

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

**NOTICE OF PROPOSED AMENDMENTS TO THE LOCAL BANKRUPTCY RULES**

You are notified that the following amendments to the Local Bankruptcy Rules have been proposed and are available for comment until **8:00 A.M., MONDAY, NOVEMBER 23, 2009**. To comment, send an email to: **tnmb\_rules\_comments@tnmb.uscourts.gov**

/s/MATTHEW T. LOUGHNEY  
Clerk of Court

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1007-1 *Lists, Schedules, and Statements, and Other Documents*

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**c. Payment Advices.** Payment advices or other evidence of payment described in 11 U.S.C. § 521(a)(1)(B)(iv):

(1) shall not be filed with the Court except on motion and order consistent with LBR 9013-1; and,

(2) shall be provided to the Chapter 7 or Chapter 13 Trustee, as applicable, and to the United States Trustee in Chapter 7 and Chapter 11 cases only.

**Comment:** Renames the rule to conform to the naming of the corresponding federal rule. Moves current paragraph (d) of local rule 4002-1 paragraph (d) to new paragraph (c) of this rule to conform to the subject matter (payment advices) in corresponding federal rule. Eliminates the local deadline for turn-over of payment advices from the moved rule, as deadlines are addressed in the corresponding federal rule.

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1017-1 *Conversion*

- a. Conversion to a Case Under Chapter 7.** Within ~~15~~ fourteen (14) days after the filing of a Notice or Order converting a case to Chapter 7 from any other chapter, the debtor shall file new lists, statements and schedules, except that Schedule C, Property Claimed as Exempt, may be filed at the discretion of the debtor.

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**Comment:** Changes deadline from 15 to 14 days to conform with federal rules changes regarding the computation of time.

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2007.2-1 *Appointment of a Patient Care Ombudsman in a Health Care Business Case*

If the debtor in a case under Chapter 7, 9, or 11 is a health care business, the debtor shall, at the time of the petition, separately file a motion to determine whether appointment of a patient care ombudsman is necessary pursuant to 11 U.S.C. § 333(a).

**Comment:** New rule which resolves to concern of how the court is become aware that a debtor is a health care business requiring an ombudsman determination pursuant to 11 U.S.C. § 333(a).

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3001-1 *Claims and Equity Security Interests - General*

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- b. Failure to Comply.** In the event that the holder of a secured claim does not comply with the provisions of this rule and the trustee gives notice to the creditor in writing that it has failed to comply with the rule, the trustee shall be entitled to recover costs (including reasonable attorney's fees) related to the filing and/or preparation of an adversary proceeding against the creditor, if the creditor fails to cure its noncompliance within ~~twenty (20)~~ twenty-one (21) days of service of notice.

**Comment:** Changes deadline from 20 to 21 days to conform with federal rules changes regarding the computation of time.

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#### 4001-1 *Automatic Stay - Relief from*

**a. Limitation on Combined Motions.** ~~Motions~~ A motion for relief from the § 362(a) stay shall not contain additional ~~motions~~ requests for relief, except ~~they may contain motions~~ for abandonment ~~and~~ and/or adequate protection regarding the same ~~collateral~~ asset. When other requests for relief are impermissibly combined with a motion for relief from the § 362(a) stay, the motion for stay relief (and any related abandonment and/or adequate protection) will be heard. The impermissible requests for relief will only be considered when separately filed.

\* \* \*

**f. Agreed Order Resolving Request for Stay Relief - Excusal of Counsel.** An agreed order resolving the merits of a request for relief from the stay excuses the attendance of counsel at a preliminary or final hearing if the parties comply with the notice requirements of FED. R. BANKR. P. 4001(d), and:

- (1) for agreements that do not include adequate protection, the agreed order is filed no later than ~~five~~ seven (7) days after the preliminary hearing or before Noon of the third business day prior to a final hearing; or
- (2) for adequate protection agreements, the LBR 9013-1 Motion for Approval of Agreed Order for Adequate Protection is filed no later than ~~five~~ seven (7) days after the preliminary hearing or before Noon of the third business day prior to a final hearing.

**Comment:** Clarifies language in paragraph (a) and adds that the consequence of filing an impermissibly combined motion is that only the motion for relief from the stay will be heard. Also, changes two deadlines from 5 to 7 days to conform to federal rules changes regarding the computation of time.

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#### 4002-1 *Debtor - Duties*

**a. Persons to Act When Debtor Is Not Natural Person.** The natural persons occupying the following positions shall perform all acts required to be performed by the debtor and shall attend on behalf of the debtor any examinations, meetings or hearings unless the Court orders otherwise:

\* \* \*

- (5) The natural person or persons who will perform acts required to be performed by the debtor shall be identified by name, title and address at the time of the commencement of the case in a voluntary case. In an involuntary case, the identification shall be

filed no later than ~~fifteen (15)~~ fourteen (14) days after entry of the order for relief.

\* \* \*

**d. Payment Advices.** ~~Payment advices or other evidence of payment described in 11 U.S.C. § 521(a)(1)(B)(iv):~~

~~(1) shall not be filed with the Court except on motion and order consistent with LBR 9013-1, and~~

~~(2) shall be provided to the trustee within ten (10) days of any written request filed by the trustee.~~

**Comment:** Changes deadline from 15 to 14 days to conform to federal rules changes regarding the computation of time. Paragraph (d) is deleted and replaced by new paragraph (c) to rule 1007-1.

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#### 4070-1 *Insurance*

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**c. Lapse of Insurance.** If during the pendency of a case, insurance lapses on any motor vehicle subject to the provisions of this rule:

\* \* \*

(4) Within ~~five (5)~~ seven (7) days after taking possession of a motor vehicle based on lapse of insurance, the creditor shall file a motion for relief from the stay of 11 U.S.C. § 362.

\* \* \*

**Comment:** Changes deadline from 5 to 7 days to conform to federal rules changes regarding the computation of time.

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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~~ E 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](http://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)~~ twenty-one (21) 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~~ **fourteen (14)** 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)~~ seven (7) 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.

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**Comment:** Corrects reference to proper Appendix in paragraph (a)(1). Changes three deadlines to conform to federal rules changes regarding the computation of time.

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#### 9014-1 *Contested Matters*

- a. **Pretrial Orders and Conferences.** Unless provided otherwise in a notice or order, pretrial orders and pretrial conferences are not required in contested matters. At any time, any party may file a motion requesting a pretrial conference.
- b. **Response Required.** In all contested matters not controlled by a NOTICE under LBR 9013-1 in which no order or notice provides otherwise, any party in opposition to the relief requested shall file and serve a response denominated as an “answer” or “objection” on or before the earlier of ~~ten (10)~~ fourteen (14) days after service of the paper commencing the contested matter or ~~five (5)~~ seven (7) days before any scheduled hearing of the contested matter. **The failure to file and serve a timely response shall be deemed a statement of no opposition to the relief requested. If no timely response is filed, LBR 9014-1c shall not apply.**
- c. **Required Disclosures and Pretrial Disclosures.** When a timely response has been filed, discovery in all contested matters shall include the following:

- (1) **Required Disclosures.** Without waiting for a discovery request, every party shall provide to every other party the information listed below. A party shall make these Required Disclosures based on the information then reasonably available and is not excused from these Required Disclosures because it has not fully completed its investigation or because it challenges the sufficiency of another party's disclosure or because another party has not made its disclosure.

\* \* \*

- (d) The disclosures required in paragraphs (a) and (b) shall be completed no later than ~~five (5)~~ seven (7) days after service of the response or two (2) business days prior to the hearing, whichever occurs first. The disclosures required in paragraph (c) shall be completed no later than ~~ten (10)~~ fourteen (14) days after service of the response or two (2) business days prior to the hearing, whichever occurs first.

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**Comment:** Changes four deadlines to conform to federal rules changes regarding the computation of time.

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**9036-1 Notice by Electronic Transmission**

To the extent practical, the Clerk and all registered ECF filers are directed to send only electronic notice to any entity so consenting or requesting.

**Comment:** New rule which gives local direction to the clerk or other persons sending notices to do so by electronic transmission when requested. (Federal Rule of Bankruptcy Procedure 9036: "Whenever the clerk or some other person as directed by the court is required to send notice by mail and the entity entitled to receive the notice requests in writing that, instead of notice by mail, all or part of the information required to be contained in the notice be sent by a specified type of electronic transmission, *the court may direct the clerk or other person to send the information by electronic transmission.*"(Italics added.))

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9072-1 *Orders - Proposed*

**a. Filing of Proposed Orders.** All orders orally announced in court shall be prepared by the attorney for the prevailing party and filed within ~~five (5)~~ seven (7) days.

**b. Approved for Entry.** All proposed orders shall be “Approved for Entry” by the signature of the preparing attorney.

**Comment:** Changes deadline from 5 to 7 days to conform to federal rules changes regarding the computation of time.

[MODEL CHAPTER 13 PLAN AND RELATED MOTIONS]

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

IN RE:

Debtor(s).

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CASE NO.  
CHAPTER [12 or 13]  
JUDGE

**CHAPTER 13 PLAN AND MOTIONS**

\* \* \*

**12. PROVISIONS RELATING TO CLAIMS SECURED BY REAL PROPERTY TREATED PURSUANT TO 11 U.S.C. § 1322(b)(5).**

- (a)** Confirmation of this Plan imposes on any claim holder treated under paragraph 9 and secured by the debtor's residence, the obligation to:
- i.** Apply payments from the trustee on account of pre-confirmation arrearages only to those arrearages. For purposes of this plan, the "preconfirmation arrearages" include all sums included in the allowed proof of claim plus any postpetition preconfirmation payments or charges due under the underlying mortgage obligation not specified in the allowed proof of claim.
  - ii.** Treat the mortgage obligation as current at confirmation such that future payments, if made pursuant to the plan, shall not be subject to late fees, penalties or other charges.
  - iii.** Not less than 60 days prior to the effective date of any change in monthly mortgage payments, notify the trustee, the debtor(s) and the attorney for the debtor(s) in writing of: (1) any change or adjustment in interest rate and the effective date of that change or adjustment; and (2) any change in property taxes and/or property insurance premiums that would increase or reduce the escrow portion, if any, of the monthly mortgage payments and the effective date of that change.
  - iv.** Notify the trustee, the debtor(s) and attorney for the debtor(s), in writing, of any protective advances or other charges incurred by the claim holder, pursuant to the mortgage agreement, within 60 days of incurring such protective advance or other charge.
- (b)**
- i.** Monthly ongoing mortgage payments shall be paid by the trustee commencing with the later of the month of confirmation or the month in which a proof of claim itemizing the arrearages is filed by the claim holder.
  - ii.** If the trustee has maintained payments to the mortgage creditor in accordance with paragraph 9, then no later than 60 days prior to the anticipated last payment under the plan, the trustee shall file a motion and notice consistent with LBR 9013-1 requesting the court find that the trustee has complied with the plan to maintain mortgage payments and to cure preconfirmation arrearages. If the claim holder asserts that the mortgage obligation is not contractually current at the time of the trustee's motion, then the claim holder shall, within 30 days of receipt of the motion, file a Statement of Outstanding

Obligations, itemizing all outstanding obligations it contends have not been satisfied as of the date of the Statement, with service upon the trustee, the debtor(s) and the attorney for the debtor(s). Filing and service of a Statement shall be treated as a response for purposes of LBR 9013-1 and a hearing will be held consistent with the trustee's notice. No liability shall result from any nonwillful failure of the trustee to file the application authorized herein.

- (c) If the claim holder fails to timely file and serve a Statement of Outstanding Obligations, the trustee shall submit an order declaring the mortgage current and all arrearages cured as of the date of the trustee's motion; and, upon discharge, the claim holder shall treat the mortgage as fully reinstated according to its original terms and fully current as of the date of the trustee's notice.
- (d) If the claim holder timely files and serves a Statement of Outstanding Obligations, the debtor may propose a modified plan to provide for payment of additional amounts the debtor acknowledges or the court determines are due. To the extent amounts set forth on a timely filed Statement of Outstanding Obligations are not determined by the court to be invalid or are not paid by the debtor through the plan or a modified plan, the right of the holder to collect those amounts is unaffected.

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DEBTOR'S ATTORNEY SIGNATURE

**Comment:** The Chapter 13 Plan and Motions Form adds paragraph 12, *Provisions Relating to Claims Secured by Real Property Treated Pursuant to 11 U.S.C. § 1322(b)(5)*, as part of Appendix F. The new paragraph imposes certain obligations on a claim holder who is secured by the debtor's residence. The Chapter 13 Trustee's motion to deem mortgage obligation contractually current is subject to objection or response by the claim holder as if though such response or objection was filed under LBR 9013-1.