

U.S. BANKRUPTCY COURT, DISTRICT OF VERMONT

SUMMARY OF 2012 CHANGES TO THE VERMONT LOCAL BANKRUPTCY RULES

PART 1

- 1002-1 eliminates the requirements for declarations regarding electronic filing and copies of petition and schedules
- 1007-1 (c) clarifies that trustee consent is required if a debtor moves to enlarge time to file schedules and deadline within 7 days of § 341 meeting
- (l) requires debtors institute either wage withholding or bank debit to fund chapter 13 plans
- 1009-1 articulates the need for amendments to conspicuously show the change
- 1015-1 replaces the term “husband and wife” with “married debtors” and uses the gender neutral term of “spouse” throughout

PART 2

- 2002-1 (g) sets out mechanics of service for motions to determine value / set amount of allowed secured claim
- 2014-1 (b) sets out new requirements for disclosure of prior or current representation of a party in the case, in connection with applications for retention of a professional
- 2016-1 (d) describes more precisely the requirement for a certification in support of fee application
- (h) and (i) permit a reduction in required legal services in certain *pro bono* cases and describe the procedure for unbundling certain legal services with respect to applications to waive the ch 7 filing fee
- 2016-2 (a) establishes new presumed reasonable fees for ch 13 debtor’s attorneys (three fee structures, depending on whether case has no secured creditors, is a non-conduit mortgage plan, or is a conduit mortgage plan)
- (d) establishes presumed reasonable fees for relief from stay and modification motions
- 2090-1 (b) establishes additional criteria for *pro hac vice* admission and updates criteria to be consistent with U.S. District Court rule
- (c)(4) removes clerkship requirement for law clerks and adds as an alternative the completion of Vermont’s four-year law office studies program

PART 3

- 3007-1 (b) changes the rule regarding objections to claims
- 3012-1 clarifies the procedure for a motion to value collateral, fixes amount of secured claim, sets an interest rate on that claim, and identifies the references to be used when valuing collateral
- revises model form motion to determine value (Vt. LB Form D-1) to provide the basis for valuation, whether the creditor has a purchase-money security interest in the collateral, whether the hanging paragraph in § 1325(a) applies, and the proposed interest rate under Till case
- 3013-1 sets out the procedure for a motion to strip wholly unsecured liens or mortgages, and includes special certification from the chapter 12/13 trustee that must be signed prior to the order being recorded
- creates new model form motion and order to strip wholly unsecured lien or mortgage (Vt. LB Form N-3 and N-4)
- 3015-1 (c) specifies details to be included when a ch 13 plan includes a sale of property
- (d) specifies minimum monthly payment and maximum period for selling property essential to funding of a plan
- modifies model form plan (Vt. LB Form E) to remove provision stating that the stay is lifted as to the surrendered collateral upon entry of the confirmation order
- 3015-2 (d) articulates the limited scope of objections that may be made to an amended plan
- (e) sets deadline for filing papers – by 10 a.m. on the last business day before the hearing
- (g) gives parties up to 7 days before the confirmation hearing to file a motion to postpone an initial hearing and until 10 a.m. on the business day before the confirmation hearing to reschedule a continued hearing
- (i) specifies terms required in sale plan and creates requirement that debtor attorney file a separate motion to approve any sale conducted in ch 13
- (j) sets out the procedure for conduit mortgage plans, including new definitions for “administrative arrearage claim” and “conduit mortgage payment plan” per standing order # 11-04, which supersedes standing order # 10-02
- (j)(7)–(8) updates the procedure for treatment of post-petition mortgage payment changes, treatment of post-petition mortgagee charges, and orders declaring the debtor current, to comport with Fed. R. Bankr. P. 3002.1
- 3017-1 describes requirement to use form order for approval of disclosure statements
- creates new model order approving disclosure statement (Vt. LB Form P)

- 3020-1 clarifies requirements for ch 11 confirmation hearing
- 3022-1 (c) requires ch 11 operating reports to be filed by 20th day following month covered (rather than last day of next month) to be consistent with U.S. Trustee guidelines
- 3070-1 (a) clarifies the various ways chapter 13 debtors may make payments (ACH, wage withholding) and limited circumstances under which a chapter 13 debtor may make plan payments directly to the chapter 13 trustee
- (c) fixes the amount due the chapter 13 trustee upon pre-confirmation conversion or dismissal of a case to be the trustee's regular commission based upon amount of payments made (rather than flat \$100 fee)
- 3071-1 defines the various categories of secured creditors

PART 4

- 4001-1 (b)(1) specifies that a creditor must wait 10 days after giving notice of default before filing a motion for relief from stay
- (b)(3) makes clear that a debtor's failure to provide a detailed response with an affidavit disputing the movant's allegations is cause for Court to consider a relief from stay motion unopposed
- (d) clarifies that parties who file relief from stay stipulations are not required to attach copies of the loan and security interest documents or related Court orders, and that affidavits are not required in support of relief from stay stipulations (because not asking the Court to adjudicate any factual dispute)
- (g) requires the relief from stay order to identify collateral using same descriptors as required in the motion
- (h) if a conditional order or stipulation for relief from stay does not set a time period for the debtor to respond to a default affidavit, the debtor shall have 7 days to respond; if the conditional order or stipulation does set a time period for the debtor's response, then that time period controls
- 4001-5 lays out the various categories of requests to obtain credit, and alternative means for securing that authorization in each category
- 4001-7 sets out the mediation procedure in a separate rule
- (a) clarifies that the Court will not grant a motion for mediation if the Court has already entered a discharge order or an order granting relief from stay as to that property, unless the creditor affirmatively consents
- (b)(3) adds the text of the state foreclosure mediation bill, which requires that parties address issues regarding ownership of instruments and pooling and servicing agreements in

the mediation process; Vt legislature, House Bill H.600, “An Act Relating to Mandatory Mediation in Foreclosure” (Mar. 16, 2012)

(b)(4) adds another provision from the state foreclosure mediation bill – requires mortgagee to produce all pooling and servicing agreements and any other agreements pertinent to the mediation and that parties keep the documents confidential

(c) explains that the filing of the selection of the mediator form with a mediator selected shall constitute appointment of the mediator (without need for Court order)

(e) directs that the mediator’s flat \$750 fee shall be split equally among the parties to the mediation and specifies that a trustee who participates has no liability for any of the mediator’s fee

(h) ensures that, at a minimum, all mediators must be qualified under the state statute and by the state court and have significant bankruptcy experience; the Clerk will monitor the certification process to ensure that mediations conducted in this Court satisfy the state standards so parties who mediate here are not at risk of being required to mediate the same issue again in state court

4002-1 (d)(2)(B) specifies other types of personal property collateral that are subject to disclosure and document production requirements

4003-2 makes clear it deals only with motion to avoid liens that impair exemptions under § 522(f), and includes special certification language for the chapter 7 or 12/13 trustee that must be added to the order prior to recording

revises model form motion to avoid lien (Vt. LB Form N-1) to provide that debtor attaches copy of judgment order or contract creating security interest with proof of perfection, claims the exemption in Schedule C, includes basis for alleging that the lien sought to be avoided is a judicial lien or avoidable interest, and specifies that the lien is avoided unless the case is dismissed

creates new model form order granting motion to avoid lien (Vt. LB Form N-2)

PART 5

5003-5 sets out the procedure for the deposit and investment of funds in the Court’s registry

5005-2 makes clear that a document is deemed filed at the time it is entered into the CM/ECF system regardless of whether it is filed directly into the CM/ECF system, submitted to the Clerk’s Office for filing via mail, e-mail, or fax, or hand delivered to the Clerk somewhere other than at the Clerk’s Office (same as with petitions – see Vt. LBR 1002-1)

5007-1 (b) explains Court’s use of, and parties’ access to, digital audio recordings of hearings

(d) explains procedure for obtaining an official transcript from a digital audio recording

(f) clarifies responsibilities and potential sanctions regarding inclusion of personal data identifiers in filed documents

- 5070-1 reflects that certain items relating to the telephonic appearances and the use of audio-visual aids at hearings have been moved from Vt. LBR 5072-1
- 5072-1 sets out current courtroom protocol
- 5073-1 (a) and (b) reflect current technology descriptors
(d) clarifies parameters for use of video conferencing
- 5081-1 (c) explains option to use Pay.gov to pay court fees
(d) sets out procedure for requesting overpayment when error made in electronic payment

PART 6

- 6003-1 delineates the requirements for first day motions
- 6004-1 (b) eliminates need for minimum bid to be specified when sale to occur by public auction
(e)(3) reiterates that sales in ch 12 and 13 plans must be approved by separate motion
(f) sets forth procedure for mortgage modifications in ch 12 and 13 cases (note: there is no trustee's approval procedure for this relief)
creates new model § 363(b) and (f) sale motions and orders (Vt. LB Form J-1, J-2, J-3, and J-4)
- 6006-1 addresses procedure for motions to approve a lease in ch 7 cases
- 6007-1 creates new model order granting motion to compel trustee to abandon (Vt. LB Form Q)

PART 7

- 7004-2 reflects current practice regarding issuance of summons
- 7008-1 requires parties to specify if they consent to Court entering a final order in a core or non-core matter, in complaints, to address uncertainties created by Stern v. Marshall, 131 S. Ct. 2594 (2011)
- 7012-1 requires parties to specify if they consent to Court entering a final order in a core or non-core matter, in responsive pleadings, to address uncertainties created by Stern
- 7016-1 (e) sets out the procedure for motion to modify a scheduling order
- 7026-1 revises model form scheduling order (Vt. LB Form X) to include information addressing uncertainties created by Stern

- 7052-1 sets out the procedure for entry of, and objections to, the Court's proposed findings of fact and conclusions of law, and the transmission of both to the U.S. District Court
- 7055-1 clarifies the procedure for entry of default and procedure for obtaining a default judgment (the two-step process); and lays out circumstances when a hearing is likely to be necessary

PART 8

There are no substantive changes in Part 8.

PART 9

- 9006-1 specifies that all "days" in Rules mean calendar days unless otherwise specified (note: time periods of three days are described throughout to be three business days)
- 9010-2 requires parties relying upon a power of atty to file a copy of the POA
- 9011-1 modifies requirements for retention of original documents
- 9011-4 explains requirements for original signatures and ways to convey signed documents to Court
- 9013-1 (b) narrows requirement for pre-filing consultation certification to exclude motions a movant is required to file based upon a statute or rule, or other compelling circumstances, provided the movant explains the reason for the lack of consultation certification in the text of the motion
- (f) permits parties to include a "So Ordered" at end of stipulated motion (an "endorsement order"), waiving the requirement for a separate proposed order
- (g) provides more detail of the procedure for motions under seal and points out that in the current electronic filing environment, filing a document *ex parte* does not mean no one gets notice; to ensure no one will know of the filing, a party must move to file the document under seal (*i.e.*, inaccessible to the public); also makes clear the Office of the U.S. Trustee must be served with motions to seal unless there is cause not to serve it, and reiterates that filing documents under seal is extraordinary relief and will be permitted as narrowly as possible to achieve necessary protection
- (j) makes clear that a hearing will proceed unless a stipulated order and consents are filed resolving the motion, and eliminating the need for the hearing, by 10 a.m. on last business day before the hearing
- 9013-2 (c)(3) and (4) set out parameters for participation in hearings via video conferencing
- 9013-3 (b) updates notice of motion language to use separate language for ch 11 cases
- 9013-4 (b) lists motions that may be filed using the default procedure in a clearer alphabetized order and includes all applications and motions currently available for default procedure (*e.g.*, motions for compensation, mediation motions, CMP motions)

- (c) requires special notice of motion language in ch 11 cases
- 9013-5 eliminates requirement to file a memorandum of law with all motions; now only required in connections with motions that raise a new or novel issue of law in the District
- 9013-6 (a) explains more fully how and when to file a certificate of service in an electronic court
- 9014-1 (a) requires each party to designate a contested matter as either a core or non-core matter and to comply with the Vt. LBR 7008-1 requirements (including the requirement to specify whether the party consents to entry of a final order or judgment by the Bankruptcy Court if the Bankruptcy Court determines that, absent consent of the parties, it cannot enter a final order or judgment consistent with Article III of the United States Constitution)
- 9027-1 (d) requires parties to specify whether they consent to entry of a final judgment by this Court in each action removed to this Court
- 9033-1 explains role of proposed findings of fact and conclusions of law in certain core proceedings, to address uncertainty created by Stern
- 9070-1 clarifies procedures for marking, distributing, and retrieving exhibits used in evidentiary hearings and trials
- 9072-1 delineates circumstances when a proposed order must be filed and the exceptions where an endorsement order (addition of “So Ordered”) is permitted
- 9075-1 makes more conspicuous the requirement to call the Clerk’s Office when filing an emergency motion
- 9076-1 implements the chapter 11 case management conference procedures