

3011-1 *Unclaimed Funds in Chapter 7, Chapter 12 and Chapter 13 Cases*

- a. **Motions to Withdraw Unclaimed Funds.** A motion to withdraw unclaimed funds shall be in the form of Appendix C.
- b. **Compliance with LBR 9013-1.** A motion to withdraw unclaimed funds shall be filed and served in accordance with LBR 9013-1 on the debtor, the debtor's attorney, the trustee, the United States Trustee, the United States Attorney and the creditor or payee for whom the funds were deposited.
- c. **Service of the Motion on the Clerk.** A copy of the motion to withdraw unclaimed funds shall be delivered by the movant to the Clerk or Chief Deputy in Room 200, Second Floor, Customs House, 701 Broadway, Nashville, Tennessee.

9013-1 *Motion Practice*

- a. **"After Notice and a Hearing."** Whenever Title 11 of the United States Code, any rule or any order authorizes an act "after notice and a hearing" or similar phrase or whenever notice of a proposed action is otherwise required:
 - (1) Movant shall file and serve a motion together with a **NOTICE** in the form of Appendix G on the parties required to receive notice and file a certificate of service pursuant to LBR 9013-3. Every NOTICE under this rule shall be accompanied by a copy of the proposed order the movant will submit in the event no response to the motion is filed. With respect to an agreed order, the parties to the agreed order shall file and serve the motion and NOTICE in the form of Appendix G with a copy of the proposed agreed order attached as an exhibit.
 - (2) **The hearing date, time, location, specific courtroom (if applicable), and last day to file responses must be included in the NOTICE.** The hearing date shall be obtained from the Clerk's office or the Court's web site at <www.tnmb.uscourts.gov>. Hearings in Chapter 12 and Chapter 13 cases may only be scheduled for Chapter 13 hearing dates. Hearings in all other cases may not be scheduled for a Chapter 13 hearing date. Unless Title 11 of the United States Code, the Federal Rules of Bankruptcy Procedure or these local rules provide otherwise, the NOTICE shall provide for a twenty (20) day response period to run from the placing of the NOTICE in the U.S. mail, postage prepaid. The hearing date shall be no sooner than **ten (10)** business days after the last day to file responses. Departure from this rule requires compliance with LBR 9075-1.
 - (3) The NOTICE served pursuant to this rule is not effective unless the NOTICE includes the deadline for filing responses and the date, time and place of the hearing on any response that may be filed.

- (4) **Any response to a motion shall state prominently the deadline for filing responses, the date, time, location, and specific courtroom (if applicable) of the scheduled hearing and a description of the motion or NOTICE to which it relates.** An objection to a motion filed under this rule may be overruled if the response does not include the deadline for filing responses and the date of the scheduled hearing.
- (5) If a timely response is filed, the hearing will be held at the date and time in the Notice. No further notice of the hearing date is required. If a timely response is filed, LBR 9014-1 shall apply.
- (6) If a timely response is filed and the contested matter is subsequently resolved on the merits by agreement of all parties, an agreed order will excuse attendance at the hearing date only if it is filed no later than Noon on the third business day prior to the hearing date. Otherwise, announcement of an agreement resolving the merits of a contested matter may be made by counsel at the first call of the docket on the hearing date.
- (7) **The failure to file and serve a timely response shall be deemed a statement of no opposition to the relief requested.**
- (8) If no timely response is filed, movant or the parties to an agreed order shall file the original of the order or agreed order exhibited in the NOTICE no later than five (5) days after the hearing date. If no timely response is filed, movant or the parties to an agreed order are excused from attendance at the hearing date. If no timely response is filed, LBR 9014-1 shall not apply.
- (9) After the order or agreed order has been signed and received for entry, the party submitting the order or agreed order shall serve a copy of the signed order on the parties required to receive notice. This requirement of separate service of the signed order is waived if the NOTICE mailed pursuant to paragraph (1) of this rule included a copy of the order or agreed order and no timely response was filed.

b. Exclusions and Modifications.

- (1) **Exclusions.** LBR 9013-1a shall not apply to the following motions:
 - (a) Motions to Convert Chapter 12 or Chapter 13 Cases filed by the Trustee
 - (b) Motions to Dismiss Chapter 12 or Chapter 13 Cases filed by the Trustee
 - (c) Motions and agreed orders for Relief from Stay under § 362(d)
 - (d) Motions in a case controlled by a separate case management order
 - (e) Motions in adversary proceedings, except motions for default

judgment, and motions for withdrawal or substitution of attorneys pursuant to LBR 2092-1

- (f) Motions to dismiss or convert a case to Chapter 7 under § 1112
- (g) Motions to validate reaffirmation agreements under LBR 4008-1

(2) **Modifications.** LBR 9013-1a is modified to include the additional requirements provided in the following rules:

- (a) LBR 2014-1 Notice of Employment Application
- (b) LBR 2016-1 Notice of Fee Application
- (c) LBR 2082-1 Motions to Modify or Amend Chapter 12 Plans
- (d) LBR 3007-1 Objections to Claims
- (e) LBR 3011-1 Unclaimed Funds
- (f) LBR 3015-2 Motions to Modify or Amend Chapter 13 Plans
- (g) LBR 4004-1 Agreed Orders of Adequate Protection to Resolve Motions for Relief from the Automatic Stay
- (h) LBR 6005-1 Auctioneers & Real Estate Agents
- (i) LBR 6007-1 Notice of Abandonment

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

IN RE:)
)
) CASE NO.
) CHAPTER
 Debtor(s).) JUDGE
)

MOTION TO WITHDRAW UNCLAIMED FUNDS

[Name of applicant], [through counsel], moves this Court for an order directing the Clerk to remit to the applicant the sum of [\$], which was deposited into the Treasury of the United States as unclaimed funds for [name of individual or entity for whom funds are on deposit] (“Claimant”).

Applicant certifies, under penalty of perjury, that:

- (1) Applicant has conducted a reasonable investigation.
- (2) The money on deposit with the Treasury of the United States is owed to the Claimant.
- (3) The funds sought have not been paid to the Claimant or to any agent on the Claimant’s behalf.
- (4) Applicant is the Claimant; or Applicant has authority to collect the funds on behalf of the Claimant as evidenced by the attached Power of Attorney or other proof that Applicant is an authorized representative for the Claimant.
- (5) No other motion is pending for recovery of the same unclaimed funds.
- (6) Applicant has complied fully with the requirements of 28 U.S.C. § 2042.

Dated:

[Attorney for Applicant]
[Address]
[Phone number]

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, _____, I mailed a copy of the foregoing to the U.S. Attorney, 110 Ninth Avenue, South, Suite A-961, Nashville, Tennessee 37203-3870, the U.S. Trustee, 701 Broadway, Customs House Suite 318, Nashville, Tennessee 37203, [name of debtor(s)], [address], [name of debtor's attorney], [address], [name of trustee], [address], and [name of Claimant], [address].

[Attorney for Applicant]

Attachments:

- (1) **Power of Attorney** or other proof if Claimant is represented by an agent or attorney.
- (2) **Proof of identity:** If Applicant is the Claimant and if the Claimant is an individual, a copy of the individual's driver's license or other photo identification.
- (3) **Proof that the funds are owed to the Claimant:** Any supporting documentation that proves the claimant is entitled to the funds requested. This can be in the form of a copy of the proof of claim, the trustee's report of unclaimed funds, or the order of distribution.
- (4) **Notice of Motion** pursuant to LBR 9013-1 (Appendix E).

**IN THE UNITED STATES BANKRUPTCY COURT
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IN RE:)
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)

**THE DEADLINE FOR FILING A TIMELY RESPONSE IS: [response date]
IF A RESPONSE IS TIMELY FILED, THE HEARING WILL BE: [hearing date, *time*,
place (including courtroom and Address)]**

NOTICE OF MOTION TO [caption of motion]

[Name of movant] has asked the court for the following relief: [brief description of relief requested].

YOUR RIGHTS MAY BE AFFECTED. If you do not want the court to grant the attached motion by entering the attached order, or if you want the court to consider your views on the motion, then on or before [response date], you or your attorney must:

1. File with the court your response or objection explaining your position. **PLEASE NOTE: THE BANKRUPTCY COURT FOR THE MIDDLE DISTRICT OF TENNESSEE REQUIRES ELECTRONIC FILING. ANY RESPONSE OR OBJECTION YOU WISH TO FILE MUST BE SUBMITTED ELECTRONICALLY. TO FILE ELECTRONICALLY, YOU OR YOUR ATTORNEY MUST GO TO THE COURT WEBSITE AND FOLLOW THE INSTRUCTIONS AT: <<https://ecf.tnmb.uscourts.gov>>.**

If you need assistance with Electronic Filing you may call the Bankruptcy Court at (615) 736-5584. You may also visit the Bankruptcy Court in person at: 701 Broadway, 1st Floor, Nashville, TN (Monday - Friday, 8:00 A.M. - 4:00 P.M.).

2. Your response must state that the deadline for filing responses is [response date], the date of the scheduled hearing is [hearing date] and the motion to which you are responding is [caption of motion].
3. You must serve your response or objection **by electronic service through the Electronic Filing system** described above. You must also mail a copy of your response or objection to:

[names and addresses of others to be served, if any]

If a response is filed before the deadline stated above, the hearing will be held at the time and place indicated above. ***THERE WILL BE NO FURTHER NOTICE OF THE HEARING DATE.*** You may check whether a timely response has been filed by calling the Clerk's office at (615) 736-5584 or viewing the case on the Court's website at <<https://ecf.tnmb.uscourts.gov>>.

If you or your attorney does not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter the attached order granting that relief.

Date:

Signature: _____

Name:

Address: