

# CHANGES TO FEDERAL RULES OF BANKRUPTCY PROCEDURE EFFECTIVE DECEMBER 1, 2017

The following amendments to the Federal Rules of Bankruptcy Procedure will take effect December 1, 2017.

A brief summary of each rule amendment (in blue text) is followed by the text of the rule amendments (in red and black). Where applicable, information about related changes to local rules, procedures and forms are included as a “Clerk’s Note.”

The summaries in blue text are provided solely as a convenience to attorneys and parties and should NOT be used as a substitute for thorough review of the full text of the rule changes, which are also available at

<http://www.uscourts.gov/rules-policies/pending-rules-and-forms-amendments>

**Rule 1001:** The last sentence of the rule was amended to add the requirement that the cases be administered without undue cost or delay and that officers of the court and parties share in responsibility.

## **Rule 1001. Scope of Rules and Forms; Short Title**

The Bankruptcy Rules and Forms govern procedure in cases under title 11 of the United States Code. The rules shall be cited as the Federal Rules of Bankruptcy Procedure and the forms as the Official Bankruptcy Forms. These rules shall be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every case and proceeding.

**Rule 1006(b):** Under amended Rule 1006(b), the clerk’s office cannot refuse to accept a petition unaccompanied by the initial installment payment, even if the court’s local rules require that the initial installment be paid at the time the petition is filed.

**Clerk’s Note:** In response to this national rule change, \$100.00 will be requested at the time of filing. If payment is not received it will be due within 14 days of filing.

## **Rule 1006. Filing Fee**

### **(b) PAYMENT OF FILING FEE IN INSTALLMENTS.**

(1) *Application to Pay Filing Fee in Installments.* A voluntary petition by an individual shall be accepted for filing, **regardless of whether any portion of the filing fee is paid**, if accompanied by the debtor's signed application, prepared as prescribed by the appropriate Official Form, stating that the debtor is unable to pay the filing fee except in installments.

**Rule 1015(b):** Amended Rule 1015(b) replaces the phrase "husband and wife" with "spouses" to conform to recent Supreme Court precedent in *United States v. Windsor*, and *Obergefell v. Hodges*.

## **Rule 1015. Consolidation or Joint Administration of Cases Pending in Same Court**

(b) CASES INVOLVING TWO OR MORE RELATED DEBTORS. If a joint petition or two or more petitions are pending in the same court by or against (1) ~~a husband and wife~~ **spouses**, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates ... An order directing joint administration of individual cases of ~~a husband and wife~~ **spouses** shall, if one spouse has elected the exemptions under § 522(b)(2) of the Code and the other has elected ...

**Rule 2002:** Subsection (a)(9) is being added to reduce the notice period for *objecting* to a chapter 13 plan from 28 to 21 days. Subsection (b) is changed to separate the objection period and the 28 days notice period still required for the *confirmation hearing*.

## **Rule 2002. Notices to creditors ...**

(a) TWENTY-ONE-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivisions (h), (i),(l), (p), and (q) of this rule, the clerk, or some

other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of:

- (7) the time fixed for filing proofs of claims pursuant to Rule 3003(c); ~~and~~
- (8) the time fixed for filing objections and the hearing to consider confirmation of a chapter 12 plan; ~~and~~
- (9) the time fixed for filing objections to confirmation of a chapter 13 plan.

(b) TWENTY-EIGHT-DAY NOTICES TO PARTIES IN INTEREST.

Except as provided in subdivision (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 28 days' notice by mail of the time fixed (1) for filing objections and the hearing to consider approval of a disclosure statement or, under § 1125(f), to make a final determination whether the plan provides adequate information so that a separate disclosure statement is not necessary; ~~and~~ (2) for filing objections and the hearing to consider confirmation of a chapter 9, ~~or~~ chapter 11, ~~or~~ ~~chapter 13~~ plan; ~~and~~ (3) for the hearing to consider confirmation of a chapter 13 plan.

**Rule 3002:** Under subsection (a), secured creditors will now be directed to file a proof of claim if they want their claim to "be allowed." However, if the secured creditor does not file a proof of claim, that act alone will not void the creditor's lien.

Under amendments to subsection (c), the deadline for filing a proof of claim in a voluntary chapter 7, 12, and 13 case is being reduced from 90 to 70 days *and* the starting date for the 70 days will now be the petition date rather than the date first set for the meeting of creditors. If a chapter 7 case converts to chapter 12 or chapter 13, the proof of claim deadline will now be 70 days after the order of conversion.

Under an amendment to subsection (c)(6)—one of the six filing deadline exceptions—a new exception seems to be created: If a debtor files his list of creditors' names and addresses untimely and the notice was insufficient to give the creditor a "reasonable" time to file a proof of claim and if the creditor files a motion before or after the original deadline, the Court may extend the time, up to an additional 60 days, for that creditor to file a proof of claim.

Note: The bar date for claims when a case that was originally noticed as no asset case becomes an asset case is still 90 days.

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

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

...

(c) TIME FOR FILING. In a **voluntary** chapter 7 liquidation case, chapter 12 family farmer's debt adjustment case, or chapter 13 individual's debt adjustment case, a proof of claim is timely filed if it is filed not later than ~~90~~**70** days after **the order for relief under that chapter or the date of the order of conversion to a case under chapter 12 or chapter 13.** In an involuntary chapter 7 case, a proof of claim is timely filed if it is filed not later than 90 days after the order for relief under that chapter is entered. ~~the first date set for the meeting of creditors called under § 341(a) of the Code, except as follows:~~ **But in all these cases, the following exceptions apply: . . .**

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

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

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

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

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

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

**Rule 3007:** First, the amended rule sets forth how an objection to a claim and the notice of the objection must be served: service by mail is fine unless the claim holder is the federal government or an insured depository institution. If the claim holder is one of these, service must be made in compliance with the applicable subparts of Fed.R.Bankr.P. 7004. Second, the rule, as amended, will no longer require a hearing to be held if the claim holder does not file a response to the objection to the claim.

**Clerk's Note:** The Court will prepare a Notice of Hearing with 21 days to respond. If no response is filed, the hearing will be cancelled.

## Rule 3007. Objections to Claims

### (a) ~~OBJECTIONS TO CLAIMS~~ TIME AND MANNER OF SERVICE.

(1) *Time of Service.* An objection to the allowance of a claim and a notice of objection that substantially conforms to the appropriate Official Form shall be ~~in writing and~~ filed and served at least 30 days before any scheduled hearing on the objection or any deadline for the claimant to request a hearing. ~~A copy of the objection with notice of the hearing thereon 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.~~

### (2) *Manner of Service.*

(A) The objection and notice shall be served on a claimant by first-class mail to the person most recently designated on the claimant's original or amended proof of claim as the person to receive notices, at the address so indicated; and

(i) if the objection is to a claim of the United States, or any of its officers or agencies, in the manner provided for service of a summons and complaint by Rule 7004(b)(4) or (5); or

(ii) if the objection is to a claim of an insured depository institution, in the manner provided by Rule 7004(h).

(B) Service of the objection and notice shall also be made by first-class mail or other permitted means on the debtor or debtor in possession, the trustee, and, if applicable, the entity filing the proof of claim under Rule 3005.

**Rule 3012:** Amendments to subdivision (a) provide that a party in interest may seek a determination of the amount of a secured claim and the amount of a claim entitled to a priority. Subdivision (b) is new and provides the amount of a secured claim may be made in a Chapter 12 or 13 plan and if 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 only governed by a motion or claim objection process – but not until the governmental unit has filed a proof of claim or the deadline for filing has passed.

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

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

### (a) DETERMINATION OF AMOUNT OF CLAIM. On request by a party

in interest and after notice—to the holder of the claim and any other entity the court designates—and a hearing, the court may determine:

- (1) the amount of a secured claim under § 506(a) of the Code; or
- (2) the amount of a claim entitled to priority under § 507 of the Code.

(b) **REQUEST FOR DETERMINATION; HOW MADE.** Except as provided in subdivision (c), a request to determine the amount of a secured claim may be made by motion, in a claim objection, or in a plan filed in a chapter 12 or chapter 13 case. When the request is made in a chapter 12 or chapter 13 plan, the plan shall be served on the holder of the claim and any other entity the court designates in the manner provided for service of a summons and complaint by Rule 7004. A request to determine the amount of a claim entitled to priority may be made only by motion after a claim is filed or in a claim objection.

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

**Rule 3015:** Amendments to this rule require the use of the Official Form chapter 13 plan, unless a local form has been adopted consistent with Rule 3015.1.

**Clerk's Note:** The District of North Dakota has a new local chapter 13 plan form to conform to the requirements of FRBP 3015.1. Use of the local form will be required for all plans and amended plans filed on and after December 1, 2017 per General Order dated 11/27/2017.

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

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

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

(c) ~~DATING. Every proposed plan and any modification thereof shall be dated.~~ **FORM OF CHAPTER 13 PLAN.** If there is an Official Form for a

plan filed in a chapter 13 case, that form must be used unless a Local Form has been adopted in compliance with Rule 3015.1. With either the Official Form or a Local Form, a nonstandard provision is effective only if it is included in a section of the form designated for nonstandard provisions and is also identified in accordance with any other requirements of the form. As used in this rule and the Official Form or a Local Form, “nonstandard provision” means a provision not otherwise included in the Official or Local Form or deviating from it.

~~(d) NOTICE AND COPIES. If the plan~~ ~~The plan or a summary of the plan shall be~~ ~~is not~~ included with ~~the~~ ~~each~~ notice of the hearing on confirmation mailed ~~under~~ ~~pursuant to~~ Rule 2002, ~~the debtor shall~~ ~~serve the plan on the trustee and all creditors when it is filed with the court.~~ ~~If required by the~~

~~court, the debtor shall furnish a sufficient number of copies to enable the clerk to include a copy of the plan with the notice of the hearing.~~

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

(f) OBJECTION TO CONFIRMATION; DETERMINATION OF GOOD FAITH IN THE ABSENCE OF AN OBJECTION. An objection to confirmation of a plan shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee, ~~before~~ ~~confirmation of the plan~~ ~~at least seven days before the date set for the hearing on confirmation, unless the court orders otherwise.~~ An objection to confirmation is governed by Rule 9014. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

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

(1) any determination in the plan made under Rule 3012 about the amount of a secured claim is binding on the holder of the claim, even if the holder files a contrary proof of claim or the debtor schedules that claim, and regardless of whether an objection to the claim has been filed; and

(2) any request in the plan to terminate the stay imposed by § 362(a), § 1201(a), or § 1301(a) is granted.

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

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

**Rule 3015.1:** New rule is being added to reflect the new official chapter 13 plan form. It sets forth the requirements for a local form plan if a district chooses to use a local form rather than the official form.

**Clerk's Note:** The District of North Dakota has a new local chapter 13 plan form to conform to the requirements of FRBP 3015.1. Use of the local form will be required for all plans and amended plans filed on and after December 1, 2017 per General Order dated 11/27/2017.

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

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

- (a) a single Local Form is adopted for the district after public notice and an opportunity for public comment;
- (b) each paragraph is numbered and labeled in boldface type with a heading stating the general subject matter of the paragraph;
- (c) the Local Form includes an initial paragraph for the debtor to indicate that the plan does or does not:
  - (1) contain any nonstandard provision;
  - (2) limit the amount of a secured claim based on a valuation of the collateral for the claim; or
  - (3) avoid a security interest or lien;
- (d) the Local Form contains separate paragraphs for:
  - (1) curing any default and maintaining payments on a claim secured by the debtor's principal residence;
  - (2) paying a domestic-support obligation;
  - (3) paying a claim described in the final paragraph of § 1325(a) of the Bankruptcy Code; and
  - (4) surrendering property that secures a claim with a request that the stay under §§ 362(a) and 1301(a) be terminated as to the surrendered collateral; and



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

(1) the placement of nonstandard provisions, as defined in Rule 3015(c), along with a statement that any nonstandard provision placed elsewhere in the plan is void; and

(2) certification by the debtor's attorney or by an unrepresented debtor that the plan contains no nonstandard provision other than those set out in the final paragraph.

**Rule 4003:** The amendment to this rule requires that a request to avoid a lien or other transfer of exempt property may be made by motion or by a Chapter 12 or 13 plan. The Advisory Committee note states that a plan that proposes lien avoidance must be served as provided under Rule 7004 for service of a summons and complaint. Lien avoidance not covered by this rule requires an adversary proceeding.

#### **Rule 4003. Exemptions.**

(d) AVOIDANCE BY DEBTOR OF TRANSFERS OF EXEMPT PROPERTY. A proceeding under § 522(f) by the debtor to avoid a lien or other transfer of property exempt under § 522(f) of the Code shall be commenced by motion in the manner provided by in accordance with Rule 9014, or by serving a chapter 12 or chapter 13 plan on the affected creditors in the manner provided by Rule 7004 for service of a summons and complaint.

Notwithstanding the provisions of subdivision (b), a creditor may object to a motion filed request under § 522(f) by challenging the validity of the exemption asserted to be impaired by the lien.

**Rule 5009:** This rule is amended to allow a chapter 12 or chapter 13 debtor to request an order declaring a secured claim satisfied and a lien released under the terms of a confirmed plan.

**Clerk's Note:** A new event, *Motion and Notice (14 day objection period) to declare secured claim satisfied and lien released*, will be added to CM/ECF on December 1, 2017 to facilitate the filing of these motions.

#### **Rule 5009. Closing Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, Chapter 13 Individual's Debt Adjustment and Chapter 15 Ancillary and Cross Border Cases; Order Declaring Lien Satisfied**

(a) **CLOSING OF CASES UNDER CHAPTERS 7, 12, AND 13.** If in a chapter 7, chapter 12, or chapter 13 case the trustee has filed a final report and final account and has certified that the estate has been fully administered, and if within 30 days no objection has been filed by the United States trustee or a party in interest, there shall be a presumption that the estate has been fully administered.

(d) **ORDER DECLARING LIEN SATISFIED.** In a chapter 12 or chapter 13 case, if a claim that was secured by property of the estate is subject to a lien under applicable nonbankruptcy law, the debtor may request entry of an order declaring that the secured claim has been satisfied and the lien has been released under the terms of a confirmed plan. The request shall be made by motion and shall be served on the holder of the claim and any other entity the court designates in the manner provided by Rule 7004 for service of a summons and complaint.

**Rule 7001:** Rule 7001(2) is amended to clarify that determination of the amount of a secured claim under Rule 3012 does not require an adversary proceeding.

### **Rule 7001. Scope of Rules of Part VII**

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

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

**Rule 9009:** The federal rule is amended to narrow how and when official forms may be modified on the local level.

### **Rule 9009. Forms**

(a) **OFFICIAL FORMS.** ~~Except as otherwise provided in Rule 3016(d), the~~ **The** Official Forms prescribed by the Judicial Conference of the United States shall be ~~observed and used with alterations as may be appropriate~~ **without alteration, except as otherwise provided in these rules, in a particular Official Form, or in the national instructions for a particular Official Form. Forms may be combined and their contents rearranged to permit economies in their use.** Official Forms may be modified to permit minor changes not affecting wording or the order of presenting information, including changes that:

- (1) expand the prescribed areas for responses in order to permit complete responses;
- (2) delete space not needed for responses; or
- (3) delete items requiring detail in a question or category if the filer indicates—either by checking “no” or “none” or by stating in words—that there is nothing to report on that question or category.

(b) **DIRECTOR'S FORMS.** The Director of the Administrative Office of the United States Courts may issue additional forms for use under the Code.

(c) **CONSTRUCTION.** The forms shall be construed to be consistent with these rules and the Code.