



AMERICAN
BANKRUPTCY
INSTITUTE

2017 Alexander L. Paskay Memorial Bankruptcy Seminar

Hot Topics in Chapter 13

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Hot Topics in Chapter 13

Equal Monthly Payments; Consequences of Surrender and Pay Direct; Rule 3001(c) Issues; Fee-Shifting under Rule 3002.1; Circuit Splits on Service of Objections to Claims and Bar Dates for Secured Creditors; Unscheduled Claims

Presented by

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Tampa and Fort Myers Divisions*

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- A. PowerPoint Presentation
- B. Third Amended Administrative Order Prescribing Procedures for Chapter 13 Cases, FLMB-2016-3, dated September 1, 2016

FLMB Model Chapter 13 Plan, effective September 6, 2016

FLMB Order Confirming Plan, revised August 17, 2016

Official Form 113, Chapter 13 Plan
- C. Equal Monthly Payments
Majority View:
In re Hamilton, 401 B.R. 539, 543 (B.A.P. 1st Cir. 2009); *In re Carman*, 2008 WL 2909863, at *1 (Bankr. D. Mass. July 25, 2008); *In re Wallace*, 2007 WL 3531551 (Bankr. M.D.N.C. Nov. 12, 2007); *In re Lockett*, 2007 WL 3125278, at *2; *In re Newberry*, 2007 WL 2029312, at *3–4 (Bankr. D. Vt. July 10, 2007); *In re Lemieux*, 347 B.R. 460, 463 (Bankr. D. Mass. 2006); *In re Wagner*, 342 B.R. 766, 772 (Bankr. E.D. Tenn. 2006); *In re DeSardi*, 340 B.R. 790, 805 (Bankr. S.D. Tex. 2006).
Minority View:
In re Cochran, 555 B.R. 892 (Bankr. M.D. Ga. 2016); *In re Ramirez*, No. 13-20891-AJC, 2014 WL 1466212, at *4 (Bankr. S.D. Fla. Apr. 7, 2014).
- D. Consequences of Surrender and Pay Direct

In re Failla, 838 F.3d 1170 (11th Cir. 2016); *In re Dukes*, 2015 WL 3856335, at *5 (Bankr. M.D. Fla. June 19, 2015); *In re Dukes*, No. 2:15-CV-420-FTM-99, 2016 WL 5390948, (M.D. Fla. Sept. 27, 2016).
- E. Rule 3001(c) Issues; Fee-Shifting under Rule 3002.1
- F. Circuit Splits on Service of Objections to Claims and Bar Dates for Secured Creditors/Unscheduled Claims
- G. Statute of Limitations
Bartram v. U.S. Bank Nat. Ass'n, ___ So.3d ___, 2016 WL 6538647 (Fla. Nov. 3, 2016).

- H. Proposed Amendments to Federal Rules of Bankruptcy Procedure
- Rule 3015 - Filing, Objection to Confirmation, Effect of Confirmation, and Modification of a Plan in a Chapter 12 or a Chapter 13 Case
 - Rule 3015.1 - Requirements for a Local Form for Plans Filed in a Chapter 13 Case
 - Rule 3012 - Determining the Amount of Secured and Priority Claims
 - Rule 7001 - Scope of Rules of Part VII
 - Rule 3002 - Filing Proof of Claim or Interest



Hot Topics in Chapter 13

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Chapter 13 Basics

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Chapter 13 Basics

- Third Amended Administrative Order Prescribing Procedures for Chapter 13 Cases, FLMB-2016-3, dated September 1, 2016
- FLMB Model Chapter 13 Plan, effective September 6, 2016
- FLMB Order Confirming Plan, revised August 17, 2016

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Model Plan's Treatment of Secured Creditors

Section 5

- (A) Retain real property and cure arrearages through Plan; regular monthly payments must be paid through the Plan.
- (B) Seek mortgage modification; adequate protection for homestead property = 31% of gross monthly income including HOA fees, for rental property = 75% of gross rental income. Post-medication payments must be paid through the plan.
- (C) Value real or personal property under § 506.
- (D) No valuation – pay full amount of (secured) claim through Plan. Examples: oversecured creditors, 910 cars.
- (E) Retain personal property by maintaining regular payments and curing arrearages; all payments made through the Plan.

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Treatment of Secured Creditors (Cont'd.)

Section 5 of Model Plan

- (F) Secured claims/lease claims paid direct by debtor. Payments must be made via automatic debit/draft from debtor's bank account. Automatic stay terminated *in rem* as to debtor and *in rem* and *in personam* as to any codebtor.
- (G) Liens to be avoided under § 522 or stripped off under § 506. Separate motion required.
- (H) Surrender of collateral/leased property. Automatic stay terminated *in rem* as to debtor and *in rem* and *in personam* as to any codebtor.
- (I) Other secured claims: debtor does not intend to make payments. Automatic stay terminated *in rem* as to debtor and *in rem* and *in personam* as to any codebtor. Debtor retains state law contract rights and defenses.

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Nonconforming Provisions

- Check the correct box on the first page of the Model Plan.
- Section 9 “Nonconforming Provisions”
- Examples:
 - Treatment of Reverse Mortgages
 - Clarification of Treatment of Non-Dischargeable Debts such as DSO’s and Student Loans
 - Anything Else That Does Not Fit in the Box

10. AMENDED (if applicable) CHAPTER 12 PLAN

CHECK ONE:

..... Debtor certifies that the Plan does not deviate from the model plan adopted by the Court at the time of the filing of this case. Any nonconforming provisions are deemed strikes.

..... The Plan contains provisions that are specific to this Plan in paragraph 9. Nonconforming Provisions: Any nonconforming provision not set forth in paragraph 9 is deemed strikes.

9. NONCONFORMING PROVISIONS:

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Plan Summaries or Spreadsheets

Required in Jacksonville and Orlando

UNITED STATES BANKRUPTCY COURT MIDDLE DISTRICT OF FLORIDA JACKSONVILLE DIVISION				
IN RE: Debtor(s)		CASE NO.:		
SUMMARY OF ANTICIPATED DISTRIBUTIONS				
ATTORNEY FEES				
<u>Service</u>	<u>Amount</u>	<u>Payment Amount</u>	<u>Payment Month Numbers</u>	
Bankruptcy	\$1,800	\$100	1 - 30	
Administrative Fee	\$1,500	\$25	1 - 60	
Mortgage Modifications				
Amortization of Second Mortgage				
PRIORITY CLAIMS				
<u>Creditor</u>	<u>Claim Amount</u>	<u>Payment Amount</u>	<u>Payment Month Numbers</u>	
SECURED CLAIMS				
<u>Secured Creditor</u>	<u>Payment Amount</u>	<u>Payment Month Numbers</u>		
Nationstar Mortgage LLC	\$950.00	1 - 60		
SECURED ARREARAGES				
<u>Name of Creditor</u>	<u>Payment Amount</u>	<u>Payment Month Numbers</u>		
Nationstar Mortgage LLC	\$100.14	1 - 10		
	\$450.14	11 - 60		
VALUATION OF SECURITIES				
<u>Name of Creditor</u>	<u>Claim Amount</u>	<u>Value</u>	<u>Payment Amount</u>	<u>Payment Month Numbers</u>
UNSECURED CREDITORS				
PAYMENT AMOUNT		PAYMENT MONTH NUMBERS		

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1/26/2017

Plan Summaries or Spreadsheets

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Proposed Bankruptcy Rule 3015

- If an Official Form for Chapter 13 Plan is adopted, it must be used unless a Local Form in compliance with Rule 3015.1 has been adopted for the District.
- New subsection (g): Effect of Confirmation. Any determination of value in Plan under Rule 3012 is binding upon the holder of the claim, even if the creditor filed a different proof of claim, or debtor scheduled differently. No objection to the claim is required;
- Requests in the Plan to terminate the stay under §§ 362(a), 1201(a) and 1301(a) are granted;
- Objections to confirmation must be filed within 7 days prior to confirmation hearing.

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Proposed Bankruptcy Rule 3015.1

- Districts may opt out of National Plan if Single Local Form is adopted for the entire District.
- Local Form requires public notice and opportunity for public comment.

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Local Form of Model Plan Requirements

- Must include initial paragraph for debtor to indicate that the Plan does or does not:
 - contain any nonstandard provision;
 - limit amount of a secured claim based on valuation of collateral;
 - avoid a security interest or lien.

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Differences Between National Plan and M.D. Model Plan

Under the National Plan, liens may be avoided and collateral valued through the Plan, rather than requiring a separate motion.

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Proposed Revision to Rule 3012 to be effective December 1, 2017

- Permits the court to determine the amount of a secured claim under section 506 by motion, claim objection, or in Chapter 12 and Chapter 13 plans. If request for valuation is in a plan, the plan must be served in accordance with Rule 7004.
- Requests to determine the amount of a priority claim may only be made by motion or claim objection.
- Requests to determine the secured claim of a governmental unit may not be made in a plan, only by motion or a claim objection after the governmental unit has filed a proof of claim or the time for filing claims has expired.

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Proposed Revision to Rule 7001 to be effective December 1, 2017

Adversary proceedings include:

“a proceeding to determine the validity, priority, or extent of a lien or other interest in property but not a proceeding under Rule 3012 [determination of secured status] or Rule 4003(d) [avoidance of liens that impair an exemption]”

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Equal Monthly Payments or Balloons?

BAPCPA amendment to § 1325(a)(5)(B)(iii)(I): property to be distributed to secured creditors in the form of periodic payments shall be in equal monthly amounts.

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Minority View

- No need to construe the phrase “equal monthly payments” because § 1322(e)—which provides that the amount necessary to cure a mortgage default in a Chapter 13 Plan is determined by state law—technically overrode § 1325(a)(5). *In re Davis*, 343 B.R. 326 (Bankr. M.D. Fla. 2006).
- Bankruptcy Code neither makes provision for nor precludes the use of balloon payments in Chapter 13. Whether a balloon payment is permitted is left to the sound discretion of the Court. Factors:
 - future earning capacity
 - debtor’s disposable income
 - whether Plan provides for interest over the term of the Plan
 - whether Plan provides for substantial payments to secured creditor that will reduce the debt and enhance prospects for refinancing.

In re Ramirez, 2014 WL 1466212 (Bankr. S.D. Fla. April 7, 2014) (citing pre-BAPCPA case *In re Fantasia*, 211 B.R. 420 (B.A.P. 1st Cir. 1997)).

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Minority View (Cont’d.)

- Not to allow balloon payments goes against the plain language and purpose of § 1325(a)(5)(B)(iii)(I).

In re Cochran, 555 B.R. 892 (Bankr. M.D. Ga. 2016).



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Majority View — Three Rationales Against Balloon Payments

Statutory Language

- Where Plan provides for periodic payments, balloon payments by definition are not equal to the preceding periodic payments;

Congressional Intent

- Congress intended to eliminate balloon payments by enacting § 1325(a)(5)(B)(iii)(I); and

Precedent

- The majority of courts so hold.

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Majority View (Cont'd.)

- Balloon payments on long-term mortgage debt violate the “equal payment” provisions of § 1325(a)(5)(B)(iii)(I).
- Section 1322 addresses a debtor’s right to cure arrearages on long-term, secured debt, whereas § 1325 addresses the manner in which debtors must provide for secured claims.
- Interpreting § 1322 to effectively override § 1325 would be contrary to § 1325’s legislative history. *In re Hamilton*, 401 B.R. 539 (B.A.P. 1st Cir. 2009).
- *In re Spark*, 509 B.R. 728 (Bankr. M.D. Fla. 2014) concurs with *Hamilton* and disagrees with *Davis*.

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Consequences of Surrender and Pay Direct



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Surrender

- Debtor whose Plan provides for surrender of collateral must surrender the collateral to the secured creditor.
- To surrender, debtor must drop opposition to state court foreclosure action.
- Bankruptcy judge has authority to direct debtors to withdraw affirmative defenses and dismiss counterclaim in state court foreclosure case.

In re Failla, 838 F.3d 1170 (11th Cir. 2016).

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Surrender Practice Pointers

- Chapter 13 debtors who wish to contest state court foreclosure action should elect “Pay Direct” (*n.b.*, check Plan for feasibility) or “Other Secured Claims” options in M.D. Model Plan.
- Chapter 7 debtors may want to select “Retain the property and [explain]” on Statement of Intentions.



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Unanswered Surrender Questions

- Effect of amendment of Chapter 13 Plan or Statement of Intentions?
- Effect of surrender on debtor's claims for violation of discharge injunction and FDCPA and FCCPA claims based on “informational statements” sent to debtor by mortgage services post-discharge?
 - See *In re Roth*, Case No. 9:10-bk-30383- FMD (Bankruptcy Court held that mortgage lender who, post-discharge, sent “informational statement” to debtor who surrendered collateral in plan did not violate the discharge injunction. On appeal to the district court, Case No. 2:16-cv-510-FTM.)
 - *Roth v. Nationstar*, Case No. 2:15-cv-7883-JES-MRM (On same facts, district court denied mortgage lender's motion to dismiss plaintiff's FDCPA and FCCPA claims.)
- Effect on § 523(a)(6) exception to discharge for postpetition HOA and condo assessments?
 - § 1328(a)(2): *In re Ramirez*, 547 B.R. 449 (Bankr. S.D. Fla. 2016) (observing that case law regarding dischargeability of Chapter 13 debtor's *in personam* obligation to pay postpetition HOA assessments is unsettled in the Eleventh Circuit); *In re Rosa*, 495 B.R. 522 (Bankr. D. Hawaii 2013) (although under Ninth Circuit law, postpetition HOA not discharged in Chapter 13, court could confirm plan that provided for vesting of property in secured creditor due to creditor's failure to object.).

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Pay Direct

- Chapter 13 Plan that proposes to pay a secured creditor directly outside the Plan “leaves unaffected” the rights of that creditor under § 1322(b)(2) and does not “provide for the debt” owed to the creditor such that the debt is included in the discharge under § 1328(a). *In re Dukes*, 2015 WL 3856335, at *5 (Bankr. M.D. Fla. June 19, 2015) (Delano, J.).
- Mere mention in Chapter 13 Plan that debtor would pay mortgage holder’s claim directly, without more, did not result in the claim being “provided for” under the Plan. *In re Dukes*, No. 2:15-CV-420-FTM-99, 2016 WL 5390948, (M.D. Fla. Sept. 27, 2016) (Chappell, J.).
- Stay Tuned: *Dukes* on Appeal to the 11th Circuit, Case No.: 16-16513.

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Rule 3001(c)

(c) Supporting information

(1) Claim based on a writing

Except for a claim governed by paragraph (3) of this subdivision, when a claim, or an interest in property of the debtor securing the claim, is based on a writing, a copy of the writing shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.

(2) Additional requirements in an individual debtor case: sanctions for failure to comply

In a case in which the debtor is an individual:

(A) If, in addition to its principal amount, a claim includes interest, fees, expenses, or other charges incurred before the petition was filed, an itemized statement of the interest, fees, expenses, or charges shall be filed with the proof of claim.

(B) If a security interest is claimed in the debtor’s property, a statement of the amount necessary to cure any default as of the date of the petition shall be filed with the proof of claim.

(C) If a security interest is claimed in property that is the debtor’s principal residence, the attachment prescribed by the appropriate Official Form shall be filed with the proof of claim. If an escrow account has been established in connection with the claim, an escrow account statement prepared as of the date the petition was filed and in a form consistent with applicable nonbankruptcy law shall be filed with the attachment to the proof of claim.

(D) If the holder of a claim fails to provide any information required by this subdivision (c), the court may, after notice and hearing, take either or both of the following actions:

(i) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or

(ii) award other appropriate relief, including reasonable expenses and attorney’s fees caused by the failure.

(3) Claim based on an open-end or revolving consumer credit agreement

(A) When a claim is based on an open-end or revolving consumer credit agreement—except one for which a security interest is claimed in the debtor’s real property—a statement shall be filed with the proof of claim, including all of the following information that applies to the account:

(i) the name of the entity from whom the creditor purchased the account;

(ii) the name of the entity to whom the debt was owed at the time of an account holder’s last transaction on the account;

(iii) the date of an account holder’s last transaction;

(iv) the date of the last payment on the account; and

(v) the date on which the account was charged to profit and loss.

(B) On written request by a party in interest, the holder of a claim based on an open-end or revolving consumer credit agreement shall, within 30 days after the request is sent, provide the requesting party a copy of the writing specified in paragraph (1) of this subdivision.

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Rule 3001(c)

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Except for a claim governed by paragraph (3) of this subdivision, when a claim, or an interest in property of the debtor securing the claim, is based on a writing, a copy of the writing shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.

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Rule 3001(c) (Cont'd.)

(2) Additional requirements in an individual debtor case: sanctions for failure to comply

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(A) If, in addition to its principal amount, a claim includes interest, fees, expenses, or other charges incurred before the petition was filed, an itemized statement of the interest, fees, expenses, or charges shall be filed with the proof of claim.

(B) If a security interest is claimed in the debtor's property, a statement of the amount necessary to cure any default as of the date of the petition shall be filed with the proof of claim.

(C) If a security interest is claimed in property that is the debtor's principal residence, the attachment prescribed by the appropriate Official Form shall be filed with the proof of claim. If an escrow account has been established in connection with the claim, an escrow account statement prepared as of the date the petition was filed and in a form consistent with applicable nonbankruptcy law shall be filed with the attachment to the proof of claim.

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Rule 3001(c) (Cont'd.)

(D) If the holder of a claim fails to provide any information required by this subdivision (c), the court may, after notice and hearing, take either or both of the following actions:

- (i) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or
- (ii) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

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Rule 3001(c) (Cont'd.)

(3) Claim based on an open-end or revolving consumer credit agreement

(A) When a claim is based on an open-end or revolving consumer credit agreement—except one for which a security interest is claimed in the debtor's real property—a statement shall be filed with the proof of claim, including all of the following information that applies to the account:

- (i) the name of the entity from whom the creditor purchased the account;
- (ii) the name of the entity to whom the debt was owed at the time of an account holder's last transaction on the account;
- (iii) the date of an account holder's last transaction;
- (iv) the date of the last payment on the account; and
- (v) the date on which the account was charged to profit and loss.

(B) On written request by a party in interest, the holder of a claim based on an open-end or revolving consumer credit agreement shall, within 30 days after the request is sent, provide the requesting party a copy of the writing specified in paragraph (1) of this subdivision.

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Bankruptcy Rule 3001(c) Caselaw

- Court sustained debtor's objections to creditor's claim for insufficient documentation but permitted creditor to amend claim. *In re Sandifer*, 318 B.R. 609 (Bankr. M.D. Fla. 2004) (Briskman, J.).
- Failure to attach sufficient documentation to proof of claim results in claim lacking prima facie validity, but creditor given opportunity to supplement the claim. *In re Taylor*, 363 B.R. 303 (Bankr. M.D. Fla. 2007) (Jennemann, J.).
- If Debtor carries burden of proof that there is genuine issue as to ownership of claim, burden shifts to creditor and insufficient documentation will result in claim being stricken. *In re Dorway*, WL 5111882 (Bankr. S.D. Fla. July 14, 2008) (Cristol, J.).

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Bankruptcy Rule 3001(c) Caselaw (Cont'd.)

- Failure to attach sufficient documentation to proofs of claim for credit card debts was not, by itself, a basis for disallowing unsecured credit card claims.
- Moreover, the Court specifically criticized the tactic of filing an objection to an undisputed scheduled claims: "if a debt is scheduled . . . for an amount equal to or exceeding the amount in the proof of claim, this Court will not tolerate attempts to obtain orders disallowing these claims if the only basis for the objection is lack of documentation."
In re Moreno, 341 B.R. 813 (Bankr. S.D. Fla. 2006) (Mark, J.).
- Court suspended debtors' attorney from practicing before the court for 31 days as a sanction for filing frivolous objection on technical grounds to claims corresponding to debts which debtors admitted they owed, and all five claims contained sufficient information for the attorney to match the claim with debts scheduled by debtors.
In re Velez, 465 B.R. 912 (Bankr. S.D. Fla. 2012) (Olson, J.).

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Bankruptcy Rule 3002.1 Notice Relating to Claims Secured by Security Interests in the Debtor's Principal Residence

Rule 3002.1 requires holders of claims secured by debtor's principal residence to provide certain notices including:

- (b) Notice of Payment Changes;
- (c) Notice of Fees, Expenses, and Charges; and
- (g) Response to Notice of Final Cure Payment.



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Bankruptcy Rule 3002.1 Notice Relating to Claims Secured by Security Interests in the Debtor's Principal Residence (Cont'd.)

Rule 3002.1

...

Failure to notify

If the holder of a claim fails to provide any information as required by subdivision (b), (c), or (g) of this rule, the court may, after notice and hearing, take either or both of the following actions:

- (1) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or
- (2) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

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Fee-Shifting Under Bankruptcy Rule 3002.1

Rationale

Debtors who had completed their Chapter 13 Plans, cured all prepetition arrearages and maintained postpetition payments, found themselves in default and possible foreclosure due to the mortgage holder's previously undisclosed postpetition fees and costs.

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Bankruptcy Rule 3002.1 Notice Relating to Claims Secured by Security Interests in the Debtor's Principal Residence

- Claim under Rule 3002.1(i) for incorrect notice dismissed because Rule 3002.1(i) provides relief in situations involving a *lack* of notice, rather than incorrect notice. Court did not dismiss other claims including claims under FDCPA and for violation of the discharge injunction. *In re Trevino*, 535 B.R. 110 (Bankr. S.D. Tex. 2015).
- Court enlarged time for creditor to file Response to Notice of Final Cure Payment. Therefore, sanctions under Rule 3002.1(i) were not warranted. *In re Gutierrez*, 2012 WL 5355964 (Bankr. D. N.M. Oct. 30, 2012).

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Rule 3002.1 Practice Pointers

Debtors

- Monitor any statements received from mortgage company and notify counsel or the Trustee if new or questionable charges are not documents with a Rule 3002.1 notice.

Creditors

- Comply with Rule 3002.1 or face possible sanctions.

Mortgage servicer sanctioned \$25,000 in each of three separate cases for improperly assessing postpetition fees without provided the required Rule 3002.1 notices and \$300,000 in two of the cases for violating court orders that debtors were current on all postpetition payments and prohibiting servicer from asserting otherwise. *In re Gravel*, 556 B.R. 561 (Bankr. D. Vt. 2016).

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Service of Objections to Claims

Split of Authority: Whether Bankruptcy Rule 3007 or Rule 7004 governs the service requirements for an objection to claim.

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Point: Bankruptcy Rule 3007 Controls Service of Objections to Claims.

- Rule 3007(a) states that:
 - [a] copy of the objection shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession, and the trustee at least 30 days prior to the hearing.
- The filing of an objection to claim initiates a contested matter. Although Rule 9014 governs contested matters, Rule 9014(a) applies only to contested matters commenced by a motion “not otherwise governed by these rules.” Because an objection to claim is not commenced by a motion, and Rule 3007 provides for service of claims objections, service in accordance to Rule 7004 is not implicated.
- Rule 2002(g)(1)(A) provides that “a proof of claim filed by a creditor . . . that designates a mailing address constitutes a filed request to mail notices to that address.” Mailing or otherwise delivering a copy of the objection with a notice of hearing on the domestic or foreign claimant to the address provided in the proof of claim is sufficient.
- Cases within the Eleventh Circuit are split on this issue. The courts in *In re Franchi*, 451 B.R. 604, 608 (Bankr. S.D. Fla. 2011) and *In re Cagle*, 2008 WL 7874772, at *4 (Bankr. N.D. Ga. June 2, 2008) agree that Rule 3007 controls, while the court in *In re Rushton*, 285 B.R. 76, 81 (Bankr. S.D. Ga. 2002) held that Rule 7004 governs.

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Counterpoint: Bankruptcy Rule 7004 Controls Service of Objections to Claims.

- Rule 9014(b) provides that the motion “shall be served in the manner provided for the service of a summons and complaint by Rule 7004.”
- The Advisory Committee Note for Rule 3007 specifically provides that an “objection to claim is governed by rule 9014.” And Rule 9014(b) incorporates the service requirements of 7004. Thus, the courts find that Rule 7004’s service requirements govern service of objections.
- Rule 7004(b)(3) requires that service on a corporation be addressed to the attention of “an officer, [or] agent” of the business. Some courts have held that failure to address the service to an officer or agent renders the service ineffective, while other courts find that service to the agent and address designated on its proof of claim is sufficient because it constitutes an “appointment” under Rule 7004(b)(3).
- For example, in *In re Chess*, 268 B.R. 150, 157 (Bankr. W.D. Tenn. 2001), the bankruptcy court held that the address designated by a creditor on its proof of claim satisfied the appointment requirement, such that service of process to that agent and location satisfied the strictures of Rule 7004(b)(3).

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Bar Dates for Secured Creditors and Unscheduled Claims

Split of Authority: Whether fully secured creditors need to comply with the bar date requirement under Rule 3002 in order to receive distributions.

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Proposed Revision to Rule 3002 to be effective December 1, 2017

- Lien that secured a claim against the debtor is not void due only to the failure to file a proof of claim.
- Except in involuntary Chapter 7 cases, the time for filing proofs of claim is reduced from 90 days after the order for relief to 70 days. Time may be extended for 60 days if notice was insufficient to give reasonable time to file a proof of claim.
- Claims secured by debtor's principal residence must be filed within 70 days, but the claimant has 120 days from the date of the order for relief to file the attachments required by Rule 3001(c)(1) and (d) [supporting information and evidence of security]

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Point: The bar date requirement under Bankruptcy Rule 3002(c) applies to all creditors, unsecured and secured alike.

- Rule 3002(a) requires the filing a proof of claim, specifically stating that “[a]n unsecured creditor or an equity security holder must file a proof of claim or interest for the claim or interest to be allowed.”
- The deadline for filing is “not later than 90 days after the first date set for the meeting of creditors called under § 341(a) of the Code.”
- Although Rule 3002(c) does not expressly state that it applies to secured creditors, courts have found that on its face it applies to any “proof of claim.” Because a proof of claim is defined by § 101(5)(A) to include the “right to payment, whether or not such right is secured or unsecured” and Rule 3002(c) does not specifically mention unsecured claims when providing the 90-day deadline in subsection (c), the deadline for filing claims encompasses all claims, secured and unsecured alike.
- The Eleventh Circuit in *In re Bateman*, 331 F.3d 821, 827 (11th Cir. 2003), found that “[i]f the secured creditor wants to receive payments under the confirmed Plan, it must file the proof of claim in a timely manner.”

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Counterpoint: The bar date requirement in Rule 3002(c) does not apply to secured creditors.

- Rule 3002(c) bar date does not apply to secured creditors as subsection (a) specifically provides for the necessity of filing proofs of claim only for unsecured creditors and is silent as to secured creditors. And finding a negative implication, some courts find Rule 3002(a) implies that a secured creditor’s claim may be allowed without the filing of a proof of claim.
- Under this approach, the courts’ rationale is that because Rule 3002(a) does not refer to secured creditors and there is no express deadline in the Bankruptcy Code or Rules that requires the filing of a secured claim, a secured creditor may receive distributions even if the claim is filed after the Rule 3002(c) bar date.
- The court in *In re Hudson*, 260 B.R. 421, 438 (Bankr. W.D. Mich. 2001), observed that after debtor receives a Chapter 13 discharge under § 1328, it may be too late for a secured creditor to file a proof of claim and hold an allowed claim since *in personam* liability has been discharged.

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Third Point of View: A secured creditor may receive distributions under a confirmed plan if the debtor proposes to pay creditor through the plan.

- The third view finds that if the debtor provides for the treatment of the creditor's claim in a confirmed plan, the plan is binding upon the creditor, notwithstanding the failure to timely file a proof of claim.
- In so finding, the courts reason that § 1327(a) provides that "the provisions of a confirmed Chapter 13 plan bind the debtor and each creditor."
- The debtor's proposal in the confirmed plan to pay the secured creditor constitutes an admission that the creditor has an allowed secured claim to the extent set forth in the plan. Thus, confirmation results in allowance of the secured claim and binds the parties under § 1327(a).
- In *In re Miller*, 2007 WL 81052, at *4 (Bankr. W.D. Pa. Jan. 9, 2007) the court found that the secured creditor was bound by the terms of the confirmed Chapter 13 plan and would receive distributions under the plan even though no proof of claim was filed.

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Statute of Limitations for Mortgage Foreclosure

Bartram V. U.S. Bank Nat. Ass'n, ___ So.3d ___, 2016 WL 6538647
(Fla. Nov. 3, 2016).

46

Bartram v. U.S. Bank Nat. Ass'n

- In *Bartram v. U.S. Bank Nat. Ass'n*, the Supreme Court of Florida affirmed the Fifth District's decision. The Supreme Court held that the statute of limitations to "[a]n action to foreclose a mortgage" under Fla. Stat. 95.11(2)(c) does not preclude a lender, whose foreclosure action is dismissed, from filing a second foreclosure action based on payment defaults occurring after the dismissal of the first foreclosure action, as long as the alleged subsequent default occurred within five years of the subsequent foreclosure action.



47



Questions?
Comments?

48

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
www.flmb.uscourts.gov

In re

ADMINISTRATIVE ORDER
PRESCRIBING PROCEDURES FOR
CHAPTER 13 CASES

Administrative Order
FLMB-2016-3

**THIRD AMENDED ADMINISTRATIVE ORDER
PRESCRIBING PROCEDURES FOR CHAPTER 13 CASES**

This Third Amended Administrative Order establishes uniform procedures for all Chapter 13 cases filed in this District on or after September 6, 2016. Accordingly, it is

ORDERED:

Debtor's failure to timely make payments to the Chapter 13 Trustee (the "Trustee") or to comply with any of the other requirements of this Order may result in dismissal or conversion of the case.

1. Additional Information Required to be Filed with the Court. No later than 14 days from the petition date, Debtor shall file with the Court the lists, statements, and schedules required by Rule 1007.
2. Service of this Administrative Order to Debtor. Debtor's attorney or, if Debtor has no attorney, the Trustee shall provide a copy of this Administrative Order to Debtor within seven days of the petition date.
3. Chapter 13 Plan. No later than 14 days from the petition date or the date the case converts to Chapter 13, Debtor shall file a Chapter 13 plan (the "Plan") using the form Model Chapter 13 Plan available on the Trustee's and the Court's website. Any modifications to the Model Chapter 13 Plan shall be included in the "Additional Provisions" section of the Plan. Plans that are filed with the petition will be served on creditors by the Clerk; if the Plan is not filed with the petition, Debtor shall serve a copy of the Plan upon all parties in interest and promptly file a proof of service.

*All references to "Debtor" shall include and refer to both debtors in a case filed jointly by two individuals.

**All references to "Plan" shall include any amended plan, which shall supersede all previously filed plans.

***All statutory references are to the Bankruptcy Code, Title 11 of the United States Code, unless otherwise noted. References to rules are to the Federal Rules of Bankruptcy Procedure.

4. Plan Payments. Payments under the Plan shall be made through the Trustee's office and shall include *all* payments to secured creditors that will come due after filing the petition (and will serve as adequate protection to such creditors) as follows:

a. For claims secured by real or personal property that are valued in the Plan, the monthly Plan payment shall include adequate protection payments based upon the proposed value of the collateral with interest.

b. For claims secured by mortgages for which the Plan proposes mortgage modification mediation ("MMM"), unless otherwise ordered by the Court, the monthly Plan payment shall include:

i. For *homestead* properties, until the MMM is concluded, the lesser of:

A. 31% of gross monthly income of Debtor and non-filing spouse, if any (after deducting homeowner association fees), or

B. The normal monthly contractual mortgage payment.

ii. For *non-homestead*, income-producing property, until the MMM is concluded, 75% of the gross rental income generated from the property.

c. If Debtor is successful in obtaining a mortgage modification at any time during the case, payments on the modified mortgage shall be paid through the Plan.

d. If the MMM does not result in a modified mortgage, then within 14 days of the filing of the mediator's final report, Debtor shall file an amended or modified Plan that proposes treatment of the mortgage claim and the appropriate payment, if any.

e. For claims secured by mortgages for which the Plan proposes to cure prepetition arrearages, the Plan payment shall include the regular postpetition contractual payment and the total arrearages paid in monthly installments over the term of the Plan.

f. The Plan payment need not include postpetition payments on claims secured by property to be surrendered in the Plan or by junior liens on Debtor's principal residence that Debtor intends to value and to strip.

g. The Plan may provide for Debtor to make postpetition payments directly to secured creditors or lessors only on claims that are not in default, for which no arrearages are being cured through the Plan, and that the Plan does not modify. Debtor shall make direct payments via automatic debit/draft from a bank account and provide documentation to the Trustee upon request. The establishment of an automatic/debit draft at Debtor's request is not a violation of the automatic stay. IF THE PLAN PROVIDES FOR DEBTOR TO MAKE DIRECT PAYMENTS TO A SECURED CREDITOR OR LESSOR, THE AUTOMATIC STAY IS TERMINATED, *IN REM*, AS TO THAT CREDITOR.

5. Payments to Trustee. Debtor, not later than 30 days after the petition date, shall make Plan payments to the Trustee as directed in the **Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, and Deadlines**, and on the same day of each succeeding month. **If the Trustee does not receive payment when due, the Trustee may seek dismissal of the case.** All payments must be made to the Trustee by approved electronic transfer, cashier's check, money order, or employee wage deduction. Each payment shall include Debtor's name, legibly printed, and the case number. The Trustee is authorized to pay from these funds any fees and charges assessed against the estate by law as authorized by § 1326(b) and to collect from all receipts the Trustee's fee authorized by 28 U.S.C. § 586 ("Trustee's commission"). The Trustee's commission shall be earned upon receipt of each payment from the Debtor and may be distributed to the Trustee upon receipt of the payment. The Trustee shall hold the remaining funds pending entry of the order confirming the Plan, except as set forth in this Order.

6. Adequate Protection for Secured Creditors. Pending confirmation of a Plan and as a condition of Debtor's continued possession or use of real or personal property subject to a security interest, the following, when taken collectively, shall constitute adequate protection to each such secured creditor:

a. Under § 1326(a)(1), Debtor shall include all adequate protection payments required by § 1326(a)(1)(C) as Plan payments and make those payments directly to the Trustee, who then will pay secured creditors as ordered by the Court.

b. Debtor shall timely file the Plan and all required information.

c. Debtor shall make all payments due to the Trustee on time.

d. All payments proposed in the initial or any amended Plan to the holders of secured claims are allowed as costs and expenses of preserving the estate within the meaning of § 503(b)(1)(A).

e. The Trustee shall make monthly disbursements of adequate protection payments to secured creditors prior to confirmation of the Plan, as soon as practicable, if:

i. The Plan provides for such payment to the secured creditor;

ii. The secured creditor has filed a proof of claim OR Debtor or the Trustee has filed a proof of claim under § 501(c);

iii. No objection to the proof of claim is pending; and

iv. As provided for in the Court's Administrative Order Prescribing Procedures for Mortgage Modification Mediation, if the Plan provides for MMM of the secured claim.

f. All disbursements to secured creditors are deemed adequate protection payments. Acceptance of such payments is not a waiver of creditors' rights to

contest confirmation or Debtor's valuation of collateral, to request relief from the automatic stay on grounds other than a default in payments, or to request additional adequate protection.

g. If a secured creditor desires to receive payments at an address other than the address in the secured creditor's proof of claim, the secured creditor must file a Notice of Payment Address Change with the Clerk and provide written notice to the Trustee.

h. Creditors holding a security interest in the Debtor's principal residence provided for in the Plan under §1322(b)(5) shall comply with Rule. 3002.1 with respect to payment changes and requests for postpetition fees and costs. The Trustee may adjust the Plan payments accordingly and notify Debtor of any such payment change. However, if a secured creditor is subject to an MMM order, the implementation of any notice under Rule 3002.1 is abated until the conclusion of the mediation.

i. Within 14 days of a written request by a secured creditor, Debtor must provide proof of insurance to the secured creditor as required by the loan documents.

j. Within 72 hours of any telephonic request by a secured creditor, Debtor must allow inspection of the collateral if required by the loan documents.

7. Refund of Plan Payments to Debtor if Case Is Converted or Dismissed. Notwithstanding the provisions of paragraph 6, if Debtor files a notice of conversion of this case to a Chapter 7 or the Court orders the conversion of this case to a Chapter 11 or its dismissal, any undistributed funds in the Trustee's possession on the date of conversion or dismissal shall be payable to Debtor and, if Debtor is represented by counsel, mailed to Debtor in care of Debtor's attorney.

8. Executory Contracts and Unexpired Leases. The Plan must provide for the assumption or rejection of executory contracts and lease obligations.

9. Termination of the Automatic Stay. **If the Plan provides for (a) the surrender of collateral to the secured creditor or lessor, (b) for payments to be made by Debtor directly to the secured creditor or lessor, (c) that Debtor does not intend to make payments to the creditor, or (d) fails to provide for the claim of the secured creditor or lessor, such secured creditor or lessor is granted *in rem* relief from the automatic stay to pursue its remedies against the property that is security for the claim or the subject of the lease and both *in rem* and *in personam* relief against any codebtor. If Debtor later amends or modifies the Plan to provide for the secured creditor or lessor, Debtor must move to re-impose the stay.**

10. Modification of the Automatic Stay. The automatic stay is modified to permit creditors whose claims are secured by mortgages on Debtor's real property to communicate directly with Debtor in good faith regarding the possible modification or refinance of the mortgage obligation.

11. Meeting of Creditors and Documents to be Submitted to Trustee. Debtor shall appear at the meeting of creditors scheduled under § 341(a) and Rule 2003(a). No later than seven days before the initial meeting of creditors, Debtor shall provide the Trustee with copies of tax returns for the two years preceding the petition date (or an affidavit that Debtor is not required to file tax returns) and copies of all pay stubs, advices, or documentation of income sources for the six-month period ending on the last day of the month preceding the month of the petition date. The Trustee may request other documentation including information about the non-debtor spouse's income, other documents required by the Bankruptcy Code or other local court order, or information needed to administer a Chapter 13 case.

12. Confirmation Hearing. The Clerk is directed to schedule a confirmation hearing between 20 and 45 days after the date first set for the meeting of creditors. Debtor shall be current in payments to the Trustee and ensure that the case is ready for confirmation, if possible, at the initial confirmation hearing. Following the meeting of creditors, the Trustee may file and serve a Recommendation Concerning Confirmation of the Plan. Debtor shall correct any deficiencies or problems in the Recommendation Concerning Confirmation of the Plan at least seven days prior to the initial confirmation hearing. At the initial or any subsequent confirmation hearing, the Court will consider confirmation of the Plan and, on a preliminary, non-evidentiary basis, all pending motions and objections, including any motion to dismiss, objection to confirmation, or objection to claim. If an evidentiary hearing is needed or if cause exists to defer confirmation, the Court will note the date for the continued confirmation hearing on the docket. The Trustee may raise objections to confirmation of the Plan at any confirmation hearing.

13. Pre-Confirmation Deadline for Filing Amended Plans and Certain Motions. The following shall be filed no later than 28 days after the claims bar date:

- a. An amended Plan, if necessary to obtain confirmation;
- b. Motions to determine secured status of claim; and
- c. Motions to avoid liens, if necessary to obtain confirmation.

14. Deadline for Filing Objections to Claims. Debtor shall file objections to any claims that Debtor seeks to have disallowed, in whole or in part, no later than 28 days after the claims bar date or 14 days after the filing of an amended proof of claim.

15. Deadline to Seek Mortgage Modification Mediation. Any party seeking MMM shall file a motion making this request within 90 days of the petition or conversion date.

16. Service Requirements. Debtor shall serve a copy of any amended Plan upon the Trustee and all other parties in interest and promptly file proof of service. Debtor shall serve a copy of any motion or objection on the Trustee and the affected creditor in the manner required by Rule 7004.

17. Duties of Debtor's Attorney and Payment of Attorney's Fees. Debtor's attorney must assist Debtor in all matters related to this case unless the Court has granted the attorney's motion to withdraw from the case. Debtor's counsel shall not withhold legal advice or service from Debtor because of lack of payment and may not demand payment from Debtor or any person on behalf of Debtor as a condition of providing legal advice or service. If the case is converted or dismissed, the Court shall retain jurisdiction to review the total amount of attorney's fees requested by or paid to Debtor's attorney.

As required by Rule 2016(b), Debtor's attorney must disclose:

- a. Any prepetition retainer paid to the attorney by Debtor or any other person for Debtor's benefit;
- b. Filing fees collected from Debtor and remitted to the Court; and
- c. Postpetition payments made to the attorney by Debtor or other person for Debtor's benefit. Such payments shall be held in the attorney's trust account pending Court approval.

If Debtor's attorney fails to timely and completely file these disclosures or to comply with all requirements in this Order, the Court may order a reduction in the amount of attorney's fees requested or the disgorgement of fees.

18. Tax Returns and Refunds. No later than the day before the initial meeting of creditors, Debtor shall file any delinquent tax returns for any tax period concluding within the four years before the petition date. Debtor shall immediately provide a copy of the returns or a statement that Debtor is not required to file tax returns to the Trustee. During the pendency of the Chapter 13 case, Debtor shall timely file all tax returns and make all tax payments and deposits when due. For each tax return that becomes due after the case is filed, Debtor shall provide to the Trustee, within 14 days of the filing of the return, a complete copy of the tax return, including business returns if Debtor owns a business, together with all related W-2s and Form 1099s. Unless otherwise consented to by the Trustee or ordered by the Court, Debtor shall turn over to the Trustee all tax refunds in addition to regular Plan payments. Debtor shall not instruct the Internal Revenue Service or other taxing agency to apply a refund to the following year's tax liability. **Debtor shall spend no tax refunds without first having obtained the Trustee's consent or court approval.**

19. Filing Claims on Behalf of Creditors. Under Rule 3004, within 30 days after the expiration of the claims bar date, Debtor may file a proof of claim on behalf of a creditor if the creditor has not timely filed a claim and Debtor proposes to make payments to the creditor under the Plan.

20. Extension of Time to File Objections to Debtor's Claims of Exemption. To assure proper administration if the Chapter 13 case converts to another chapter, under § 105, the Court extends the time for the Trustee or any party in interest to file objections to property claimed as exempt by Debtor to not later than (a) 30 days after the conclusion of the meeting of creditors after conversion of the case to a case under another chapter, or (b) 30 days after Debtor amends the list of property claimed as exempt, whichever is later, unless within such period,

further time is granted by the Court. However, this extension does not limit the right of any party in interest to object to entry of a discharge under § 1328(h) on the ground that § 522(q)(1) is applicable. To the extent necessary, the extension of time to object to Debtor's claim of exemptions includes and extends beyond the confirmation hearing in every Chapter 13 case; Trustee or any party in interest may contest Debtor's claimed exemptions in objecting to confirmation of the Plan.

21. Cooperation with Trustee. Debtor and Debtor's attorney shall cooperate with the Trustee to the greatest extent possible during the pendency of a Chapter 13 case, both before and after the Plan is confirmed. Upon the Trustee's oral or written request, Debtor shall provide to the Trustee any requested information, including books, documents, records, and papers, relating to property of the estate. Within 28 days of the Trustee's request, Debtor shall, at Debtor's expense, obtain and deliver to the Trustee a current appraisal of real or personal property performed by a qualified appraiser in an acceptable format. Debtor may file, if needed, a motion to employ professionals under § 327.

22. Debtor's Duty to Supplement. Debtor shall promptly disclose to the Trustee and file amendments with the Court reporting all changes of Debtor's financial circumstances, including, but not limited to, inheritances, personal injury settlements, new or additional employment, loss of employment, or reduction or increase to income.

23. Notice of Domestic Support Obligations. At the initial meeting of creditors, Debtor shall inform the Trustee of any domestic support obligation, as defined in § 101(14A), and provide the following information: the name of the holder of claim, the address of the holder of the claim, the state court case number (if applicable), and the telephone number of the holder of claim. Debtor promptly shall provide the same information to the Trustee for any domestic support obligation that arises after the meeting of creditors.

24. Notice to Creditors and Other Interested Parties. All parties must comply with the noticing and service requirements of Local Rule 2002-1. Failure to timely serve orders and notices may cause the denial of the party's motion without prejudice.

25. **Default.** If Debtor fails to make payments to the Trustee when due or to timely comply with any of the requirements of this Order, the case may be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code upon motion by the Trustee or a party in interest.

DATED: September 1, 2016.

MICHAEL G. WILLIAMSON
Chief United States Bankruptcy Judge

AMERICAN BANKRUPTCY INSTITUTE

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
_____ DIVISION**

Debtor(s) _____

Case No:

[# AMENDED (if applicable)] CHAPTER 13 PLAN

CHECK ONE:

_____ Debtor¹ certifies that the Plan does not deviate from the model plan adopted by the Court at the time of the filing of this case. Any nonconforming provisions are deemed stricken.

_____ The Plan contains provisions that are specific to this Plan in paragraph 9, Nonconforming Provisions. Any nonconforming provision not set forth in paragraph 9 is deemed stricken.

1. MONTHLY PLAN PAYMENTS. Plan payments include the Trustee's fee of 10% and shall begin 30 days from petition filing/conversion date. Debtor shall make payments to the Trustee for the period of _____ months. If the Trustee does not retain the full 10%, any portion not retained will be disbursed to allowed claims receiving payment under the plan and may cause an increased distribution to the unsecured class of creditors:

- (A) \$_____ for months _____ through _____
(B) \$_____ for months _____ through _____
(C) \$_____ for months _____ through _____

to pay the following creditors:

2. ADMINISTRATIVE ATTORNEY'S FEES.

Base Fee \$_____ Total Paid Prepetition \$_____ Balance Due \$_____

Estimated Additional Fees Subject to Court Approval \$_____

Attorney's Fees Payable through Plan \$_____ Monthly (subject to adjustment)

¹ All references to "Debtor" include and refer to both of the debtors in a case filed jointly by two individuals.

3. **PRIORITY CLAIMS (as defined in 11 U.S.C. §507).**

Last 4 Digits of Acct No.	Creditor	Total Claim
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4. **TRUSTEE FEES.** Trustee shall receive a fee from each payment received, the percentage of which is fixed periodically by the United States Trustee.

5. **SECURED CLAIMS.** Pre-confirmation payments allocated to secured creditors under the Plan, other than amounts allocated to cure arrearages, shall be deemed adequate protection payments.

(A) Claims Secured by Real Property Which Debtor Intends to Retain/ Mortgage Payments and Arrears, if any, Paid through the Plan. If the Plan provides to cure prepetition arrearages on a mortgage, Debtor will pay, in addition to all other sums due under the proposed Plan, all regular monthly postpetition mortgage payments to the Trustee as part of the Plan. These mortgage payments, which may be adjusted up or down as provided for under the loan documents, are due beginning the first due date after the case is filed and continuing each month thereafter. The Trustee shall pay the postpetition mortgage payments on the following mortgage claims:

Last 4 Digits of Acct No.	Creditor	Collateral Address	Reg. Mo. Pmt.	Gap Pmt.	Arrears
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(B) Claims Secured by Real Property/Debtor Intends to Seek Mortgage Modification. If Debtor is successful in obtaining a mortgage modification at any time during the case, payments on the modified mortgage shall be paid through the Plan. Pending the resolution of a mortgage modification request, Debtor shall make the following adequate protection payments to the Trustee: (1) for *homestead* property, the lesser of 31% of the gross monthly income of Debtor and non-filing spouse, if any (after deducting homeowner association fees), or the normal monthly contractual mortgage payment, or (2) for *non-homestead*, income producing property, 75% of the gross rental income generated from the property:

Last 4 Digits of Acct. No.	Creditor	Collateral Address	Pmt. Amt.
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AMERICAN BANKRUPTCY INSTITUTE

(C) Claims Secured by Real Property or Personal Property to Which Section 506 Valuation APPLIES. Under 11 U.S.C. § 1322(b)(2), this provision does not apply to a claim secured solely by Debtor's principal residence. A separate motion to determine secured status or to value the collateral must be filed. The secured portion of the claim, estimated below shall be paid:

Last 4 Digits of Acct No.	Creditor	Collateral Desc./Address	Claim Amt. Value	Pmt. Interest @ ____%
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(D) Claims Secured by Real Property and/or Personal Property to Which Section 506 Valuation DOES NOT APPLY. Claims of the following secured creditors shall be paid in full with interest:

Last 4 Digits of Acct No.	Creditor	Collateral Desc./Address	Claim Amt.	Pmt. Interest @ ____%
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(E) Claims Secured by Personal Property – Maintaining Regular Payments and Curing Arrearages, if any, with All Payments in Plan.

Last 4 Digits of Acct No.	Creditor	Collateral Description	Regular Payment	Arrearages
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(F) Secured Claims/Lease Claims Paid Direct by Debtor. The following secured claims/lease claims are being made via automatic debit/draft from Debtor's depository account and are to continue to be paid direct to the creditor or lessor by Debtor outside the Plan via automatic debit/draft. The automatic stay is terminated *in rem* as to Debtor and *in rem* and *in personam* as to any codebtor as to these creditors and lessors upon the filing of this Plan. Nothing herein is intended to terminate or abrogate Debtor's state law contract rights. (Note: The Plan must provide for the assumption of lease claims that Debtor proposes to pay direct in the Lease/Executory Contract Section 6 below.)

Last 4 Digits of Acct No.	Creditor	Property/Collateral
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(G) Liens to be Avoided per 11 U.S.C. §522 or Stripped Off per 11 U.S.C. §506. A separate motion to avoid a lien under § 522 or to determine secured status and to strip a lien under § 506 must be filed.

Last 4 Digits of Acct No.	Creditor	Collateral Description/Address
------------------------------	----------	--------------------------------

(H) Surrender of Collateral/Leased Property. Debtor will surrender the following collateral/leased property. The automatic stay is terminated *in rem* as to Debtor and *in rem* and *in personam* as to any codebtor as to these creditors and lessors upon the filing of this Plan. (Note: The Plan must provide for the rejection of lease claims in the Lease/Executory Contract section below.)

Last 4 Digits of Acct No.	Creditor	Property/Collateral to be Surrendered
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(I) Other Secured Claims. Debtor does not intend to make payments to the following secured creditors. The automatic stay is terminated *in rem* as to Debtor and *in rem* and *in personam* as to any codebtor with respect to these creditors. Debtor's state law contract rights and defenses are neither terminated nor abrogated.

6. LEASES/EXECUTORY CONTRACTS.

Last 4 Digits of Acct No.	Creditor	Property	Assume/Reject-Surrender	Est. Arrears
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7. GENERAL UNSECURED CREDITORS. General unsecured creditors with allowed claims shall receive a *pro rata* share of the balance of any funds remaining after payments to the above referenced creditors or shall otherwise be paid under a subsequent Order Confirming Plan. The estimated dividend to unsecured creditors shall be no less than \$_____.

8. ADDITIONAL PROVISIONS:

(A) Unless otherwise ordered, secured creditors, whether or not dealt with under the Plan, shall retain the liens securing such claims;

(B) Payments made to any creditor shall be based upon the amount set forth in the creditor's proof of claim or other amount as allowed by an Order of the Bankruptcy Court.

(C) Property of the estate (check one)*

(1) _____ shall not vest in Debtor until the earlier of Debtor's discharge or dismissal of this case, unless the Court orders otherwise; or

(2) _____ shall vest in Debtor upon confirmation of the Plan.

*If Debtor fails to check (1) or (2) above, or if Debtor checks both (1) and (2), property of the estate shall not vest in Debtor until the earlier of Debtor's discharge or dismissal of this case, unless the Court orders otherwise.

(D) The amounts listed for claims in this Plan are based upon Debtor's best estimate and belief and/or the proofs of claim as filed and allowed. The Trustee shall only pay creditors with filed and allowed proof of claims. An allowed proof of claim shall control, unless the Court orders otherwise.

(E) Debtor may attach a summary or spreadsheet to provide an estimate of anticipated distributions. The actual distributions may vary. If the summary or spreadsheet conflicts with this Plan, the provisions of the Plan shall control prior to confirmation; after confirmation the Order Confirming Plan shall control.

(F) Debtor shall timely file all tax returns and make all tax payments and deposits when due. (However, if Debtor is not required to file tax returns, Debtor shall provide Trustee with a statement to that effect.) For each tax return that becomes due after the case is filed, Debtor shall provide a complete copy of the tax return, including business returns if Debtor owns a business, together with all related W-2s and Form 1099s, to the Trustee within 14 days of filing the return. Unless otherwise consented to by the Trustee or ordered by the Court, Debtor shall turn over to the Trustee all tax refunds in addition to regular Plan payments. Debtor shall not instruct the Internal Revenue Service or other taxing agency to apply a refund to the following year's tax liability. **Debtor shall spend no tax refunds without first having obtained the Trustee's consent or court approval.**

9. NONCONFORMING PROVISIONS:

 Debtor

Dated: _____

 Debtor

Dated: _____

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA

DIVISION
www.flmb.uscourts.gov

In re:

Case No.

Chapter 13

Debtor.¹
_____/

ORDER CONFIRMING PLAN

THIS CASE came on for a hearing on *, 201* following the transmittal of Debtor's Chapter 13 plan (the "Plan," Docket No. * reference to which shall include any subsequent amendment made by prior order, in open court during the hearing, or in this Order) to all parties in interest. Any amendment to the Plan made by Debtor or the Chapter 13 Trustee at confirmation has been incorporated herein. The Court finds that the Plan complies with the provisions of Chapter 13 of the Bankruptcy Code² and with other applicable provisions of the Code.

Accordingly, it is hereby

ORDERED:

¹ All references to "Debtor" shall include and refer to both of Debtors in a case filed jointly by two individuals.

² All statutory references are to the Bankruptcy Code, Title 11 of the United States Code, unless otherwise noted. References to rules are to the Federal Rules of Bankruptcy Procedure.

1. The Plan as amended is confirmed as set forth herein. If there is a discrepancy between the provisions of the Plan and this Order, the provisions of this Order supersede the Plan.

2. Payments by Debtor as set forth in the attached Exhibit “A,” incorporated herein by reference, shall be made each month by Trustee-approved electronic transfer, money order or cashier’s check for * consecutive months commencing on *, 201* to the Chapter 13 Standing Trustee, **(Trustee name), (Trustee Address)**. Nevertheless, if Trustee has insufficient monies to make distribution pursuant to this Order, or any other Court order, the payments may be adjusted during the life of the Plan without further order of this Court.

3. Debtor is prohibited from incurring any non-ordinary course post-confirmation debt during the term of this Plan without prior approval of the Court or the Trustee.

4. All claims, including Debtor’s attorney’s fees, are allowed or disallowed as set forth in Exhibit “A” attached hereto and by reference made a part hereof. Any party in interest may, within 21 days of the date of this Order, request the Court to examine the fees to be paid to Debtor’s attorney.

5. The Trustee will collect from each payment received his/her percentage fee, which percentage fee is fixed periodically by the United States Trustee. If the Trustee’s actual fee is less than provided for in the Plan, any unused portion of the fee may be used to fund the Plan or to increase the distribution to unsecured creditors.

6. Distributions by the Trustee may commence and continue on a monthly basis to pay allowed claims as set forth on attached Exhibit “A” or as subsequently provided for in an amended Exhibit “A” or Court order. The Trustee is authorized to disburse partial payments based on the availability of funds. The Trustee may distribute partial Plan payments to creditors in their order of priority based upon the availability of funds.

7. The procedure for treatment of mortgage payment changes and escrow account adjustments during the life of the Plan shall be governed by Rule 3002.1(b).

8. If a Notice of Payment Change is filed and served, the Trustee may take the following action:

(a) If the new payment is *less* than the current payment, the Trustee may reduce the payment to the creditor in accordance with the notice and apply the difference to increase the distribution to unsecured creditors; or

(b) If the new payment is *greater* than the current payment, the Trustee may compute the additional sum Debtor must pay and notify Debtor and Debtor's attorney of the new monthly payment amount. The payment to the creditor will be adjusted accordingly.

The foregoing provisions are, in effect, a modification to the Plan, which is deemed requested by the Trustee as provided in Section 1329. Notice and hearing are waived inasmuch as no creditor will be adversely affected by such change.

9. Provisions for both prepetition and postpetition arrearages, if any, on allowed secured claims are included in the Plan. After the completion of all payments under the Plan and the entry of a discharge of Debtor, the delinquencies on mortgages and security interests related to such claims will be deemed cured and their contractual maturities reinstated. Any postpetition costs or expenses incurred by or on behalf of any secured creditor will be discharged upon the completion of the Plan, unless specifically provided for in this Order, or allowed pursuant a notice provided under Rule 3002.1(c) before the completion of Plan payments.

10. The automatic stay was terminated *in rem* as to Debtor and *in rem* and *in personam* as to any codebtor as to any secured creditor or lessor for which the Plan provided (a) for the surrender of collateral or leased property to the secured creditor or lessor, or (b) for Debtor to make payments directly to the secured creditor or lessor, (c) that Debtor does not intend to make

payments while preserving state law contract rights and defenses, or (d) for which no provision was made in the Plan. The automatic stay is hereby terminated *in rem* as to Debtor and *in rem* and *in personam* as to any codebtor as to any secured creditor or lessor not provided for in this Order.

11. The holders of allowed secured claims provided for in the Plan shall retain the lien securing such claim until the earlier of the payment of the underlying debt determined under non-bankruptcy law or discharge under Section 1328. If the case is dismissed or converted without completion of the Plan, such lien shall also be retained by such holder to the extent recognized by applicable non-bankruptcy law.

12. If the bar date to file proofs of claim has not yet expired, Debtor shall have 28 days following the expiration of the claims bar date to object to any filed claim which has not already been provided for in this Order.

13. Any claim or amended claim filed after the claims bar date, other than a claim filed by Debtor or the Trustee under Rule 3004, unless provided for in Exhibit “A” of this Order or subsequent modification shall be disallowed and receive no distribution unless an order is entered allowing such untimely filed claim.

14. If any timely filed claim is not already provided for in this Order, Debtor (through counsel, if any) shall timely file an appropriate motion to modify the confirmed Plan and any objection to claims or motions to value claims. The Trustee shall review the claims register after all bar dates have passed and may file a motion to dismiss if Debtor fails to timely take appropriate action to address all filed claims.

15. The Trustee shall hold all funds payable to general unsecured creditors for at least 30 days after the bar date for filing claims has passed, and the Trustee may continue to hold all such funds until all objections to claims have been resolved.

16. If Debtor files a notice of conversion of this case to a Chapter 7 or the Court orders the conversion of this case to a Chapter 11 or the dismissal of this case, any undistributed funds in the Trustee's possession on the date of conversion or dismissal shall be payable to Debtor and, if Debtor is represented by counsel, mailed to Debtor in care of Debtor's attorney.

17. Unless otherwise provided for in this Order or any other order of this Court, Debtor is responsible for paying all postpetition ongoing homeowners' assessments, homeowners' dues, and/or property taxes that are related to real property being retained by Debtor under the Plan, and the automatic stay shall not apply to these postpetition claims.

18. Debtor is responsible for paying any domestic support obligation that first becomes payable after the petition date.

19. Any objections to confirmation of the Plan are deemed withdrawn and/or overruled by entry of this Order.

20. Upon completion of all payments under the Plan, Debtor shall promptly file a declaration under penalty of perjury or affidavit that (a) lists all domestic support obligations and whether such obligations are current or file a certificate stating that Debtor is not required to pay a domestic support obligation and (b) states that § 522(q)(1) is not applicable and that no proceeding is pending in which Debtor could be found guilty of an offense listed in § 522(q)(1) or liable for a debt of the kind listed in § 522(q)(1)(B).

21. Debtor shall complete a required personal financial management course and file a certificate that such course has been completed within 90 days of the entry of this Order.

22. The entry of a discharge shall be withheld until Debtor complies with Paragraphs 20 and 21.

23. This case is not subject to the provisions of § 521(i)(1).

24. During the pendency of the Chapter 13 case, Debtor shall timely file all tax returns and make all tax payments and deposits when due. (However, if Debtor is not required to file tax returns, Debtor shall provide Trustee with a statement to that effect.) For each tax return that becomes due after the case is filed, Debtor shall, within 14 days of filing the return, provide the Trustee with a complete copy of the tax return, including business returns if Debtor owns a business, together with all related W-2s and Form 1099s.

25. Unless otherwise consented to by the Trustee or ordered by the Court, Debtor shall turn over to the Trustee all tax refunds in addition to regular Plan payments for distribution to allowed general unsecured creditors. Debtor shall not instruct the Internal Revenue Service or other taxing agency to apply a refund to the following year's tax liability. **Debtor shall not spend any tax refund without first having obtained the Trustee's consent or court approval.**

26. Any discharge entered in this case shall not discharge Debtor's liability on a federally guaranteed student loan unless the Court specifically finds that repayment of the debt would cause an undue hardship to Debtor or Debtor's dependents pursuant to § 523(a)(8).

27. To the extent this Order contains any modified term or condition that was not timely noticed to the parties, any party may seek reconsideration of this Order within 14 days of its entry by separate motion.

28. Debtor is under a continuing duty to disclose any changes in financial circumstances and new assets or potential rights to assets that Debtor acquires post-petition by promptly filing amended schedules with the Court. Any failure to disclose changes in financial circumstances or assets by the filing of amended schedules may result in dismissal of the case and/or denial of Debtor's discharge.

29. If a claim is withdrawn by a creditor or the creditor files a satisfaction of the debt or claim, the Trustee, in his/her discretion may elect to seek recovery of funds already disbursed

or to take no action at all regarding funds already disbursed to that creditor. The Trustee may also discontinue any further disbursements if a claim is withdrawn by a creditor. Any disbursements made under this Order on account of a claim that is subsequently withdrawn or for which the Trustee receives a satisfaction of claim are deemed authorized disbursements and the Trustee shall have no liability therefor.

Trustee (**Trustee Name**) is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of entry of the order.

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APPENDIX

State Taxes

Sales Taxes and Unemployment Taxes.

Mail reports and payments to:

State of Florida - Department of Revenue
Office of General Counsel/Bankruptcy Section
P.O. Box 6668
Tallahassee, FL 32314-6668

Federal Taxes

Federal tax deposits of social security taxes (employer and employee shares) and withholding taxes are to be made within three banking days after each payroll is made. Deposits are to be made in a Federal Reserve Bank or a commercial bank authorized to accept federal tax deposits. Deposits are to be made by cashier's or certified check and be accompanied by Form 8109, Federal Tax Deposit Withheld Income and FICA Taxes. If Form 8109 is not available, deposits are to be mailed within the time prescribed or deposits to the address indicated below. If you pay amounts with Form 941 that should have been deposited, you may be subject to penalty. See Deposit Penalties in Section 11 of Pub. 15 (Circular E).

Mail original returns prepetition (prior to confirmation) to the appropriate district office listed below according to the county listed in the bankruptcy petition as Debtor's residence or place of operating business.

If any taxes are due on the prepetition returns, they should be included in the Plan (paid through the Trustee) and the IRS should be noticed at the Philadelphia address regarding the bankruptcy

Jacksonville District
Internal Revenue Service
Attn: Insolvency, Stop 5720
400 W. Bay Street, Suite 35045
Jacksonville, FL 32202

Ft. Lauderdale District
Internal Revenue Service
Attn: Insolvency, Stop 5730
P.O. Box 17167
Ft. Lauderdale, FL 33318

Mailing of original returns postpetition (after confirmation) and/or payments for those specific returns should be sent to the regularly scheduled address as listed by the IRS on your filing information.

Fill in this information to identify your case:			
Debtor 1			
	First Name	Middle Name	Last Name
Debtor 2			
(Spouse, if filing)	First Name	Middle Name	Last Name
United States Bankruptcy Court for the: _____ District of _____			
(State)			
Case number			
(If known)			

☐ Check if this is an amended plan, and list below the sections of the plan that have been changed.

Official Form 113

Chapter 13 Plan

12/17

Part 1: Notices

To Debtors: This form sets out options that may be appropriate in some cases, but the presence of an option on the form does not indicate that the option is appropriate in your circumstances or that it is permissible in your judicial district. Plans that do not comply with local rules and judicial rulings may not be confirmable.

In the following notice to creditors, you must check each box that applies.

To Creditors: Your rights may be affected by this plan. Your claim may be reduced, modified, or eliminated.

You should read this plan carefully and discuss it with your attorney if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you oppose the plan's treatment of your claim or any provision of this plan, you or your attorney must file an objection to confirmation at least 7 days before the date set for the hearing on confirmation, unless otherwise ordered by the Bankruptcy Court. The Bankruptcy Court may confirm this plan without further notice if no objection to confirmation is filed. See Bankruptcy Rule 3015. In addition, you may need to file a timely proof of claim in order to be paid under any plan.

The following matters may be of particular importance. **Debtors must check one box on each line to state whether or not the plan includes each of the following items. If an item is checked as "Not Included" or if both boxes are checked, the provision will be ineffective if set out later in the plan.**

1.1	A limit on the amount of a secured claim, set out in Section 3.2, which may result in a partial payment or no payment at all to the secured creditor	<input type="checkbox"/> Included	<input type="checkbox"/> Not included
1.2	Avoidance of a judicial lien or nonpossessory, nonpurchase-money security interest, set out in Section 3.4	<input type="checkbox"/> Included	<input type="checkbox"/> Not included
1.3	Nonstandard provisions, set out in Part 8	<input type="checkbox"/> Included	<input type="checkbox"/> Not included

Part 2: Plan Payments and Length of Plan

2.1 Debtor(s) will make regular payments to the trustee as follows:

\$ _____ per _____ for _____ months
 [and \$ _____ per _____ for _____ months.] *Insert additional lines if needed.*

If fewer than 60 months of payments are specified, additional monthly payments will be made to the extent necessary to make the payments to creditors specified in this plan.

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Debtor _____

Case number _____

2.2 Regular payments to the trustee will be made from future income in the following manner:

Check all that apply.

- ☐ Debtor(s) will make payments pursuant to a payroll deduction order.
- ☐ Debtor(s) will make payments directly to the trustee.
- ☐ Other (specify method of payment): _____.

2.3 Income tax refunds.

Check one.

- ☐ Debtor(s) will retain any income tax refunds received during the plan term.
- ☐ Debtor(s) will supply the trustee with a copy of each income tax return filed during the plan term within 14 days of filing the return and will turn over to the trustee all income tax refunds received during the plan term.
- ☐ Debtor(s) will treat income tax refunds as follows:

2.4 Additional payments.

Check one.

- ☐ None. If "None" is checked, the rest of § 2.4 need not be completed or reproduced.
- ☐ Debtor(s) will make additional payment(s) to the trustee from other sources, as specified below. Describe the source, estimated amount, and date of each anticipated payment.

2.5 The total amount of estimated payments to the trustee provided for in §§ 2.1 and 2.4 is \$ _____.

Part 3: Treatment of Secured Claims

3.1 Maintenance of payments and cure of default, if any.

Check one.

- ☐ None. If "None" is checked, the rest of § 3.1 need not be completed or reproduced.
- ☐ The debtor(s) will maintain the current contractual installment payments on the secured claims listed below, with any changes required by the applicable contract and noticed in conformity with any applicable rules. These payments will be disbursed either by the trustee or directly by the debtor(s), as specified below. Any existing arrearage on a listed claim will be paid in full through disbursements by the trustee, with interest, if any, at the rate stated. Unless otherwise ordered by the court, the amounts listed on a proof of claim filed before the filing deadline under Bankruptcy Rule 3002(c) control over any contrary amounts listed below as to the current installment payment and arrearage. In the absence of a contrary timely filed proof of claim, the amounts stated below are controlling. If relief from the automatic stay is ordered as to any item of collateral listed in this paragraph, then, unless otherwise ordered by the court, all payments under this paragraph as to that collateral will cease, and all secured claims based on that collateral will no longer be treated by the plan. The final column includes only payments disbursed by the trustee rather than by the debtor(s).

Name of creditor	Collateral	Current installment payment (including escrow)	Amount of arrearage (if any)	Interest rate on arrearage (if applicable)	Monthly plan payment on arrearage	Estimated total payments by trustee
_____	_____	\$ _____	\$ _____	_____ %	\$ _____	\$ _____
		Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)				
_____	_____	\$ _____	\$ _____	_____ %	\$ _____	\$ _____
		Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)				

Insert additional claims as needed.

2017 ALEXANDER L. PASKAY MEMORIAL BANKRUPTCY SEMINAR

Debtor _____

Case number _____

3.2 Request for valuation of security, payment of fully secured claims, and modification of undersecured claims. Check one.

☐ **None.** If "None" is checked, the rest of § 3.2 need not be completed or reproduced.

The remainder of this paragraph will be effective only if the applicable box in Part 1 of this plan is checked.

☐ The debtor(s) request that the court determine the value of the secured claims listed below. For each non-governmental secured claim listed below, the debtor(s) state that the value of the secured claim should be as set out in the column headed *Amount of secured claim*. For secured claims of governmental units, unless otherwise ordered by the court, the value of a secured claim listed in a proof of claim filed in accordance with the Bankruptcy Rules controls over any contrary amount listed below. For each listed claim, the value of the secured claim will be paid in full with interest at the rate stated below.

The portion of any allowed claim that exceeds the amount of the secured claim will be treated as an unsecured claim under Part 5 of this plan. If the amount of a creditor's secured claim is listed below as having no value, the creditor's allowed claim will be treated in its entirety as an unsecured claim under Part 5 of this plan. Unless otherwise ordered by the court, the amount of the creditor's total claim listed on the proof of claim controls over any contrary amounts listed in this paragraph.

The holder of any claim listed below as having value in the column headed *Amount of secured claim* will retain the lien on the property interest of the debtor(s) or the estate(s) until the earlier of:

- (a) payment of the underlying debt determined under nonbankruptcy law, or
- (b) discharge of the underlying debt under 11 U.S.C. § 1328, at which time the lien will terminate and be released by the creditor.

Name of creditor	Estimated amount of creditor's total claim	Collateral	Value of collateral	Amount of claims senior to creditor's claim	Amount of secured claim	Interest rate	Monthly payment to creditor	Estimated total of monthly payments
_____	\$ _____	_____	\$ _____	\$ _____	\$ _____	____%	\$ _____	\$ _____
_____	\$ _____	_____	\$ _____	\$ _____	\$ _____	____%	\$ _____	\$ _____

Insert additional claims as needed.

3.3 Secured claims excluded from 11 U.S.C. § 506.

Check one.

☐ **None.** If "None" is checked, the rest of § 3.3 need not be completed or reproduced.

☐ The claims listed below were either:

- (1) incurred within 910 days before the petition date and secured by a purchase money security interest in a motor vehicle acquired for the personal use of the debtor(s), or
- (2) incurred within 1 year of the petition date and secured by a purchase money security interest in any other thing of value.

These claims will be paid in full under the plan with interest at the rate stated below. These payments will be disbursed either by the trustee or directly by the debtor(s), as specified below. Unless otherwise ordered by the court, the claim amount stated on a proof of claim filed before the filing deadline under Bankruptcy Rule 3002(c) controls over any contrary amount listed below. In the absence of a contrary timely filed proof of claim, the amounts stated below are controlling. The final column includes only payments disbursed by the trustee rather than by the debtor(s).

Name of creditor	Collateral	Amount of claim	Interest rate	Monthly plan payment	Estimated total payments by trustee
_____	_____	\$ _____	____%	\$ _____	\$ _____
Disbursed by:					
<input type="checkbox"/> Trustee					
<input type="checkbox"/> Debtor(s)					
_____	_____	\$ _____	____%	\$ _____	\$ _____
Disbursed by:					
<input type="checkbox"/> Trustee					
<input type="checkbox"/> Debtor(s)					

Insert additional claims as needed.

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Debtor _____

Case number _____

3.4 Lien avoidance.

Check one.

☐ None. If "None" is checked, the rest of § 3.4 need not be completed or reproduced.

The remainder of this paragraph will be effective only if the applicable box in Part 1 of this plan is checked.

☐ The judicial liens or nonpossessory, nonpurchase money security interests securing the claims listed below impair exemptions to which the debtor(s) would have been entitled under 11 U.S.C. § 522(b). Unless otherwise ordered by the court, a judicial lien or security interest securing a claim listed below will be avoided to the extent that it impairs such exemptions upon entry of the order confirming the plan. The amount of the judicial lien or security interest that is avoided will be treated as an unsecured claim in Part 5 to the extent allowed. The amount, if any, of the judicial lien or security interest that is not avoided will be paid in full as a secured claim under the plan. See 11 U.S.C. § 522(f) and Bankruptcy Rule 4003(d). If more than one lien is to be avoided, provide the information separately for each lien.

Information regarding judicial lien or security interest	Calculation of lien avoidance		Treatment of remaining secured claim
Name of creditor	a. Amount of lien	\$ _____	Amount of secured claim after avoidance (line a minus line f)
_____	b. Amount of all other liens	\$ _____	\$ _____
Collateral	c. Value of claimed exemptions	+ \$ _____	Interest rate (if applicable)
_____	d. Total of adding lines a, b, and c	\$ _____	_____ %
Lien identification (such as judgment date, date of lien recording, book and page number)	e. Value of debtor(s)' interest in property	- \$ _____	Monthly payment on secured claim
_____	f. Subtract line e from line d.	\$ _____	\$ _____
_____	Extent of exemption impairment (Check applicable box):		Estimated total payments on secured claim
	<input type="checkbox"/> Line f is equal to or greater than line a.		\$ _____
	The entire lien is avoided. (Do not complete the next column.)		
	<input type="checkbox"/> Line f is less than line a.		
	A portion of the lien is avoided. (Complete the next column.)		

Insert additional claims as needed.

3.5 Surrender of collateral.

Check one.

☐ None. If "None" is checked, the rest of § 3.5 need not be completed or reproduced.

☐ The debtor(s) elect to surrender to each creditor listed below the collateral that secures the creditor's claim. The debtor(s) request that upon confirmation of this plan the stay under 11 U.S.C. § 362(a) be terminated as to the collateral only and that the stay under § 1301 be terminated in all respects. Any allowed unsecured claim resulting from the disposition of the collateral will be treated in Part 5 below.

Name of creditor	Collateral
_____	_____
_____	_____

Insert additional claims as needed.

2017 ALEXANDER L. PASKAY MEMORIAL BANKRUPTCY SEMINAR

Debtor _____

Case number _____

Part 4: Treatment of Fees and Priority Claims

4.1 General

Trustee's fees and all allowed priority claims, including domestic support obligations other than those treated in § 4.5, will be paid in full without postpetition interest.

4.2 Trustee's fees

Trustee's fees are governed by statute and may change during the course of the case but are estimated to be _____% of plan payments; and during the plan term, they are estimated to total \$_____.

4.3 Attorney's fees

The balance of the fees owed to the attorney for the debtor(s) is estimated to be \$_____.

4.4 Priority claims other than attorney's fees and those treated in § 4.5.

Check one.

- ☐ None. If "None" is checked, the rest of § 4.4 need not be completed or reproduced.
- ☐ The debtor(s) estimate the total amount of other priority claims to be _____.

4.5 Domestic support obligations assigned or owed to a governmental unit and paid less than full amount.

Check one.

- ☐ None. If "None" is checked, the rest of § 4.5 need not be completed or reproduced.
- ☐ The allowed priority claims listed below are based on a domestic support obligation that has been assigned to or is owed to a governmental unit and will be paid less than the full amount of the claim under 11 U.S.C. § 1322(a)(4). *This plan provision requires that payments in § 2.1 be for a term of 60 months; see 11 U.S.C. § 1322(a)(4).*

Name of creditor

Amount of claim to be paid

_____ \$ _____

_____ \$ _____

Insert additional claims as needed.

Part 5: Treatment of Nonpriority Unsecured Claims

5.1 Nonpriority unsecured claims not separately classified.

Allowed nonpriority unsecured claims that are not separately classified will be paid, pro rata. If more than one option is checked, the option providing the largest payment will be effective. *Check all that apply.*

- ☐ The sum of \$_____.
- ☐ _____% of the total amount of these claims, an estimated payment of \$_____.
- ☐ The funds remaining after disbursements have been made to all other creditors provided for in this plan.

If the estate of the debtor(s) were liquidated under chapter 7, nonpriority unsecured claims would be paid approximately \$_____.
Regardless of the options checked above, payments on allowed nonpriority unsecured claims will be made in at least this amount.

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Debtor _____

Case number _____

5.2 Maintenance of payments and cure of any default on nonpriority unsecured claims. Check one.

- ☐ **None.** If "None" is checked, the rest of § 5.2 need not be completed or reproduced.
- ☐ The debtor(s) will maintain the contractual installment payments and cure any default in payments on the unsecured claims listed below on which the last payment is due after the final plan payment. These payments will be disbursed either by the trustee or directly by the debtor(s), as specified below. The claim for the arrearage amount will be paid in full as specified below and disbursed by the trustee. The final column includes only payments disbursed by the trustee rather than by the debtor(s).

Name of creditor	Current installment payment	Amount of arrearage to be paid	Estimated total payments by trustee
_____	\$ _____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)	\$ _____	\$ _____
_____	\$ _____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)	\$ _____	\$ _____

Insert additional claims as needed.

5.3 Other separately classified nonpriority unsecured claims. Check one.

- ☐ **None.** If "None" is checked, the rest of § 5.3 need not be completed or reproduced.
- ☐ The nonpriority unsecured allowed claims listed below are separately classified and will be treated as follows

Name of creditor	Basis for separate classification and treatment	Amount to be paid on the claim	Interest rate (if applicable)	Estimated total amount of payments
_____	_____	\$ _____	_____%	\$ _____
_____	_____	\$ _____	_____%	\$ _____

Insert additional claims as needed.

Part 6: Executory Contracts and Unexpired Leases

6.1 The executory contracts and unexpired leases listed below are assumed and will be treated as specified. All other executory contracts and unexpired leases are rejected. Check one.

- ☐ **None.** If "None" is checked, the rest of § 6.1 need not be completed or reproduced.
- ☐ **Assumed items.** Current installment payments will be disbursed either by the trustee or directly by the debtor(s), as specified below, subject to any contrary court order or rule. Arrearage payments will be disbursed by the trustee. The final column includes only payments disbursed by the trustee rather than by the debtor(s).

2017 ALEXANDER L. PASKAY MEMORIAL BANKRUPTCY SEMINAR

Debtor _____			Case number _____		
Name of creditor	Description of leased property or executory contract	Current installment payment	Amount of arrearage to be paid	Treatment of arrearage (Refer to other plan section if applicable)	Estimated total payments by trustee
_____	_____	\$ _____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)	\$ _____	_____	\$ _____
_____	_____	\$ _____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)	\$ _____	_____	\$ _____

Insert additional contracts or leases as needed.

Part 7: Vesting of Property of the Estate

7.1 Property of the estate will vest in the debtor(s) upon

Check the applicable box:

- ☐ plan confirmation.
☐ entry of discharge.
☐ other: _____

Part 8: Nonstandard Plan Provisions

8.1 Check "None" or List Nonstandard Plan Provisions

- ☐ None. If "None" is checked, the rest of Part 8 need not be completed or reproduced.

Under Bankruptcy Rule 3015(c), nonstandard provisions must be set forth below. A nonstandard provision is a provision not otherwise included in the Official Form or deviating from it. Nonstandard provisions set out elsewhere in this plan are ineffective.

The following plan provisions will be effective only if there is a check in the box "Included" in § 1.3.

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Debtor _____

Case number _____

Part 9: Signature(s):

9.1 Signatures of Debtor(s) and Debtor(s)' Attorney

If the Debtor(s) do not have an attorney, the Debtor(s) must sign below; otherwise the Debtor(s) signatures are optional. The attorney for the Debtor(s), if any, must sign below.

X _____

Signature of Debtor 1

Executed on _____
MM / DD / YYYY

X _____

Signature of Debtor 2

Executed on _____
MM / DD / YYYY

X _____

Signature of Attorney for Debtor(s)

Date _____
MM / DD / YYYY

By filing this document, the Debtor(s), if not represented by an attorney, or the Attorney for Debtor(s) also certify(ies) that the wording and order of the provisions in this Chapter 13 plan are identical to those contained in Official Form 113, other than any nonstandard provisions included in Part 8.

Exhibit: Total Amount of Estimated Trustee Payments

The following are the estimated payments that the plan requires the trustee to disburse. If there is any difference between the amounts set out below and the actual plan terms, the plan terms control.

- | | |
|--|------------|
| a. Maintenance and cure payments on secured claims <i>(Part 3, Section 3.1 total)</i> | \$ _____ |
| b. Modified secured claims <i>(Part 3, Section 3.2 total)</i> | \$ _____ |
| c. Secured claims excluded from 11 U.S.C. § 506 <i>(Part 3, Section 3.3 total)</i> | \$ _____ |
| d. Judicial liens or security interests partially avoided <i>(Part 3, Section 3.4 total)</i> | \$ _____ |
| e. Fees and priority claims <i>(Part 4 total)</i> | \$ _____ |
| f. Nonpriority unsecured claims <i>(Part 5, Section 5.1, highest stated amount)</i> | \$ _____ |
| g. Maintenance and cure payments on unsecured claims <i>(Part 5, Section 5.2 total)</i> | \$ _____ |
| h. Separately classified unsecured claims <i>(Part 5, Section 5.3 total)</i> | \$ _____ |
| i. Trustee payments on executory contracts and unexpired leases <i>(Part 6, Section 6.1 total)</i> | \$ _____ |
| j. Nonstandard payments <i>(Part 8, total)</i> | + \$ _____ |

Total of lines a through j

\$ _____

F.R.B.P. Rule 3001(c) Objections
and how the Florida Bankruptcy Divisions have ruled

Middle District of Florida, Orlando Division

In re Sandifer, 318 B.R. 609 (Briskman) – The court sustained debtors’ objections to, and disallowed, creditor’s initial claims. The court however, allowed creditor to amend claims to provide proper documentation.

In re Taylor, 363 B.R. 303 (Jennemann) – Failure to attach sufficient documentation to a proof of claim results in the claim lacking any prima facie validity, which, upon a proper objection, makes the claim subject to disallowance. Certainly if a creditor fails to initially attach sufficient documentation, the creditor should be given an opportunity to supplement the initial claim to add the additional supporting documentation.

Southern District of Florida, Miami Division

In re Dorway, 2008 Bankr. Lexis 3795 (Cristol) – If the Debtor (Objecting Party) can carry the burden of proof that there is a genuine question as to the ownership of the Debtor’s account, then the burden shifts to the creditor and insufficient documentation will result in the claim being stricken.

In re Moreno, 341 B.R. 813 (Mark) – Failure to attach sufficient documentation to proofs of claim for credit card debts was not, by itself, a basis for disallowing unsecured credit card claims. Moreover, the Court specifically criticized the tactic of filing an objection to an undisputed scheduled claims stating that “if a debt is scheduled ... for an amount equal to or exceeding the amount in the proof of claim, this Court will not tolerate attempts to obtain orders disallowing these claims if the only basis for the objection is lack of documentation.”

In re Rodriguez, 555 B.R. 871 (Mark) – Rule 3001(c) does not require a creditor to prove that its claim is based on an open-end or revolving consumer credit agreement. It simply requires the creditor to include a statement with its claim that provides the following account information: (i) the name of the entity from whom the creditor purchased the account; (ii) the name of the entity to whom the debt was owed at the time of an account holder’s last transaction on the account; (iii) the date of an account holder’s last transaction; (iv) the date of the last payment on the account; and (v) the date on which the account was charged to profit and loss.

Southern District of Florida, Fort Lauderdale Division

In re Velez, 465 B.R. 912 (Olsen) – The court found that the Debtor’s attorney objected on technical grounds to claims corresponding to debts which his clients admitted they owed, and all five claims contained sufficient information for the attorney to match the claim with debts the

debtors scheduled. The court suspended the attorney from practicing before the court for 31 days as a sanction for filing frivolous objections.

Northern District of Florida, Tallahassee Division

In re Barnes, 2008 Bankr. LEXIS 1932 (Killian) – If a creditor’s claim is based on a writing, the original or a duplicate should be filed with the proof of claim, unless it has been lost or destroyed, in which case an explanation should be provided. The exclusive statutory bases for disallowing a claim are found in Section 502(b) and do not include a lack of documentation. Debtor’s Objection overruled.

CIRCUIT SPLITS ON SERVICE OF OBJECTIONS TO CLAIMS AND BAR DATES FOR SECURED CREDITORS

I. Service of Objections to Claims

A. Applicable Federal Rules of Bankruptcy Procedure

- Rule 3007 Objections to Claims
- Rule 9014 Contested Matters
- Rule 7004 Process; Service of Summons, Complaint
- Rule 2002 Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief Is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee

B. Split of Authority

Issue

Whether Bankruptcy Rule 3007 or Rule 7004 governs the service requirements for an objection to claim.

Point: Bankruptcy Rule 3007 Controls Service of Objections to Claims

Several courts have held that Rule 3007 controls the service of objections to claims.¹ These courts initially observe that the filing of an objection to claim initiates a contested matter,² and begin their analysis by examining Rule 9014, which governs contested matters.

Rule 9014(a) provides that “[i]n a contested matter *not otherwise governed by these rules*, relief shall be requested by a motion.”³ Rule 9014(b) states that the motion “shall be

¹ *In re State Line Hotel, Inc.*, 323 B.R. 703 (B.A.P. 9th Cir. 2005), *vacated on other grounds*, 242 F. App’x 460 (9th Cir. 2007); *In re Vivaro Corp.*, 541 B.R. 144, 151 (Bankr. S.D.N.Y. 2015); *In re AMF Bowling Worldwide, Inc.*, 2013 WL 5575470, at *4 (Bankr. E.D. Va. Oct. 9, 2013) (“Although an objection to a claim is a contested matter, it is not one commenced by motion. It is a contested matter ‘otherwise governed by the rules,’ and, therefore, Rule 7004 does not control.”); *In re Wilkinson*, 457 B.R. 530, 546 (Bankr. W.D. Tex. 2011) (“This court is inclined to agree with those cases that have found that service of a claim objection is ‘otherwise governed by these rules’—in other words, because service is governed by Rule 3007, Rule 9014 (and thus Rule 7004) does not apply.”); *In re Franchi*, 451 B.R. 604, 608 (Bankr. S.D. Fla. 2011) (“The specific language of Rule 9014 exempts an objection to claim from the requirement of service in accordance with Rule 7004.”); *In re Cagle*, 2008 WL 784772, at *4 (Bankr. N.D. Ga. June 2, 2008); *In re Hensley*, 356 B.R. 68, 79 (Bankr. D. Kan. 2006); *In re Anderson*, 330 B.R. 180, 186 (Bankr. S.D. Tex. 2005) (“An objection to a claim is a contested matter not commenced by a motion and that is otherwise governed by Rule 3007; therefore, Rule 7004 does not govern.”); *In re Hawthorne*, 326 B.R. 1, 4 (Bankr. D. Colo. 2005) (holding that “[m]ailing as required by Rule 3007 ... constitute[s] proper service”); *In re Hejl*, 85 B.R. 399, 400 (Bankr. W.D. Tex. 1988).

² See generally *In re AMF Bowling Worldwide, Inc.*, at *4; *In re Anderson*, 330 B.R. at 186.

³ Fed. R. Bankr. P. 9014(a) (emphasis added).

served in the manner provided for the service of a summons and complaint by Rule 7004.” Although an objection to claim initiates a contested matter, these courts conclude that because Rule 9014(a) applies only to contested matters commenced by a motion “not otherwise governed by these rules,” and because an objection to claim is not commenced by a motion, and Rule 3007 provides for service of claims objections, service in accordance to Rule 7004 is not implicated. Similarly, these courts find that “since Rule 3007 is the specific rule concerning objections to claims, it controls service of such an objection rather than the more general Rule 9014(b).”⁴

Service under Rule 3007

Rule 3007(a) states that:

[a] copy of the objection shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession, and the trustee at least 30 days prior to the hearing.

Rule 2002(g)(1)(A) provides that “a proof of claim filed by a creditor . . . that designates a mailing address constitutes a filed request to mail notices to that address.” Once a creditor has submitted a proof of claim and designated on that proof of claim where future notices should be sent, “due process is satisfied by mailing the objection and notice to the name and address specified on the proof of claim for the receipt of notices in the case.”⁵

Therefore, mailing or otherwise delivering a copy of the objection with a notice of hearing on the domestic or foreign claimant to the address provided in the proof of claim is sufficient.

Counterpoint: Bankruptcy Rule 7004 Controls Service of Objections to Claims

In contrast, other courts have held that Rules 9014 and 7004 govern the method of service required for claims objections.⁶ These courts also find that the filing of an objection to claim initiates a contested matter, which in turn leads to the application of Rule 9014. Rule 9014(b) provides that the motion “shall be served in the manner provided for the service of a summons and complaint by Rule 7004.” Most courts that find that Rule 9014—and

⁴ *In re Anderson*, 330 B.R. at 186.

⁵ *In re AMF Bowling Worldwide, Inc.*, at *4 (quoting *In re Hawthorne*, 326 B.R. at 5)).

⁶ *In re Levoy*, 182 B.R. 827, 834 (B.A.P. 9th Cir. 1995) (holding that Rule 7004 applies to claim objections pursuant to Rule 9014(b), since Rule 3007(a) “does not provide the manner of service of the objection to a proof of claim”); *In re Morales*, 2015 WL 3825981, at *4 (Bankr. D.P.R. June 18, 2015); *In re Gordon*, 2013 WL 1163773, at *3 (Bankr. D. Nev. Mar. 20, 2013) (“Rule 3007 is not a substitute for service of the objection to claim that is required by Rules 9014(b) and 7004”); *In re Parker*, 392 B.R. 490, 496 (Bankr. D. Utah 2008) (finding service inadequate when not served pursuant to Rule 7004); *In re Swanson*, 312 B.R. 153, 158 (Bankr. N.D. Ill. 2004); *In re Rushton*, 285 B.R. 76, 81 (Bankr. S.D. Ga. 2002); *In re Boykin*, 246 B.R. 825, 828 (Bankr. E.D. Va. 2000); *In re Ms. Interpret*, 222 B.R. 409, 413 (Bankr. S.D.N.Y. 1998); *I.R.S. v. Filipovits*, 1996 WL 627412, at *2 (D. Md. Aug. 27, 1996); *In re Vill. Craftsman, Inc.*, 160 B.R. 740, 745 (Bankr. D.N.J. 1993).

thus 7004 controls—rely on the Advisory Committee Notes to Rules 3007⁷ and 9014.⁸ The Advisory Committee Note for Rule 3007 specifically provides that an “objection to claim is governed by rule 9014.” And Rule 9014(b) incorporates the service requirements of 7004. Thus, the courts find that Rule 7004’s service requirements govern service of objections. These courts also make the distinction between the notice requirements and service requirements, namely that the notice and service rules act in tandem to govern the service of the claim objection and the notice of the hearing about it.⁹

Service under Rule 7004

Some courts that find that Rule 7004 controls service of an objection, also discuss the appropriate person to be served. Rule 7004(b) sets forth the requirements for service can upon a party by First Class Mail.

Rule 7004(b)(3) requires that service on a corporation be addressed to the attention of “an officer, [or] agent” of the business. Some courts have held that failure to address the service to an officer or agent renders the service ineffective.¹⁰ While others courts find that service to the agent and address designated on its proof of claim is sufficient because it constitutes an “appointment” under Rule 7004(b)(3).¹¹ For example, in *In re Chess*, the bankruptcy court held that the address designated by a creditor on its proof of claim satisfied the appointment requirement, such that service of process to that agent and location satisfied the strictures of Rule 7004(b)(3).¹²

⁷ “The contested matter initiated by an objection to a claim is governed by rule 9014, unless a counterclaim by the trustee is joined with the objection to the claim.”

⁸ “Whenever there is an actual dispute, other than an adversary proceeding, before the bankruptcy court, the litigation to resolve that dispute is a contested matter. For example, the filing of an objection to a proof of claim, to a claim of exemption, or to a disclosure statement creates a dispute which is a contested matter.”

⁹ See, e.g., *In re Levoy*, 182 B.R. 827, 833-34 (B.A.P. 9th Cir. 1995); *In re Sunde*, WL 3275128, at *2 (Bankr. W.D. Wis. Oct. 2, 2007); *In re Boykin*, 246 B.R. 825, 827 (Bankr. E.D. Va. 2000) (“Notice in bankruptcy proceedings is different from service of process.”).

¹⁰ *In re Parker*, 392 B.R. 490, 496 (Bankr. D. Utah 2008) (finding service inadequate where service was sent to post office box, and not to the creditor’s registered agent or officer).

¹¹ E.g., *In re Ms. Interpret*, 222 B.R. 409 (Bankr. S.D.N.Y. 1998) (holding that service was effective because attorney-addressee designated on the proof of claim was impliedly appointed as agent); *In re Chess*, 268 B.R. 150, 157 (Bankr. D. Tenn. 2001) (holding that “the address designated by a creditor on its proof of claim evidences ‘appointment’ and satisfies the requirements of Rule 7004, effectuating service of process.”).

¹² 268 B.R. at 157–58; see also *In re Allen*, 417 B.R. 850, 853 (E.D. Ky. 2009) (“Appellant Deutsche listed Litton’s Bankruptcy Department as its agent on the proof of claim for all notices regarding the bankruptcy case, which serves as an ‘appointment’ under the Rule [7004(b)(3)].”).

II. Applicability of Claims Bar Date to Secured Creditors

A. Applicable Code and Rules

- 11 USC § 501 Filing of proofs of claims or interests
- 11 USC § 502 Allowance of claims or interests
- 11 USC § 506 Determination of secured status
- Fed. R. Bankr. P. 3002 Filing Proof of Claim or Interest
- Fed. R. Bankr. P. 3004 Filing of Claims by Debtor or Trustee
- Fed. R. Bankr. P. 3021 Distribution Under Plan

B. Split of Authority

Issue

A lien “passes through” bankruptcy, and a secured creditor can elect not to participate in a bankruptcy case and rely on its *in rem* lien rights.¹³ In order to receive distributions under a confirmed plan, does a fully secured creditor need to timely file a proof of claim?

Point: The bar date requirement under Bankruptcy Rule 3002(c) applies to all creditors, unsecured and secured alike.¹⁴

Courts that find that the bar date for proofs of claims applies to secured creditors analyze the interplay between § 502(a) and Rule 3002. Section 502(a) provides that “[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects.” While Rule 3002(a) requires the filing a proof of claim, specifically stating that “[a]n unsecured creditor or an equity security holder must file a proof of claim or interest for the claim or interest to be allowed,” Rule 3002(c) states the

¹³ See e.g., *In re Mansaray-Ruffin*, 530 F.3d 230, 235 (3d Cir. 2008); *In re Bateman*, 331 F.3d 821, 827 (11th Cir. 2003); *Cen-Pen Corp. v. Hanson*, 58 F.3d 89, 33 (4th Cir. 1995); *In re Thomas*, 883 F.2d 991, 996 (11th Cir. 1989).

¹⁴ *In re Pajian*, 785 F.3d 1161, 1165 (7th Cir. 2015); *In re Bateman*, 331 F.3d 821, 827 (11th Cir. 2003); *In re Dumain*, 492 B.R. 140, 148 (Bankr. S.D.N.Y. 2013); *In re Westcott*, 2009 WL 1883729, at *2 (Bankr. D. Mont. June 30, 2009); *In re Nwonwu*, 362 B.R. 705, 709 (Bankr. E.D. Va. 2007); *In re Hogan*, 346 B.R. 715, 719–20 (Bankr. N.D. Tex. 2006); *In re Mickens*, 2005 WL 375661, at *1 (Bankr. D.D.C. Feb. 14, 2005); *In re Hill*, 286 B.R. 612, 615 (Bankr. E.D. Pa. 2002); *In re Michels*, 270 B.R. 737 (Bankr. N.D. Iowa 2001), *reversed on other grounds*, 286 B.R. 684; *In re Kelley*, 259 B.R. 580, 585 (Bankr. E.D. Tex. 2001); *In re Hudson*, 260 B.R. 421, 431 (Bankr. W.D. Mich. 2001); *In re Dennis*, 230 B.R. 244, 248–49 (Bankr. D.N.J. 1999); *In re Baldridge*, 232 B.R. 394, 396 (Bankr. N.D. Ind. 1999); *In re Macias*, 195 B.R. 659, 661 (Bankr. W.D. Tex. 1996); *In re Schaffer*, 173 B.R. 393, 397 (Bankr. N.D. Ill. 1994); *In re Alderman*, 150 B.R. 246, 251–52 (Bankr. D. Mont. 1993); *In re Zimmerman*, 156 B.R. 192, 198 (Bankr. W.D. Mich. 1993).

deadline for filing as “not later than 90 days after the first date set for the meeting of creditors called under § 341(a) of the Code.”¹⁵

Although Rule 3002(c) does not expressly state that it applies to secured creditors, courts have found that on its face it applies to any “proof of claim.” Because a proof of claim is defined by § 101(5)(A) to include the “right to payment, whether or not such right is secured or unsecured” and Rule 3002(c) does not specifically mention unsecured claims when providing the 90-day deadline in subsection (c), the deadline for filing claims encompasses all claims, secured and unsecured alike. As a result of this interpretation, the courts find that in order to have an allowed claim under § 502(a) and receive a distribution, secured creditors must abide by the deadline set forth in 3002(c).

Counterpoint: The bar date requirement in Rule 3002(c) does not apply to secured creditors.¹⁶

Courts that conclude that the Rule 3002(c) bar date does not apply to secured creditors find that subsection (a) specifically provides for the necessity of filing proofs of claims for only unsecured creditors and is silent as to secured creditors. And finding a negative implication, those courts find Rule 3002(a) implies that a secured creditor’s claim may be allowed without the filing of a proof of claim. Under this approach, the courts’ rationale is that because Rule 3002(a) does not refer to secured creditors and there is no express deadline in the Bankruptcy Code or Rules that requires the filing of a secured claim, a secured creditor may receive distributions even if the claim is filed after the Rule 3002(c) bar date. While these courts find that secured creditors are not subject to a bar *per se*, the court in *In re Hudson* observed that the filing of a proof of claim after debtor received a Chapter 13 discharge under §1328 may be too late for a secured creditor to file a proof of claim and hold an allowed claim since *in personam* liability has been discharged.¹⁷

And a Third Point of View: A secured creditor may receive distributions under a confirmed plan if the debtor proposes to pay creditor through the plan.¹⁸

The third view finds that if the debtor provides for the treatment of the creditor’s claim in a confirmed plan, the plan is binding upon the creditor, notwithstanding the failure to

¹⁵ Rule 3002(c) provides for six exceptions to the 90-day deadline, which are inapplicable to the present analysis.

¹⁶ *In re Moehring*, 485 B.R. 571, 581 (Bankr. S.D. Ohio 2013); *In re Mehl*, WL 2806676 at * 3 (Bankr. C.D. Ill. Oct. 25, 2005); *In re Hudson*, 260 B.R. 421, 438 (Bankr. W.D. Mich. 2001); *In re Strong*, 203 B.R. 105, 112 (Bankr. N.D. Ill. 1996); *In re Robert*, 171 B.R. 881, 886 (Bankr. N.D. Cal. 1994); *In re Babbin*, 160 B.R. 848, 849 (D. Colo. 1993).

¹⁷ *In re Hudson*, 260 B.R. at 438.

¹⁸ *In re Pence*, 905 F.2d 1107, 1110 (7th Cir. 1990); *In re Fili*, 257 B.R. 370, 374 (B.A.P. 1st Cir. 2001) (holding that confirmation of a plan that impairs a creditors rights, after notice and an opportunity for hearing, bars the creditor's later-filed claim under principles of *res judicata*); *In re Miller*, 2007 WL 81052 at *4 (Bankr. W.D. Pa. Jan. 9, 2007); *In re McDonald*, 336 B.R. 380, 383 (Bankr. N.D. Ill. 2006); *In re Dennis*, 230 B.R. 244, 252 (Bankr. D.N.J. 1999).

timely file a proof of claim. In so finding, the courts reason that § 1327(a) provides that “the provisions of a confirmed Chapter 13 plan bind the debtor and each creditor.” And the debtor’s proposal in the confirmed plan to pay the secured creditor constitutes an admission that the creditor has an allowed secured claim to the extent set forth in the plan. Thus, confirmation results in allowance of the secured claim and binds the parties under § 1327(a). Most courts also find that plan confirmation is final with *res judicata* effect.

**PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE***

1 **Rule 3015. Filing, Objection to Confirmation, Effect of**
2 **Confirmation, and Modification of a Plan**
3 **in a Chapter 12 ~~Family Farmer's Debt~~**
4 **~~Adjustment~~ or a Chapter 13 ~~Individual's~~**
5 **~~Debt Adjustment Case~~**

6 (a) FILING A CHAPTER 12 PLAN. The debtor
7 may file a chapter 12 plan with the petition. If a plan is not
8 filed with the petition, it shall be filed within the time
9 prescribed by § 1221 of the Code.

10 (b) FILING A CHAPTER 13 PLAN. The debtor
11 may file a chapter 13 plan with the petition. If a plan is not
12 filed with the petition, it shall be filed within 14 days
13 thereafter, and such time may not be further extended
14 except for cause shown and on notice as the court may
15 direct. If a case is converted to chapter 13, a plan shall be
16 filed within 14 days thereafter, and such time may not be

* New material is underlined in red; matter to be omitted is lined through.

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17 further extended except for cause shown and on notice as
18 the court may direct.

19 (c) ~~DATING. Every proposed plan and any~~
20 ~~modification thereof shall be dated.~~ FORM OF
21 CHAPTER 13 PLAN. If there is an Official Form for a
22 plan filed in a chapter 13 case, that form must be used
23 unless a Local Form has been adopted in compliance with
24 Rule 3015.1. With either the Official Form or a Local
25 Form, a nonstandard provision is effective only if it is
26 included in a section of the form designated for
27 nonstandard provisions and is also identified in accordance
28 with any other requirements of the form. As used in this
29 rule and the Official Form or a Local Form, “nonstandard
30 provision” means a provision not otherwise included in the
31 Official or Local Form or deviating from it.

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32 (d) NOTICE-AND-COPIES. If the plan ~~The plan or~~
33 ~~a summary of the plan shall be~~ is not included with the ~~each~~
34 notice of the hearing on confirmation
35 mailed under ~~pursuant to Rule 2002,~~ the debtor shall serve
36 the plan on the trustee and all creditors when it is filed with
37 the court. ~~If required by the court, the debtor shall furnish a~~
38 ~~sufficient number of copies to enable the clerk to include a~~
39 ~~copy of the plan with the notice of the hearing.~~

40 (e) TRANSMISSION TO UNITED STATES
41 TRUSTEE. The clerk shall forthwith transmit to the
42 United States trustee a copy of the plan and any
43 modification thereof filed under ~~pursuant to~~ subdivision (a)
44 or (b) of this rule.

45 (f) OBJECTION TO CONFIRMATION;
46 DETERMINATION OF GOOD FAITH IN THE
47 ABSENCE OF AN OBJECTION. An objection to

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48 confirmation of a plan shall be filed and served on the
49 debtor, the trustee, and any other entity designated by the
50 court, and shall be transmitted to the United States
51 trustee, ~~before confirmation of the plan~~ at least seven days
52 before the date set for the hearing on confirmation, unless
53 the court orders otherwise. An objection to confirmation is
54 governed by Rule 9014. If no objection is timely filed, the
55 court may determine that the plan has been proposed in
56 good faith and not by any means forbidden by law without
57 receiving evidence on such issues.

58 (g) EFFECT OF CONFIRMATION. Upon the
59 confirmation of a chapter 12 or chapter 13 plan:

60 (1) any determination in the plan made under
61 Rule 3012 about the amount of a secured claim is
62 binding on the holder of the claim, even if the holder
63 files a contrary proof of claim or the debtor schedules

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64 that claim, and regardless of whether an objection to
65 the claim has been filed; and
66 (2) any request in the plan to terminate the stay
67 imposed by § 362(a), § 1201(a), or § 1301(a) is
68 granted.

69 ~~(g)~~(h) MODIFICATION OF PLAN AFTER
70 CONFIRMATION. A request to modify a plan ~~pursuant~~
71 ~~to~~ under § 1229 or § 1329 of the Code shall identify the
72 proponent and shall be filed together with the proposed
73 modification. The clerk, or some other person as the court
74 may direct, shall give the debtor, the trustee, and all
75 creditors not less than 21 days' notice by mail of the time
76 fixed for filing objections and, if an objection is filed, the
77 hearing to consider the proposed modification, unless the
78 court orders otherwise with respect to creditors who are not
79 affected by the proposed modification. A copy of the

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80 notice shall be transmitted to the United States trustee. A
81 copy of the proposed modification, or a summary thereof,
82 shall be included with the notice. ~~If required by the court,~~
83 ~~the proponent shall furnish a sufficient number of copies of~~
84 ~~the proposed modification, or a summary thereof, to enable~~
85 ~~the clerk to include a copy with each notice.~~ Any objection
86 to the proposed modification shall be filed and served on
87 the debtor, the trustee, and any other entity designated by
88 the court, and shall be transmitted to the United States
89 trustee. An objection to a proposed modification is
90 governed by Rule 9014.

Committee Note

This rule is amended and reorganized.

Subdivision (c) is amended to require use of an Official Form if one is adopted for chapter 13 plans unless a Local Form has been adopted consistent with Rule 3015.1. Subdivision (c) also provides that nonstandard provisions in a chapter 13 plan must be set out in the section of the Official or Local Form specifically

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designated for such provisions and must be identified in the manner required by the Official or Local Form.

Subdivision (d) is amended to ensure that the trustee and creditors are served with the plan before confirmation. Service may be made either at the time the plan is filed or with the notice under Rule 2002 of the hearing to consider confirmation of the plan.

Subdivision (f) is amended to require service of an objection to confirmation at least seven days before the hearing to consider confirmation of a plan, unless the court orders otherwise.

Subdivision (g) is amended to set out two effects of confirmation. Subdivision (g)(1) provides that the amount of a secured claim under § 506(a) may be determined through a chapter 12 or chapter 13 plan in accordance with Rule 3012. That determination controls over a contrary proof of claim, without the need for a claim objection under Rule 3007, and over the schedule submitted by the debtor under § 521(a). The amount of a secured claim of a governmental unit, however, may not be determined through a chapter 12 or chapter 13 plan under Rule 3012. Subdivision (g)(2) provides for termination of the automatic stay under §§ 362, 1201, and 1301 as requested in the plan.

Subdivision (h) was formerly subdivision (g). It is redesignated and is amended to reflect that often the party proposing a plan modification is responsible for serving the proposed modification on other parties. The option to serve

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a summary of the proposed modification has been retained. Unless required by another rule, service under this subdivision does not need to be made in the manner provided for service of a summons and complaint by Rule 7004.

1 **Rule 3015.1. Requirements for a Local Form for Plans**
2 **Filed in a Chapter 13 Case**

3 Notwithstanding Rule 9029(a)(1), a district may
4 require that a Local Form for a plan filed in a chapter 13
5 case be used instead of an Official Form adopted for that
6 purpose if the following conditions are satisfied:

7 (a) a single Local Form is adopted for the district
8 after public notice and an opportunity for public comment;

9 (b) each paragraph is numbered and labeled in
10 boldface type with a heading stating the general subject
11 matter of the paragraph;

12 (c) the Local Form includes an initial paragraph for
13 the debtor to indicate that the plan does or does not:

14 (1) contain any nonstandard provision;

15 (2) limit the amount of a secured claim based
16 on a valuation of the collateral for the claim; or

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17 (3) avoid a security interest or lien;

18 (d) the Local Form contains separate paragraphs

19 for:

20 (1) curing any default and maintaining

21 payments on a claim secured by the debtor's principal

22 residence;

23 (2) paying a domestic-support obligation;

24 (3) paying a claim described in the final

25 paragraph of § 1325(a) of the Bankruptcy Code; and

26 (4) surrendering property that secures a claim

27 with a request that the stay be terminated as to the

28 surrendered collateral; and

29 (e) the Local Form contains a final paragraph for:

30 (1) the placement of nonstandard provisions, as

31 defined in Rule 3015(c), along with a statement that

32 any nonstandard provision placed elsewhere in the
33 plan is void; and
34 (2) certification by the debtor's attorney or by
35 an unrepresented debtor that the plan contains
36 no nonstandard provision other than those set out in
37 the final paragraph.

Committee Note

This rule is new. It sets out features required for all Local Forms for plans in chapter 13 cases. If a Local Form does not comply with this rule, it may not be used in lieu of the Official Chapter 13 Plan Form. *See* Rule 3015(c).

Under the rule only one Local Form may be adopted in a district. The rule does not specify the method of adoption, but it does require that adoption of a Local Form be preceded by a public notice and comment period.

To promote consistency among Local Forms and clarity of content of chapter 13 plans, the rule prescribes several formatting and disclosure requirements. Paragraphs in such a form must be numbered and labeled in bold type, and the form must contain separate paragraphs for the cure and maintenance of home mortgages, payment of domestic support obligations, treatment of secured claims covered by the “hanging paragraph” of § 1325(a), and surrender of

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property securing a claim. Whether those portions of the Local Form are used in a given chapter 13 case will depend on the debtor's individual circumstances.

The rule requires that a Local Form begin with a paragraph for the debtor to call attention to the fact that the plan contains a nonstandard provision, limits the amount of a secured claim based on a valuation of the collateral, or avoids a lien. The last paragraph of a Local Form must be for the inclusion of any nonstandard provisions, as defined by Rule 3015(c), and must include a statement that nonstandard provisions placed elsewhere in the plan are void. The form must also require a certification by the debtor's attorney or unrepresented debtor that there are no nonstandard provisions other than those placed in the final paragraph.

1 **Rule 3012. ~~Valuation of Security~~Determining the**
2 **Amount of Secured and Priority Claims**

3 ~~The court may determine the value of a claim secured~~
4 ~~by a lien on property in which the estate has an interest on~~
5 ~~motion of any party in interest and after a hearing on notice~~
6 ~~to the holder of the secured claim and any other entity as~~
7 ~~the court may direct.~~

8 **(a) DETERMINATION OF AMOUNT OF CLAIM.**

9 On request by a party in interest and after notice—to the
10 holder of the claim and any other entity the court
11 designates—and a hearing, the court may determine

12 (1) the amount of a secured claim under §
13 506(a) of the Code, or

14 (2) the amount of a claim entitled to priority
15 under § 507 of the Code.

16 **(b) REQUEST FOR DETERMINATION; HOW**
17 **MADE.** Except as provided in subdivision (c), a request to

18 determine the amount of a secured claim may be made by
19 motion, in a claim objection, or in a plan filed in a
20 chapter 12 or chapter 13 case. When the request is made in
21 a chapter 12 or chapter 13 plan, the plan shall be served on
22 the holder of the claim and any other entity the court
23 designates in the manner provided for service of a
24 summons and complaint by Rule 7004. A request to
25 determine the amount of a claim entitled to priority may be
26 made only by motion after a claim is filed or in a claim
27 objection.

28 (c) CLAIMS OF GOVERNMENTAL UNITS. A
29 request to determine the amount of a secured claim of a
30 governmental unit may be made only by motion or in a
31 claim objection after the governmental unit files a proof of
32 claim or after the time for filing one under Rule 3002(c)(1)
33 has expired.

Committee Note

This rule is amended and reorganized.

Subdivision (a) provides, in keeping with the former version of this rule, that a party in interest may seek a determination of the amount of a secured claim. The amended rule provides that the amount of a claim entitled to priority may also be determined by the court.

Subdivision (b) is added to provide that a request to determine the amount of a secured claim may be made in a chapter 12 or chapter 13 plan, as well as by a motion or a claim objection. When the request is made in a plan, the plan must be served on the holder of the claim and any other entities the court designates according to Rule 7004. Secured claims of governmental units are not included in this subdivision and are governed by subdivision (c). The amount of a claim entitled to priority may be determined through a motion or a claim objection.

Subdivision (c) clarifies that a determination under this rule with respect to a secured claim of a governmental unit may be made only by motion or in a claim objection, but not until the governmental unit has filed a proof of claim or its time for filing a proof of claim has expired.

Changes Made After Publication and Comment

None.

Summary of Public Comment

Summaries of the comments submitted in response to the publication of these rule amendments are set forth in Appendix B.

1 Rule 7001. Scope of Rules of Part VII

2 An adversary proceeding is governed by the rules of
3 this Part VII. The following are adversary proceedings:

4 * * * * *

5 (2) a proceeding to determine the validity,
6 priority, or extent of a lien or other interest in
7 property, ~~other than~~ but not a proceeding under
8 Rule 3012 or Rule 4003(d);

9 * * * * *

Committee Note

Subdivision (2) is amended to provide that the determination of the amount of a secured claim under Rule 3012, like a proceeding by the debtor to avoid a lien on or other transfer of exempt property under Rule 4003(d), does not require an adversary proceeding. The determination of the amount of a secured claim may be sought by motion or through a chapter 12 or chapter 13 plan in accordance with Rule 3012. An adversary proceeding continues to be required for lien avoidance not governed by Rule 4003(d).

Changes Made After Publication and Comment

- The first sentence of the Committee Note was revised to describe more accurately a proceeding under Rule 4003(d).
- The example in the Committee Note of a proceeding to determine the amount of a secured claim was deleted.
- The phrase “by motion or” was added to the second sentence of the Committee Note.

Summary of Public Comment

Summaries of the comments submitted in response to the publication of these rule amendments are set forth in Appendix B.

1 **Rule 3002. Filing Proof of Claim or Interest**

2 (a) NECESSITY FOR FILING. ~~An~~ A secured
3 creditor, unsecured creditor, or an equity security holder
4 must file a proof of claim or interest for the claim or
5 interest to be allowed, except as provided in Rules 1019(3),
6 3003, 3004, and 3005. A lien that secures a claim against
7 the debtor is not void due only to the failure of any entity to
8 file a proof of claim.

9 (b) PLACE OF FILING. A proof of claim or
10 interest shall be filed in accordance with Rule 5005.

11 (c) TIME FOR FILING. In a voluntary chapter 7
12 ~~liquidation~~ case, chapter 12 ~~family—farmer's—debt~~
13 ~~adjustment~~ case, or chapter 13 ~~individual's—debt~~
14 ~~adjustment~~ case, a proof of claim is timely filed if it is filed
15 not later than ~~90~~ 70 days after the order for relief under that
16 chapter or the date of the order of conversion to a case
17 under chapter 12 or chapter 13. In an involuntary chapter 7

18 case, a proof of claim is timely filed if it is filed not later
19 than 90 days after the order for relief under that chapter is
20 entered. ~~the first date set for the meeting of creditors called~~
21 ~~under § 341(a) of the Code, except as follows:~~ But in all
22 these cases, the following exceptions apply:

23 * * * * *

24 (6) ~~If notice of the time to file a proof of claim~~
25 ~~has been mailed to a creditor at a foreign address, o~~On
26 ~~motion filed by the~~a creditor before or after the
27 expiration of the time to file a proof of claim, the
28 court may extend the time by not more than 60 days
29 from the date of the order granting the motion. The
30 motion may be granted if the court finds that ~~the~~
31 ~~notice was insufficient under the circumstances to~~
32 ~~give the creditor a reasonable time to file a proof of~~
33 ~~claim~~

34 (A) the notice was insufficient under the
35 circumstances to give the creditor a reasonable
36 time to file a proof of claim because the debtor
37 failed to timely file the list of creditors' names
38 and addresses required by Rule 1007(a); or

39 (B) the notice was insufficient under the
40 circumstances to give the creditor a reasonable
41 time to file a proof of claim, and the notice was
42 mailed to the creditor at a foreign address.

43 (7) A proof of claim filed by the holder of a
44 claim that is secured by a security interest in the
45 debtor's principal residence is timely filed if:

46 (A) the proof of claim, together with the
47 attachments required by Rule 3001(c)(2)(C), is
48 filed not later than 70 days after the order for
49 relief is entered; and

50 (B) any attachments required by
 51 Rule 3001(c)(1) and (d) are filed as a supplement
 52 to the holder's claim not later than 120 days after
 53 the order for relief is entered.

Committee Note

Subdivision (a) is amended to clarify that a creditor, including a secured creditor, must file a proof of claim in order to have an allowed claim. The amendment also clarifies, in accordance with § 506(d), that the failure of a secured creditor to file a proof of claim does not render the creditor's lien void. The inclusion of language from § 506(d) is not intended to effect any change of law with respect to claims subject to setoff under § 553. The amendment preserves the existing exceptions to this rule under Rules 1019(3), 3003, 3004, and 3005. Under Rule 1019(3), a creditor does not need to file another proof of claim after conversion of a case to chapter 7. Rule 3003 governs the filing of a proof of claim in chapter 9 and chapter 11 cases. Rules 3004 and 3005 govern the filing of a proof of claim by the debtor, trustee, or another entity if a creditor does not do so in a timely manner.

Subdivision (c) is amended to alter the calculation of the bar date for proofs of claim in chapter 7, chapter 12, and chapter 13 cases. The amendment changes the time for filing a proof of claim in a voluntary chapter 7 case, a chapter 12 case, or a chapter 13 case from 90 days after the

§ 341 meeting of creditors to 70 days after the petition date. If a case is converted to chapter 12 or chapter 13, the 70-day time for filing runs from the order of conversion. If a case is converted to chapter 7, Rule 1019(2) provides that a new time period for filing a claim commences under Rule 3002. In an involuntary chapter 7 case, a 90-day time for filing applies and runs from the entry of the order for relief.

Subdivision (c)(6) is amended to expand the exception to the bar date for cases in which a creditor received insufficient notice of the time to file a proof of claim. The amendment provides that the court may extend the time to file a proof of claim if the debtor fails to file a timely list of names and addresses of creditors as required by Rule 1007(a). The amendment also clarifies that if a court grants a creditor's motion under this rule to extend the time to file a proof of claim, the extension runs from the date of the court's decision on the motion.

Subdivision (c)(7) is added to provide a two-stage deadline for filing mortgage proofs of claim secured by an interest in the debtor's principal residence. Those proofs of claim must be filed with the appropriate Official Form mortgage attachment within 60 days of the order for relief. The claim will be timely if any additional documents evidencing the claim, as required by Rule 3001(c)(1) and (d), are filed within 120 days of the order for relief. The order for relief is the commencement of the case upon filing a petition, except in an involuntary case. See § 301 and § 303(h). The confirmation of a plan within the 120-day period set forth in subdivision (c)(7)(B) does not prohibit an objection to any proof of claim.

Changes Made After Publication and Comment

- The deadline in subsection (c) for filing a proof of claim in a voluntary chapter 7, 12, or 13 case was changed from 60 days to 70 days.
- The phrase “under that chapter” was added after “order for relief” in two places in subdivision (c).
- The Committee Note was changed accordingly.

Summary of Public Comment

Summaries of the comments submitted in response to the publication of these rule amendments are set forth in Appendix B.