

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
West Palm Beach Division

IN RE:

ROBERT ABRAHAM,

CASE NO. 15-23972

CHAPTER 11

Debtor.

\_\_\_\_\_ /

**DISCLOSURE STATEMENT**

The Debtor, Robert Abraham, submits this Disclosure Statement to his creditors and other parties in interest. The approval of the Disclosure Statement is not tantamount to a decision by the Court on the merits of the Plan.

**I. INTRODUCTION**

**A. Purpose of this Document.**

This Disclosure Statement is submitted pursuant to the requirement imposed on the proponent of a Plan of Reorganization by 11 U.S.C. § 1125. The purpose is to disclose information deemed to be material, important, and necessary for the creditors to arrive at a reasonably informed decision in exercising their right, or to vote for acceptance or rejection of the Plan of Reorganization. This Disclosure Statement should be read in conjunction with the accompanying Plan of Reorganization. The Plan is a legally binding document once it is approved by the Court, and should be read in its entirety. Accordingly, creditors may wish to consult with their own attorney to more fully understand the Plan.

No representations concerning the Debtor, his future business operations, the value of his property or the value of any benefits offered to holders of claims or interests in connection with the Plan are authorized other than as set forth in this Disclosure Statement. Any representations or inducements made to secure acceptance of the Plan other than those contained in this Disclosure Statement should not be relied upon by a creditor or interest holder. Any such additional

representations and inducements should be reported to counsel for the Debtor at the address below and to the United States Trustee.

The information contained in this Disclosure Statement has not been subject to certified audit and is based in large extent on information maintained and collected by the Debtor. While every effort has been made to provide the most accurate information available, the books and records of the Debtor are not warranted or represented to be completely and historically accurate. Further, much of the information contained herein consists of projections of future performance. While every effort has been made to insure that the assumptions are valid and that the projections are as accurate as can be made under the circumstances, neither the Debtor nor his accountant undertakes to certify or warrant the absolute accuracy of the projections.

B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing

The Court has not yet confirmed the Plan described in this Disclosure Statement. This section describes the procedures pursuant to which the Plan will or will not be confirmed.

1. Time and Place of the Hearing to Confirm the Plan

The hearing at which the Court will determine whether to confirm the Plan will take place on \_\_\_\_\_, in Courtroom B, Room 801, at 1515 North Flagler Drive, West Palm Beach, FL 33401.

2. Deadline for Voting to Accept or Reject the Plan

If you are entitled to accept or reject the plan, vote on the enclosed ballot and return the ballot to the United States Bankruptcy Court, 1515 N. Flagler Drive, Room 801, West Palm Beach, FL 33401. See section VIII for a discussion of voting eligibility requirements.

The ballot must be received by \_\_\_\_\_ or it will not be counted.

3. Deadline for Objecting to the Confirmation of the Plan

Objections to the confirmation of the Plan must be filed with the Court and served upon the

Debtors; attorney for the Debtor, Brian K. McMahon, P.A., 1401 Forum Way, 6<sup>th</sup> Floor, West Palm Beach, FL 33401; Ariel Rodriguez, Office of the U.S. Trustee, 51 S.W. First Ave, Suite 1204, Miami, FL 33130; and all interested parties by \_\_\_\_\_.

4. Identity of Person to Contact for More Information

If you want additional information about the Plan, you should contact Brian K. McMahon, 1401 Forum Way, 6<sup>th</sup> Floor, West Palm Beach, FL 33401.

5. Effective Date. As the term is used in this disclosure statement and the plan of reorganization, the effect date shall be 10 days after the date the Order of Confirmation becomes final.

## **II. BACKGROUND**

The Debtor, Robert Abraham, is a realtor. In the early 2000's the Debtor and his brothers invested in residential property. The Debtor had the best credit of the brothers and obtained homes and mortgages in his name. When the housing market collapsed, the Debtor was left with multiple properties and mortgages. At the time of the filing, the Debtor had three properties remaining in his name; his homestead property, 10797 Lake Wynds Ct, Boynton Beach; the property in which his brother lives, 10898 Lake Wynds Ct, Boynton Beach; and, an investment property, 9801 Majestic Way, Boynton Beach.

The Debtor initially filed the case as one under Chapter 13. When it became apparent that the Debtor would not qualify for chapter 13, he sought to convert the case. Before the hearing on the conversion took place, the case was dismissed. Creditors holding liens on the 10898 Lake Wynds Court Property and the 9801 Majestic Way property objected to the Debtor's motion to reinstate the case for purposes of converting to chapter 11. As a condition of reinstatement, the creditors on those properties were granted relief from stay.

The Debtor is proposing a plan that will allow him to keep his homestead property.

### **III. FINANCIAL INFORMATION**

The Debtor has filed schedules of assets, liabilities, income and expenses, a Statement of Financial Affairs, and Monthly Operating Reports which contain the most accurate and current information available to the Debtor.

#### A. Real Property

Debtor's homestead: 10797 Lake Wynds Ct, Boynton Beach. The Palm Beach County Tax Appraiser values the property at \$355,000.00. According to Zillow, the property has an estimated value of \$491,258.00. The Debtor believes the value is closer to the amount in which the Tax Appraiser has determined because the home has structural damage. US Bank has been assigned and currently holds the first mortgage on the home. It has not filed a proof of claim but is allegedly owed \$557,193.06 at the time of the filing of the case. At the time of the filing of the case, Bosco Credit II Trust Series 2010-1 held the second mortgage which is being serviced by Franklin Credit. Recently Bosco assigned the mortgage to Deutsche Bank National Trust Company, as Trustee. Franklin Credit, on behalf of Bosco filed a proof of claim in the amount of \$151,770.01. The property is also encumbered by a lien held by Wyndsong Estates Homeowners Association in the amount of \$29,417.59. The Debtor disputes the validity of this lien. The amount due Wyndsong is being litigated in state court.

10898 Lake Wynds property: The Debtor's brother lives in the property located at 10898 Lake Wynds. The Palm Beach County Tax Appraiser has valued the property at \$427,633.00. Zillow has estimated the property to be worth \$513,000.00. Sabadell/Baron & Baron LLC, holds the first mortgage on the property and has filed a proof of claim in the amount of \$537,720.55. The property is also encumbered by a lien held by Wyndsong Estates Homeowners Association in the amount of \$33,174.10. The Debtor disputes the validity of this lien. The amount due Wyndsong is being litigated in state court. Taxes are also due for 2012 (\$9,533.16 to Sunshine State Certificates V, LLLP) and 2015 (\$8,041.13 to Palm Beach County Tax Collector) for this property.

9801 Majestic: The Debtor's property located at 9801 Majestic Way has been appraised by the Palm Beach County Tax Collector to have a value of \$236,274.00. Zillow has estimated the value of the property to be \$323,931.00. Wells Fargo holds the first mortgage on the property and is owed \$402,818.03. Wells Fargo was granted relief from stay during the course of the chapter 13 proceeding. Sun Valley Homeowners Association also holds a lien on the property in the amount of \$15,873.60.

#### B. Personal Property

At the time of the filing of the bankruptcy, the Debtor valued his personal property at \$8,013.73.

#### C. Ability to Fund and Complete Plan

The Debtor's ability to fully fund the plan and make payments is dependent on his income. Although his income as a realtor varies, he will have sufficient income to pay the mortgage on his home and some money to unsecured creditors.

### **IV. EXECUTORY CONTRACTS**

The Debtor has no executory contracts.

### **V. LIQUIDATION ANALYSIS**

Estimated value of assets:

Homestead		\$ 491,258.00
10898 Lake Wynds		\$ 513,000.00
9801 Majestic		\$ 323,931.00
Total Value		\$1,328,189.00
Liens on properties:		
US Bank	\$557,193.06	
Bosco	\$151,770.01	
Baron & Baron	\$537,720.55	
Wells Fargo	\$402,818.03	
Wyndsong HOA	\$ 62,591.69	
Sun Valley HOA	\$ 15,873.60	
Taxes	\$ 17,574.29	
Total Liens		\$1,745,541.00
Amount available for unsecured creditors		\$ 0.00

## Personal Property:

Bank account at filing	\$	442.73	
2002 Dodge Intrepid	\$	1,045.00	
1994 Olds Cutlass	\$	500.00	
Household furniture	\$	5,925.00	
Jewelry	\$	100.00	
Total value of personal property			\$ 8,012.73
Liens on personal property			\$ 0.00
Administrative Claims	\$	10,000.00	
Priority Claims	\$	0.00	
			<hr/>
Amount available for general unsecured creditors			\$0.00

**VI. SPECIAL RISK FACTORS**

Certain substantial risk factors are inherent in most plans of reorganization in Chapter 11 cases. If such plans are accepted, it is usually because they represent a greater return in dividends than in a liquidating Chapter 7 case. This Plan bears the risk that the Debtor receives a modification on his mortgage and continues to receive income.

Should the Debtor's plan failed to be approved, or should the Debtor default under the plan, creditors will be entitled to complete the foreclosure process and creditors who already have liens will be able to execute ahead of other creditors. The plan, as proposed, offers payment in a greater amount than creditors would receive outside bankruptcy or under a chapter 7.

ALL THE RISK FACTORS INHERENT IN A PLAN OF REORGANIZATION UNDER CHAPTER 11 ARE PRESENT IN THIS CASE. CREDITORS ARE URGED TO CAREFULLY READ THIS DISCLOSURE STATEMENT AND THE ACCOMPANYING PLAN OF REORGANIZATION SO THAT AN INFORMED JUDGMENT CAN BE MADE WITH RESPECT TO VOTING ON THE PLAN.

## **VII. SUMMARY OF NON-BANKRUPTCY LITIGATION**

At the time of the filing of the case, the Debtor had four pending lawsuits against him in state court.

1. Virtual Bank, FSB vs. Robert Abraham, 2007CA21298XXXMB – this case was improperly listed on the schedules as pending, the case was dismissed in 2011.
2. Wyndsong Estates Homeowners Association vs. Robert Abraham, 2011CC014904 - case relates to the appropriateness of the HOA fees on the 10898 Lake Wynds property. It is still pending.
3. Wyndsong Estates Homeowners Association vs. Robert Abraham, 2011CC015157 – case relates to HOA fees on the 10797 Lake Wynds property. Case is still pending.
4. US Bank, as Trustee vs. Robert Abraham, 2008CA39250 – case is a foreclosure action on 10797 Lake Wynds property. Case is still pending.

## **VIII. CLAIMS**

The deadline to file a proof of claim was April 26, 2016.

Wyndsong Estates Homeowners Association has filed claim #1 in the amount of \$29,417.59 that is for assessments against the 10898 Lake Wynds property. This amount has been satisfied by the Debtor's brother. Claim #7 in the amount of \$33,174.10 is for assessments on the 10797 Lake Wynds property.

Franklin Credit Management Corporation filed claim #4 in the amount of \$151,770.01. The claim is secured by a second mortgage on the 10797 Lake Wynds property.

Sunshine State Certificates V, LLLP filed claim #6 in the amount of \$9,533.16 for 2012 taxes on 10898 Lake Wynds property.

Palm Beach County Tax Collector filed claim #9 in the amount of \$8,041.23 for 2015 taxes on 10898 Lake Wynds property.

Sun Valley Homeowners Association, Inc. filed claim #10 in the amount of \$15,873.60 for homeowners' assessments on the 9801 Majestic property.

Sabadell/Baron & Baron, LLC filed claim #11 in the amount of \$537,720.55, secured by the 10898 Lake Wynds property.

All other filed claims are unsecured creditors for the amount of \$107,235.23.

US Bank has not filed a claim but is secured by the first mortgage on the 10797 Lake Wynds property. The amount owed on the mortgage is \$557,193.06.

Unsecured, unfiled claims listed on the schedules total \$38,157.00.

## **IX. SUMMARY OF PLAN OF REORGANIZATION**

### A. Purpose of the Plan of Reorganization

As required by the Code, the Plan places claims and equity interests in various classes and describes the treatment each class will receive. The Plan also states whether each class of claims or equity interests is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to the amount provided by the Plan.

### B. Unclassified Claims

Certain types of claims are automatically entitled to specific treatment under the Code. They are not considered impaired, and holders of such claims do not vote on the Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Code. As such, the Plan Proponent has not placed the following claims in any class:

1. Administrative Claims

Administrative expenses are costs or expenses of administering the Debtor's chapter 11 case which are allowed under § 507(a)(2) of the Code. Administrative expenses also include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days before the date of the bankruptcy petition. The Code requires that all administrative expenses be paid on the effective date of the Plan, unless a particular claimant agrees to a different treatment.

Administrative claims:

Professional fees:	estimated \$10,000.00	Subject to Court authorization, to be paid in full on effective date or as agreed to by attorney and Debtor.
Office of the US Trustee	current	Paid in full on effective date

2. Priority Claims

Palm Beach County filed its claim as priority claim. The amount owed is secured by 10898 Lake Wynds and will be paid either by the Debtor's brother or satisfied through the property.

C. Classes of Claims and Equity Interests

The Plan shall provide for the payment of all expenses of this proceeding, including fees due the Office of the U.S. Trustee. The accompanying Plan of Reorganization divides creditors into the following classes:

Class 1 – The secured claim of US Bank in the amount of \$557,193.06. US Bank is secured by the first mortgage on Debtor's homestead property: 10797 Lake Wynds Court, Boynton Beach, FL. The Debtor is attempting to modify this mortgage. While the modification process is being pursued, the Debtor proposes to pay an adequate protection payment of \$1,500.00 per month for principal and interest, plus keep insurance in force.

Class 2 – Bosco Credit II Trust Series 2010-1, serviced by Franklin Credit Management

Corporation, claim in the amount of \$151,770.01. Franklin Credit has filed secured claim on behalf ofr Bosco Credit II Trust 2010-1, secured by a second mortgage on the Debtor's homestead property: 10797 Lake Wynds Court, Boynton Beach, FL. A motion to "strip" this lien is pending. If it is determined that the claim is wholly unsecured, Franklin Credit's claim will be treated as an unsecured claim as set forth in Class 8. If it is determined that the claim is secured, the Debtor will continue with his attempts to modify this mortgage.

Class 3 – Sabadell/Baron & Baron, LLC filed claim in the amount of \$537,720.55. Sabadell's claim is secured by a mortgage on the 10898 Lake Wynds property. The Debtor's brother is living in the 10898 Lake Wynds property. Sabadell has been granted relief from stay to foreclose the property. The Debtor will not provide for payment to Sabadell. Sabadell may be fully secure and not entitled to a deficiency claim. To the extent that Sabadell is entitled to a deficiency claim, the claim will be paid a pro rata amount in accordance with Class 8.

Class 4 – Wells Fargo Bank, N.A. Wells Fargo holds the first mortgage on the property located at 9801 Majestic Way, Boynton Beach, FL. Wells Fargo has been granted relief from stay [DE#57] to complete foreclosure on the property. The Debtor disputes validity of Wells Fargo's note and will liquidate the claim in state court. Wells Fargo may be fully secure and not entitled to a deficiency claim. To the extent that Wells Fargo is entitled to a deficiency claim, the claim will be paid a pro rata amount in accordance with Class 8.

Class 5 - Wyndsong Estates Homeowners Association. Wyndsong has filed a claim in the amount of \$33,174.10 is for assessments on the 10797 Lake Wynds property. Pursuant to the agreed order entered on October 19, 2015 [ECF 51], Wyndsong's lien will remain on the property and will be collectible against any subsequent owners. The lien will not be enforceable against the Debtor. Consequently, the Debtor will pay only the regular assessments which are \$200.00 a month.

Class 6 - Sun Valley Homeowners Association, Inc. Sun Valley's claim in the amount of

\$15,873.60 is for homeowners' assessments on the 9801 Majestic property. The Debtor has a dispute as to the validity of the first mortgage. The Debtor will pay the arrearage by paying \$264.56 per month for 60 months. The Debtor will also pay \$225.00 per month for the regular assessments.

Class 7 - Sunshine State Certificates V, LLLP. The amount owed is secured by 10898 Lake Wynds and will be paid either by the Debtor's brother or satisfied through the property.

Class 8 - The Debtor shall dedicate the sum of \$200.00 per month for 60 months to be paid to unsecured creditors on a pro rata basis

Class 9 - The Debtor shall retain all property of the estate not surrendered.

The Debtor shall pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. Section 1930(a)(6) within ten (10) days of the entry of this order for pre-confirmation periods and simultaneously provide to the United States Trustee an appropriate affidavit indicating the cash disbursements for the relevant period. The reorganized Debtor shall further pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6) based upon all disbursements of the reorganized debtor for post-confirmation periods within the time period set forth in 28 U.S.C. § 1930(a)(6), until the earlier of the closing of this case by the issuance of a Final Decree by the Court, or upon the entry of an Order by this Court dismissing this case or converting this case to another chapter under the United States Bankruptcy Code, and the party responsible for paying the post-confirmation United States Trustee fees shall provide to the United States Trustee upon the payment of each post-confirmation payment an appropriate affidavit indicating all the cash disbursements for the relevant period.

The plan proposes to pay all costs and expenses of administration within thirty days of the date of confirmation of the Plan, or within such additional time as the administrative claimants may allow. The total amount of administrative expenses has not yet been determined, but will be set by the Court at the hearing on the confirmation of the Plan.

The plan will be funded by the rental from Debtor's income. The Plan of Reorganization is deemed by the Debtor to be feasible.

## **X. CONFIRMATION REQUIREMENTS AND PROCEDURES**

To be confirmable, the Plan must meet the requirements listed in §§ 1129(a) or (b) of the Code. These include the requires that: the Plan must be proposed in good faith; at least one impaired class of claims must accept the plan, without counting votes of insiders; the Plan must distribute to each creditor at least as much as the creditor would receive in a chapter 7 liquidation case, unless the creditor votes to accept the Plan; and the Plan must be feasible. These requirements are not the only requirements listed in § 1129, and they are not the only requirements for confirmation.

### **A. Who May Vote or Object**

Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met.

Many parties in interest, however, are not entitled to accept or reject the Plan. A creditor has a right to vote for or against the Plan only if that creditor has a claim that is both (1) allowed or allowed for voting purposes and (2) impaired.

In this case, the Plan Proponent believes that classes are impaired and that holders of claims in each of these classes are therefore entitled to vote to accept or reject the Plan. The Plan Proponent believes that classes are unimpaired and that holders of claims in each of these classes, therefore, do not have the right to vote to accept or reject the Plan.

#### **1. What is an Allowed Claim?**

Only a creditor with an allowed claim has the right to vote on the Plan. Generally, a claim is allowed if either (1) the Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or (2) the creditor has filed a proof of claim, unless an objection has been filed to such proof of claim. When a claim is not allowed, the creditor

holding the claim cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

***The deadline for filing a proof of claim in this case was April 26, 2016.***

2. What is an Impaired Claim?

As noted above, the holder of an allowed claim has the right to vote only if it is in a class that is impaired under the Plan. As provided in § 1124 of the Code, a class is considered impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class.

3. Who is Not Entitled to Vote?

The holders of the following types of claims and equity interests are not entitled to vote:

- holders of claims and equity interests that have been disallowed by an order of the Court;
- holders of claims and equity interests that are not “allowed claims” or “allowed equity interests”, unless they have been “allowed” for voting purposes.
- holders of claims or equity interests in unimpaired classes;
- holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3) and (a)(8) of the Code;
- holders of claims or equity interests in classes that do not receive or retain any value under the Plan; and
- administrative expenses

***Even if you are not entitled to Vote on the Plan, you have a right to object to Confirmation of the Plan.***

4. Who Can Vote in More than One Class?

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim, or who otherwise holds claims in multiple classes, is entitled to accept or reject a Plan in each

capacity, and should cast one ballot for each claim.

B. Votes Necessary to Confirm the Plan

If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired class of creditors has accepted the Plan without counting the votes of any insiders within that class of creditors, and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by “cram down” on non-accepting classes as discussed below in Section B.2.

1. Votes Necessary for a Class to Accept the Plan

A class of claims accepts the Plan if both of the following occur: (1) the holders of more than one-half ( $\frac{1}{2}$ ) of the allowed claims in the class, who vote, cast their votes to accept the Plan, and (2) the holders of at least two-thirds ( $\frac{2}{3}$ ) in dollar amount of the allowed claims in the class, who vote, cast their votes to accept the Plan.

2. Treatment of Nonaccepting Classes

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner prescribed by § 1129(b) of the Code. A plan that binds nonaccepting classes is commonly referred to as a “cram down” plan. The Code allows the Plan to bind nonaccepting classes or of claims or equity interests if it meets all the requirements for consensual confirmation except the voting requirements of § 1129(a)(8) of the Code, does not “discriminate unfairly” and is “fair and equitable” toward each impaired class that has not voted to accept the Plan.

*You should consult your own attorney if a “cram down” confirmation will affect your claim or equity interest, as the variations on this general rule are numerous and complex.*

**XI. EFFECT OF CONFIRMATION**

In accordance with 11 U.S.C. § 1141(d)(5), the Debtor will not, without court order, be entitled to a discharge until all payments are made pursuant to the terms of the Plan.

The Debtor will seek to have the case administratively closed until all payments are made and the Debtor is entitled to a discharge.

## **XII. CONCLUSION**

The Plan offers to cure the amount owed to secured creditors and pay approximately \$12,000.00 to unsecured creditors to be distributed on a pro rata basis.

   s/ Robert Abraham\_\_\_\_\_  
Robert Abraham

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