procedures contain guidance for the examination of the debtor and for other aspects of the conduct of virtual 341 meetings, and trustees are expected to follow them. The trustee shall administer the oath to the debtor in every virtual 341 meeting.⁸ Except as modified by these Interim Procedures, the conduct and scope of the debtor's examination should be the same as for in-person meetings and in accordance with the Handbooks. For example, the trustee is expected to ask the same required questions for each debtor who appears at a virtual 341 meeting. See Supplementary Materials to the Handbooks for the current list of required questions and additional suggested questions. For unrepresented debtors, the trustee should also inquire into the extent of assistance, if any, the debtor received from a petition preparer and the fees that were charged for these services.

If the trustee becomes aware of a debtor's disability, such as a hearing impairment, the trustee should notify the UST immediately. The UST, in consultation with the debtor and the trustee, will determine the reasonable accommodation to be made, if any.

⁸ The Handbooks specify that arrangements should be made for a third party to administer the oath to the debtor when the debtor cannot personally appear before the trustee. See Chapter 7 Handbook, Section 3, E, 13; Chapter 12 Handbook, Chapter 3, B, 6; Chapter 13 Handbook, Chapter 3, B, 6. Pursuant to these Interim Procedures, the trustee is required to administer the oath to the debtor as the designee of the UST in every virtual 341 meeting – video or telephonic. See 11 U.S.C. §§ 102(9), 343; FRBP 2003(b)(1), 9001(12).



Language Interpreters - Limited English Proficiency Program

Language interpreter services are available for virtual 341 meetings. The trustee may contact the interpreter service through Zoom and the interpreter service may participate in virtual 341 meetings by the Zoom audio connection. In order to facilitate the efficient use of the interpreter service for virtual 341 meetings, the trustee should use the attached procedures for contacting the interpreter service.

The trustee should follow the procedures set forth in the Handbooks for using the interpreter service. It is possible that in certain instances the trustee may experience problems in reaching the interpreter service. Pursuant to the Handbooks, the trustee and the trustee's employees may not serve as interpreters.⁹ The debtor may not use family members, friends, the debtor's attorney, or the attorney's employees, unless the interpreter service is not available.¹⁰ The trustee should report to the UST any instances of excessive or frequent delays in reaching the interpreter service.

VERIFYING THE DEBTOR'S IDENTITY AND SOCIAL SECURITY NUMBER

Obtaining Copies of Identification Documents Prior to 341 Meeting

The trustee is required to verify every individual debtor's identity at the virtual 341 meeting consistent with the Handbooks.¹¹ See 11 U.S.C. § 521(h); FRBP 4002(b)(1). Prior to the virtual 341 meeting, the trustee should obtain from the debtor or the debtor's attorney, if represented, the following documents: (1) a clear copy of a government-issued photo identification of the debtor¹² ("ID") and (2) copies of the debtor's social security number ("SSN") card or other evidence of the debtor's SSN, or a written statement that such documentation does not exist (collectively referred to as the "SSN Documents").¹³ The ID and SSN Documents (hereafter the ID and SSN Documents are collectively referred to as the "ID Documents") must conform to the proof requirements that are set out in the respective Handbooks.

The debtor or debtor's attorney should send the ID Documents to the trustee in a sufficient time before the scheduled 341 meeting to permit the trustee to complete their satisfactory review.¹⁴ The trustee is responsible for ensuring that the ID Documents are sent to the trustee in a safe and secure manner, for safeguarding the ID Documents from theft, loss or unauthorized access, and for preventing unauthorized disclosure of any personally identifiable information contained in the ID Documents, as required by applicable law and consistent with established practices for the secure transmission and

⁹ See Chapter 7 Handbook, Section 3, E, 6; Chapter 12 Handbook, Chapter 3, B, 10; Chapter 13 Handbook, Chapter 3, B, 10.

¹⁰ *Id.*

¹¹ The debtor identification procedures specified herein pertain to video 341 meetings. To the extent the trustee is required to complete the debtor's identification at a telephonic 341 meeting or other remote alternative to an in-person meeting, the trustee should comply with the requirements specified in the Handbooks or by their UST. See Chapter 7 Handbook, Section 3, E, 5; Chapter 12 Handbook, Chapter 3, B, 5; Chapter 13 Handbook, Chapter 3, B, 5; and related Supplementary Materials (Notice to United States Trustee of Debtor Identity Problem and Declaration Regarding Administration of Oath and Confirmation of Identity and Social Security Number).

¹² These procedures apply to each debtor, including co-debtors.

¹³ If the debtor states that they are not eligible for a social security number, the trustee must comply with existing requirements in the Handbooks for obtaining documentation sufficient to verify the debtor's identity in that circumstance. See Chapter 7 Handbook, Section 3, E, 5; Chapter 12 Handbook, Chapter 3, B, 5; Chapter 13 Handbook, Chapter 3, B, 5.

¹⁴ In accordance with the Best Practices, the debtor must provide the ID Documents to the trustee at least 14 days prior to the scheduled 341 meeting, or within the timeframe requested by the trustee.



**U.S. Department of Justice
United States Trustee Program**

receipt of sensitive documents in their applicable district.¹⁵ The transfer of the ID Documents by unprotected email or messaging must not be used. If the debtor or debtor's attorney fails to provide the ID Documents to the trustee prior to the 341 meeting, the trustee should adjourn and continue the 341 meeting. The trustee should not attempt to identify the debtor at the virtual 341 meeting by asking the debtor or their attorney to display the ID Documents at the video 341 meeting.

The debtor's attorney should assist the debtor in obtaining the ID Documents and facilitate their timely submission to the trustee. If possible, the trustee should communicate with any unrepresented debtor and arrange for the debtor to timely submit the ID Documents to the trustee prior to the 341 meeting.

After receiving the ID Documents, the trustee must ensure that the ID is of sufficient clarity to allow the trustee to identify the debtor at the video 341 meeting. If the ID is not sufficiently clear, the trustee should promptly request a new copy. If feasible, the trustee should also check before the 341 meeting whether the number on the SSN Documents provided to the trustee matches the SSN on file with the bankruptcy court or determine that the debtor has provided sufficient documentation to verify the debtor's identity if the debtor is not eligible for an SSN.

Verifying the Individual Debtor's Identity at the 341 Meeting

At the video 341 meeting, the trustee must verify the debtor's identity as follows:

- ◆ At the beginning of the video 341 meeting, the trustee should ask the debtor and their attorney, if represented, to identify themselves so that the trustee can view the debtor on the screen. As part of this process, the trustee must ask the debtor to expressly testify that he or she is the individual whose name and address appear on the voluntary bankruptcy petition as the debtor.
- ◆ The trustee should make sure that debtor's image can be clearly seen on the screen. Next, without displaying the previously provided ID, the trustee should compare the photo on the ID with the image of the debtor on the screen.
- ◆ If the photo on the ID sufficiently matches the debtor's image on the video screen, the trustee should confirm this fact on the record by stating the type of ID (driver's license, passport, etc.), describing the process used by the trustee to obtain the ID from the debtor, confirming that the name on the ID matches the name of the debtor on the 341 meeting notice, and reciting that the photo on the ID sufficiently matches the debtor's image on the video screen and that the ID photo and video screen image are of sufficient clarity for the trustee to make this determination. The trustee should not rely upon the debtor's attorney to certify the debtor's identity or the validity of the ID Documents.

¹⁵ Trustees have created secure web portals or virtual drop boxes, many in collaboration with their software vendors, for the secure uploading, transmission, or receipt of sensitive documents in the course of their administration of cases, which could be used for the debtor's transmission of ID Documents. In certain jurisdictions, the courts have created similar mechanisms for the secure handling or transmission of sensitive documents which may be used by trustees for receiving the ID Documents. Trustees who have accounting or law practices may have developed similar secure platforms for exchanging sensitive documents with their clients which could be adapted for this use. In addition, similar secure document exchange methods are commercially available. It is incumbent upon the trustee to implement an appropriate mechanism for the safe and secure transmission and receipt of the ID Documents in connection with their administration of cases, and trustees are encouraged to consult with their software vendor or an IT professional before implementing their mechanism.



**U.S. Department of Justice
United States Trustee Program**

- ◆ If the trustee cannot match the photo on the ID with the debtor's video image for any reason, the trustee should take steps to remedy the issue and if those are unsuccessful, should state the inability to confirm the debtor's identity on the record and adjourn and continue the 341 meeting to a later time. The trustee also should refer the matter to the UST.¹⁶

Confirming the Debtor's Social Security Number

Prior to the 341 meeting, the debtor or debtor's attorney, if represented, should provide to the trustee the SSN Documents, and the trustee should take the following steps in connection with confirming this information:

- ◆ Ensure the SSN Documents provide sufficient proof of the debtor's SSN consistent with the Handbooks.¹⁷ If the proof of the SSN is insufficient, then the trustee should promptly request new proof of the debtor's SSN.
- ◆ The trustee should secure the SSN Documents in the same manner as any other record that contains personally identifiable or sensitive information consistent with the Handbooks and in compliance with applicable law.
- ◆ If possible before the 341 meeting, the trustee should compare the name and SSN in the SSN Documents with the SSN on file with the bankruptcy court in the debtor's case and confirm that the debtor's name and SSN in the bankruptcy case matches the name and SSN in the SSN Documents. If they match, then at the beginning of the video 341 meeting, without displaying the SSN Documents or reading the SSN, the trustee should confirm this fact on the record by describing the SSN Documents and the process used by the trustee to obtain them from the debtor, confirming the name and SSN in the SSN Documents match the name and SSN of the debtor on the 341 meeting notice, and reciting any other relevant facts used by the trustee to determine that the SSN Documents provide sufficient proof of the debtor's SSN consistent with the Handbooks.
- ◆ If either the name or SSN does not match, or the trustee determines that the SSN Documents otherwise are insufficient, the trustee should take steps to remedy the issue and if those are unsuccessful, should state the inability to confirm the debtor's SSN on the record and adjourn and continue the 341 meeting to a later time. The trustee also should refer the matter to the UST.¹⁸

Security and Disposition of Identification Documents

At all times, the trustee has ongoing responsibilities to protect and secure the ID Documents and any personally identifiable or sensitive information contained therein in accordance with applicable law. After receiving the ID Documents, the trustee should undertake appropriate measures to restrict access to the ID Documents and maintain, handle, store, transmit, or otherwise use them in a secure manner to avoid any loss, unauthorized access, or disclosure in accordance with applicable law.

¹⁶ The trustee should refer these matters to the UST using the Notice to United States Trustee of Debtor Identity Problem form. See Chapter 7 Handbook, Section 3, E, 5; Chapter 12 Handbook, Chapter 3, B, 5; Chapter 13 Handbook, Chapter 3, B, 5; and related Supplementary Materials.

¹⁷ If the debtor states that they are not eligible for a SSN, the trustee must comply with existing requirements in the Handbooks for obtaining documentation sufficient to verify the debtor's identity in that circumstance and ensure there is adequate documentation sufficient to verify the debtor's identity at the 341 meeting. See Chapter 7 Handbook, Section 3, E, 5; Chapter 12 Handbook, Chapter 3, B, 5; Chapter 13 Handbook, Chapter 3, B, 5.

¹⁸ The trustee should refer these matters to the UST using the Notice to United States Trustee of Debtor Identity Problem form. See Chapter 7 Handbook, Section 3, E, 5; Chapter 12 Handbook, Chapter 3, B, 5; Chapter 13 Handbook, Chapter 3, B, 5; and related Supplementary Materials.



Absent unique circumstances in particular cases where the trustee determines that retention of the ID Documents is necessary for further investigation in connection with the administration of the case or is required for the performance of the trustee's duties, the trustee should take appropriate measures to destroy the ID Documents in a safe and secure manner after the conclusion of the 341 meeting. The trustee should immediately report to the UST any incident of unauthorized access or disclosure of any personally identifiable or sensitive information contained in the ID Documents, and any incident of theft or loss of ID Documents.

VIRTUAL 341 MEETING PROTOCOLS¹⁹

The trustee is expected to conduct virtual 341 meetings expeditiously and with professionalism and decorum within the scheduled meeting times established by the UST. If the virtual 341 meeting calendar regularly lasts longer than the scheduled time or routinely requires lengthy wait times for debtors and creditors, the trustee must consult with the UST to explore improved scheduling options for virtual 341 meetings. The trustee should emphasize to all parties that no one is permitted to electronically record the 341 meeting other than the trustee as authorized by the UST. If it becomes necessary to share a document on the screen, the trustee should ensure that no personally identifiable or sensitive information is disclosed on the video screen or otherwise disclosed during the meeting.

The trustee should adopt and announce protocols to assist debtors and other parties in interest on how to participate in virtual 341 meetings consistent with the Best Practices. These Best Practices include requesting the debtors and other parties in interest to do the following:

- ◆ The debtor's attorney should facilitate the participation of their client in the virtual 341 meeting.
- ◆ Upon logging into Zoom and joining the 341 meeting, parties should immediately place themselves on mute and listen for their case to be called, and when their case is called, unmute their Zoom microphone and identify themselves.
- ◆ The debtor should provide their testimony from a quiet location, with no background noise, distractions, or disruptions, which is appropriate for their participating in a video meeting that is open to the public.
- ◆ The debtor and the debtor's attorney should ensure they can both view the video screen and be seen by the trustee. To replicate the in-person 341 meeting, provide the proper decorum, and allow the trustee to perceive the interaction between the debtor and their attorney, the parties should situate themselves so both debtor and their attorney may be viewed on the screen.
- ◆ While the debtor is sworn in and testifying: (1) no person may be present in the location from which the debtor is testifying except for the debtor's attorney, employees of the debtor's attorney, or a co-debtor, (2) the debtor should have an available copy of the filed schedules and statement of financial affairs and any other documents presented to the trustee, and (3) except as noted below, the debtor may not communicate with any person regarding the subject of the debtor's testimony, by electronic means or otherwise.²⁰

¹⁹ While these protocols are generally applicable to any virtual Zoom meeting, i.e., where the debtor appears by video conference or by telephone using the Zoom audio dial-in feature, certain of the protocols have specific application to Zoom video meetings. The trustee should contact the UST if they have any questions regarding any aspect of conducting a telephonic or video 341 meeting via Zoom.

²⁰ The 341 meeting is open to the public and any party may join the meeting so long as they comply with the Best Practices.



**U.S. Department of Justice
United States Trustee Program**

- ◆ The debtor and debtor’s attorney should treat the 341 meeting as if it is being held in person. The attorney should refrain from coaching the debtor, and the debtor should answer the questions of the trustee and other 341 meeting attendees in the same manner as required for an in-person meeting.
- ◆ If the debtor or the debtor’s attorney seek to communicate with each other, either should openly request a recess for such purpose. If such request is granted by the trustee, the debtor and the debtor’s attorney may privately confer “offline,” i.e., by telephonic or other means that are not transmitted to the other parties.
- ◆ No one is to make any video or audio recording or to photograph the debtor or any party attending the virtual 341 meeting.
- ◆ The trustee, debtor’s attorney, the debtor, and all other parties in interest should present themselves in a professional manner and respect the formality and solemnity of the proceedings in the same manner as if the parties were appearing in-person.
- ◆ 341 meeting attendees should be respectful when asking questions of the debtor.
- ◆ If any party is disconnected before the 341 meeting is finished, they should reconnect to the Zoom meeting by using the same Zoom meeting login information or meeting link to be admitted back into the 341 meeting.
- ◆ If at any time during the 341 meeting, the internet connection becomes so poor that the trustee cannot view the debtor or hear and properly record their testimony, the trustee will try to resolve the issue with the assistance of the parties, but the meeting will need to be adjourned and continued if the trustee is unable to resolve the issue.
- ◆ Once the 341 meeting is finished, parties may leave the meeting by disconnecting from the Zoom platform.
- ◆ Failure to follow these Best Practices may result in the trustee’s adjournment and continuance of the 341 meeting.

**LIMITED TRUSTEE DISCRETION FOR ADJOURNMENT TO CONDUCT
341 MEETINGS OTHER THAN BY VIDEO**

These Interim Procedures presume that the 341 meetings in chapter 7, 12, and 13 cases will be conducted virtually, i.e., via Zoom, and that the debtors will appear by video conference. See Introduction. However, in order to promote consistency and fundamental fairness, while retaining necessary flexibility to deal with unique or particular circumstances in specific cases, the trustee will have limited discretion to adjourn and continue video meetings in order to conduct 341 meetings in certain cases by some manner other than by video conference, as further set forth below. In exercising this limited discretion, the trustee should provide reasonable accommodation to debtors who cannot appear by video due to technical or other accessibility problems, and the trustee otherwise should have adequate justification to conduct a 341 meeting in a manner other than by video conference. As further explained below, until further notice by the UST, the primary alternative to a video meeting is the debtor’s appearance at a telephonic meeting using the Zoom audio dial-in feature.



In-Person 341 Meetings

Until further notice, no in-person meetings should take place without consultation with and approval by the UST.

Telephonic Meetings and Other Alternatives

Prior to the pandemic, the USTP authorized the trustees to conduct telephonic 341 meetings only in certain extenuating circumstances, namely military service, terminal illness, disability, or incarceration. Until further notice, the trustee's discretion to adjourn and continue the 341 meeting to conduct a telephonic meeting using the Zoom audio dial-in feature is not limited to these extenuating circumstances, provided the trustee has adequate justification. Although no pre-approval by the UST is required, the trustee should have adequate justification to conduct a 341 meeting by telephone or by some other alternative to video (e.g., interrogatories). There is adequate justification if (1) the trustee has determined that the debtor is unable to appear at a 341 meeting by video, (2) the trustee has determined that a telephonic or other alternative appearance is justified and sufficient in the particular circumstances, and (3) the UST has not approved the debtor's in-person attendance at the meeting.

RECORDKEEPING

Except as provided herein, the recordkeeping responsibilities for the trustee that are outlined in the applicable Handbooks remain in effect.²¹ The trustee must use the electronic digital recorders provided or approved by the UST. The trustee must transfer the 341 meeting recording to the UST immediately after conclusion of the 341 meeting, or as soon as practicable. The recordings should be in a digital format prescribed by the USTP and transmitted to the USTP in a safe and secure manner and in compliance with all USTP requirements and instructions. The trustee may maintain copies of the recordings, however, the 341 meeting recordings maintained by the UST are the official record of the meetings.²² Transfers of the recordings can continue electronically through Justice Enterprise File Sharing ("JEFS"), or such other method as approved by the UST.

ADDITIONAL QUESTIONS

The USTP is unable to anticipate all matters or issues that may arise regarding the conduct of virtual 341 meetings. If the trustee has additional questions or concerns regarding their conduct of virtual 341 meetings in accordance with these Interim Procedures, they should contact their local UST office. If the trustee encounters any issues or problems conducting virtual 341 meetings, including any technical or security issues, the trustee should contact the Telespace Service Desk for assistance. The Telespace Service Desk contact information is:

Phone: 877.294.0091

Email: support@Telespace.com

Web: www.Telespace.com/support

Hours of Operation: 8:00 a.m. to 8:00 p.m. Eastern

²¹ See Chapter 7 Handbook, Section 3, E, 12; Chapter 12 Handbook, Chapter 3, B, 12; Chapter 13 Handbook, Chapter 3, B, 12.

²² The Handbook for Chapter 13 Standing Trustees currently provides that the chapter 13 trustee may retain the original recordings, if authorized by the UST. See Chapter 13 Handbook, Chapter 3, B, 12. Pursuant to these Interim Procedures, the USTP will retain all the original recordings of 341 meetings.



**U.S. Department of Justice
United States Trustee Program**

In addition, the trustee should notify their local UST office.

These Interim Procedures supplement the Handbooks and to the extent an issue is not addressed in this document, please refer to the Handbooks or contact the UST.

Faculty

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Richard M. Dauval is a shareholder with Leavengood, Dauval, Boyle, Vasti & Sullivan, P.A. in St. Petersburg, Fla., and a chapter 7 bankruptcy panel trustee in the Middle District of Florida, where he served for almost 15 years in the Tampa Division and very recently was transferred to the Ft. Myers Division. He is Board Certified in Consumer Bankruptcy Law by the American Board of Certification and a licensed title agent for Old Republic National Title Insurance Company and the Florida Attorneys' Title Fund. Prior to joining the panel of trustees, Mr. Dauval represented debtors in chapter 7 and chapter 13 cases for about 10 years. His experience in consumer bankruptcies and chapter 7 trustee short sales has positioned himself to be hired as counsel to other chapter 7 bankruptcy trustees, helping them to facilitate and successfully negotiate these 11 U.S.C. § 363 bankruptcy short sales. Mr. Dauval received his undergraduate degree from the University of Colorado at Boulder, his J.D. from the New England School of Law in Boston, and his LL.M in taxation from the University of Florida Levin College of Law.

Paul A. Giordano is a shareholder with Roetzel & Andress, LPA in Fort Myers, Fla., and handles a variety of business, commercial and banking litigation, with a special focus on bankruptcy & creditors' rights, troubled debt restructuring, workouts and related litigation, partnership disputes, commercial foreclosures, contract and corporate disputes, construction liens, real estate dispute litigation, and general and professional liability lawsuits. He regularly assists national, regional and community banks in stabilizing distressed commercial and industrial properties, from negotiating pre-foreclosure agreements to advocating for the appointment of receivers and judicial sales. He also has experience in insurance coverage litigation, and jury and non-jury trial practice. Mr. Giordano is active in several bankruptcy-related professional organizations, including the Tampa Bay Bankruptcy Bar Association, the Bankruptcy Legal Education Series Foundation Inc. (for which he served as treasurer from 2014-15 and president and chairman of the board from 2013-14), and the Southwest Florida Bankruptcy Professional Association, where he served as President in 2014. He has received professional accolades for his work in bankruptcy and has been named by *Florida Trend* as one of the "Legal Elite" for Bankruptcy & Workout (2013 and 2016), in *The Best Lawyers in America* for Litigation - Bankruptcy (2018-26), by *Florida Super Lawyers* as a "Rising Star" in Bankruptcy (2011-13) and in *Florida Super Lawyers* (2015-17), and he is rated AV-Preeminent by Martindale-Hubbell. Mr. Giordano received his B.A. in 1995 from the University of Florida and his J.D. in 1999 from the University of Florida Levin College of Law.

Hon. Grace E. Robson is a U.S. Bankruptcy Judge for the Middle District of Florida in Orlando. She previously was a partner with Markowitz Ringel Trusty & Hartog, P.A. Prior to taking the bench, she practiced for more than 25 years in the area of corporate reorganization and bankruptcy, debtor/creditor relations and bankruptcy litigation. Judge Robson has represented corporate debtors, trade and institutional creditors, trustees, receivers and creditors' committees. She has been involved in all facets of reorganization-related representations, including pre-filing consultation, filing complex corporate bankruptcy cases, post-bankruptcy financing, asset-purchase agreements and other routine matters. Judge Robson is Board Certified in Business Bankruptcy Law and currently serves as judicial chair of the Health and Wellness Task Force of the Business Law Section of the Florida Bar, as well as co-chair of the Secured Creditors Subcommittee of the Business Law Section, Business Bankruptcy Committee of the ABA (having previously served as a co-chair of the *Pro Bono* Services Subcommittee). Prior to relocating to the Middle District of Florida, she served on the board of directors of the Bankruptcy Bar Association for the Southern District of Florida and was the Broward Chair of the Pro Bono Committee, the Broward chair of the CARE Program Committee, and chair of the Wellness Committee. Judge Robson received her B.A. *cum laude* from the State University of New York at Albany in 1994 and her J.D. from the Benjamin N. Cardozo School of Law in 1997.

Gavin N. Stewart is the owner of Stewart Legal Group, P.L. in Tampa, Fla., and his practice centers on creditors' rights and consumer litigation in Florida, New Jersey and New York. He has nearly 20 years of experience representing financial institutions, businesses and individuals in consumer and commercial bankruptcy cases, with a particular focus on complex litigation, secured-creditor representation, and restructuring matters across chapters 7, 11 and 13. Mr. Stewart is a member of ABI, the Tampa Bay Bankruptcy Bar Association and the New Jersey State Bar Association. He received his B.A. degree from Rutgers University as a Henry Rutgers Scholar and his J.D. in 2007 from Stetson University College of Law, where he was a member of the Moot Court Board.