

VBA Bankruptcy Committee
Bench-Bar Brown Bag Lunch Meeting
with Colleen A. Brown, U.S. Bankruptcy Judge
Tuesday, April 24, 2007
12:30 pm – 2:00 pm
United States Bankruptcy Court, Burlington
Participation may be in person or via the telephone

1. New reaffirmation cover sheet (*sample attached*)
2. New Standing orders (*attached*)
 - 07-06: Modifying the Procedure for a Debtor's Motion to Convert a Chapter 7 Case to Chapter 13
 - 07-07: Post-Petition Invoicing, Impact on RFS Motions & Local Rule 4001-1(a)
 - 07-08: Motions for Entry of Chapter 13 Discharge in Post-BAPCPA Cases
3. Local Rules to be revised this summer
 - no more pamphlet editions to be issued; e-version to be maintained on the web
 - please send suggested changes to Robin Barovick (robin_barovick@vtb.uscourts.gov) **by May 31**
 - attys will also have an opportunity to comment on proposed new rules in late Aug. / early Sept
4. Motions to avoid of judicial liens
 - motions need to aver and demonstrate that the lien is a judicial (vs statutory) lien [see Ahokas]
5. Motions for relief from stay
 - if the collateral that is the subject of the motion is real estate, both the motion and order should specify both the street address and book / page recording reference
6. Chapter 13 discharge order will not be entered until after the ch 13 Trustee files his Final Report
 - this is consistent with pre-BAPCPA timing
 - there will typically be 60-day lag between date of last pmt and date TFR is filed
 - if the D needs the discharge entered earlier, Court will enter the discharge prior to the filing of the TFR for cause shown or upon consent of chapter 13 trustee
7. CM/ECF Tip of the Day - Notice of Request for Certificate of Approval
8. Bench-Bar Brown Bag Lunch Meeting Schedule – Next meeting May 22, 2007 Rutland.

These Bench-Bar Lunches are coordinated by the Bankruptcy Court Chambers and Clerk's Office.
Questions? Call Thomas J. Hart at 802-776-2002

No fee, no pre-registration required. Soft drinks and bottled water will be provided.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

IN RE: [Name],
Debtors.

Chapter
Case Number

Reaffirmation Agreement Cover Sheet

Part I: (To be completed by Debtor's Attorney. Filer must serve on creditor)

Certification of Debtor's Attorney Regarding Correlation Between Schedules I and J and Part D of the Attached Reaffirmation Agreement

Along with this certification, a reaffirmation agreement is being filed between [debtor(s)] and [creditor] regarding [collateral description]. The following information is certified (choose the one box which applies):

There is no difference between the information in Schedules I and J and Part D of the reaffirmation agreement. Part D shows income in excess of expenses, including all debts to be reaffirmed.

There is no difference between the information in Schedules I and J and Part D of the reaffirmation agreement. Part D shows income less than that of expenses, including debts to be reaffirmed. An explanation identifying additional sources of funds, reductions in expenses, or other changed circumstances enabling debtor(s) to make payments on the reaffirmed debt is provided in Part D.

There is a difference between the information in Schedules I and J and Part D of the reaffirmation agreement. An explanation of such difference is provided in Part D. With that explanation, part D shows income in excess of expenses, including all debts to be reaffirmed.

There is a difference between the information in Schedules I and J and Part D of the reaffirmation agreement. An explanation of such difference is provided in Part D. With that explanation, Part D shows income less than that of expenses, including debts to be reaffirmed. An explanation identifying additional sources of funds, reductions in expenses, or other changed circumstances enabling debtor(s) to make payments on the reaffirmed debt is provided in Part D.

I certify that the above information is true and correct.

Date: _____

Debtor's Attorney

Part II: (To be completed by creditor of debtor's attorney)

Certification Regarding Compliance with 11 USC § 524

I _____, hereby certify that the attached reaffirmation agreement complies with the provisions of 11 USC § 524.

Date: _____

Signed: _____

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**

In re:

**MODIFICATION OF
LOCAL RULES OF PRACTICE AND
PROCEDURE IN BANKRUPTCY COURT,
DISTRICT OF VERMONT**

STANDING ORDER # 07-06

**MODIFYING THE PROCEDURE FOR A
DEBTOR'S MOTION TO CONVERT
A CHAPTER 7 CASE TO CHAPTER 13**

WHEREAS, this Court has to date taken the position that a debtor has an absolute right to convert a case under Chapter 7 to a case under Chapter 13 and therefore that the debtor need only file a motion on notice to the United States Trustee (UST) and Chapter 7 Trustee in order to be eligible to convert the case; and

WHEREAS, in Marrama v. Citizens Bank of Massachusetts, et al., 127 S.Ct. 1105 (February 21, 2007), the Supreme Court ruled that the right to convert a case under Chapter 7 to a case under Chapter 13 is not absolute, but rather is conditioned on a debtor's eligibility for Chapter 13 relief, and in particular upon a debtor demonstrating that such conversion is in good faith;

THE COURT ACCORDINGLY FINDS that in order to comply with Marrama, this Court must modify its procedure for processing a debtor's motion to convert a case from Chapter 7 to Chapter 13;

THEREFORE, IT IS ORDERED that, effective immediately, if a debtor seeks to convert a case from Chapter 7 to Chapter 13 he or she must file a motion, on notice to all creditors, asserting that the debtor is eligible for relief and the conversion is in good faith; the motion may be filed using the default procedure set forth in Vt. LBR 9013-4.

Appendix I to the Local Rules shall be amended to specify that a motion to convert a case from Chapter 7 to Chapter 13 must be filed on notice to all creditors, and may be done under the default procedure.

SO ORDERED.

Rutland, Vermont
April 9, 2007



Colleen A. Brown
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**

In re:

**MODIFICATION OF THE
LOCAL RULES OF PRACTICE AND
PROCEDURE IN THE BANKRUPTCY COURT,
FOR THE DISTRICT OF VERMONT
AS TO:**

STANDING ORDER # 07-07

- (1) THE SCOPE AND CONTENT
OF ACCOUNT INFORMATION AND STATEMENTS
A SECURED CREDITOR MUST PROVIDE
TO DEBTORS POST-PETITION
REGARDING CONSUMER ACCOUNTS,**
 - (2) THE STAY VIOLATION PROTECTION
AFFORDED TO CREDITORS WHO PROVIDE
SUCH STATEMENTS,**
 - (3) OPPORTUNITIES TO UTILIZE NON-CONFORMING
STATEMENTS WITH DEBTOR CONSENT OR
COURT APPROVAL, AND**
 - (4) AMENDMENT OF VT. LBR 4001-1(A) REGARDING
CONTENT OF MOTIONS FOR RELIEF FROM STAY.**
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I. The Scope and Purpose of This Standing Order

The Court enters this Standing Order to direct that, to the greatest degree possible, the routine flow of information from secured creditors to debtors continue post-petition with respect to secured loans, in each bankruptcy case where the debtor retains possession of the collateral and continues to make regular installment payments directly to the secured creditor; and to direct that each secured creditor provide debtors with a contact point so that debtors can obtain specific information on the status of such loans, as needed.

It is also the purpose of this Standing Order to make clear that, as long as a creditor complies with this Standing Order in furnishing account information to the debtor, such good faith attempts at compliance will not expose the secured creditor to claims of violating the automatic stay.

This Standing Order applies in chapters 7, 12, and 13; applies only to consumer loan relationships; and applies only as long as the debtor is in bankruptcy and protected by the automatic stay. However, for cause shown and after proper notice and a hearing, the Court may direct parties to comply with this Standing Order with regard to commercial loans, or in chapter 11.

II. Debts Secured by a Mortgage on Real Property

- (A) For purposes of this subsection, the term “Mortgage Creditor” shall include any creditor that has a claim secured by a mortgage on real property.
- (B) Except as provided in paragraph (C) below, the Mortgage Creditor shall provide monthly statements to all Chapter 12 and Chapter 13 debtors who have indicated an intent to retain the Mortgage Creditor’s collateral in their plan, and to all Chapter 7 debtors who have indicated an intent to retain the Mortgage Creditor’s collateral in their statement of intent which has been served on the Mortgage Creditor.

The monthly statements shall contain at least the following information concerning post-petition mortgage payments to be made directly to the mortgagee (“outside the plan”):

- (1) the date of the statement and the date the next payment is due;
 - (2) the amount of the current monthly payment;
 - (3) the portion of the payment attributable to escrow, if any;
 - (4) the post-petition amount past due, if any, and from what date;
 - (5) any outstanding post-petition late charges;
 - (6) the amount and date of receipt of all payments received since the date of the last statement;
 - (7) a telephone number and contact information that the debtor or the debtor’s attorney may use to obtain reasonably prompt information regarding the loan and recent transactions; and
 - (8) the proper payment address.
- (C) No monthly statement shall be required in a Chapter 12 or Chapter 13 case where post-petition mortgage payments are to be made to the Trustee (“through the plan”). If a Mortgage Creditor sends a monthly statement to a debtor in such a case which complies with subsection (IV)(B) below, the Mortgage Creditor is entitled to the protections of subsection (IV)(B).
 - (D) The Mortgage Creditor shall provide any of the following information to the debtor upon the reasonable written request of the debtor:
 - (1) the principal balance of the loan;
 - (2) the original maturity date;
 - (3) the current interest rate;
 - (4) the current escrow balance, if any;
 - (5) the interest paid year to date;
 - (6) the property taxes paid year to date, if any; and/or
 - (7) any other amounts due, including charges paid by lender for taxes, insurance, attorney’s fees, or other expense, the nature of the expense, and the date of the payment.

III. Other Secured Debts

For the purposes of this subsection, the term “creditor” shall include any creditor that holds a claim secured by personal property, and lessors for assumed leases for personal property, for which monthly statements are provided under non-bankruptcy law or practice. For all debts secured by property other than as provided for by subsection (B) above, and for assumed leases for personal property, the creditor shall provide monthly statements to the debtors in the following manner:

- (A) If the case was filed under Chapter 12 or 13 and the secured debt is paid entirely through the Plan, the creditor is under no obligation to send a monthly statement to the debtor directly. However, if a creditor or lessor sends a monthly statement which complies with this Standing Order to the debtor in such a case, then the creditor shall be entitled to the protection described in subsection (IV)(B), below.
- (B) If the case was filed under Chapter 7, or was filed under Chapter 12 or 13 and the secured debt is not paid entirely through the Plan, and the creditor sent monthly statements to the debtor(s) prior to the bankruptcy petition, the creditor shall send monthly statements which contain the same information as, and are similar to, the monthly statements that the creditor sent to the debtor before the bankruptcy case was filed.
- (C) If the case was filed under Chapter 7, or was filed under Chapter 12 or 13 and the secured debt is not paid entirely through the Plan, and the creditor provided a coupon book or other similar set of invoices to the debtor, the creditor shall send to the debtor and the debtor’s attorney a default letter to setting forth the post-petition arrearages, upon any perceived or actual default by the debtor, and before taking any steps to modify the automatic stay.

IV. Forms of Communication; Issuance of Monthly Statements is not a Stay Violation

- (A) For the purposes of this Standing Order, and Vt. LBR 4001-1(a), creditors shall be considered to have sent the requisite documents or monthly statements to the debtor when the creditor has placed the required document in any form of communication which in the usual course would result in the debtor receiving said document, to the address that the debtor last provided to the creditor by agreement between the debtor and the creditor. Said communication may be transmitted via electronic mail, facsimile, United States Postal Service, commercial communications carrier, or such other mode as is mutually acceptable to the parties.
- (B) Creditors who provide account information or monthly statements under sections II or III above shall not be found to have violated the automatic stay by doing so. Secured creditors may contact the debtors about the status of insurance coverage on property that is collateral for the creditor’s claim, may respond to inquiries and requests for information about the account from debtors, and may send the debtor statements, payment coupons, or other corre-

spondence that the creditor sends to its non-debtor customers, without violating the automatic stay, provided none of these communications includes an attempt to collect the debt.

V. Motions to Compel a Creditor to Issue Monthly Statements that Comply with this Order

- (A) A debtor may file a Motion to Compel Creditor to Issue Monthly Statements in Compliance with this Standing Order (a “Motion to Compel”) if the debtor can offer evidence that a creditor has not complied with sections (II), (III), or (IV) for at least thirty (30) days. Before filing such a Motion to Compel, the debtor must make good faith attempts to contact the creditor to determine the cause of the omission. The Motion must include a description of the debtor’s good faith attempts taken prior to filing the Motion, any response(s) from the creditor, and the harm the debtor has suffered, if any, as a result of the creditor’s failure to provide appropriate monthly statements.
- (B) If a creditor’s regular billing system can provide a statement to a debtor that substantially complies with this Standing Order, but does not fully conform to all of its requirements, the creditor may request that the debtor accept such statements, and the debtor may do so. If the debtor declines to accept the non-conforming statements, a creditor may file a motion, on notice to the debtor and debtor’s attorney, seeking a declaration of the Court that cause exists to allow such non-conforming statements to satisfy the creditor’s obligations under this Standing Order. For cause shown, the Court may grant a waiver for purposes of a single case or multiple cases, and for either a limited or unlimited period of time. No waiver will be granted, however, unless the proffered statement substantially complies with the Standing Order and the creditor has demonstrated that it would be an undue hardship for it to strictly comply with the Standing Order.

VI. Amendment of Vt. LBR 4001-1(a) Regarding Content of Motions for Relief from Stay

Vt LBR 4001-1(a) Rule is hereby modified to add the following subparagraph (g):

(g) Impact of Post-Petition Invoicing on Content of Motion; Specificity Required in Both Motion and Opposition to Motion

- (1) A secured creditor seeking relief from the automatic stay based upon allegations of a post-petition payment default by a chapter 13 debtor must specify that it seeks relief based on the debtor’s payment default, articulate with specificity the amount and date of the payments the debtor allegedly failed to make, and attest that it has provided the debtor with the account information required by Standing Order # 07-07 in a timely fashion. In the event the secured creditor has not provided the debtor with the account information required by that Standing Order, the Court may deny the secured creditor’s request for recovery of attorney’s fees or costs in connection with the motion, regardless of the terms of its agree-

ment with the debtor; and the Court may order the secured creditor to pay the debtor's reasonable attorney's fees, if any, for responding to the motion.

- (2) A secured creditor seeking relief from the automatic stay based upon allegations of a post petition payment default by a chapter 7 debtor must specify that it seeks relief based on the debtor's payment default, articulate with specificity the amount and date of the payments the debtor allegedly failed to make, and attest that it responded promptly and thoroughly to the trustee or to the debtor's reasonable requests for account information.
- (3) A debtor opposing relief from stay in connection with a debt within the scope of Standing Order # 07-07 shall state with specificity which allegations of the creditor's motion the debtor disputes and must append to the motion either an affidavit of the debtor or copies of records showing proof of payment on the account, and articulate the debtor's legal and factual basis for asserting that the creditor is not entitled to relief from stay. The debtor's failure to meet these requirements may constitute cause for the Court to deny the debtor's request for additional time and/or for the Court to consider the motion unopposed.
- (4) When a chapter 13 debtor's objection to a motion for relief from stay contests, with specificity, either the payment default or the creditor's application of payments, the creditor shall immediately transmit the debtor's payment history and a detailed accounting of how the debtor's payments were applied to the outstanding obligation to counsel for the debtor (or to the debtor directly, if not represented by counsel), by electronic or facsimile means, to ensure that the debtor has a reasonable opportunity to review this data prior to the hearing on the motion for relief from stay.

VII. Effective Date and Impact upon Other Standing Orders

This Standing Order shall be effective immediately, and supersedes Standing Order # 06-09.

SO ORDERED.

Rutland, Vermont
April 9, 2007



Colleen A. Brown
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**

In re:

**MODIFICATION OF THE
LOCAL RULES OF PRACTICE AND
PROCEDURE IN THE BANKRUPTCY COURT,
FOR THE DISTRICT OF VERMONT**

STANDING ORDER # 07-08

**MOTION FOR ENTRY OF CHAPTER 13
DISCHARGE UNDER 11 U.S.C. § 1328
FOR CASES FILED ON OR AFTER
OCTOBER 17, 2005**

IT IS HEREBY ORDERED that, with respect to all chapter 13 cases filed on or after October 17, 2005, a discharge shall not be entered unless the following requirements are met.

1. Upon completion of a chapter 13 plan, the debtor shall file a motion for entry of discharge. The motion shall set forth, at a minimum, all of the averments included in the Court's local form entitled "Motion for Entry of Discharge."
2. In the Motion for Entry of Discharge, the debtor shall certify that:
 - (A) all domestic support obligations payable under any judicial or administrative order or required by statute have been paid, including but not limited to:
 - (i) child support and spousal maintenance and alimony that were due on or before the date of the motion, including all payments due under the plan for amounts due before the petition was filed; and
 - (ii) any domestic support obligations that arose after the filing of the petition;
 - (B) the debtor has completed a financial management course pursuant to §1328(g)(1) and filed a certification of completion with the Court; and
 - (C) the debtor has
 - (i) not claimed a homestead exemption in excess of the \$125,000 cap described in § 522(q)(1), or
 - (ii) claimed a homestead exemption in excess of \$125,000 but there is no proceeding pending in which the debtor may be found guilty of a felony of the kind described in § 522 (q)(1)(A) or liable for a debt of the kind described in § 522 (q)(1)(B).

3. If the debtor was represented by an attorney during the course of the chapter 13 case, the debtor's attorney shall certify that the attorney has explained the requirements for a discharge to the debtor and to the best of the attorney's knowledge, the debtor qualifies for a discharge under §§ 521, 1308, and 1328(a), (g)(1) and (h).

IT IS FURTHER ORDERED that the debtor shall serve the Motion for Entry of Discharge upon the beneficiary(ies) of the debtor's domestic support obligations, if any, the Chapter 13 Trustee, the United States Trustee, and any parties who have appeared in the case; the debtor may file and serve the motion using the Court's default procedure. See Vt. LBR 9013-4.

IT IS FURTHER ORDERED that if no Motion for Entry of Discharge is filed, no discharge shall be entered, and if no Motion for Entry of Discharge is filed within a reasonable time after completion of the payments due under the confirmed plan, the case may be closed without entry of a discharge order.

IT IS FURTHER ORDERED that this Standing Order supersedes and replaces Standing Order #05-10, entered on October 20, 2005; the only change is to reduce the scope of notice required.

IT IS FURTHER ORDERED that this standing order is effective immediately.

April 9, 2007
Rutland, Vermont



Colleen A. Brown
United States Bankruptcy Judge