

1 Russell A. Brown  
CHAPTER 13 TRUSTEE  
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5  
6 IN THE UNITED STATES BANKRUPTCY COURT  
7 FOR THE DISTRICT OF ARIZONA

8 In re  
9 MICHAEL T. HERZOG,

In Proceedings Under Chapter 13  
Case No. 05-14971 PHX RJH

10  
11 Debtor.

**TRUSTEE'S RECOMMENDATION**

12 The Trustee has reviewed the Plan, Schedules, and Statement of Financial Affairs.

13 Trustee notes the following problems, which must be resolved prior to confirmation of the  
14 Plan:

15 1. Schedule J allowances for food, telephone and recreation exceed Trustee's published  
16 guidelines by \$1,665.00 per month. The Trustee objects to the allowances and recommends that the  
17 Plan payment be increase from \$1,591.00 to \$3,250.00, effective February 16, 2006. Schedule J must  
18 be amended accordingly.

19 2. Schedule J includes an allowance of \$565.00 per month for direct payment of a  
20 vehicle. The Trustee objects as the vehicle is being paid through the Plan. The Schedule J must be  
21 amended to delete the allowance.

22 3. Schedule J includes an allowance of \$200.00 per month for payment of support for  
23 dependents not home. The Trustee requires written disclosure as to whom these funds are paid and  
24 the month and year they are scheduled to terminate. A copy of the document or decree requiring the  
25 payment must be provided.

26 4. Schedule J includes an allowance of \$1,600.00 for payment of estimated taxes. A  
27 self-employed debtor is usually required by federal law to file quarterly estimated tax vouchers and  
28 to pay in full the estimated income tax due for the given quarter. The Trustee requires a copy of such  
voucher as filed for the quarter ending December 2005, together with proof of payment [copy of

1 canceled (paid) check (front and back) or copy of other form of payment]. Similar documentation  
2 may be requested for future quarters. If the debtor is not required by tax law to pay self-employment  
3 taxes, the Trustee requires a copy of the income tax return for the previous year to confirm that the  
4 Debtor owed no self employment taxes. The purpose of the Trustee's request is to ensure that the  
5 Debtor incurs no post-petition income taxes.

6 5. The fees requested by the debtor's attorney exceed the standard for this district for  
7 a flat fee case. The Trustee requires that counsel file and notice a separate fee application for  
8 approval by the Court.

9 6. The Statement of Financial Affairs, Answer 16, must be amended to disclose required  
10 information regarding the debtor's spouse.

11 7. The proofs of claim filed by Saxon Mortgage (2 claims), Onyx Acceptance, the IRS  
12 and the Arizona Department of Revenue differ from the creditors' treatment under the Plan or are  
13 not provided for by the Plan. The Trustee has received no notification that the issues have been  
14 resolved and the Debtor(s) must resolve the discrepancies before the Trustee recommends  
15 confirmation of the Plan. As to each claim, the Trustee requires that the Debtor(s): (a) file an  
16 objection to the claim (if the debt is believed to be unsecured; (b) notify the Trustee **in writing** that  
17 the claim issue has been resolved and the holder of the claim will endorse the order confirming the  
18 Plan; (c) notify the Trustee **in writing** that the order confirming the Plan will provide for full  
19 payment of the claim; or (d) timely file an amended Plan to provide for some or all payment on the  
20 claim. If resolution of the claims changes Plan funding requirements, the Trustee requires the receipt  
21 of an amended Plan analysis (Local Form 13-2) with any proposed Order confirming the Plan. If  
22 one or more objections to the proofs of claim is timely filed by the Debtor(s), then the time to submit  
23 a proposed Order confirming the Plan to the Trustee is extended by 15 days after substantive  
24 completion of the last objection.

25 8. Any Order confirming the Plan must comply with the provisions of the Trustee's  
26 Memorandum dated March 19, 1998 (copy enclosed or previously submitted to counsel). The tax  
27 years are 2005 and 2006. The time to submit a proposed Order to the Trustee is extended to 15 days  
28 after the conclusion of any objection to proof of claim or objection to confirmation.

1 9. Other requirements:

2 (a) Due to the possibility of errors on the claims docket, it is the attorney's  
3 responsibility to review all proofs of claim filed with the Court and resolve any discrepancies  
4 between the claims and the Plan prior to submitting any proposed Order Confirming Plan to the  
5 Trustee.

6 (b) Requests by the Trustee for documents and information are not superseded by the  
7 filing of an amended plan or motion for moratorium.

8 (c) The Trustee will object to any reduction in the Plan duration or payout in a  
9 proposed Order Confirming Plan unless an amended or modified plan is filed and noticed out.

10 (d) The Trustee requires that any proposed Order Confirming Plan state: "The Plan  
11 and this Order shall not constitute an informal proof of claim for any creditor."

12 **Plan payment status:** Debtor's interim payments of \$1,591.00 each are current through due  
13 date December 16, 2005. Payment in like amount coming due January 16, 2006 must be received  
14 in the Trustee's office not later than February 1, 2006.

15 Subsequent payments will be due on or before the 16<sup>th</sup> day of each month, starting February  
16 2006.

17 **SUMMARY**

18 **Pursuant to the Court's Order Re: Procedures for Confirmation of Plans, paragraph**  
19 **E.(2), the Debtor must provide the following by February 1, 2006 or the Trustee will lodge an**  
20 **order dismissing the case:**

21 (a) All information and documents as requested in Items #1, #2, #3, #4, #5, #6 and #7  
22 above; and

23 (b) Pay to the Trustee the sum of \$1,591.00.

24 **The Court may dismiss the case without further notice for the Debtor's failure to timely**  
25 **comply with the Trustee's Recommendation.** If the Debtor meets all requirements of the  
26 Recommendation and this case remains active, Debtor's counsel must submit to the Trustee for  
27 review and signature, a proposed stipulated Order Confirming the Plan, signed by all objecting  
28 parties, which incorporates the requirements of this Recommendation, no later than February 1,

1 2006. The Trustee considers the time for reviewing a proposed Order pursuant to Rule 2083-7(a),  
2 L.R.B.P., to begin running when all Recommendation conditions are met.

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/s/ Russell Brown  
Russell A. Brown ABN 10173  
Chapter 13 Trustee

A copy of the foregoing was  
mailed on the date stated below to:

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