

The following rule amendments and new forms were approved by the Judicial Conference in September, 2011 and will take effect December 1, 2011.

These rule and form changes will govern in all proceedings in bankruptcy cases commenced on or after the December 1, 2011 effective date and in all pending cases, unless a party demonstrates that application of such new rules or forms would be inappropriate under the circumstances.

Federal Rules of Bankruptcy Procedure

Bankruptcy Rule 1004.2 requires that a petition for recognition of a foreign proceeding under new chapter 15 of the Bankruptcy Code identify the countries where a foreign proceeding is pending against the same debtor and the country where the debtor has its "center of main interests." The rule sets out applicable notice provisions and generally requires that a challenge to the debtor's designation of the center of main interests be raised at least seven days before the hearing on the petition for recognition.

Bankruptcy Rule 2003(e) requires a presiding official who "adjourns" a meeting of creditors to file a statement specifying the date and time to which the meeting is adjourned. The requirement ensures that the record clearly reflects whether the meeting of creditors was concluded or extended to another day and if extended, when it will resume.

Bankruptcy Rule 2019 applies in chapter 9 and 11 cases and requires that committees, groups, or entities that consist of or represent creditors or equity security holders who are acting in concert to identify their "disclosable economic interests" relating to the debtor. The amendments broadly define the term to include economic rights and interests that are affected by the value, acquisition, or disposition of a claim or interest. Under the amendments, every such group, committee, or entity is required to provide a verified statement of, among other things, the nature and amount of each disclosable economic interest relating to the debtor. In addition, each member of an unofficial group or committee that claims to represent any entity in addition to the members of the group or committee must disclose the acquisition date of each "disclosable economic interest" by quarter and year, unless the interest was acquired more than a year before the bankruptcy petition was filed. The amendments further require that a supplemental verified statement be filed when any material changes to the information disclosed in the original verified statement occur.

Bankruptcy Rule 3001 requires creditors to provide additional information supporting certain proofs of claim and imposes penalties if creditors fail to comply with the new disclosure requirements. The amendments continue and clarify the long-established disclosure requirement that a creditor presenting a claim in an individual-debtor case provide an itemized statement of the interest, fees, expenses, and other charges incurred before the petition was filed. Special disclosure requirements apply under the amendments if the claim is secured by a security interest in the individual debtor's property. In such a case, a statement of the amount necessary to cure

any prepetition default and, for home mortgages, a statement of any escrow account must also be provided. The amendments also strengthen the penalties for failing to comply with the Rule 3001 requirements. The sanctions provision permits a court to prohibit the creditor from presenting omitted information as evidence in a contested matter or adversary proceeding in the case, but only if the failure to provide the required information was not "substantially justified or ... harmless," further emphasizes the court's discretion to determine whether that sanction or any other should be imposed, and makes it clear that "notice and hearing" is required before the imposition of any sanction.

Bankruptcy Rule 3002.1 implements § 1322(b)(5) of the Bankruptcy Code, which permits a chapter 13 debtor to cure a default and maintain payments of a home mortgage over the course of the debtor's plan. The rule is intended to provide the mortgage-debtor with information necessary to determine the exact amount needed to cure any prepetition arrearage and the amount of the postpetition payments. If the latter amount changes over time because of changing interest rates, escrow account adjustments, or the assessment of fees, expenses, or other charges, notice of any change in payment must be conveyed to the debtor and trustee.

The rule further requires that the holder of a home mortgage claim give: (1) a notice itemizing any postpetition fees, expenses, or charges within 180 days after they are incurred; and (2) at least 21 days' advance notice to the debtor, debtor's counsel, and the trustee of any postpetition changes in the mortgage payment amount. The rule also establishes a procedure for determining whether the debtor has cured any default and is otherwise current on mortgage payments at the close of a chapter 13 case. Finally, the rule provides for sanctions if the holder of a claim secured by the debtor's principal residence fails to provide any of the required information.

Bankruptcy Rule 4004 provides that a party may seek an extension of time, based on newly discovered information, to object to a debtor's discharge after the time for objecting expires but before a discharge is granted.

Bankruptcy Rule 6003 clarifies that the 21-day waiting period before a court can enter certain orders at the beginning of a case --- including an order approving employment of counsel --- does not prevent the court from specifying in the order that it is effective on a date earlier than when the order is entered.

Official Forms

Official Form 1 is amended to implement new Rule 1004.2, which requires an entity filing a chapter 15 petition to state the country of the debtor's main interests and to list each country in which a case involving the debtor is pending.

Official Forms 9A – 9I are amended to conform to the amendment of Rule 2003(e). When a meeting of creditors is adjourned, the amendment requires that the presiding official file a statement specifying the date and time to which the meeting is adjourned.

Official Form 10 (Proof of Claim) is amended to clarify that, consistent with Rule 3001(c), writings supporting a claim or evidencing perfection of a security interest – not just summaries – must be attached to the proof of claim. The amended form includes a new section for reporting a uniform claim identifier which is used by some creditors and chapter 13 trustees to facilitate payments by electronic fund transfers. The signature box is revised to include a declaration under penalty of perjury by the person who completes the form.

Form 10 (Attachment A), Form 10 (Supplement 1), and Form 10 (Supplement 2) are three new forms for a claim secured by a security interest in the debtor's principal residence that take effect on December 1, 2011, along with pending amendments to Rule 3001 and new Rule 3002.1 which the forms implement.

Form 10 (Attachment A) is to be filed with the proof of claim as required by new Rule 3001(c)(2). The form includes a statement of the principal and interest due as of the petition date; a statement of prepetition fees, expenses, and charges; and a statement of the amount necessary to cure a default as of the petition date.

Form 10 (Supplement 1) is to be used by the holder of a home mortgage claim to provide the notice required by new Rule 3002.1(b) of any escrow account payment adjustment, interest payment change, and any other mortgage payment change while a chapter 13 case is pending.

Form 10 (Supplement 2) is to be used in chapter 13 cases to provide notice of the date incurred and amount of any postpetition fees, expenses, and charges.

Official Form 25A is amended to change the effective date provision in the model small business plan to reflect the 2009 amendments that increased from 10 to 14 days the time to file a notice of appeal and the duration of the stay of a confirmation order.

Director's Form 240 A/B ALT Reaffirmation Agreement A technical amendment to Director's Procedural Form 240A/B ALT will take effect on December 1. (The amendment does not require approval by the Judicial Conference). The form is amended at page 5 to conform to an amendment to 11 U.S.C. § 524(k)(3)(J) by the Bankruptcy Technical Corrections Act of 2010, Pub. L. 111-327.