

**UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF MASSACHUSETTS
COMMENTS OF THE COMMITTEE ON LOCAL RULES
TO OFFICIAL LOCAL FORM 3: CHAPTER 13 PLAN**

Background

On December 1, 2017, the new national chapter 13 plan, Official Form 113 (the “National Plan”), will go into effect.¹ At the same time, amendments to Rules 1001, 1006, 1015, 2002, 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009 of the Federal Rules of Bankruptcy Procedure (the “Rules”),² new Rule 3015.1, technical and conforming amendments to Rule 7004(a)(1), and Official Form 101 will go into effect.

A subcommittee (the “Subcommittee”) of the Local Rules Advisory Committee (the “Committee”) reviewed the National Plan and recommended adoption of a local form plan for the District of Massachusetts pursuant to Rule 3015.1.³ The Subcommittee drafted the new

¹ A complete history of the process of developing the Official Form for chapter 13 plans, which began in August 2013, is set forth at Tab 5, commencing on page 179, of the January 2017 Report of the Standing Committee on Rules of Practice and Procedure, which can be found at www.uscourts.gov/rules-policies/archives/agenda-books/committee-rules-practice-and-procedure-january-2017.

² Rule references contained in these notes are to the Federal Rules of Bankruptcy Procedure in effect on December 1, 2017, unless otherwise stated.

³ Rule 3015.1 in pertinent part provides:

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;

local form plan, and the Committee recommended its adoption. The United States Bankruptcy Judges for the District of Massachusetts approved adoption of the local form plan as MLBR Official Form 3 (the “Plan”), which replaces both current Official Local Form 3 (Pre-Confirmation Chapter 13 Plan and Cover Sheet) and 3A (Post-Confirmation Amended Chapter 13 Plan). The Plan is designed to satisfy the strict requirements in Rule 3015.1 and **its use will be mandatory in all cases, including pending cases, on and after December 1, 2017.** *See* Standing Order 2017-04 issued on September 13, 2017, by the United States Bankruptcy Judges

(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.

Fed. R. Bankr. P. 3015.1.

for the District of Massachusetts.⁴ Important distinctions exist between the chapter 13 plan forms, effective prior to December 1, 2017, and the Plan. What follows are detailed Committee comments to the Plan to provide guidance and facilitate its use.

Introduction

Parts 1-8 of the Plan require the debtor⁵ to supply information; Part 9 is for signatures. If a part of the Plan is inapplicable, the debtor must check “None” in the appropriate box at the beginning of each Part where applicable. If the debtor checks “None,” the remainder of that section does not need to be completed and may be deleted from the Plan.

There are four exhibits to the Plan. In all cases, Exhibit 1, “Calculation of Plan Payment,” and Exhibit 2, “Liquidation Analysis,” are required to be filed with the Plan. Exhibits 3 and 4, “Table for Lien Avoidance under 11 U.S.C. § 522(f)” and “Order Avoiding Lien Impairing Exemption,” must be filed with the Plan only if the box “Included” in Part 1, Line 1.2 is checked.

The substantive information presented in the Plan cannot be modified based on a debtor’s circumstances, unless the debtor (1) checks the box “Included” in Part 1, Line 1.3, and (2) describes any changes to the Plan in Part 8 governing “Nonstandard Plan Provisions,” defined in Rule 3015(c), as ones “not otherwise included in the Official or Local Form or

⁴ The Standing Order, captioned “Rescission and Replacement of Official Forms 3 and 3A with Official Local Form 3” provides:

It is hereby ORDERED that effective December 1, 2017, Official Local Forms 3 (Pre-Confirmation Chapter 13 Plan and cover Sheet) and 3A (Post-Confirmation Amended Chapter 13 Plan) are hereby rescinded and replaced with the attached new Official Local Form: Official Local Form 3, Chapter 13 Plan.

⁵ As used in these Comments, debtor shall refer to an individual chapter 13 debtor and joint debtors.

deviating from it.”⁶ Neither Rule 3015 nor the Plan limits the debtor’s use of nonstandard plan provisions; rather the *placement* of nonstandard plan provisions is limited, and, as discussed below, there are strict notice requirements when certain provisions are proposed.

Comments to Part 1: NOTICES

Caption

Under the caption of the Plan, at the top of the first page, the debtor must include the date the Plan was filed and check at least one box to indicate whether the Plan is the original plan or an amended plan. A post-confirmation amended plan must be noted by checking the appropriate box and identifying the date of the most recent order confirming the plan.

Notice to Creditors

The notice to creditors in Part 1 implements Rule 13-8(a) of MLBR, Appendix 1, Chapter 13 Rules (the “Chapter 13 Rules”), captioned “Deadline for Filing” relating to “Objections to Confirmation.” That rule is consistent with Rule 2002(a)(9), which requires at least 21 days’ notice by mail of the time fixed for filing objections to confirmation of a chapter 13 plan. The amendment to Rule 2002 to add subsection (a)(9) conforms to amended Rule 3015. An

⁶ Rule 3015(c) provides:

(c) 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.

Fed. R. Bankr. P. 3015(c).

objection to confirmation must be filed and served on the debtor, the chapter 13 trustee, the U.S. trustee, and any other entity that the court may designate. The creditor must serve those parties at least seven days before the date set for the hearing on confirmation, unless the court orders otherwise. *See* Fed. R. Bankr. P. 3015(f). Chapter 13 Rule 13-8, however, contains detailed provisions as to the need to file a response to an objection to prevent the court from sustaining the objection without a scheduled hearing, as well as the need to file a certificate with respect to the conference requirement to resolve or narrow disputes as to objections before a hearing will be scheduled.

The notice to creditors also emphasizes the necessity of filing a proof of claim to receive a distribution under the Plan. Rule 3002(a) is amended to clarify that a creditor, including a secured creditor, except as provided in Rules 1019(3), 3004, and 3005, must file a proof of claim in order to have an allowed claim. *See* 11 U.S.C. §§ 501 and 502(a) (“[a] claim . . . proof of which is filed under section 501 . . . is deemed allowed, unless a party in interest . . . objects”); Fed. R. Bankr. P. 3002. Specifically, the amendment to Rule 3002(a) 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. *See* Johnson v. Home State Bank, 501 U.S. 78 (1991).

Pursuant to Rule 3002(c), another significant change is that the general bar date for filing proofs of claim in chapter 13 cases, subject to specifically enumerated exceptions in the rule, **is reduced from 90 days to “not later than 70 days after the order for relief is entered”** or the date of the order of conversion of a case to a case under chapter 13.

There are exceptions in Rule 3002(c) for cases in which a creditor receives insufficient notice of the time to file a proof of claim. If either (1) the debtor fails to timely file a list of

names and addresses of creditors as required by Rule 1007(a)⁷ or (2) the notice was mailed to a creditor at a foreign address, the court may grant a creditor's motion to extend the time to file a proof of claim "before or after the time to file a proof of claim." *See* Fed. R. Bankr. P. 3002(c)(6). The extension runs from the date of the court's decision on the motion.

For creditors with claims secured by a security interest in the debtor's principal residence, the claim must be filed not later than 70 days after the order for relief; however, any attachments required by Rule 3001(c)(1) and (d) will be timely filed if the creditor files those documents within 120 days of the order for relief. *See* Fed. R. Bankr. P. 3002(c)(7).

Notice to Debtors

Rule 3015(d) governs notice of the Plan which the debtor must provide. It requires service of the Plan "on the trustee and all creditors when it is filed with the court." Fed. R. Bankr. P. 3015(d). *See also* Chapter 13 Rule 13-4(b).

As a result of the amendments to the Federal Rules of Bankruptcy Procedure, the service requirements for the Plan are significantly changed. The service requirements are discussed in the Comments Regarding Service. The type of service required depends on whether the debtor has, or has not, checked the box "Included" in Part 1, Line 1.1 and/or Part 1, Line 1.2 of the Plan.

⁷ Rule 1007(a) provides in pertinent part:

In a voluntary case, the debtor shall file with the petition a list containing the name and address of each entity included or to be included on Schedules D, E/F, G, and H as prescribed by the Official Forms. . . .

Fed. R. Bankr. P. 1007(a). *See also* 11 U.S.C. § 521(a)(1)(A) and Chapter 13 Rule 13-2(a)(1)(B) (explaining a matrix must be filed within three (3) days after the commencement of the case).

This section of the Plan also notifies the debtor of the requirements of 11 U.S.C. § 1326(a)(1) for the commencement of payments.

The provisions of the Plan emphasize the rigorous attention to which the debtor and the debtor's attorney should pay to appropriately checking boxes in Part 1, Lines 1.1, 1.2, and 1.3 with respect to (1) the modification of secured claims under 11 U.S.C. § 506 and Rule 3012, *see* 11 U.S.C. §§ 1322(b)(2) and (c) and 1325(a)(5), in Part 3.B.1; (2) the avoidance of judicial liens under 11 U.S.C. § 522(f) and Rule 4003, in Part 3.B.3, if the debtor seeks confirmation of a plan intending to do either or both; and (3) the inclusion of nonstandard provisions, in Part 8. If the box "Included" is checked in Part 1, Line 1.1 and/or Part 1, Line 1.2, service of the Plan in accordance with Fed. R. Bankr. P. 7004 is required.

The boxes in lines 1.1, 1.2, and 1.3 in Part 1 must be checked either as "Included" or as "Not Included," depending on whether the debtor provides for treatment of secured claims in Parts 3.B.1 or 3.B.3 of the Plan or has included nonstandard provisions. Failure to check the boxes correctly on the first page will void any provision in the Plan that modifies a secured claim, proposes to avoid a judicial lien or nonpossessory, nonpurchase-money security interest, or proposes a nonstandard provision. If the box "None" is checked in Part 3.B where indicated, the box "Not Included" in Part 1, Lines 1.1 and 1.2 must be checked. If "None" is checked in Part 8 where indicated, the box "Not Included" in Part 1, Line 1.3 must be checked. Failure to strictly comply with these requirements may result in denial of confirmation of the Plan, the need to file an amended plan, and unnecessary delay in obtaining confirmation, which could prompt the filing and allowance of a motion to dismiss.

Although the Plan contains no provisions for objecting to claims, Rule 3007 has been substantially amended and must be consulted in drafting a plan.⁸ In Part 3.A.1, Part 3.B.1 (with respect to governmental units only), Part 3.B.2, Part 4.A, and Part 4.B, the amount of a claim set forth by a creditor in its proof of claim will control for distribution purposes, unless an objection to claim is filed. Rule 3007 provides that “[a]n objection to the allowance of a claim and a notice of objection that substantially conforms to the appropriate Official Form [Form 420B] shall be filed and served at least 30 days before any scheduled hearing on the objection or any deadline for the claimant to request a hearing.” *See* Fed. R. Bankr. P. 3007(a)(1); MLBR Appendix 1, Chapter 13 Rules, Rule 13-13(e). Pursuant to Chapter 13 Rule 13-13(g), a creditor

⁸ Rule 3007 provides in pertinent part:

(a) 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 filed and served at least 30 days before any scheduled hearing on the objection or any deadline for the claimant to request a 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.

Fed. R. Bankr. P. 3007(a)(1) and (2).

must file a response to a claim objection before a hearing will be scheduled. *See* MLBR Appendix 1, Chapter 13 Rules, Rule 13-13(g). Pursuant to Chapter 13 Rule 13-13(f), absent the filing of a certificate that a conference was held to resolve or narrow disputes as to objections to proofs of claim, a hearing will not be scheduled. *See* MLBR, Appendix 1, Chapter 13 Rules, Rule 13-13(f).

As to the manner of service, Rule 3007(a)(2) provides that the objection and the notice of hearing, must be served “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 notice, at the address so indicated” Fed. R. Bankr. P. 3007(a)(2). Chapter 13 Rule 13-13(e) provides that in addition to the foregoing, service may be made by “other permitted means on the debtor, the trustee and, if applicable, the entity filing the claim under Rule 3005, and any other party entitled to notice.” *See also* MLBR, Appendix 8, Electronic Filing Rules, Rule 9. If, however, the claimant is the United States, an officer or agency of the United States, or an insured depository institution, service also must be made according to the method prescribed by the appropriate provision of Rule 7004(b)(4) or (5) and (h). *See* Fed. R. Bankr. P. 3007(a)(2)(A)(i) and (ii). *See also* MLBR, Appendix 4, Notices to the United States of America and the Commonwealth of Massachusetts.

Comments to Part 2: PLAN LENGTH AND PAYMENTS

Part 2.A of the Plan is substantially the same as Section 1 of the chapter 13 plan form effective prior to December 1, 2017. The applicable commitment period is determined by 11 U.S.C. §§ 1325(b)(4)(A)(i) and (ii), and 1322(d) and the information set forth on Official Form 122C-1 - Chapter 13 Statement of Your Current Monthly Income and Calculation of

Commitment Period. The debtor should check the appropriate box and, if the debtor's income is below the applicable median income, *see id.* at § 1322(d)(2), and the debtor is proposing to have a Plan longer than 36 months, then the debtor must state cause to extend beyond 36 months.

The debtor should set forth in Part 2.B. the proposed monthly payment amount and the duration of the payments in months. With respect to allowed secured claims provided for by the Plan if, "property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts." *See* 11 U.S.C. § 1325(a)(5)(B)(iii)(I).

Part 2.C permits the debtor to adjust periodic payments or to make additional payments to account for events occurring during the bankruptcy case, such as the sale or refinancing of property, the receipt of a tax refund, or the entry of an order granting a secured creditor relief from the automatic stay, thereby eliminating a payment affecting the debtor's disposable income during the applicable commitment period. *See* 11 U.S.C. §§ 1325(b)(4), 1322(d) and Official Form 122C-2 - Calculation of Your Disposable Income. If the debtor does not propose to make any additional payments, the debtor may check the box "None" and the rest of Part 2.C, except for the total amount of payment(s) to the chapter 13 trustee, need not be completed and may be deleted from the Plan.

Part 2.C also requires the debtor to state the total amount of payments to be made to the chapter 13 trustee and references, as Exhibit 1, the "Calculation of Plan Payment" which must be attached to every chapter 13 plan.

Comments to Part 3: SECURED CLAMS

If the debtor has not listed any creditors on Official Form 106D, “Schedule D: Creditors Who Hold Claims Secured by Property (against individuals),” the debtor should check “None” and the rest of Part 3 does not need to be completed and may be deleted from the Plan.

Cure of Default and Maintenance of Payments

Part 3.A pertains to the treatment of secured claims under 11 U.S.C. § 1322(b)(5) (curing any arrearages and maintaining current payments while the case is pending on when the last payment is due after the date on which the final payment under the Plan is due). If the debtor does not propose to satisfy arrears through the Plan and to maintain payments, the debtor should check the box “None” and the rest of Part 3.A need not be completed and may be deleted from the Plan.

If the debtor proposes to cure arrears on secured claims in default and to maintain ongoing contractual payments postpetition, the debtor must complete Part 3.A. Part 3.A.1(a) addresses mortgage claims and security interests (i.e., “a lien created by an agreement,” *see* 11 U.S.C. § 101(51)) secured only by the debtor’s principal residence, which may not be modified under 11 U.S.C. § 1322(b)(2). *See Nobelman v. Am. Savs. Bank*, 508 U.S. 324 (1993). If the claim is secured by property other than the debtor’s principal residence, such as income producing units in a multi-unit building in which the debtor resides, the secured claim may be modified, *see Lomas Mortg., Inc. v. Louis*, 82 F.3d 1, 7 (1st Cir. 1996), and addressed in Part 3.B.

For the claims of secured creditors listed in Part 3.A.1(a), the address of the primary residence and the arrearage amount must be provided. If a creditor files a timely proof of

claim, however, any contrary arrearage amount or current installment payment amount listed in a timely filed proof of claim will control over the amount set forth in the Plan, unless the debtor contests the amount by way of objection or motion and the court either sustains the objection or grants the motion. *See* Fed. R. Bankr. P. 3012(a) and (b).⁹

In cases where there are no prepetition arrears to be paid on the primary residence, but the debtor intends to maintain contractual payments through the Plan, Part 3.A.1 should be completed. “None,” “n/a,” or “\$0” should appear in the table under “Amount of Arrears.”

Part 3.A.1(b), “Secured Claims (Other),” provides for the payment of prepetition arrears with respect to property other than the debtor’s primary residence. An extra column in the

⁹ Rule 3012 provides in pertinent part the following:

(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.

Fed. R. Bankr. P. 3012.

table provides for a description of collateral. When identifying real property, the debtor should provide the address of the real property under "Description of Collateral." If the debtor intends to cure and make contractual payments pertaining to motor vehicles, the debtor should identify the make, model, and year of each vehicle. The debtor should strive to provide sufficient information to enable parties in interest to easily associate the collateral described in the table with a filed proof of claim.

The debtor is required in Part 3.A.2 to identify secured creditors whose claims will be paid directly, "outside the plan." Even when there are no arrears related to secured claims being paid through the Plan, this section must be completed as it will identify what postpetition payments the debtor will continue to make. In addition to listing the identity of the creditor and describing the collateral, the debtor is required to disclose both the type of the claim and the amount of the claim. Even though these claims will be paid directly by the debtor to creditors, identifying the collateral will facilitate reconciliation of this Plan provision with filed proofs of claim.

Modification of Secured Claims under 11 U.S.C. § 506

If there are no secured claims being modified through the Plan, the debtor may check the box "None" and the rest of Part 3.B need not be completed and may be deleted from the Plan. The introductory paragraphs of Part 3.B.1 alert the debtor to changes imposed by Rule 3012(b) and (c) and Rule 3015(g), particularly as to the effect of confirmation with respect to nongovernmental secured claims. Rule 3015(g) provides:

(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.

Notably Rule 3012(c), as indicated above, precludes the determination of a secured claim of a governmental unit through the Plan. Accordingly, the debtor must file an objection to the claim of the governmental unit after the time for filing such claims under Rule 3002(c)(1) has expired.

Except with respect to the treatment of the claims of governmental units, there is no change from the prior practice of permitting the avoidance [“stripping off”] of wholly unsecured liens. *See, e.g., Eastern Savs. Bank v. LaFata (In re LaFata)*, 483 F3d. 13, 20-21 (1st Cir. 2007); *Domestic Bank v. Mann (In re Mann)*, 249 B.R. 831, 835-37 (B.A.P. 1st Cir. 2000).

If the debtor proposes to modify a secured claim under 11 U.S.C. § 506 in Part 3.B.1, the debtor must comply with the special service rules referenced in Part 1 and discussed in the Comments for Service of the Plan. Rule 3012(b) provides that a request to determine the amount of a secured claim may be made by motion, in a claim objection, or through the Plan. If the debtor, through the Plan, requests the court to determine, pursuant to 11 U.S.C. § 506(a), the amount of a secured claim and to reduce the secured portion of the creditor’s claim to the value of the creditor’s interest in the estate’s interest in the collateral securing it, the debtor must serve the Plan on the holder of the claim in the manner provided for service of a summons and complaint by Rule 7004. Although a proof of claim filed by a secured creditor

(other than a governmental unit) will be binding with respect to the debtor's proposed modification of a secured claim in Part 3.B.1, the service requirements imposed by Rule 3012(b) (service of the Plan on the affected creditor in the manner provided for service of a summons and complaint under Rule 7004) provide due process to the affected creditor by providing an opportunity to object to confirmation.

As noted above, Rule 3012(c) excludes claims of governmental units. For the secured claim of a governmental unit, if a valuation listed on the creditor's proof of claim differs from the amount set forth in the Plan, the proof of claim will control, unless contested by an objection or in a motion. Rules 3004 and 3005(a) contemplate that the debtor, the chapter 13 trustee, or another entity that is or may be liable with the debtor to a creditor, may file a proof of claim if the creditor does not do so in a timely manner. *See* Fed. R. Bankr. P. 3004 and 3005, MLBR Appendix 1, Chapter 13 Rules, Rule 13-13(b).

Secured Claims Excluded from 11 U.S.C. § 506

Part 3.B.2 addresses secured claims excluded from 11 U.S.C. § 506, i.e., so-called "910-day car claims," *see* 11 U.S.C. § 1325* (the "hanging paragraph"). Although the claims may not be bifurcated into secured and unsecured portions under 11 U.S.C. § 506(a), the debtor is permitted to propose an interest rate, other than the contract rate, to be applied to payments on such a claim. If a creditor timely files a proof of claim, the claim amount controls over the amount set forth in the Plan, unless the debtor objects to the claim.

Lien Avoidance under 11 U.S.C. § 522(f)

Part 3.B.3 has been added to the Plan because the mandatory provisions of Part 1, Line 1.2 expressly permit the avoidance of judicial liens or nonpossessory, non-purchase money

security interests through the Plan. If the debtor does not intend to avoid any liens as impairing exemptions through the Plan, the debtor may check the box “None” and the rest of Part 3.B.3 need not be completed and may be deleted from the Plan.

The amendments to Rule 4003(d) permit the avoidance of a lien under 11 U.S.C. § 522(f) by motion or through the Plan, in each case by serving the Plan on affected creditors in the manner provided by Rule 7004.¹⁰

The Plan references Official Local Form 21A, “Order Avoiding Lien Impairing Exemption.” An “Order Avoiding Lien Impairing Exemption,” may be entered upon confirmation of the Plan, and the debtor should consider requesting the same if the debtor anticipates that the property encumbered by the avoidable lien will be sold or refinanced during the case. The debtor may otherwise file a separate motion seeking an order declaring lien satisfied and released at the conclusion of the case pursuant to Rule 5009(d).¹¹ If the debtor is not entitled to a discharge, the debtor should submit the motion upon the filing of the Chapter 13 Trustee’s Final Report and Account. For a motion filed

¹⁰ With respect to avoidance requested by motion, Rule 9014(b) requires service in the manner provided for service of a summons and complaint by Rule 7004.

¹¹ Rule 5009(d) provides:

(d) ORDER DECLARING LIEN SATISFIED. In a . . . 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.

Fed. R. Bankr. P. 5009(d).

pursuant to Rule 5009(d), the debtor should attach a proposed order suitable for recordation at the Registry of Deeds or other appropriate recording authority referencing the book and page number or certificate number. More than one lien may be the subject of the order.

Surrender of Collateral

Part 3.C is a new provision and pertains to the surrender of collateral. *See* Fed. R. Bankr. P. 3015.1(d)(4); 11 U.S.C. § 1325(a)(5)(C). The debtor may check the box “None” and the rest of the section need not be completed and may be deleted from the Plan.

If the debtor elects to surrender, in the absence of any order from the court or a nonstandard provision set forth in Part 8 of the Plan to the contrary, the stay automatically will be terminated as to surrendered property upon the entry of the confirmation order without the necessity of the secured party filing a motion for relief from the automatic stay. As with every other section in the Plan, the introductory paragraphs that follow the checked boxes cannot be supplemented or altered. If there is any deviation from Part 3.C, such as termination of the stay under §§ 362 and 1301(a) at a time *after* confirmation, it is considered a “Nonstandard Plan Provision,” which must be indicated in Part 1, § 1.3 and described in Part 8 in order for it to be effective.

Comments to Part 4: PRIORITY CLAIMS

Part 4 contains three sections which govern the treatment of claims entitled to priority and full payment under 11 U.S.C. § 1322(a)(2), which references 11 U.S.C. § 507. The debtor may check the box “None” and the rest of Part 4 need not be completed and may be deleted from the Plan.

Section 507 lists the order of payment of expenses and claims. With respect to priority claims, domestic support obligations (“DSOs”), *see* 11 U.S.C. § 101(14A), are governed by § 507(a)(1)(A) and (B). Care should be taken to distinguish between DSOs payable to a spouse, former spouse, child, or legal guardian (§507(a)(1)(A)) and DSOs payable to governmental units (§ 507(a)(1)(B)). This is because § 1322(a)(4) carves out an exception for domestic support obligations under § 507(a)(1)(B), allowing “for less than full payment of all amounts owed . . . [but] . . . only if the plan provides that all of the debtor’s projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.” *See* 11 U.S.C. § 1322(a)(4). *See also* 11 U.S.C. § 1325(a)(4) (requiring payment of not less than the amount that claim would receive in a chapter 7 liquidation). The latter type of DSO should be listed as “Other,” particularly in view of 11 U.S.C. § 1326(b) which provides for payment to such creditors “[b]efore or at the time of each payment to creditors under the plan.”

Similarly, the debtor should list under “Other” claims of a chapter 7, 11, or 12 trustee if, for example, the debtor converted a chapter 7, 11, or 12 case to chapter 13. Section 507(a)(1)(C) provides an appointed or elected trustee with an administrative expense “allowed under paragraphs (1)(A), (2), and (6) of section 503(b)” payable before domestic support obligations under § 507(a)(1)(A) and (B), “to the extent that the trustee administers assets that are otherwise available for the payment of such claims.” Those priority claims are paid pursuant to 11 U.S.C. § 1326(b).

If a creditor files proof of a priority claim, the amount set forth in the proof of claim will control over the amount set forth in the Plan, unless otherwise ordered by the court after an

objection to the claim. The debtor should take care to avoid listing fully secured tax claims as priority claims.

If the debtor's attorney does not seek to be paid through the Plan, Part 4.C.1 need not be completed. If counsel to the debtor seeks any compensation through the Plan as an administrative expense, Part 4.C.1 should be completed. The Plan expressly provides that, if an attorney seeks compensation in excess of the "no-look" fee, the attorney must submit a fee application in accordance with Chapter 13 Rule 13-7.¹² Thus, the provisions relating to attorney's fees and fees of other professionals may require an estimate of fees for future services, unless the Plan is a modified plan and fees attributable to the debtor's attorney or other professionals whom the debtor employed and seeks to pay through the Plan have been ascertained. Regardless of the actual amount set forth in Part 4.C.1, the chapter 13 trustee may not distribute to debtor's counsel any fees in excess of the "no-look" fee set forth in Chapter 13 Rule 13-7 in the absence of a court order approving compensation after the filing of a fee application. The inclusion of these provisions in Part 4.C.1 of the Plan obviates the need to include this language in a nonstandard provision or in the confirmation order.

Any application for compensation must be filed before the debtor completes payments under the Plan. If the chapter 13 trustee has filed the Trustee's Report and Account and Notice of Deadline for Objections, the time to file the application will have expired. If no application is filed, the chapter 13 trustee will disburse the remaining funds to other creditors up to a 100% dividend.

¹² The Local Rules Committee is considering amendments to Chapter 13 Rule 13-7.

The chapter 13 trustee's commission, which must be set forth in Part 4.C.3 is calculated using Exhibit 1, Calculation of Plan Payment.

Comments to Part 5: NONPRIORITY UNSECURED CLAIMS

Part 5 governs treatment of nonpriority unsecured claims. If the Plan does not provide for the treatment of unsecured claims, the debtor may check the box "None" and Part 5 need not be completed and may be deleted from the Plan.

If "None" is not checked, the debtor must indicate whether the Plan is either a "Pot Plan," or Fixed Percentage Plan. To avoid the need for a nonstandard provision regarding a Pot Plan, a separate space is provided for the debtor to estimate the dividend in the event the plan is a "Pot Plan" or a Fixed Percentage Plan. Only one box should be checked.

General unsecured claims in Part 5.A-D also include claims arising from modification of secured claims, lien avoidance, or surrender of collateral under Part 3.B and/or Part 3.C, nondischargeable unsecured claims, *see* 11 U.S.C. § 1328(a)(2)¹³, (3) and (4), and Rule 4007, and claims arising from rejection of executory contracts or leases (those not listed in Part 6), *see* 11 U.S.C. § 365, Fed. R. Bankr. P. 3002(c)(4).

In Part 5.E., the debtor should set forth the total amount to be paid to the chapter 13 trustee (either the fixed percentage amount or the "pot").

¹³ Pursuant to 11 U.S.C. § 1328(a)(2), debts of a kind specified in 11 U.S.C. § 507(a)(8)(C) and 11 U.S.C. § 523(1)(B), (1)(C), (2), (3), (4), (5), (8), and (9) are excepted from discharge under 11 U.S.C. § 1328(a). *See* Fed. R. Bankr. P. 4007. The debtor should note that interest may continue to accrue during the pendency of the chapter 13 case on nondischargeable debts that may be recovered from the debtor personally. Section 1322(b)(10) permits the debtor to provide for the payment of interest on nondischargeable claims, so long as the debtor has sufficient disposable income to pay all other dischargeable claims 100% of the allowed amount of the claims. *See* 11 U.S.C. § 1322(b)(10).¹⁴ The confirmation order, Official Local Form 4, will be amended effective December 1, 2017.

Part 5.F is for separately classified unsecured claims (such as claims with co-borrowers). *See* 11 U.S.C. § 1322(b)(1). The table that must be completed for separately classified claims requires an explanation of the basis for separate classification.

Finally, Part 5 requires the completion of Exhibit 2, the Liquidation Analysis. Exhibit 2 enables the debtor to meet the burden of demonstrating compliance with the “best interests” test set forth in 11 U.S.C. § 1325(a)(4) (“the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date”).

Comments to Part 6: EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Part 6 governing executory contracts and unexpired leases is a new provision. As in other parts, if the box “None” is checked, the rest of the part need not be completed and may be deleted.

Part 6 contains substantially the same language employed in the National Plan. The difference between the Plan and the National Plan is that the Plan contains categories of leases and contracts and the total arrears, which, if any, are to be paid under the Plan by the chapter 13 trustee. The Committee Note to the National Plan provides:

An executory contract or unexpired lease is rejected unless it is listed in this part. If the plan proposes neither to assume nor reject an executory contract or unexpired lease, that treatment would have to be set forth as a nonstandard provision in Part 8.

Consistent with that language, the introductory paragraph of Part 6 provides that any executory contracts and unexpired leases that are not assumed are rejected. Treatment of rejection claims should be set forth in Part 5.D, or in Part 8, nonstandard provisions.

Comments to Part 7: VESTING OF PROPERTY OF THE ESTATE

The language regarding vesting of property of the estate in Part 7 is intended to be consistent with language employed in the confirmation order effective prior to December 1, 2017.¹⁴ If the debtor is not entitled to a discharge because, for example, the debtor received a discharge in a chapter 7, 11, or 12 case during the 4-year period preceding the date of the order for relief, *see* 11 U.S.C. § 1328(f)(1), or received a discharge in a chapter 13 case during the 2-year period preceding the date of the order for relief, *see* 11 U.S.C. § 1328(f)(2), property of the estate will vest upon the earlier of (1) the filing of the Chapter 13 Trustee’s Final Report and Account and the closing of the case or (2) dismissal of the case. If the debtor, pursuant to 11 U.S.C. § 1327(b), seeks vesting at confirmation, this would be considered a nonstandard provision and the debtor would need to check the box “Included” in Part 1, Line 1.3 and complete Part 8.

Comments to Part 8: NONSTANDARD PLAN PROVISIONS

The definition of a “nonstandard provision” is found in Rule 3015(c) (“a provision not otherwise included in the Official or Local Form or deviating from it”). If the debtor does not propose any nonstandard provisions, the debtor may check the box “None” and delete the remainder of Part 8.

Nonstandard provisions must be set forth in Part 8, and not anywhere else in the Plan. Nonstandard provisions set forth elsewhere in the Plan are ineffective and void. In addition, even if a nonstandard provision is set forth in Part 8, it still will be void if the corresponding

¹⁴ The confirmation order, Official Local Form 4, will be amended effective December 1, 2017.

box in Part 1, Line 1.3 is not checked as “Included.” *Any deviation from the Plan provisions, absent proper completion of Part 1 and Part 8, will be ineffective, even in the absence of an objection by an affected creditor.*

The debtor must list nonstandard provisions in sequentially numbered sentences or paragraphs. Nonstandard provisions may include provisions governing the sale of property of the estate, a consensual loan modification agreement, pairing of surrender and vesting, or other treatments of claims, actions, or requests for relief which are not otherwise provided for in the Plan.

Comments to Part 9: SIGNATURES

The Plan requires the signatures of the debtor and debtor’s counsel, together with an acknowledgment by the debtor that the Plan does not contain any nonstandard provisions except those set forth in Part 8.

Debtor’s counsel is required to sign the Plan pursuant to Rule 9011. By signing, the debtor is acknowledging that the Plan and all applicable exhibits have been reviewed and understood.

In addition to execution of the Plan pursuant to Rule 9011, consistent with Rule 3015.1(e)(2), the Plan requires the debtor and counsel to certify “that the wording and order of the provisions in this Plan are identical to those contained in Official Local Form 3, including the Exhibits identified below, other than any Nonstandard Plan Provisions in Part 8.” Pro se debtors also must make the same certification.

Exhibits 1 and 2 are required for all plans. Exhibits 3 and 4 must be included if the box in Part 1, Line 1.2 is checked “Included.”

Comments to Exhibit 1: CALCULATION OF PLAN PAYMENT

Exhibit 1 incorporates all of the information previously found in Section VII of the chapter 13 plan form effective prior to December 1, 2017. The debtor need not complete lines k, l, and m, unless the Plan is being amended and the payment has changed.

Comments to Exhibit 2: LIQUIDATION ANALYSIS

The longstanding practice in this district has been the inclusion of a Liquidation Analysis in a plan to better enable the court, the chapter 13 trustee, and parties in interest to determine whether a plan satisfies the “best interests” test set forth in 11 U.S.C. § 1325(a)(4).

Comments Regarding Service

The Court has adopted two new local forms addressing service of the Plan. The debtor must use new Official Local Form 3A if the Plan does not contain a request to modify a secured claim(s) and/or avoid a lien(s). If the Plan contains a request(s) to modify a secured claims and/or avoid a lien, the debtor or the party effecting service, *see* Fed. R. Bankr. P. 7004 (a)(1), must use new Official Local Form 3B **in addition** to new Official Local Form 3A. Both Rule 3015(d) and Chapter 13 Rule 13-4(b) require service of the Plan when it is filed. Chapter 13 Rule 13-4(b) provides that “[c]oncurrently with the filing of the plan, the debtor or the debtor’s attorney shall cause a copy of the plan to be served by first class mail or other permitted means upon the chapter 13 trustee, all creditors of the debtor, all attorneys who have filed appearances and requested service of all pleadings, and other parties in interest.” Chapter 13 Rule 13-4(b) has been amended by Standing Order 2017-05 to provide that the “debtor or debtor’s attorney shall file appropriate certificates of service within three business days” of the filing of the Plan.

The method of service of the Plan is dependent on whether the box “Included” is checked in Part 1, Lines 1.1 and 1.2. Assuming that neither box is checked “Included” in Part I, Line 1.1 or Line 1.2, service of the Plan shall be made in accordance with Chapter 13 Rule 13-4(b). Each recipient’s name and address must be listed separately. Account numbers and personally identifiable information must not be included.

If either or both boxes in Part 1, Lines 1.1 or 1.2 have been checked “Included,” a copy of the Plan must be served on the holder(s) of all affected claims and any other entity the court designates in the manner provided for service of a summons and complaint in accordance with Rule 7004. The requirement to serve the Plan in accordance with Rule 7004 is set forth in Rule 3012(b) and Rule 4003(d).

Conclusion

If Official Local Form 3 is not used, the Plan will not be confirmed and the debtor’s chapter 13 case may be dismissed pursuant to 11 U.S.C. § 1307(c). Similarly, if service is defective, the Plan may not be confirmed until proper service has been certified and filed with the court.