

Important Changes to the Massachusetts Bankruptcy Court's Local Rules

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The United States Bankruptcy Court for the District of Massachusetts has amended its Local Rules, effective December 1, 2009. Changes affecting the procedures in Chapter 13 cases make up the majority of the December 1, 2009 amendments found in Appendix 1, Chapter 13 Rules, and there are also amendments to the rules that affect Chapter 7 and Chapter 11 cases. The most relevant changes for secured creditors are as follows:

1. MLBR Rule 4001-3, Permitted Billing and Settlement Communications

The amendments to Rule 4001-3 affect all chapters. MLBR 4001-3 states that it is not a violation of the automatic stay under 11 U.S.C. §362(a) for a secured creditor, excluding its attorney, to send written correspondence to the debtor, with a copy to debtor's counsel, consisting of statements, payment coupons, notices, analyses or accountings of payment defaults, status of insurance coverage, tax payments and/or municipal charges and any other such correspondence that a creditor typically sends to its non-debtor customers. However, the correspondence cannot make demand for payment or threaten foreclosure or dismissal of the bankruptcy case.

Relief from the automatic stay is also deemed granted via this rule to allow a secured creditor to discuss and/or negotiate with a debtor for a loan modification. Communications must be conducted through the debtor's counsel unless debtor's counsel grants permission in writing for direct communication with the debtor.

Communications must cease immediately upon written notice from the debtor or debtor's counsel requesting the cessation of communications. The court must also approve any loan modification into which the parties seek to enter.

2. Appendix 1, Chapter 13 Rules, 13-16-1 (a) Motions for Relief from Stay, Pre-Filing Conference Requirement

The Local Rules amendments for Chapter 13 cases impose a pre-filing conference to take place at least 7 days before filing a motion for relief from the automatic stay. Counsel for the movant must confer with the debtor's counsel to make a good faith effort to resolve or narrow the dispute about the contents of the motion. Initial contact shall be made by the movant's counsel by telephone, facsimile, email, first class mail or in person. The actual conference must be held in person or by telephone. The motion for relief must be accompanied by a certificate stating the conference was held, stating the date and time of same and who participated in the conference. If the conference was not held, the movant's counsel must file a certificate attesting to the creditor's reasonable efforts to initiate the conference.

Motions that are filed without the certificate may be denied without prejudice to their renewal when accompanied by the certificate of compliance.

3. Appendix 1, Chapter 13 Rules, 13-16-1(d) Motions for Relief from Stay, Real Estate Worksheet Requirement

The Local Rules amendments for Chapter 13 cases now require that a "Real Estate Worksheet" (Local Form 13) be filed with each motion seeking relief from the automatic stay with respect to real property. The exceptions to this requirement are limited to instances where the debtor agrees in advance to the relief from stay motion or has indicated an intent to surrender the real property in a Chapter 13 Plan. The Real Estate Worksheet must include the following information:

- Property address, lender name, date of mortgage, post-petition payment address, how the security interest was perfected and all material liens and encumbrances;
- Total pre-petition and post-petition indebtedness due;
- Estimated market value of the property and the source of the estimated valuation;
- Total prepetition indebtedness with a breakdown of the arrearage;
- Contractual interest rate and if the interest rate is or was adjustable, a list of the rates and dates that the rates were in effect;
- Any additional pre-petition fees, charges or amounts charged to the debtor;
- Date the last payment was received, total number of post-petition payments alleged to be due and a schedule of the dates that the payments were due and the payment amounts;
- A schedule of payments that were received, if any, post-petition;
- All post-petition fees and charges, advances or sums held in suspense; and
- Amount and date of post-petition payments that may have been offered by the debtor but refused.

In addition to the information listed above, the lender must attach the following exhibits and certification to the Real Estate Worksheet:

- Exhibits must indicate the lender's interest in the property, such as a copy of the promissory note, mortgage and any assignments in the chain of title;
- Copies of documents establishing standing to bring the motion; and
- Exhibits that establish that the lender's interest in the property is perfected, such as a UCC-1 financing statement.
- The Real Estate Worksheet must be signed and notarized by the moving party. **Counsel for the moving party cannot sign the Real Estate Worksheet.** The moving party must certify that the information provided in the Worksheet and/or exhibits to the Worksheet were made at or near the occurrence of the matter set forth by or from information transmitted by a person with knowledge of those matters; were kept in the course of regularly conducted activity; and were made by the regularly conducted activity as a regular practice. The moving party must also certify that the exhibits attached to the Real Estate Worksheet and the motion for relief are true and accurate copies of the original documents and that the original documents are in the possession of the moving party or list the documentary exceptions if the original documents are not in possession of the movant.

4. Appendix 1, Chapter 13 Rules, 13-8, Objections to Confirmation

The Local Rules amendments for Chapter 13 cases impose a requirement that a conference take place between the objecting party and the debtor's counsel to attempt to resolve or narrow the dispute. Within 7 days after filing a response to an objection to confirmation, debtor's counsel shall confer with counsel to the objecting party. Counsel to the objecting party is responsible for initiating the conference by telephone, facsimile, email, first class mail or in person. The actual conference must take place via telephone or in person. No hearing will be scheduled by the court on the objection to confirmation until the objecting party files a certificate stating the conference was held, together with the date and time of the conference and the names of the participants. If the conference is not held, the objecting party must file a statement attesting to the timely and reasonable efforts made to initiate the conference. In the event that no conference is held, the court may order appropriate sanctions, including sustaining or overruling the objection or awarding monetary sanctions.

5. Appendix 1, Chapter 13 Rules, Proofs of Claim and Objections

The Local Rules amendments for Chapter 13 cases state that all creditors must timely file a proof of claim to participate in plan distributions. A creditor filing a proof of claim for a debt related to a mortgage must attach a copy of the original note and mortgage to the proof of claim. Copies of any and all assignments or other appropriate documentation

sufficient to trace the chain of ownership of the mortgage and to establish standing to assert the claim must be filed with the proof of claim in the event the claimant is not the original holder of the note and mortgage.

Any proof of claim that relates to a mortgage must include a detailed itemization consisting of principal, interest, costs and all expenses charged to the mortgage loan. Examples of expenses to be itemized are the amounts due for foreclosure sales, advertisements, appraisals and a statement of attorneys' fees included in the creditor's claim for prepetition arrearage. The court, at its discretion, may order a claimant to file a fee application for any professional fees and costs incurred by the creditor and included in the creditor's proof of claim. The court may also order an accounting of any item claimed in the prepetition arrearage.

Similar to the procedure for objections to confirmation, a conference must be held between the claimant and the objecting party to resolve or narrow the dispute. The court will not schedule a hearing until a certificate stating the conference was held is filed.