

VBA BANKRUPTCY LAW SECTION
BENCH-BAR BROWN BAG LUNCH MEETING
with Hon. Colleen A. Brown, U.S. Bankruptcy Judge
United States Bankruptcy Court, Burlington
Wednesday, September 7, 2016 ~ 12:00 - 1:10 P.M.

Dial-in number: (888) 398-2342, Access Code: 846 68 72#

AGENDA

1. COURTROOM SECURITY PRESENTATION (15 min) Adam Stein, Senior Inspector
U.S. Marshals Service
 - Procedures to be discussed in the event of an incident:
 - Evacuation, Shelter in Place, Active Shooter (handout attached)
2. CMP RULE TASK FORCE – PRELIMINARY REPORT (15 min) Jan Sensenich / Michelle Kainen
See attachments
3. MODEL CH 13 PLAN - PER NEW BK RULE 3015.1 (10 min) Judge Brown / Jan Sensenich
 - Ch 13 T to give overview of the proposed new model plan & related rules (copies of both are attached)
 - Note: new Rules grant an option for each District to opt out under certain circumstances & make substantive changes, all of which are effective **12/1/17**
 - Comment period ends 10/3/17. Does Bk section wish to file comments?
4. TAX TIP FOR BANKRUPTCY PRACTICE (5 min) Melissa Ranaldo
5. STAFF UPDATE & PRACTICE POINTER FROM CH 13 TRUSTEE'S OFFICE Jan Sensenich / Michelle Kainen
 - Decrease in filings has led to reduction in staff in the Ch 13 T's office
 - Need attorneys to be more effectively redact docs sent to Ch 13 T
6. ANNUAL HOLIDAY CLE (5 min) Heather Cooper
 - Date set for **Friday December 2nd**; at **Essex Culinary Resort and Spa**
 - Preview of possible programs to be offered, call for presenters
7. JUDICIAL LIAISON REPORT Judge Brown
 - Thanks to the bankruptcy bar for their feedback to John Kellner
 - Very helpful as we implement strategies to be as efficient as possible
8. 2017 COURT & 341 MEETING CALENDAR Lisa Penpraze
 - All §341 mtgs will be held in courthouses - to ensure adequate security
 - Chapter 13 §341 mtgs will generally be on the same day as conf hrs
 - There will be one ch 7 /11 motion calendar per month in each location
 - For all of the above, Rutland hrs/ §341 meetings will be on Fridays and Burlington hrs/ §341s meetings will be on Wednesdays
 - **NOTE: in Jan, Oct, and Nov, the chapter 7 §341 meetings will be in the afternoon**
9. Clerk's Announcement # 16-102 – Court Call-In Telephone Number. Theresa Davidson
 - Purpose of this change is to make it easier for attorneys to participate, by telephone, in Bankruptcy Court meetings & hearings
 - Call-in number will always be the same (see attached):
 - Call in number is **(888) 398-2342**; access code is **84 668 72#**

10. HISTORICALLY SIGNIFICANT VTB BANKRUPTCY CASES

Theresa Davidson

- the Federal Record Center will retain forever cases of such significance
- If anyone knows of a VT bankruptcy case they believe warrants designation as “historically significant,” let Theresa know.

11. SUGGESTED TOPICS FOR OUR NEXT MEETING?

Heather Cooper

These Bench-Bar lunch meetings are coordinated by the Bankruptcy Court
Have a question about them? Contact Maria Dionne at 802-657-6432 or maria_dionne@vtb.uscourts.gov
No fee and no pre-registration required. Bottled water will be provided.

Attachments: Materials for USMS presentation
CMP Task Force Preliminary Report
Copy of Proposed Model Ch 13 Plan & Related Proposed Rules, with pertinent Advisory Notes
Clerk’s Announcement #16-102

District of Vermont Bankruptcy Security Briefing

Adam Stein, Senior Inspector
U.S. Marshals Service
(802) 951-6204 Office

The District of Vermont has Security & Safety Plans for various scenarios that include: Active Shooter, Evacuation, bomb threats, suspicious packages and natural disaster situations. In brief, a few things you should be familiar with.

Shelter-In-Place

Sometimes the best way to stay safe in an emergency is to get inside and stay put inside a building or vehicle. Where you should stay can be different for different types of emergencies.

If officials (Court Room Deputy, Court Security Officers, court house staff) tell you to "stay put or shelter in place," act quickly. Listen carefully to instructions (in person or through PA system), because the exact directions will depend on the emergency situation. In general you should:

1. Find a safe spot in this location. The exact spot will depend on the type of emergency.
2. Stay put in this location until officials say that it is safe to leave.

Active Shooter

An Active Shooter is an individual actively engaged in killing or attempting to kill people in a confined and populated area; in most cases, active shooters use firearms(s) and there is no pattern or method to their selection of victims.

Active shooter situations are unpredictable and evolve quickly. Typically, the immediate deployment of law enforcement is required to stop the shooting and mitigate harm to victims.

Because active shooter situations are often over within 10 to 15 minutes, before law enforcement arrives on the scene, individuals must be prepared both mentally and physically to deal with an active shooter situation.

RUN HIDE FIGHT

See hand-out

Facility Evacuation

Upon direction of court staff which includes: Court Room Deputy, Court Security Officers, building emergency voice activated system) individuals that are occupants of the 11 Elmwood Ave Federal Building will be provided shelter from weather at First Unitarian Church at 152 Pearl Street. This church is located directly across the street from the main lobby. If you are ordered to evacuate do just that; do not worry about personal items, your safety is much more important than your belongings.



There will be Court Security Officers, Court Staff and or a designated official at this location to provide you with further information.

HOW TO RESPOND

WHEN AN ACTIVE SHOOTER IS IN YOUR VICINITY

1. RUN

- Have an escape route and plan in mind
- Leave your belongings behind
- Keep your hands visible

2. HIDE

- Hide in an area out of the shooter's view
- Block entry to your hiding place and lock the doors
- Silence your cell phone and/or pager

3. FIGHT

- As a last resort and only when your life is in imminent danger
- Attempt to incapacitate the shooter
- Act with physical aggression and throw items at the active shooter

CALL 911 WHEN IT IS SAFE TO DO SO

HOW TO RESPOND

WHEN LAW ENFORCEMENT ARRIVES

- Remain calm and follow instructions
- Put down any items in your hands (i.e., bags, jackets)
- Raise hands and spread fingers
- Keep hands visible at all times
- Avoid quick movements toward officers such as holding on to them for safety
- Avoid pointing, screaming or yelling
- Do not stop to ask officers for help or direction when evacuating

INFORMATION

YOU SHOULD PROVIDE TO LAW ENFORCEMENT OR 911 OPERATOR

- Location of the active shooter
- Number of shooters
- Physical description of shooters
- Number and type of weapons held by shooters
- Number of potential victims at the location

COPING

WITH AN ACTIVE SHOOTER SITUATION

- Be aware of your environment and any possible dangers
- Take note of the two nearest exits in any facility you visit
- If you are in an office, stay there and secure the door
- Attempt to take the active shooter down as a last resort

Contact your building management or human resources department for more information and training on active shooter response in your workplace.

PROFILE

OF AN ACTIVE SHOOTER

An active shooter is an individual actively engaged in killing or attempting to kill people in a confined and populated area, typically through the use of firearms.

CHARACTERISTICS

OF AN ACTIVE SHOOTER SITUATION

- Victims are selected at random
- The event is unpredictable and evolves quickly
- Law enforcement is usually required to end an active shooter situation



**CALL 911 WHEN IT
IS SAFE TO DO SO**

PROPOSED RULE REVISION from the CMP Task Force 2016

(a) Conduit Mortgage Payments.

- (1) **Local Bankruptcy Forms.** Paragraph (h) requires use of the following local bankruptcy forms: mortgage creditor checklist (Vt. LB Form Y-1); notice of conduit mortgage payment and authorization to release information to the Chapter 13 trustee (Vt. LB Form Y-2); model mortgage payment history (Vt. LB Form Y-5); and notice of transfer of claim (other than for security) (Official Form B210a). All of these forms are available on the Court's website, <http://www.vtb.uscourts.gov>. Use of these forms is required, with the exception that if a Mortgage Creditor (as defined in subparagraph (2)(G)) is already using forms that substantially conform to these forms and provide all of the information included on the forms, the Mortgage Creditor may use its own forms unless and until the Court orders otherwise.
- (2) **Definitions.** For purposes of this Rule, the following terms have the stated meanings:
 - (A) A "Conduit Mortgage Payment" is the Regular Monthly Mortgage Payment the debtor is obligated to pay to the Mortgage Creditor post-petition, which the Chapter 13 trustee disburses pursuant to the terms of this Rule.
 - (B) A "Conduit Mortgage Payment Plan" is a Chapter 13 plan that includes the payment of ongoing monthly mortgage payments on one or more mortgages, by the Chapter 13 trustee to the Mortgage Creditor from payments that are included in the debtor's Chapter 13 plan payments to the Chapter 13 trustee.
 - (C) The debtor is "Delinquent" when the debtor owes the Mortgage Creditor any past due payments or other charges as of the Filing Date. This term does not include a failure to make Regular Monthly Mortgage Payments that came due after the Filing Date.
 - (D) The "Filing Date" is the date the case was filed under, or converted to, Chapter 13.
 - (E) A "Mortgage Creditor" is an entity entitled to enforce an allowed claim secured by a properly perfected mortgage on the debtor's residential real property, or the servicer for that entity, as determined by which entity files a proof of claim for the mortgage debt. Wherever this Rule refers to notice on the Mortgage Creditor, or requires the Mortgage Creditor to file a document, it also refers to the Mortgage Creditor's attorney.
 - (F) The "Mortgage Payment Accounting" is a complete history of the Chapter 13 trustee's receipt of payments from the debtor and disbursement of payments to the Mortgage Creditor, with the disbursements showing separate entries for the Conduit Mortgage Payments, and Pre-Petition Mortgage Arrearage components.
 - (G)
 - (H) The "Post-Petition Mortgage Arrearage" is the sum of past due Regular Monthly Mortgage Payments the debtor owes to a Mortgage Creditor post-petition.
 - (I) The "Pre-Petition Mortgage Arrearage" is the sum of Regular Monthly Mortgage Payments the debtor owes to a Mortgage Creditor that came due prior to the Filing Date, without regard to any grace period that expires post-petition.
 - (J) A "Regular Monthly Mortgage Payment" is:

- (i) the sum of the principal, interest, taxes, insurance, administrative fees, and any other charges properly escrowed, charged, or assessed under a note and secured by a properly perfected mortgage on the debtor's residential real property, which is due each month; or
- (ii) a monthly amount of no less than the sum of the taxes, insurance, administrative fees, and anticipated interest and principal, which is proposed in conjunction with the debtor's participation in this Court's Mortgage Mediation and Loss Mitigation Program,
 - (a) a debtor's plan utilizing a regular monthly mortgage payment under subparagraph (ii) may only be confirmed by the court if
 - 1 after notice and opportunity the mortgage creditor does not object, and
 - 2 the debtor's plan provides that the debtor will promptly modify this figure to match the outcome of mortgage mediation, if necessary, as described in Vt. LBR ____.

(K) A "Waiver Order" is a Court order that waives the requirement to make Conduit Mortgage Payments to the Mortgage Creditor through a Chapter 13 plan.

(3) **Post-Petition Mortgage Payments.** A debtor is required to make Conduit Mortgage Payments as follows:

(A) When the Debtor is Not Delinquent.

- (i) Except as provided in subsections (iii) and (iv), below, a debtor who is not Delinquent is not required to make Conduit Mortgage Payments.
- (ii) A debtor who is not Delinquent may elect to make Conduit Mortgage Payments as outlined in this Rule, by so specifying in the Debtor's Chapter 13 plan.
- (iii) If (a) a debtor has been making Regular Monthly Mortgage Payments directly to a Mortgage Creditor post-petition pursuant to section (i), (b) the Mortgage Creditor files a motion for relief from stay based at least in part upon the debtor's post-petition default in Regular Monthly Mortgage Payments, (c) the Court finds the debtor is in default on those payments, but (d) the Court either allows the debtor to retain the real property that secures the Mortgage Creditor's claim and conditionally maintains the automatic stay or denies the motion based upon the debtor's election to make Conduit Mortgage Payments, then the Mortgage Creditor must include in its proposed order provisions directing the debtor to make Conduit Mortgage Payments commencing with the first Regular Monthly Mortgage Payment due date following entry of the order, requiring the debtor to increase the monthly plan payments to an amount sufficient to include the Conduit Mortgage Payment, and directing the debtor to comply with all applicable provisions of this paragraph.
- (iv) If (a) a debtor has been making Regular Monthly Mortgage Payments directly to a Mortgage Creditor post-petition pursuant to subsection (i), and (b) the debtor files a motion to modify the Chapter 13 plan based upon a post-petition default in Regular Monthly Mortgage Payments, the motion and corresponding proposed order must require the debtor

to make Conduit Mortgage Payments commencing with the first Regular Monthly Mortgage Payment due date following entry of the order granting modification of the plan, and to increase the monthly Chapter 13 plan payment to an amount sufficient to include the Conduit Mortgage Payment.

(B) When the Debtor is Delinquent.

- (i) Except as provided in subsection (ii), below, a debtor who is Delinquent is required to make Conduit Mortgage Payments.
 - (ii) A debtor who is Delinquent may obtain a Waiver Order only upon a showing of cause, based upon exigent circumstances.
 - (a) The debtor bears the burden of showing cause in any motion for a Waiver Order. The debtor must file the motion on notice to the Chapter 13 trustee and the Mortgage Creditor within seven days of the Filing Date, and may use the default procedure. See Vt. LBR 9013-4.
 - (b) The additional cost associated with the Chapter 13 trustee's fee on the Conduit Mortgage Payment will not constitute cause for entry of a Waiver Order unless the debtor shows that the additional cost would cause the Chapter 13 plan to fail.
 - (iii) A Mortgage Creditor or the Chapter 13 trustee may file a motion to revoke a Waiver Order if:
 - (a) the Mortgage Creditor files a motion for relief from stay based at least in part upon the debtor's post-petition default in Regular Monthly Mortgage Payments;
 - (b) the Court finds the debtor is in default of those payments;
 - (c) the outcome of the motion for relief from stay is the Court's entry of an order that either (1) allows the debtor to retain the real property that secures the Mortgage Creditor's claim and conditionally maintains the automatic stay, or (2) denies the motion for relief from stay based on the debtor's election to make Conduit Mortgage Payments; and
 - (d) the debtor has not filed a motion to modify the Chapter 13 plan to voluntarily commence making Conduit Mortgage Payments pursuant to section (A)(iv).
- (4) **Duties of the Debtor.** A debtor who is Delinquent, is otherwise subject to the Conduit Mortgage Payment requirement, or voluntarily chooses to make Conduit Mortgage Payments, must fulfill the following duties:

(A) Duty to Specify Components of Mortgage Creditor's Claim in Chapter 13 Plan.

- (i) In the Chapter 13 plan, the debtor must specify:
 - (a) the amount of the Conduit Mortgage Payment;
 - (b) The total amount of Conduit Mortgage Payments being paid through the plan.
 - (1) The total amount of Conduit Mortgage Payments being paid through the plan shall be calculated by multiplying the Conduit Mortgage Payment by the number of months of the plan, plus two additional months.

- (c) the amount of the Pre-Petition Mortgage Arrearage and the Regular Monthly Mortgage Payments included in that arrearage figure.
- (ii) The debtor must also file a wage withholding authorization (Vt. LB Form Y-8) with the Chapter 13 plan, unless the debtor files a motion for waiver of the wage withholding requirement.
- (B) Duty to Provide Forms to the Chapter 13 Trustee and Mortgage Creditor.** The debtor must complete the mortgage creditor checklist (Vt. LB Form Y-1) and the notice of conduit mortgage payment and authorization to release information to the Chapter 13 trustee (Vt. LB Form Y-2), and must provide both, along with a copy of the three most recent mortgage invoices or monthly payment vouchers, (if available), to the Chapter 13 trustee, with a copy to the Mortgage Creditor, no later than seven days after the Filing Date.
- (C) Duty to Make Timely First Chapter 13 Plan Payment Directly to the Chapter 13 Trustee.** The debtor must make the first Chapter 13 plan payment, in an amount that includes the full Conduit Mortgage Payment, directly to the Chapter 13 trustee within 30 days of the Filing Date.
- (D) Duty to Make Sufficient Chapter 13 Plan Payments.** If the amount of the Regular Monthly Mortgage Payment increases during the term of the Chapter 13 plan, the debtor must increase the amount of the Chapter 13 plan payment to the Chapter 13 trustee by an amount equal to the increase in the Regular Monthly Mortgage Payment due, plus the Chapter 13 trustee's fee allocable to that additional sum, and the Chapter 13 trustee must effectuate this via notice to the entity withholding the Chapter 13 plan payment. The increased Chapter 13 plan payment will be due on the effective date of the increase in the Regular Monthly Mortgage Payment. If the amount of the Regular Monthly Mortgage Payment decreases during the term of the Chapter 13 plan, the Chapter 13 plan payment will not change, and the Chapter 13 trustee must retain the additional funds and disburse them as set forth in subparagraph (7)(A)(iv), unless the debtor modifies the Chapter 13 plan to provide otherwise.
- (E) Penalty for Failure to Comply with Foregoing Requirements.** The debtor's failure to comply with the requirements of subparagraph (4) may result in the Court denying confirmation of the Chapter 13 plan.
- (F) Additional Duty to Object to Proof of Claim.** If the debtor believes that the Mortgage Creditor's proof of claim is inaccurate, the debtor must promptly file an objection to the proof of claim.
- (i) If the debtor's objection is overruled, within seven days of the Court's ruling, (a) the Chapter 13 trustee must file a notice of increased Chapter 13 plan payment and serve that notice on the debtor's employer to increase wage withholding to reimburse the Mortgage Creditor for any post-petition shortfall and to make correct payments going forward to comport with the allowed proof of claim, and (b) if needed, due to the change in treatment to other claimants under the plan, the debtor ~~should~~ shall file a motion to amend or modify the Chapter 13 plan.
- (ii) If the debtor's objection is sustained, the trustee must continue to disburse payments in the amount determined by the Court and file an amended proof of claim on behalf of the Mortgage Creditor consistent with the Court's order.

(5) Duties of the Chapter 13 Trustee.

- (A) Duty to Disburse Conduit Mortgage Payments.** Upon receipt of a mortgage creditor checklist (Vt. LB Form Y-1), notice of conduit mortgage payment and authorization to release information to the trustee (Vt. LB Form Y-2), and the first Chapter 13 plan payment, the Chapter 13 trustee must commence disbursing Conduit Mortgage Payments to the Mortgage Creditor in the amount specified in the debtor's Chapter 13 plan, unless the debtor has filed a motion requesting that no payments be made to the Mortgage Creditor until some future date (e.g., the filing of a proof of claim by the Mortgage Creditor, resolution of an objection to the Mortgage Creditor's proof of claim), and the Court enters an order granting the debtor's motion. If the Chapter 13 trustee makes payments to the Mortgage Creditor according to the Chapter 13 plan and it later becomes clear, by agreement or Court order, that the amount paid to the Mortgage Creditor was not due, either in whole or in part, the Mortgage Creditor must disgorge any such overpayments. See subparagraph (6)(B).
- (B) Duty Regarding Plan Payment Increases.** Upon receipt of a notice of mortgage payment change (Official Form B410S-1), pursuant to subparagraph (7)(A), the Chapter 13 trustee must:
- (i) file with the Court notice of any required Chapter 13 plan payment increase;
 - (ii) serve a copy of such notice on the debtor and the debtor's attorney; and
 - (iii) if the proposed increase in plan payment is less than 5% and the debtor does not object, pursuant to subparagraph (7), within 14 days of service of the notice of mortgage payment change, then the Chapter 13 trustee must file a notice of increased Chapter 13 plan payment and promptly serve notice of increased wage withholding on the entity withholding the Chapter 13 plan payment, and must commence making Conduit Mortgage Payments in the new amount on the later of the date the Chapter 13 trustee begins receiving increased Chapter 13 plan payments or the effective date of the new payment.
 - (iv) If the proposed increase in plan payment is 5% or more, the Chapter 13 trustee shall schedule a status conference so that the court can address feasibility of the proposed plan payment increase. If, prior to the status conference, the debtor files a Motion to Modify the Chapter 13 plan, or a Stipulation to Plan Payment Increase, with any necessary amended schedules, the trustee may withdraw the request for status conference, and commence making Conduit Mortgage Payments in the new amount, once the Motion to Modify has been granted or the Stipulation has been filed.
- (C) Duty to Disburse Only Full Payments; Duty When Insufficient Funds Available.** The Chapter 13 trustee must disburse payments only in an amount equal to the Regular Monthly Mortgage Payment to the Mortgage Creditor as Conduit Mortgage Payments unless the Chapter 13 trustee is disbursing a final payment due to satisfaction of claim, conversion, or dismissal. If funds in the debtor's account with the Chapter 13 trustee are not sufficient to make a full Conduit Mortgage Payment and pay the corresponding Chapter 13 trustee's fee, then the Chapter 13 trustee must hold such funds until the Chapter 13 trustee receives from the debtor funds sufficient to do so. In such an event, within seven days of the date the Chapter 13 trustee intended to make the Conduit Mortgage Payment, the Chapter 13 trustee must notify by email the debtor, the debtor's attorney, and the Mortgage Creditor that there are insufficient funds to make full payment and the amount of additional funds needed to make a full payment.

(D) Duty to Specify Proper Application of Payment. The Chapter 13 trustee's payments to a Mortgage Creditor must include a voucher narrative:

- (i) identifying the debtor's name, Chapter 13 case number, and the last four digits of the Mortgage Creditor's account number; and
- (ii) indicating the amount allocable to the Conduit Mortgage Payment, and the amount allocable to the Pre-Petition Mortgage Arrearage.

(E) Duties upon the Debtor's Default. If the debtor fails to make any timely or full Chapter 13 plan payment, including the first Chapter 13 plan payment, then the Chapter 13 trustee must take the following steps:

- (i) The first time the debtor fails to make a timely or full Chapter 13 plan payment, within 14 days of the default, the Chapter 13 trustee must file and serve upon the debtor, mortgage creditor, and their attorneys (if any) a notice of delinquency specifying the due date and amount of the missed payment, and the amount needed to cure the plan payment default. If the debtor does not cure the default or file a motion to modify the Chapter 13 plan within 30 days of the filing of the Chapter 13 trustee's notice, the Chapter 13 trustee must file and serve upon all parties in interest a motion to dismiss the case based upon the payment default and any other grounds the Chapter 13 trustee deems warrant dismissal of the case.
- (ii) The second time the debtor fails to make a timely or full Chapter 13 plan payment, within 14 days of the default, the Chapter 13 trustee must file and serve upon all parties in interest a motion to dismiss the case, specifying that it is the second Chapter 13 plan payment default and any other grounds the Chapter 13 trustee deems warrants dismissal of the case.
- (iii) Nothing in this paragraph precludes a Mortgage Creditor, or any other party in interest, from filing a motion to dismiss the case or a motion for relief from stay based upon a debtor's default in Chapter 13 plan payments or other requirements of this paragraph, or other grounds set forth in § 1307.

(F) Duty to File Motion to Declare the Debtor Current Upon Completion of Conduit Mortgage Payments. See subparagraph (8).

(6) Duties of the Mortgage Creditor.

(A) Duty to File a Proof of Claim as Soon as Practicable. A Mortgage Creditor with a Pre-Petition Mortgage Arrearage claim is encouraged to file a proof of claim as soon as practicable after receipt of notice of the debtor's bankruptcy filing. The Mortgage Creditor should attach to the proof of claim a mortgage proof of claim attachment (Official Form 410A) to facilitate a prompt commencement of post-petition payments in the correct amount, and is further encouraged to provide the mortgage proof of claim attachment to the Chapter 13 trustee in advance of filing the proof of claim.

(B) Duty to Apply Payments Properly. The Mortgage Creditor must apply each Conduit Mortgage Payment disbursed by the Chapter 13 trustee to the earliest outstanding post-petition payment due under the Chapter 13 plan.

(C) Duty to Limit Late Fees. The Mortgage Creditor may not charge the debtor a late fee unless the tardiness of the payment was caused by the debtor's failure to make a full or timely

Chapter 13 plan payment to the Chapter 13 trustee.

(C) Duty to Provide Annual Payment History.

- (i) During the pendency of the Chapter 13 case and using the model mortgage payment history form (Vt. LB Form Y-5), on or before March 1st of each year, the Mortgage Creditor must provide to the debtor, the debtor's attorney, and the Chapter 13 trustee, a summary of the 12-month mortgage payment history from January 1st through December 31st of the previous year, on the loan on which Conduit Mortgage Payments have been disbursed. If the case was filed or converted from another chapter on or after January 1st, the first summary must include activity on the account from the Filing Date through December 31st of the previous year.
- (ii) The mortgage payment history summary is not to be filed with the Court unless authorized by the Court to do so or it is pertinent to a motion for relief from stay or a motion to dismiss, in which event it shall be filed as an attachment to the motion.

(E) Duty to Provide Documents to the Debtor's Attorney and the Chapter 13 Trustee. The Mortgage Creditor must provide to the debtor's attorney and the Chapter 13 trustee copies of all documents sent to the debtor post-petition, including correspondence, statements, payment coupons, escrow notices, and default notices, and any other documents, which disclose a change in:

- (i) the name or identity of the Mortgage Creditor;
- (ii) the monthly payment amount;
- (iii) the interest rate or escrow requirements; or
- (iv) the address to which mortgage payments are to be sent.

(D) Duty to Attach Information to Motion for Relief from Stay. A motion for relief from stay in a Conduit Mortgage Payment case must be accompanied by either a mortgage payment history summary (Vt. LB Form Y-5) setting forth the post-petition account history, or a print-out from the Chapter 13 trustee's website showing the debtor's Chapter 13 plan payment history, including the portion of the website report showing the date the data was last updated. If the Mortgage Creditor prevails on its motion for relief from stay, demonstrates that payments were not timely made, and a conditional or absolute order for relief is entered, the proposed order may authorize the Mortgage Creditor to collect late fees on past due payments, if the Mortgage Creditor requested that relief in the motion. See also Vt. LBR 4001-1.

(7) Post-Petition Changes and Additional Charges.

(A) Changes to Regular Monthly Mortgage Payment Amount.

- (i) If the mortgage documents authorize the Mortgage Creditor to modify the Regular Monthly Mortgage Payment amount, and the Mortgage Creditor files and serves a notice of mortgage payment change (Official Form B410S-1) pursuant to Fed. R. Bankr. P. 3002.1(b), then the debtor, Chapter 13 trustee, or any other party in interest shall have 14 days to file a response or objection to the notice of mortgage payment change. If no response in opposition or objection is timely filed, then the debtor is deemed to have accepted the mortgage payment change, and that amount will become the new Regular Monthly Mortgage Payment on the effective date provided in the notice of mortgage

payment change.

- (ii) If the Mortgage Creditor offers, and the debtor accepts, a Trial Payment Plan (TPP), the debtor shall immediately file a copy of the TPP with the Court and the Trustee shall then disburse Conduit Mortgage Payments consistent with the terms of the TPP.
- (iii) If, during the term of the TPP, a Notice of Mortgage Payment Change is filed, the trustee shall disburse in accordance with the TPP, unless the Mortgage Creditor files a notice of termination of the TPP.
- (iv) If the plan payment needs to increase as a result of the increase in the Regular Monthly Mortgage Payment amount, the Chapter 13 trustee may arrange for the modification in withholding or bank account debit to satisfy the increase in the Regular Monthly Mortgage Payment amount, without a Court order. See subparagraph (5)(C).
- (v) When a modified Regular Monthly Mortgage Payment amount goes into effect pursuant to subparagraph 7(A)(i), the Chapter 13 trustee may disburse the new Conduit Mortgage Payment as of the effective date set forth in the notice of mortgage payment change, without an order of the Court.

(B) Post-Petition Changes to the Name, Identity, or Address of the Mortgage Creditor.

When a Mortgage Creditor transfers or assigns its claim to another entity, it shall file with the Court, and serve upon the debtor, the debtor's attorney (if any), and the Chapter 13 Trustee, a statement setting forth the name and address of the new holder of the claim, and the address to which the Chapter 13 Trustee should send Conduit Mortgage Payments, unless the Mortgage Creditor has filed a notice of transfer of claim (other than for security) (Official Form B210a) . The Mortgage Creditor will be precluded from seeking late fees based upon the Chapter 13 trustee's failure to send payments to the correct party or correct address if that failure is reasonably attributable to the timing or content of the notice by the Mortgage Creditor.

(8) Motions Relating To Claims Secured By a Security Interest in the Debtor's Principal Residence, Upon Completion of Chapter 13 Payments.

- (A) In Completed Conduit Mortgage Payment Cases.** The Chapter 13 Trustee shall file a motion, pursuant to Fed. R. Bankr. P. 3002.1(h) in every Chapter 13 case in which the debtor made Conduit Mortgage Payments.
- (B) In Completed Non-Conduit Mortgage Payment Cases.** The debtor may make a motion, motion, pursuant to Fed. R. Bankr. P. 3002.1(h), in Chapter 13 cases in which the debtor made mortgage payments directly to the Mortgage Creditor during the Chapter 13 case.

(9) Jurisdiction. This Court retains jurisdiction over any order entered pursuant to this paragraph.

PROPOSED RULE REVISION from the CMP Task Force 2016

(a) Conduit Mortgage Payments.

- (1) **Local Bankruptcy Forms.** Paragraph (h) requires use of the following local bankruptcy forms: mortgage creditor checklist (Vt. LB Form Y-1); notice of conduit mortgage payment and authorization to release information to the Chapter 13 trustee (Vt. LB Form Y-2); model mortgage payment history (Vt. LB Form Y-5); and notice of transfer of claim (other than for security) (~~Official Form B210a~~~~Vt. LB Form Y-6~~). All of these forms are available on the Court's website, <http://www.vtb.uscourts.gov>. Use of these forms is required, with the exception that if a Mortgage Creditor (as defined in subparagraph (2)(G)) is already using forms that substantially conform to these forms and provide all of the information included on the forms, the Mortgage Creditor may use its own forms unless and until the Court orders otherwise.
- (2) **Definitions.** For purposes of this Rule, the following terms have the stated meanings:
- (A) A "Conduit Mortgage Payment" is the Regular Monthly Mortgage Payment the debtor is obligated to pay to the Mortgage Creditor post-petition, which the Chapter 13 trustee disburses pursuant to the terms of this Rule.
- (B) A "Conduit Mortgage Payment Plan" is a Chapter 13 plan that includes the payment of ongoing monthly mortgage payments on one or more mortgages, by the Chapter 13 trustee to the Mortgage Creditor from payments that are included in the debtor's Chapter 13 plan payments to the Chapter 13 trustee.
- (C) The debtor is "Delinquent" when the debtor owes the Mortgage Creditor any past due payments or other charges as of the Filing Date. This term does not include a failure to make Regular Monthly Mortgage Payments that came due after the Filing Date.
- (D) The "Filing Date" is the date the case was filed under, or converted to, Chapter 13.
- (E) A "Mortgage Creditor" is an entity entitled to enforce an allowed claim secured by a properly perfected mortgage on the debtor's residential real property, or the servicer for that entity, as determined by which entity files a proof of claim for the mortgage debt. Wherever this Rule refers to notice on the Mortgage Creditor, or requires the Mortgage Creditor to file a document, it also refers to the Mortgage Creditor's attorney.
- (F) The "Mortgage Payment Accounting" is a complete history of the Chapter 13 trustee's receipt of payments from the debtor and disbursement of payments to the Mortgage Creditor, with the disbursements showing separate entries for the Conduit Mortgage Payments, ~~Administrative Arrearage~~, and Pre-Petition Mortgage Arrearage components.
- (G) ~~The "Plan Completion Date" is the date on which the debtor fulfilled the debtor's obligations under the Chapter 13 plan, as identified by the Chapter 13 trustee, or as determined by the Court in the event of a dispute.~~
- (H) The "Post-Petition Mortgage Arrearage" is the sum of past due Regular Monthly Mortgage Payments the debtor owes to a Mortgage Creditor post-petition, ~~excluding the first two post-petition Regular Monthly Mortgage Payments, which are treated as the Administrative Arrearage.~~

(I) The “Pre-Petition Mortgage Arrearage” is the sum of Regular Monthly Mortgage Payments the debtor owes to a Mortgage Creditor that came due prior to the Filing Date, without regard to any grace period that expires post-petition.

(J) A “Regular Monthly Mortgage Payment” is:

(i) the sum of the principal, interest, taxes, insurance, administrative fees, and any other charges properly escrowed, charged, or assessed under a note and secured by a properly perfected mortgage on the debtor’s residential real property, which is due each month; or

(ii) a monthly amount of no less than the sum of the taxes, insurance, administrative fees, and anticipated interest and principal, which is proposed in conjunction with the debtor’s participation in this Court’s Mortgage Mediation and Loss Mitigation Program,

(a) a debtor’s plan utilizing a regular monthly mortgage payment under subparagraph (ii) may only be confirmed by the court if

1 after notice and opportunity the mortgage creditor does not object, and

2 the debtor’s plan provides that the debtor will promptly modify this figure to match the outcome of mortgage mediation, if necessary, as described in Vt. LBR _____.

(K) A “Waiver Order” is a Court order that waives the requirement to make Conduit Mortgage Payments to the Mortgage Creditor through a Chapter 13 plan.

(3) **Post-Petition Mortgage Payments.** A debtor is required to make Conduit Mortgage Payments as follows:

(A) **When the Debtor is Not Delinquent.**

(i) Except as provided in subsections (iii) and (iv), below, a debtor who is not Delinquent is not required to make Conduit Mortgage Payments.

(ii) A debtor who is not Delinquent may elect to make Conduit Mortgage Payments as outlined in this Rule, by so specifying in the Debtor’s Chapter 13 plan.

(iii) If (a) a debtor has been making Regular Monthly Mortgage Payments directly to a Mortgage Creditor post-petition pursuant to section (i), (b) the Mortgage Creditor files a motion for relief from stay based at least in part upon the debtor’s post-petition default in Regular Monthly Mortgage Payments, (c) the Court finds the debtor is in default on those payments, but (d) the Court either allows the debtor to retain the real property that secures the Mortgage Creditor’s claim and conditionally maintains the automatic stay or denies the motion based upon the debtor’s election to make Conduit Mortgage Payments, then the Mortgage Creditor must include in its proposed order provisions directing the debtor to make Conduit Mortgage Payments commencing with the first Regular Monthly Mortgage Payment due date following entry of the order, requiring the debtor to increase the monthly plan payments to an amount sufficient to include the Conduit Mortgage Payment, and directing the debtor to comply with all applicable provisions of this paragraph.

(iv) If (a) a debtor has been making Regular Monthly Mortgage Payments directly to a Mortgage Creditor post-petition pursuant to subsection (i), and (b) the debtor files a motion to modify the Chapter 13 plan based upon a post-petition default in Regular Monthly Mortgage Payments, the motion and corresponding proposed order must require the debtor to make Conduit Mortgage Payments commencing with the first Regular Monthly Mortgage Payment due date following entry of the order granting modification of the plan, and to increase the monthly Chapter 13 plan payment to an amount sufficient to include the Conduit Mortgage Payment.

(B) When the Debtor is Delinquent.

(i) Except as provided in subsection (ii), below, a debtor who is Delinquent is required to make Conduit Mortgage Payments.

(ii) A debtor who is Delinquent may obtain a Waiver Order only upon a showing of cause, based upon exigent circumstances.

(a) The debtor bears the burden of showing cause in any motion for a Waiver Order. The debtor must file the motion on notice to the Chapter 13 trustee and the Mortgage Creditor within seven days of the Filing Date, and may use the default procedure. See Vt. LBR 9013-4.

(b) The additional cost associated with the Chapter 13 trustee's fee on the Conduit Mortgage Payment will not constitute cause for entry of a Waiver Order unless the debtor shows that the additional cost would cause the Chapter 13 plan to fail.

(iii) A Mortgage Creditor or the Chapter 13 trustee may file a motion to revoke a Waiver Order if:

(a) the Mortgage Creditor files a motion for relief from stay based at least in part upon the debtor's post-petition default in Regular Monthly Mortgage Payments;

(b) the Court finds the debtor is in default of those payments;

(c) the outcome of the motion for relief from stay is the Court's entry of an order that either (1) allows the debtor to retain the real property that secures the Mortgage Creditor's claim and conditionally maintains the automatic stay, or (2) denies the motion for relief from stay based on the debtor's election to make Conduit Mortgage Payments; and

(d) the debtor has not filed a motion to modify the Chapter 13 plan to voluntarily commence making Conduit Mortgage Payments pursuant to section (A)(iv).

(4) **Duties of the Debtor.** A debtor who is Delinquent, is otherwise subject to the Conduit Mortgage Payment requirement, or voluntarily chooses to make Conduit Mortgage Payments, must fulfill the following duties:

(A) Duty to Specify Components of Mortgage Creditor's Claim in Chapter 13 Plan.

(i) In the Chapter 13 plan, the debtor must specify:

(a) the amount of the Conduit Mortgage Payment;

(b) The total amount of Conduit Mortgage Payments being paid through the plan.

- (1) The total amount of Conduit Mortgage Payments being paid through the plan shall be calculated by multiplying the Conduit Mortgage Payment by the number of months of the plan, plus two additional months.
- ~~(a)(c)~~ the amount of the Pre-Petition Mortgage Arrearage and the Regular Monthly Mortgage Payments included in that arrearage figure, ~~and~~
- ~~(b) the amount of the Administrative Arrearage and the Regular Monthly Mortgage Payments included in that figure.~~
- (ii) The debtor must also file a wage withholding authorization (Vt. LB Form Y-8) with the Chapter 13 plan, unless the debtor files a motion for waiver of the wage withholding requirement.
- (B) Duty to Provide Forms to the Chapter 13 Trustee and Mortgage Creditor.** The debtor must complete the mortgage creditor checklist (Vt. LB Form Y-1) and the notice of conduit mortgage payment and authorization to release information to the Chapter 13 trustee (Vt. LB Form Y-2), and must provide both, along with a copy of the three most recent mortgage invoices or monthly payment vouchers ~~the debtor has, (if available),~~ to the Chapter 13 trustee, with a copy to the Mortgage Creditor, no later than seven days after the Filing Date.
- (C) Duty to Make Timely First Chapter 13 Plan Payment Directly to the Chapter 13 Trustee.** The debtor must make the first Chapter 13 plan payment, in an amount that includes the full Conduit Mortgage Payment, directly to the Chapter 13 trustee within 30 days of the Filing Date.
- (D) Duty to Make Sufficient Chapter 13 Plan Payments.** If the amount of the Regular Monthly Mortgage Payment increases during the term of the Chapter 13 plan, the debtor must increase the amount of the Chapter 13 plan payment to the Chapter 13 trustee by an amount equal to the increase in the Regular Monthly Mortgage Payment due, plus the Chapter 13 trustee's fee allocable to that additional sum, and the Chapter 13 trustee must effectuate this via notice to the entity withholding the Chapter 13 plan payment. The increased Chapter 13 plan payment will be due on the effective date of the increase in the Regular Monthly Mortgage Payment. If the amount of the Regular Monthly Mortgage Payment decreases during the term of the Chapter 13 plan, the Chapter 13 plan payment will not change, and the Chapter 13 trustee must retain the additional funds and disburse them as set forth in subparagraph (7)(A)(iv), unless the debtor modifies the Chapter 13 plan to provide otherwise.
- (E) Penalty for Failure to Comply with Foregoing Requirements.** The debtor's failure to comply with the requirements of subparagraph (4) may result in the Court denying confirmation of the Chapter 13 plan.
- (F) Additional Duty to Object to Proof of Claim.** If the debtor believes that the Mortgage Creditor's proof of claim is inaccurate, the debtor must promptly file an objection to the proof of claim.
- (i) If the debtor's objection is overruled, within seven days of the Court's ruling, (a) the Chapter 13 trustee must file a notice of increased Chapter 13 plan payment and serve that notice on the debtor's employer to increase wage withholding to reimburse the Mortgage Creditor for any post-petition shortfall and to make correct payments going forward to comport with the allowed proof of claim, and (b) if needed, due to the change in treatment

to other claimants under the plan, the debtor ~~should~~ shall file a motion to amend or modify the Chapter 13 plan.

- (ii) If the debtor's objection is sustained, the trustee must continue to disburse payments in the amount determined by the Court and file an amended proof of claim on behalf of the Mortgage Creditor consistent with the Court's order.

(5) Duties of the Chapter 13 Trustee.

(A) Duty to Disburse Conduit Mortgage Payments. Upon receipt of a mortgage creditor checklist (Vt. LB Form Y-1), notice of conduit mortgage payment and authorization to release information to the trustee (Vt. LB Form Y-2), and the first Chapter 13 plan payment, the Chapter 13 trustee must commence disbursing Conduit Mortgage Payments to the Mortgage Creditor in the amount specified in the debtor's Chapter 13 plan, unless the debtor has filed a motion requesting that no payments be made to the Mortgage Creditor until some future date (e.g., the filing of a proof of claim by the Mortgage Creditor, resolution of an objection to the Mortgage Creditor's proof of claim), and the Court enters an order granting the debtor's motion. If the Chapter 13 trustee makes payments to the Mortgage Creditor according to the Chapter 13 plan and it later becomes clear, by agreement or Court order, that the amount paid to the Mortgage Creditor was not due, either in whole or in part, the Mortgage Creditor must disgorge any such overpayments. - See subparagraph (6)(B).

~~(B) Duty to Pay Administrative Arrearage with Pre-Petition Mortgage Arrearage. The Chapter 13 trustee will pay the amount due for Administrative Arrearage with the amount due for Pre-Petition Mortgage Arrearage.~~

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~~(B)~~ **Duty Regarding Plan Payment Increases.** Upon receipt of a notice of mortgage payment change (Official Form B410S-1), pursuant to subparagraph (7)(A), the Chapter 13 trustee must:

- (i) file with the Court notice of any required Chapter 13 plan payment increase;
- (ii) serve a copy of such notice on the debtor and the debtor's attorney; and
- (iii) if the proposed increase in plan payment is less than 5% and the debtor does not object, pursuant to subparagraph (7), within 14 days of service of the notice of mortgage payment change, then the Chapter 13 trustee must file a notice of increased Chapter 13 plan payment and promptly serve notice of increased wage withholding on the entity withholding the Chapter 13 plan payment, and must commence making Conduit Mortgage Payments in the new amount on the later of the date the Chapter 13 trustee begins receiving increased Chapter 13 plan payments or the effective date of the new payment.

(iv) If the proposed increase in plan payment is 5% or more, the Chapter 13 trustee shall schedule a status conference so that the court can address feasibility of the proposed plan payment increase. If, prior to the status conference, the debtor files a Motion to Modify the Chapter 13 plan, or a Stipulation to Plan Payment Increase, with any necessary amended schedules, the trustee may withdraw the request for status conference, and commence making Conduit Mortgage Payments in the new amount, once the Motion to Modify has been granted or the Stipulation has been filed.

~~(C)~~ **Duty to Disburse Only Full Payments; Duty When Insufficient Funds Available.** The Chapter 13 trustee must disburse payments only in an amount equal to the Regular Monthly

Mortgage Payment to the Mortgage Creditor as Conduit Mortgage Payments unless the Chapter 13 trustee is disbursing a final payment due to satisfaction of claim, conversion, or dismissal. If funds in the debtor's account with the Chapter 13 trustee are not sufficient to make a full Conduit Mortgage Payment and pay the corresponding Chapter 13 trustee's fee, then the Chapter 13 trustee must hold such funds until the Chapter 13 trustee receives from the debtor funds sufficient to do so. In such an event, within seven days of the date the Chapter 13 trustee intended to make the Conduit Mortgage Payment, the Chapter 13 trustee must notify by email the debtor, the debtor's attorney, and the Mortgage Creditor that there are insufficient funds to make full payment and the amount of additional funds needed to make a full payment.

~~(E)~~**(D) Duty to Specify Proper Application of Payment.** The Chapter 13 trustee's payments to a Mortgage Creditor must include a voucher narrative:

- (i) identifying the debtor's name, Chapter 13 case number, and the last four digits of the Mortgage Creditor's account number; and
- (ii) indicating the amount allocable how to apply each payment to the Conduit Mortgage Payment, Administrative Arrearage, and the amount allocable to the Pre-Petition Mortgage Arrearage components of the Mortgage Creditor's allowed claim.

~~(F)~~**(E) Duties upon the Debtor's Default.** If the debtor fails to make any timely or full Chapter 13 plan payment, including the first Chapter 13 plan payment, then the Chapter 13 trustee must take the following steps:

- (i) The first time the debtor fails to make a timely or full Chapter 13 plan payment, within 14 days of the default, the Chapter 13 trustee must file and serve upon the debtor, mortgage creditor, and their attorneys (if any), ~~the debtor's attorney, and the Mortgage Creditor~~ a notice of delinquency specifying the due date and amount of the missed payment, and the amount needed to cure the plan payment default. If the debtor does not cure the default or file a motion to modify the Chapter 13 plan within 44 30 days of the filing of the Chapter 13 trustee's notice, the Chapter 13 trustee must file and serve upon all parties in interest a motion to dismiss the case based upon the payment default and any other grounds the Chapter 13 trustee deems warrant dismissal of the case.
- (ii) The second time the debtor fails to make a timely or full Chapter 13 plan payment, within 14 days of the default, the Chapter 13 trustee must file and serve upon all parties in interest a motion to dismiss the case, specifying that it is the second Chapter 13 plan payment default and any other grounds the Chapter 13 trustee deems warrants dismissal of the case.
- (iii) Nothing in this paragraph precludes a Mortgage Creditor, or any other party in interest, from filing a motion to dismiss the case or a motion for relief from stay based upon a debtor's default in Chapter 13 plan payments or other requirements of this paragraph, or other grounds set forth in § 1307.

~~(G)~~**Duty to Declare Plan Completion Date.** ~~Within 21 days of the date the debtor has made his or her final Chapter 13 plan payment, the Chapter 13 trustee must make a docket entry identifying the Plan Completion Date.~~

~~(H)~~**(F) Duty to File Motion to Declare the Debtor Current Upon Completion at Conclusion of Conduit Mortgage Payments.** See subparagraph (8).

(6) Duties of the Mortgage Creditor.

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~~(A)~~ **Duty to File a Proof of Claim as Soon as Practicable.** A Mortgage Creditor with a Pre-Petition Mortgage Arrearage claim is encouraged to file a proof of claim as soon as practicable after receipt of notice of the debtor's bankruptcy filing. The Mortgage Creditor should attach to the proof of claim a mortgage proof of claim attachment (Official Form 410A) to facilitate a prompt commencement of post-petition payments in the correct amount, and is further encouraged to provide the mortgage proof of claim attachment to the Chapter 13 trustee in advance of filing the proof of claim.

~~(B)~~ ~~(A)~~ **Duty to Disgorge.** If the Court determines that a payment the Chapter 13 trustee made to the Mortgage Creditor included an overpayment or was otherwise improper, the Mortgage Creditor must promptly disgorge that sum to the Chapter 13 trustee.

~~(C)~~ ~~(B)~~ **Duty to Apply Payments Properly.** The Mortgage Creditor must apply each Conduit Mortgage Payment disbursed by the Chapter 13 trustee to the earliest outstanding post-petition payment due under the Chapter 13 plan, ~~as will be specified on the voucher narrative accompanying the payment. This will generally require the Mortgage Creditor to treat the sums due as the Administrative Arrearage as part of the Pre-Petition Mortgage Arrearage for purposes of applying payments, and to apply the first Conduit Mortgage Payment it receives to the third Regular Monthly Mortgage Payment due from the debtor post petition.~~

~~(D)~~ ~~(C)~~ **Duty to Limit Late Fees.** The Mortgage Creditor may not charge the debtor a late fee unless ~~t:~~

~~(i)~~ The tardiness of the payment was caused by the debtor's failure to make a full or timely Chapter 13 plan payment to the Chapter 13 trustee; ~~and either~~

~~(ii)~~ the Chapter 13 trustee and the debtor consent to the assessment of a late fee; or

~~(a)~~ the Court enters an order, which the Mortgage Creditor may seek through an emergency motion for expedited relief, authorizing the Mortgage Creditor to charge, and the Chapter 13 trustee to pay, a late fee, and directing a one-time increase in the plan payment amount to fund payment of the late fee and corresponding Chapter 13 trustee's commission; or

~~(iii)~~ the Court enters an order authorizing the Mortgage Creditor to collect a late fee (e.g., in connection with a motion to dismiss or motion for relief from stay); or

~~the Mortgage Creditor obtains an order pursuant to subparagraph (7)(B).~~

~~(E)~~ ~~(C)~~ **Duty to Provide Annual Payment History.**

(i) During the pendency of the Chapter 13 case and using the model mortgage payment history form (Vt. LB Form Y-5), on or before March 1st of each year, the Mortgage Creditor must provide to the debtor, the debtor's attorney, and the Chapter 13 trustee, a summary of the 12-month mortgage payment history from January 1st through December 31st of the previous year, on the loan on which Conduit Mortgage Payments have been disbursed. If the case was filed or converted from another chapter on or after January 1st, the first summary must include activity on the account from the Filing Date through December 31st of the previous year.

(ii) The mortgage payment history summary is not to be filed with the Court unless authorized by the Court to do so or it is pertinent to a motion for relief from stay or a motion to dismiss, in which event it shall be filed as an attachment to the motion.

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~~(F)~~(E) **Duty to Provide Documents to the Debtor's Attorney and the Chapter 13 Trustee.**

The Mortgage Creditor must provide to the debtor's attorney and the Chapter 13 trustee copies of all documents sent to the debtor post-petition, including correspondence, statements, payment coupons, escrow notices, and default notices, and any other documents, which disclose a change in:

- (i) the name or identity of the Mortgage Creditor;
- (ii) the monthly payment amount;
- (iii) the interest rate or escrow requirements; or
- (iv) the address to which mortgage payments are to be sent.

~~(G)~~(D) **Duty to Attach Information to Motion for Relief from Stay.** A motion for relief from stay in a Conduit Mortgage Payment case must be accompanied by either a mortgage payment history summary (Vt. LB Form Y-5) setting forth the post-petition account history, or a print-out from the Chapter 13 trustee's website showing the debtor's Chapter 13 plan payment history, including the portion of the website report showing the date the data was last updated. If the Mortgage Creditor prevails on its motion for relief from stay, demonstrates that payments were not timely made, and a conditional or absolute order for relief is entered, the proposed order may authorize the Mortgage Creditor to collect late fees on past due payments, if the Mortgage Creditor requested that relief in the motion. See also Vt. LBR 4001-1.

(7) Post-Petition Changes and Additional Charges.

(A) Changes to Regular Monthly Mortgage Payment Amount.

~~(i)~~ (i) If the mortgage documents authorize the Mortgage Creditor to modify the Regular Monthly Mortgage Payment amount, and the Mortgage Creditor files and serves a notice of mortgage payment change (Official Form B410S-1) pursuant to Fed. R. Bankr. P. 3002.1(b), then the debtor, Chapter 13 trustee, or any other party in interest shall have 14 days to file a response or objection to the notice of mortgage payment change. If no response in opposition or objection is timely filed, then the debtor is deemed to have accepted the mortgage payment change, and that amount will become the new Regular Monthly Mortgage Payment on the effective date provided in the notice of mortgage payment change.

~~(ii)~~ (ii) If the Mortgage Creditor offers, and the debtor accepts, a Trial Payment Plan (TPP), offered by the Mortgage Creditor, the debtor shall immediately file a copy of the TPP with the Court and the trustee shall then to disburse Conduit Mortgage Payments consistent with the terms of the TPP.

~~(iii)~~ (iii) If, during the term of the TPP, a Notice of Mortgage Payment Change is filed, the trustee shall disburse in accordance with the TPP, unless the Mortgage Creditor files a notice of termination of the TPP.

~~(iv)~~ (iv) If the plan payment will need needs to increase as a result of the increase in the Regular Monthly Mortgage Payment amount, the Chapter 13 trustee may arrange for the modification in withholding or bank account debit to satisfy the increase in the Regular Monthly Mortgage Payment amount, without a Court order. See subparagraph (5)(C).

~~(v)~~ (v) If a modified plan is necessary as a result of the increase in the Regular Monthly Mortgage

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Payment amount and the debtor has not yet filed a motion to modify, the Chapter 13 trustee shall file a request for a status conference to address how the debtor will satisfy the obligations under the plan in light of the increase in the Regular Monthly Mortgage Payment amount.

(iii)(v) When a modified Regular Monthly Mortgage Payment amount goes into effect pursuant to subparagraph 7(A)(i), the Chapter 13 trustee may disburse the new Conduit Mortgage Payment ~~without~~ as of the effective date set forth in the notice of mortgage payment change, without an order of the Court.

~~(B) Treatment of Post-Petition Charges Incurred.~~ If the Mortgage Creditor incurs post-petition attorney's fees, costs, or other charges, such as property inspection fees, persistent post-petition late charges not addressed as described in subparagraph (6)(C), or other items payable by the debtor under the terms of the loan documents (hereafter, collectively "charges"), then the following requirements will apply:

(i) ~~To collect these charges, the Mortgage Creditor shall file a notice, in compliance with Fed. R. Bankr. P. 3002.1(e), itemizing all charges, accompanied by a mortgage payment history summary (Vt. LB Form Y-5), within 180 days after the date the charge was incurred.~~

(ii) ~~Not later than one year after service of the notice and mortgage payment history summary, the debtor or the Chapter 13 trustee may file a response or objection thereto.~~

(iii) ~~To expedite a determination as to the allowance of the claimed charges, the Mortgage Creditor may file a motion, on notice to the debtor, the debtor's attorney, and the Chapter 13 trustee, requesting that the additional charges be paid post-petition. In that event, the Mortgage Creditor must file a notice of post-petition mortgage fees, expenses and charges (Official Form 410S-2) with a motion requesting that the debtor either amend the plan or make a separate additional payment to satisfy the allowed outstanding post-petition charges; the Mortgage Creditor may file this motion using the default procedure.~~

~~(C)(B) Post-Petition Changes to the Name, Identity, or Address of the Mortgage Creditor.~~

~~When a~~The Mortgage Creditor transfers or assigns its claim to another entity, it shall file with the Court, and serve upon the debtor, the debtor's attorney (if any), and the Chapter 13 Trustee, a statement setting forth the name and address of the new holder of the claim, and the must notify the debtor, the debtor's attorney, and the Chapter 13 trustee, and file with the court, promptly immediately upon learning of a change in the name or identity of the Mortgage Creditor payee or a change of address to which the Chapter 13 Trustee should send Conduit Mortgage Payments, unless the Mortgage Creditor has filed ~~should be made, using~~ a notice of transfer of claim (other than for security) (Official Form B210a) (Vt. LB Form Y-6). The Mortgage Creditor will be precluded from seeking late fees based upon the Chapter 13 trustee's failure to send payments to the correct party or correct address if that failure is reasonably attributable to the timing or content of the notice by the Mortgage Creditor.

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(8) ~~Motions Notices-Relating To Claims Secured By a Security Interest In tThe Debtor's Principal Residence, Upon "Payments Current Order" at Completion, Dismissal, and Conversion of Chapter 13 Case~~Payments.

(A) In Completed Conduit Mortgage Payment Cases. The Chapter 13 Trustee shall file a motion, pursuant to ~~Within 30 days after the trustee disburses~~ debtor completes all conduit payments and mortgage arrearages ~~payments under the Chapter 13 plan, the Chapter 13 trustee must:~~

~~(i) file and serve the notice of final cure payment required by Fed. R. Bankr. P. 3002.1(hf) in every Chapter 13 case in which the debtor made Conduit Mortgage Payments. (Official Form B4100N) (the "Rule 3002.1(f) notice"); as an exhibit to Official Form B4100N the Rule 3002.1(f) notice, attach a Mortgage Payment Accounting;~~

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~~— pursuant to Fed. R. Bankr. P. 3002.1(gh), 21 days following the filing of Official Form B4100N, the creditor shall file the response to notice of final cure payment (Official Form B4100R)~~

~~(ii) following the filing of Official Form B4100N, the trustee or debtor may file a motion for a determination of whether the debtor has cured the mortgage default and paid all required post-petition amounts to the Chapter 13 trustee and any Mortgage Creditor, regardless of whether the Mortgage Creditor has filed a response to the Rule 3002.1(f) notice (Official Form B4100N); and~~

~~(iii) articulate in that motion the relief or declaration the Chapter 13 trustee is seeking, and whether the Chapter 13 trustee is proceeding under Fed. R. Bankr. P. 3002.1(i).~~

(B) In Completed Non-Conduit Mortgage Payment Cases Where the Debtor Paid a Mortgage Arrears Through the Plan.

~~(i) Within 30 days after the debtor completes all payments under the Chapter 13 plan, the Chapter 13 trustee must file and serve the the notice of final cure payment required by Fed. R. Bankr. P. 3002.1(f) Rule 3002.1(f) notice (Official Form B4100N) and provide the debtor with a copy of the Mortgage Payment Accounting (with respect to the payments the Chapter 13 trustee made to the Mortgage Creditor).~~

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~~(ii) If the Mortgage Creditor does not respond to the Rule 3002.1(f) notice within 21 days of service, the debtor may serve a motion to obtain an order finding that the debtor is current on the mortgage debt ("payments current motion"), following the procedure set out in Fed. R. Bankr. P. 3002.1(g) (i). To obtain an order declaring the debtor current on the mortgage as of the completion of the Chapter 13 plan (a "payments current order"), the debtor must serve a payments current motion on the Mortgage Creditor, all parties who claim an interest in the debtor's residential real property, and the Chapter 13 trustee, and attach copies of (a) the Mortgage Creditor's proof of claim, (b) the confirmation order, (c) the Mortgage Payment Accounting, and (d) copies of the debtor's cancelled checks (or other records) showing proof the debtor made all required payments to the Mortgage Creditor. — A payments current motion must be filed using the conventional procedure on at least 28 days' notice. See Vt. LBR 9013-3.~~

~~(iii) If the Mortgage Creditor objects to entry of a payments current order, then the Mortgage Creditor must file an objection no later than seven days before the hearing date, setting forth specific grounds for its position, and attaching a mortgage payment history to show that the debtor is not current. If the Mortgage Creditor does not object, (a) it will be deemed to have acknowledged that the debtor is current with Regular Monthly Mortgage Payments through the Plan Completion Date, and that the debtor owes no other charges under the note, (b) will be precluded from separately objecting to the Chapter 13 trustee's final report with respect to~~

whether the debtor is current on its mortgage debt, and (c) will be precluded from disputing that the debtor is current (as set forth in the payments current order) in any other proceeding.

(iv) Any other party in interest may file a response to the payments current motion, provided it is filed no later than seven days before the hearing date.

~~(v)(A) Upon entry of a payments current order, the debtor will be: (a) deemed current on the mortgage as of the Filing Date, extinguishing any right of the Mortgage Creditor to recover any amount alleged to have arisen prior to the Filing Date or to declare a default under the note or mortgage based upon events prior to the Filing Date; and (b) deemed current post-petition through the Plan Completion Date, thereby extinguishing any right of the Mortgage Creditor to recover any amount alleged to have arisen between the Filing Date and Plan Completion Date or to declare a default under the note or mortgage based upon events between the Filing Date and Plan Completion Date.~~

~~(C) **In Completed Non-Conduit Mortgage Payment Cases Where the Debtor Did Not Pay a Mortgage Arrears through the Plan.** If the debtor may make a motion, motion, pursuant to Fed. R. Bankr. P. 3002.1(h), in Chapter 13 cases in which the debtor made mortgage payments directly to the Mortgage Creditor during the Chapter 13 case, made Regular Monthly Mortgage Payments to a Mortgage Creditor directly during the pendency of the case, the debtor may file a Payments Current Motion to obtain an order that the debtor is current on the mortgage debt as of the Plan Completion Date. To obtain this relief, the debtor must proceed as set out in subparagraph (8)(B), above.~~

~~(D) **Determination of Status of the Debtor's Mortgage Payments.** Except as otherwise provided herein, the procedures set forth in Fed. R. Bankr. P. 3002.1 will govern determinations of the status of a debtor's mortgage payments.~~

~~(E)(B) **Rights in Chapter 13 Cases that Are Not Completed.** Within 90 days of the date of conversion or dismissal of a chapter 13 case, the debtor may file a motion seeking an order declaring the status of the debtor's pre- and post-petition obligations to the Mortgage Creditor, on 21 days' notice, using the conventional procedure. See Vt. LBR 9013-3. The debtor may rely upon the Chapter 13 trustee's final report to demonstrate proof of payments. The debtor, the Mortgage Creditor, and the Chapter 13 trustee may proceed—and will have the same rights and duties—as set forth in subparagraph (8)(B), above.~~

(9) **Jurisdiction.** This Court retains jurisdiction over any order entered pursuant to this paragraph.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

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CRIMINAL RULES

WILLIAM K. SESSIONS III
EVIDENCE RULES

MEMORANDUM

TO: THE BENCH, BAR, AND PUBLIC

FROM: Honorable Jeffrey S. Sutton, Chair
Committee on Rules of Practice and Procedure



DATE: July 1, 2016

**RE: Request for Comments by October 3, 2016 on Proposed Amendments to
Bankruptcy Rule 3015 and new Rule 3015.1**

The Judicial Conference Advisory Committee on Bankruptcy Rules has proposed amendments to Bankruptcy Rule 3015 and adoption of new Rule 3015.1 to modify its prior proposal for an official form for the plan of reorganization under chapter 13 of the Bankruptcy Code. It has requested that the two rules be circulated to the bench, bar, and public for comment. The proposed amendments, advisory committee report, and other information are attached and posted on the Judiciary's website at:

<http://www.uscourts.gov/rules-policies/proposed-amendments-published-public-comment>

Opportunity for Public Comment and Notice of Shortened Comment Period

The proposed amendment to Rule 3015, along with new Rule 3015.1, would modify the Advisory Committee's proposal (published for comment in 2014 and again in 2015) for a mandatory nation-wide official chapter 13 plan form. The proposed amendment to Rule 3015 would require use of the national official plan form unless a district instead adopts a local plan form that meets the requirements of proposed new Rule 3015.1. Given the prior rounds of public

comments on the proposed plan form package (Official Form 113 and related amendments to Rules 2002, 3002, 3007, 3012, 4003, 5009, 7001 and 9009), and given the limited nature of the proposed modification, the Committee on Rules of Practice and Procedure has approved a public comment period of three months for Rules 3015 and 3015.1.

All comments on these proposed amendments will be carefully considered by the Advisory Committee on Bankruptcy Rules, which is composed of experienced trial and appellate lawyers, judges, and scholars. Please provide any comments on the proposed amendments, whether favorable, adverse, or otherwise, as soon as possible, but **no later than Monday, October 3, 2016**. All comments are made part of the official record and will be available to the public.

Comments concerning the proposed amendments must be submitted electronically by following the instructions at:

<http://www.uscourts.gov/rules-policies/proposed-amendments-published-public-comment>

Members of the public who wish to present testimony may appear at the public hearing on these proposals. The Advisory Committee will hold a hearing on the proposed amendments on the following date:

September 27, 2016, in Pasadena, CA

If you wish to testify, you must notify the Committee in writing **at least 30 days before the scheduled hearing**. Requests to testify should be mailed to the Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Suite 7-240, Washington, D.C. 20544.

After the public comment period, the Advisory Committee will decide whether to recommend final approval of the amendments to Rules 3015 and 3015.1. At this time, the Committee on Rules of Practice and Procedure has not approved the proposed amendments except to authorize their publication for comment. The proposed amendments could become effective on December 1, 2017, if they are approved, with or without revision, by the Advisory Committee, the Committee on Rules of Practice and Procedure, the Judicial Conference, and the Supreme Court, and if Congress does not act to defer, modify, or reject them.

If you have questions about the rulemaking process or pending rules amendments, please contact the Rules Committee Support Office at 202-502-1820 or visit:

<http://www.uscourts.gov/rules-policies>

**PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE***

1 **Rule 3015. Filing, Objection to Confirmation, Effect of**
2 **Confirmation, and Modification of a Plan**
3 **in a Chapter 12 ~~Family Farmer's Debt~~**
4 **~~Adjustment~~ or a Chapter 13 ~~Individual's~~**
5 **~~Debt Adjustment Case~~**

6 (a) FILING A CHAPTER 12 PLAN. The debtor
7 may file a chapter 12 plan with the petition. If a plan is not
8 filed with the petition, it shall be filed within the time
9 prescribed by § 1221 of the Code.

10 (b) FILING A CHAPTER 13 PLAN. The debtor
11 may file a chapter 13 plan with the petition. If a plan is not
12 filed with the petition, it shall be filed within 14 days
13 thereafter, and such time may not be further extended
14 except for cause shown and on notice as the court may
15 direct. If a case is converted to chapter 13, a plan shall be
16 filed within 14 days thereafter, and such time may not be

* New material is underlined in red; matter to be omitted is lined through.

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17 further extended except for cause shown and on notice as
18 the court may direct.

19 (c) ~~DATING.~~ ~~Every proposed plan and any~~
20 ~~modification thereof shall be dated.~~ FORM OF
21 CHAPTER 13 PLAN. If there is an Official Form for a
22 plan filed in a chapter 13 case, that form must be used
23 unless a Local Form has been adopted in compliance with
24 Rule 3015.1. With either the Official Form or a Local
25 Form, a nonstandard provision is effective only if it is
26 included in a section of the form designated for
27 nonstandard provisions and is also identified in accordance
28 with any other requirements of the form. As used in this
29 rule and the Official Form or a Local Form, “nonstandard
30 provision” means a provision not otherwise included in the
31 Official or Local Form or deviating from it.

32 (d) NOTICE AND COPIES. If the plan ~~The plan or~~
33 ~~a summary of the plan shall be~~ is not included with the ~~each~~
34 notice of the hearing on confirmation
35 mailed under ~~pursuant to~~ Rule 2002, the debtor shall serve
36 the plan on the trustee and all creditors when it is filed with
37 the court. ~~If required by the court, the debtor shall furnish a~~
38 ~~sufficient number of copies to enable the clerk to include a~~
39 ~~copy of the plan with the notice of the hearing.~~

40 (e) TRANSMISSION TO UNITED STATES
41 TRUSTEE. The clerk shall forthwith transmit to the
42 United States trustee a copy of the plan and any
43 modification thereof filed under ~~pursuant to~~ subdivision (a)
44 or (b) of this rule.

45 (f) OBJECTION TO CONFIRMATION;
46 DETERMINATION OF GOOD FAITH IN THE
47 ABSENCE OF AN OBJECTION. An objection to

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48 confirmation of a plan shall be filed and served on the
49 debtor, the trustee, and any other entity designated by the
50 court, and shall be transmitted to the United States
51 trustee, ~~before confirmation of the plan~~ at least seven days
52 before the date set for the hearing on confirmation, unless
53 the court orders otherwise. An objection to confirmation is
54 governed by Rule 9014. If no objection is timely filed, the
55 court may determine that the plan has been proposed in
56 good faith and not by any means forbidden by law without
57 receiving evidence on such issues.

58 (g) EFFECT OF CONFIRMATION. Upon the
59 confirmation of a chapter 12 or chapter 13 plan:

60 (1) any determination in the plan made under
61 Rule 3012 about the amount of a secured claim is
62 binding on the holder of the claim, even if the holder
63 files a contrary proof of claim or the debtor schedules

64 that claim, and regardless of whether an objection to
65 the claim has been filed; and
66 (2) any request in the plan to terminate the stay
67 imposed by § 362(a), § 1201(a), or § 1301(a) is
68 granted.

69 ~~(g)~~(h) MODIFICATION OF PLAN AFTER
70 CONFIRMATION. A request to modify a plan pursuant
71 ~~to~~ under § 1229 or § 1329 of the Code shall identify the
72 proponent and shall be filed together with the proposed
73 modification. The clerk, or some other person as the court
74 may direct, shall give the debtor, the trustee, and all
75 creditors not less than 21 days' notice by mail of the time
76 fixed for filing objections and, if an objection is filed, the
77 hearing to consider the proposed modification, unless the
78 court orders otherwise with respect to creditors who are not
79 affected by the proposed modification. A copy of the

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80 notice shall be transmitted to the United States trustee. A
81 copy of the proposed modification, or a summary thereof,
82 shall be included with the notice. ~~If required by the court,~~
83 ~~the proponent shall furnish a sufficient number of copies of~~
84 ~~the proposed modification, or a summary thereof, to enable~~
85 ~~the clerk to include a copy with each notice.~~ Any objection
86 to the proposed modification shall be filed and served on
87 the debtor, the trustee, and any other entity designated by
88 the court, and shall be transmitted to the United States
89 trustee. An objection to a proposed modification is
90 governed by Rule 9014.

Committee Note

This rule is amended and reorganized.

Subdivision (c) is amended to require use of an Official Form if one is adopted for chapter 13 plans unless a Local Form has been adopted consistent with Rule 3015.1. Subdivision (c) also provides that nonstandard provisions in a chapter 13 plan must be set out in the section of the Official or Local Form specifically

designated for such provisions and must be identified in the manner required by the Official or Local Form.

Subdivision (d) is amended to ensure that the trustee and creditors are served with the plan before confirmation. Service may be made either at the time the plan is filed or with the notice under Rule 2002 of the hearing to consider confirmation of the plan.

Subdivision (f) is amended to require service of an objection to confirmation at least seven days before the hearing to consider confirmation of a plan, unless the court orders otherwise.

Subdivision (g) is amended to set out two effects of confirmation. Subdivision (g)(1) provides that the amount of a secured claim under § 506(a) may be determined through a chapter 12 or chapter 13 plan in accordance with Rule 3012. That determination controls over a contrary proof of claim, without the need for a claim objection under Rule 3007, and over the schedule submitted by the debtor under § 521(a). The amount of a secured claim of a governmental unit, however, may not be determined through a chapter 12 or chapter 13 plan under Rule 3012. Subdivision (g)(2) provides for termination of the automatic stay under §§ 362, 1201, and 1301 as requested in the plan.

Subdivision (h) was formerly subdivision (g). It is redesignated and is amended to reflect that often the party proposing a plan modification is responsible for serving the proposed modification on other parties. The option to serve

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a summary of the proposed modification has been retained. Unless required by another rule, service under this subdivision does not need to be made in the manner provided for service of a summons and complaint by Rule 7004.

1 **Rule 3015.1. Requirements for a Local Form for Plans**
2 **Filed in a Chapter 13 Case**

3 Notwithstanding Rule 9029(a)(1), a district may
4 require that a Local Form for a plan filed in a chapter 13
5 case be used instead of an Official Form adopted for that
6 purpose if the following conditions are satisfied:

7 (a) a single Local Form is adopted for the district
8 after public notice and an opportunity for public comment;

9 (b) each paragraph is numbered and labeled in
10 boldface type with a heading stating the general subject
11 matter of the paragraph;

12 (c) the Local Form includes an initial paragraph for
13 the debtor to indicate that the plan does or does not:

14 (1) contain any nonstandard provision;

15 (2) limit the amount of a secured claim based
16 on a valuation of the collateral for the claim; or

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- 17 (3) avoid a security interest or lien;
18 (d) the Local Form contains separate paragraphs
19 for:
20 (1) curing any default and maintaining
21 payments on a claim secured by the debtor's principal
22 residence;
23 (2) paying a domestic-support obligation;
24 (3) paying a claim described in the final
25 paragraph of § 1325(a) of the Bankruptcy Code; and
26 (4) surrendering property that secures a claim
27 with a request that the stay be terminated as to the
28 surrendered collateral; and
29 (e) the Local Form contains a final paragraph for:
30 (1) the placement of nonstandard provisions, as
31 defined in Rule 3015(c), along with a statement that

32 any nonstandard provision placed elsewhere in the
33 plan is void; and
34 (2) certification by the debtor’s attorney or by
35 an unrepresented debtor that the plan contains
36 no nonstandard provision other than those set out in
37 the final paragraph.

Committee Note

This rule is new. It sets out features required for all Local Forms for plans in chapter 13 cases. If a Local Form does not comply with this rule, it may not be used in lieu of the Official Chapter 13 Plan Form. *See* Rule 3015(c).

Under the rule only one Local Form may be adopted in a district. The rule does not specify the method of adoption, but it does require that adoption of a Local Form be preceded by a public notice and comment period.

To promote consistency among Local Forms and clarity of content of chapter 13 plans, the rule prescribes several formatting and disclosure requirements. Paragraphs in such a form must be numbered and labeled in bold type, and the form must contain separate paragraphs for the cure and maintenance of home mortgages, payment of domestic support obligations, treatment of secured claims covered by the “hanging paragraph” of § 1325(a), and surrender of

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property securing a claim. Whether those portions of the Local Form are used in a given chapter 13 case will depend on the debtor's individual circumstances.

The rule requires that a Local Form begin with a paragraph for the debtor to call attention to the fact that the plan contains a nonstandard provision, limits the amount of a secured claim based on a valuation of the collateral, or avoids a lien. The last paragraph of a Local Form must be for the inclusion of any nonstandard provisions, as defined by Rule 3015(c), and must include a statement that nonstandard provisions placed elsewhere in the plan are void. The form must also require a certification by the debtor's attorney or unrepresented debtor that there are no nonstandard provisions other than those placed in the final paragraph.

Draft August 28, 2015

Debtor _____

United States Bankruptcy Court for the: _____

[Bankruptcy district]

Case number: _____

Check if this is an amended plan, and list below the sections of the plan that have been changed.

Official Form 113 Chapter 13 Plan

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Part 1: Notices

To Debtors: This form sets out options that may be appropriate in some cases, but the presence of an option on the form does not indicate that the option is appropriate in your circumstances or that it is permissible in your judicial district. **Plans that do not comply with local rules and judicial rulings may not be confirmable.**

In the following notice to creditors, you must check each box that applies.

To Creditors: Your rights may be affected by this plan. Your claim may be reduced, modified, or eliminated.

You should read this plan carefully and discuss it with your attorney if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you oppose the plan's treatment of your claim or any provision of this plan, you or your attorney must file an objection to confirmation at least 7 days before the date set for the hearing on confirmation, unless otherwise ordered by the Bankruptcy Court. The Bankruptcy Court may confirm this plan without further notice if no objection to confirmation is filed. See Bankruptcy Rule 3015. In addition, you may need to file a timely proof of claim in order to be paid under any plan.

The following matters may be of particular importance. Debtors must check one box on each line to state whether or not the plan includes each of the following items. If an item is checked as "Not Included" or if both boxes are checked, the provision will be ineffective if set out later in the plan.

1.1	A limit on the amount of a secured claim, set out in Section 3.2, which may result in a partial payment or no payment at all to the secured creditor	<input type="checkbox"/> Included	<input type="checkbox"/> Not included
1.2	Avoidance of a judicial lien or nonpossessory, nonpurchase-money security interest, set out in Section 3.4	<input type="checkbox"/> Included	<input type="checkbox"/> Not included
1.3	Nonstandard provisions, set out in Part 8	<input type="checkbox"/> Included	<input type="checkbox"/> Not included

Part 2: Plan Payments and Length of Plan

2.1 Debtor(s) will make regular payments to the trustee as follows:

\$ _____ per _____ for _____ months

[and \$ _____ per _____ for _____ months.] *Insert additional lines if needed.*

If fewer than 60 months of payments are specified, additional monthly payments will be made to the extent necessary to make the payments to creditors specified in Parts 3 through 6 of this plan.

2.2 Regular payments to the trustee will be made from future income in the following manner:

Check all that apply.

- Debtor(s) will make payments pursuant to a payroll deduction order.
- Debtor(s) will make payments directly to the trustee.
- Other (specify method of payment): _____.

2.3 Income tax refunds.

Check one.

- Debtor(s) will retain any income tax refunds received during the plan term.
- Debtor(s) will supply the trustee with a copy of each income tax return filed during the plan term within 14 days of filing the return and will turn over to the trustee all income tax refunds received during the plan term.
- Debtor(s) will treat income tax refunds as follows:

2.4 Additional payments.

Check one.

- None. If "None" is checked, the rest of § 2.4 need not be completed or reproduced.
- Debtor(s) will make additional payment(s) to the trustee from other sources, as specified below. Describe the source, estimated amount, and date of each anticipated payment.

2.5 The total amount of estimated payments to the trustee provided for in §§ 2.1 and 2.4 is \$ _____.

Part 3: Treatment of Secured Claims

3.1 Maintenance of payments and cure of default, if any.

Check one.

- None. If "None" is checked, the rest of § 3.1 need not be completed or reproduced.
- The debtor(s) will maintain the current contractual installment payments on the secured claims listed below, with any changes required by the applicable contract and noticed in conformity with any applicable rules. These payments will be disbursed either by the trustee or directly by the debtor, as specified below. Any existing arrearage on a listed claim will be paid in full through disbursements by the trustee, with interest, if any, at the rate stated. Unless otherwise ordered by the court, the amounts listed on a proof of claim filed before the filing deadline under Bankruptcy Rule 3002(c) control over any contrary amounts listed below as to the current installment payment and arrearage. In the absence of a contrary timely filed proof of claim, the amounts stated below are controlling. If relief from the automatic stay is ordered as to any item of collateral listed in this paragraph, then, unless otherwise ordered by the court, all payments under this paragraph as to that collateral will cease, and all secured claims based on that collateral will no longer be treated by the plan. The final column includes only payments disbursed by the trustee rather than by the debtor.

Name of creditor	Collateral	Current installment payment (including escrow)	Amount of arrearage, if any	Interest rate on arrearage (if applicable)	Monthly plan payment on arrearage	Estimated total payments by trustee
_____	_____	\$ _____	\$ _____	_____ %	\$ _____	\$ _____
		Disbursed by:				
		<input type="checkbox"/> Trustee				
		<input type="checkbox"/> Debtor(s)				
_____	_____	\$ _____	\$ _____	_____ %	\$ _____	\$ _____
		Disbursed by:				
		<input type="checkbox"/> Trustee				
		<input type="checkbox"/> Debtor(s)				

Insert additional claims as needed.

3.2 Request for valuation of security, payment of fully secured claims, and modification of undersecured claims. Check one.

None. If "None" is checked, the rest of § 3.2 need not be completed or reproduced.

The remainder of this paragraph will be effective only if the applicable box in Part 1 of this plan is checked.

The debtor(s) request that the court determine the value of the secured claims listed below. For each non-governmental secured claim listed below, the debtor(s) state that the value of the secured claim should be as set out in the column headed Amount of secured claim. For secured claims of governmental units, unless otherwise ordered by the court, the value of a secured claim listed in a proof of claim filed in accordance with the Bankruptcy Rules controls over any contrary amount listed below. For each listed claim, the value of the secured claim will be paid in full with interest at the rate stated below.

The portion of any allowed claim that exceeds the amount of the secured claim will be treated as an unsecured claim under Part 5 of this plan. If the amount of a creditor's secured claim is listed below as having no value, the creditor's allowed claim will be treated in its entirety as an unsecured claim under Part 5 of this plan. Unless otherwise ordered by the court, the amount of the creditor's total claim listed on the proof of claim controls over any contrary amounts listed in this paragraph.

The holder of any claim listed below as having value in the column headed Amount of secured claim will retain the lien on the property interest of the debtor(s) or the estate(s) until the earlier of:

- (a) payment of the underlying debt determined under nonbankruptcy law, or
(b) discharge of the underlying debt under 11 U.S.C. § 1328, at which time the lien will terminate and be released by the creditor. See Bankruptcy Rule 3015.

Table with 9 columns: Name of creditor, Estimated amount of creditor's total claim, Collateral, Value of collateral, Amount of claims senior to creditor's claim, Amount of secured claim, Interest rate, Monthly payment to creditor, Estimated total of monthly payments. Includes two rows of blank lines for entry.

3.3 Secured claims excluded from 11 U.S.C. § 506.

Check one.

None. If "None" is checked, the rest of § 3.3 need not be completed or reproduced.

The claims listed below were either:

- (1) incurred within 910 days before the petition date and secured by a purchase money security interest in a motor vehicle acquired for the personal use of the debtor(s), or
(2) incurred within 1 year of the petition date and secured by a purchase money security interest in any other thing of value.

These claims will be paid in full under the plan with interest at the rate stated below. These payments will be disbursed either by the trustee or directly by the debtor, as specified below. Unless otherwise ordered by the court, the claim amount stated on a proof of claim filed before the filing deadline under Bankruptcy Rule 3002(c) controls over any contrary amount listed below. In the absence of a contrary timely filed proof of claim, the amounts stated below are controlling. The final column includes only payments disbursed by the trustee rather than by the debtor.

Table with 7 columns: Name of creditor, Collateral, Amount of claim, Interest rate, Monthly plan payment, Estimated total payments by trustee. Includes two rows of blank lines for entry and checkboxes for 'Disbursed by: Trustee' and 'Debtor(s)'.

Insert additional claims as needed.

3.4 Lien avoidance.

Check one.

None. If "None" is checked, the rest of § 3.4 need not be completed or reproduced.

The remainder of this paragraph will be effective only if the applicable box in Part 1 of this plan is checked.

The judicial liens or nonpossessory, nonpurchase money security interests securing the claims listed below impair exemptions to which the debtor(s) would have been entitled under 11 U.S.C. § 522(b). **Unless otherwise ordered by the court,** a judicial lien or security interest securing a claim listed below will be avoided to the extent that it impairs such exemptions upon entry of the order confirming the plan. The amount of the judicial lien or security interest that is avoided will be treated as an unsecured claim in Part 5 **to the extent allowed.** The amount, if any, of the judicial lien or security interest that is not avoided will be paid in full as a secured claim under the plan. See 11 U.S.C. § 522(f) and Bankruptcy Rule 4003(d). *If more than one lien is to be avoided, provide the information separately for each lien.*

Information regarding judicial lien or security interest	Calculation of lien avoidance		Treatment of remaining secured claim
Name of creditor _____	a. Amount of lien	\$ _____	Amount of secured claim after avoidance (line a minus line f) \$ _____
	b. Amount of all other liens	\$ _____	
Collateral _____	c. Value of claimed exemptions	+ \$ _____	Interest rate (if applicable) _____ %
	d. Total of adding lines a, b, and c	\$ _____	
Lien identification (such as judgment date, date of lien recording, book and page number) _____ _____	e. Value of debtor's interest in property	- \$ _____	Monthly payment on secured claim \$ _____
	f. Subtract line e from line d.	\$ _____	
Extent of exemption impairment (Check applicable box):			Estimated total payments on secured claim \$ _____
<input type="checkbox"/> Line f is equal to or greater than line a. The entire lien is avoided. (Do not complete the next column.)			
<input type="checkbox"/> Line f is less than line a. A portion of the lien is avoided. (Complete the next column.)			

Insert additional claims as needed.

3.5 Surrender of collateral.

Check one.

None. If "None" is checked, the rest of § 3.5 need not be completed or reproduced.

The debtor(s) elect to surrender to each creditor listed below the collateral that secures the creditor's claim. **The debtor(s) request that upon confirmation of this plan the stay under 11 U.S.C. § 362(a) be terminated as to the collateral only and that the stay under § 1301 be terminated in all respects.** Any allowed unsecured claim resulting from the disposition of the collateral will be treated in Part 5 below.

Name of creditor	Collateral
_____	_____
_____	_____

Insert additional claims as needed.

Part 4: Treatment of Fees and Priority Claims

4.1 General

Trustee's fees and all allowed priority claims, including domestic support obligations other than those treated in § 4.5, will be paid in full without postpetition interest.

4.2 Trustee's fees

Trustee's fees are governed by statute and may change during the course of the case but are estimated to be _____% of plan payments; and during the plan term, they are estimated to total \$_____.

4.3 Attorney's fees

The balance of the fees owed to the attorney for the debtor(s) is estimated to be \$_____.

4.4 Priority claims other than attorney's fees and those treated in § 4.5.

Check one.

- None.** *If "None" is checked, the rest of § 4.4 need not be completed or reproduced.*
- The debtor estimates the total amount of other priority claims to be _____.

4.5 Domestic support obligations assigned or owed to a governmental unit and paid less than full amount.

Check one.

- None.** *If "None" is checked, the rest of § 4.5 need not be completed or reproduced.*
- The allowed priority claims listed below are based on a domestic support obligation that has been assigned to or is owed to a governmental unit and will be paid less than the full amount of the claim under 11 U.S.C. § 1322(a)(4). *This plan provision requires that payments in § 2.1 be for a term of 60 months; see 11 U.S.C. § 1322(a)(4).*

Name of creditor	Amount of claim to be paid
_____	\$ _____
_____	\$ _____

Insert additional claims as needed.

Part 5: Treatment of Nonpriority Unsecured Claims

5.1 Nonpriority unsecured claims not separately classified.

Allowed nonpriority unsecured claims that are not separately classified will be paid, pro rata. If more than one option is checked, the option providing the largest payment will be effective. *Check all that apply.*

- The sum of \$_____.
- _____% of the total amount of these claims, an estimated payment of \$_____.
- The funds remaining after disbursements have been made to all other creditors provided for in this plan.

If the estate of the debtor(s) were liquidated under chapter 7, nonpriority unsecured claims would be paid approximately \$_____. Regardless of the options checked above, payments on allowed nonpriority unsecured claims will be made in at least this amount.

5.2 Maintenance of payments and cure of any default on nonpriority unsecured claims. Check one.

- None.** *If "None" is checked, the rest of § 5.2 need not be completed or reproduced.*
- The debtor(s) will maintain the contractual installment payments and cure any default in payments on the unsecured claims listed below on which the last payment is due after the final plan payment. **These payments will be disbursed either by the trustee or directly by the debtor, as specified below. The claim for the arrearage amount will be paid in full as specified below and disbursed by the trustee. The final column includes only payments disbursed by the trustee rather than by the debtor.**

Name of creditor	Current installment payment	Amount of arrearage to be paid	Estimated total payments by trustee
_____	\$_____	\$_____	\$_____
	Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)		
_____	\$_____	\$_____	\$_____
	Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)		

Insert additional claims as needed.

5.3 Other separately classified nonpriority unsecured claims. Check one.

- None.** *If "None" is checked, the rest of § 5.3 need not be completed or reproduced.*
- The nonpriority unsecured allowed claims listed below are separately classified and will be treated as follows

Name of creditor	Basis for separate classification and treatment	Amount to be paid on the claim	Interest rate (if applicable)	Estimated total amount of payments
_____	_____	\$_____	_____%	\$_____
_____	_____	\$_____	_____%	\$_____

Insert additional claims as needed.

Part 6: Executory Contracts and Unexpired Leases

6.1 The executory contracts and unexpired leases listed below are assumed and will be treated as specified. All other executory contracts and unexpired leases are rejected. Check one.

None. If "None" is checked, the rest of § 6.1 need not be completed or reproduced.

Assumed items. Current installment payments will be disbursed either by the trustee or directly by the debtor, as specified below, subject to any contrary court order or rule. Arrearage payments will be disbursed by the trustee. The final column includes only payments disbursed by the trustee rather than by the debtor.

Name of creditor	Description of leased property or executory contract	Current installment payment	Amount of arrearage to be paid	Treatment of arrearage (Refer to other plan section if applicable)	Estimated total payments by trustee
_____	_____	\$ _____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)	\$ _____	_____	\$ _____
_____	_____	\$ _____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)	\$ _____	_____	\$ _____

Insert additional contracts or leases as needed.

Part 7: Vesting of Property of the Estate

7.1 Property of the estate will vest in the debtor(s) upon

Check the applicable box:

- plan confirmation.
- entry of discharge.
- other: _____.

Part 8: Nonstandard Plan Provisions

None. If "None" is checked, the rest of Part 8 need not be completed or reproduced.

Under Bankruptcy Rule 3015(c), nonstandard provisions must be set forth below. A nonstandard provision is a provision not otherwise included in the Official Form or deviating from it. Nonstandard provisions set out elsewhere in this plan are ineffective.

The following plan provisions will be effective only if there is a check in the box "Included" in § 1.3.

Part 9: Signatures

X _____ Date _____

Signature of Attorney for Debtor(s)

X _____ Date _____

X _____ Date _____

Signature(s) of Debtor(s) (required if not represented by an attorney; otherwise optional)

By filing this document, the Attorney for Debtor(s) or Debtor(s) themselves, if not represented by an attorney, also certify(ies) that the wording and order of the provisions in this Chapter 13 plan are identical to those contained in Official Form 113, other than any nonstandard provisions included in Part 8.

Exhibit: Total Amount of Estimated Trustee Payments

The following are the estimated payments that the plan requires the trustee to disburse. If there is any difference between the amounts set out below and the actual plan terms, the plan terms control.

- | | | |
|---|---|----------|
| a. Maintenance and cure payments on secured claims <i>(Part 3, Section 3.1 total)</i> | | \$ _____ |
| b. Modified secured claims <i>(Part 3, Section 3.2 total)</i> | | \$ _____ |
| c. Secured claims excluded from 11 U.S.C. § 506 <i>(Part 3, Section 3.3 total)</i> | | \$ _____ |
| d. Judicial liens or security interests partially avoided <i>(Part 3, Section 3.4 total)</i> | | \$ _____ |
| e. <b style="color: red;">Fees and priority claims <i>(Part 4 total)</i> | | \$ _____ |
| f. Nonpriority unsecured claims <i>(Part 5, Section 5.1, highest stated amount)</i> | | \$ _____ |
| g. Maintenance and cure payments on unsecured claims <i>(Part 5, Section 5.2 total)</i> | | \$ _____ |
| h. Separately classified unsecured claims <i>(Part 5, Section 5.3 total)</i> | | \$ _____ |
| i. <b style="color: red;">Trustee payments on executory contracts and unexpired leases <i>(Part 6, Section 6.1 total)</i> | | \$ _____ |
| j. <b style="color: red;">Nonstandard payments <i>(Part 8, total)</i> | + | \$ _____ |

Total of lines a through j

\$ _____

Committee Note

Official Form 113 is new and is the required plan form in all chapter 13 cases, **except to the extent that Rule 3015(c)(1) permits the use of a Local Form. Except as permitted by Rule 9009, alterations to the Official Form are not permitted.** As the form explains, spaces for responses may be expanded or collapsed as appropriate, and sections that are inapplicable do not need to be reproduced. Portions of the form provide multiple options for provisions of a debtor's plan, but some of those options may not be appropriate in a given debtor's situation or may not be allowed in the court presiding over the case. Debtors are advised to refer to applicable local rulings. **Nothing in the Official Form requires confirmation of a plan containing provisions inconsistent with applicable law.**

Part 1. This part sets out warnings to both debtors and creditors. For creditors, if the plan includes one or more of the provisions listed in this part, the appropriate boxes must be checked. For example, if Part 8 of the plan proposes a provision not included in, or contrary to, the Official Form, that nonstandard provision will be ineffective if the appropriate check box in Part 1 is not selected.

Part 2. This part states the proposed periodic plan payments, the estimated total plan payments, and sources of funding for the plan. Section 2.1 allows the debtor or debtors to propose periodic payments in other than monthly intervals. For example, if the debtor receives a paycheck every week and wishes to make plan payments from each check, that should be indicated in § 2.1. If the debtor proposes to make payments according to different "steps," the amounts and intervals of those payments should also be indicated in § 2.1. Section 2.2 provides for the manner in which the debtor will make regular payments to the trustee. If the debtor selects the option of making payments pursuant to a payroll deduction order, that selection serves as a request by the debtor for entry of the order. Whether to enter a payroll deduction order is determined by the court. See Code § 1325(c). If the debtor selects the option of making payments other than by direct payments to the trustee or by a payroll deduction order, the alternative method (*e.g.*, a designated third party electronic funds transfer program) must be specified.

Part 3. This part provides for the treatment of secured claims.

The Official Form contains no provision for proposing preconfirmation adequate protection payments to secured creditors, leaving that subject to local rules, orders, forms, custom, and practice. A Director's Form for notice of and order on proposed adequate protection payments has been created and may be used for that purpose.

Section 3.1 provides for the treatment of claims under Code § 1322(b)(5) (maintaining current payments and curing any arrearage). For the claim of a secured creditor listed in § 3.1, an estimated arrearage amount should be given. A contrary arrearage amount listed on the creditor's proof of claim, unless contested by objection or motion, will control over the amount given in the plan.

In § 3.2, the plan may propose to determine under Code § 506(a) the value of a secured claim. For example, the plan could seek to reduce the secured portion of a creditor's claim to the value of the collateral securing it. For the secured claim of a non-governmental creditor, that determination would be binding upon confirmation of the plan. For the secured claim of a governmental unit, however, a contrary valuation listed on the creditor's proof of claim, unless contested by objection or motion, would control over the valuation given in the plan. *See* Bankruptcy Rule 3012. Bankruptcy Rule 3002 contemplates that a debtor, the trustee, or another entity may file a proof of claim if the creditor does not do so in a timely manner. *See* Bankruptcy Rules 3004 and 3005. Section 3.2 will not be effective unless the appropriate check box in Part 1 is selected.

Section 3.3 deals with secured claims that **under the so-called "hanging paragraph" of § 1325(a)(5)** may not be bifurcated into secured and unsecured portions under Code § 506(a), but it allows for **the proposal of** an interest rate other than the contract rate to be applied to payments on such a claim. If appropriate, a claim may be treated under § 3.1 instead of § 3.3.

In § 3.4, the plan may propose to avoid certain judicial liens or security interests encumbering exempt property in accordance with Code § 522(f). This section

includes space for the calculation of the amount of the judicial lien or security interest that is avoided. A plan proposing avoidance in § 3.4 must be served in the manner provided by Bankruptcy Rule 7004 for service of a summons and complaint. *See* Bankruptcy Rule 4003. Section 3.4 will not be effective unless the appropriate check box in Part 1 is selected.

Section 3.5 provides for elections to surrender collateral and **requests for** termination of the stay under § 362(a) and § 1301 with respect to the collateral surrendered. Termination will be effective upon confirmation of the plan.

Part 4. This part provides for the treatment of trustee's fees and claims entitled to priority status. Section 4.1 provides that trustee's fees and all allowed priority claims (other than those domestic support obligations treated in § 4.5) will be paid in full. In § 4.2, the plan lists an estimate of the trustee's fees. Although the estimate may indicate whether the plan will be feasible, it does not affect the trustee's entitlement to fees as determined by statute. In § 4.3, the form requests **a statement of** the balance of attorney's fees owed. Additional details about payments of attorney's fees, including information about their timing and approval, are left to the requirements of local practice. In § 4.4, the plan calls for an estimated amount of priority claims. A contrary amount listed on the creditor's proof of claim, unless changed by court order in response to an objection or motion, will control over the amount given in § 4.4. In § 4.5, the plan may propose to pay less than the full amount of a domestic support obligation that has been assigned to, or is owed to, a governmental unit, but not less than the amount that claim would have received in a chapter 7 liquidation. *See* **§ 1322(a)(4) of the Code.**

Part 5. This part provides for the treatment of unsecured claims that are not entitled to priority status. In § 5.1, the plan may propose to pay nonpriority unsecured claims in accordance with several options. One or more options may be selected. For example, the plan could propose simply to pay unsecured creditors any funds remaining after disbursements to other creditors, or **it could** also provide that a defined percentage of the total amount of unsecured claims will be paid. **In § 5.2, the plan may**

propose to cure any arrearages and maintain periodic payments on long-term, nonpriority unsecured debts pursuant to § 1322(b)(5) of the Code. In § 5.3, the plan may provide for the separate classification of nonpriority unsecured claims (such as co-debtor claims) as permitted under Code § 1322(b)(1).

Part 6. This part provides for executory contracts and unexpired leases. An executory contract or unexpired lease is rejected unless it is listed in this part. If the plan proposes neither to assume nor reject an executory contract or unexpired lease, that treatment would have to be set forth as a nonstandard provision in Part 8.

The Official Form contains no provision on the order of distribution of payments under the plan, leaving that to local rules, orders, custom, and practice. If the debtor desires to propose a specific order of distribution, it must be contained in Part 8.

Part 7. This part defines when property of the estate will revert in the debtor or debtors. One choice must be selected—upon plan confirmation, upon entry of discharge the case, or upon some other specified event. This plan provision is subject to a contrary court order under Code § 1327(b).

Part 8. This part gives the debtor or debtors the opportunity to propose provisions that are not otherwise in, or are contrary to, the Official Form. All such nonstandard provisions must be set forth in this part and nowhere else in the plan. This part will not be effective unless the appropriate check box in Part 1 is selected. *See* Bankruptcy Rule 3015.

Part 9. The plan must be signed by the attorney for the debtor or debtors. If the debtor or debtors are not represented by an attorney, they must sign the plan, but the signature of represented debtors is optional. In addition to the certifications set forth in Rule 9011(b), the signature constitutes a certification that the wording and order of Official Form 113 have not been altered, other than by including any nonstandard provision in Part 8.

1 **Rule 3002. Filing Proof of Claim or Interest**

2 (a) NECESSITY FOR FILING. ~~An~~A secured
3 creditor, unsecured creditor, or an equity security holder
4 must file a proof of claim or interest for the claim or
5 interest to be allowed, except as provided in Rules 1019(3),
6 3003, 3004, and 3005. A lien that secures a claim against
7 the debtor is not void due only to the failure of any entity to
8 file a proof of claim.

9 (b) PLACE OF FILING. A proof of claim or
10 interest shall be filed in accordance with Rule 5005.

11 (c) TIME FOR FILING. In a voluntary chapter 7
12 ~~liquidation~~case, chapter 12 ~~family—farmer’s—debt~~
13 ~~adjustment~~case, or chapter 13 ~~individual’s—debt~~
14 ~~adjustment~~case, a proof of claim is timely filed if it is filed
15 not later than ~~90~~6070 days after the order for relief under
16 that chapter or the date of the order of conversion to a case
17 under chapter 12, or chapter 13. In an involuntary chapter
18 7 case, a proof of claim is timely filed if it is filed not later

19 | than 90 days after the order for relief under that chapter is
20 | entered.~~the first date set for the meeting of creditors called~~
21 | ~~under § 341(a) of the Code, except as follows:~~ But in all
22 | these cases, the following exceptions apply:

23 | * * * * *

24 | (6) ~~If notice of the time to file a proof of claim~~
25 | ~~has been mailed to a creditor at a foreign address, o~~On
26 | ~~motion filed by the~~a creditor before or after the
27 | expiration of the time to file a proof of claim, the
28 | court may extend the time by not more than 60 days
29 | from the date of the order granting the motion. The
30 | motion may be granted if the court finds that~~the~~
31 | ~~notice was insufficient under the circumstances to~~
32 | ~~give the creditor a reasonable time to file a proof of~~
33 | ~~claim~~

34 | (A) the notice was insufficient under the
35 | circumstances to give the creditor a reasonable
36 | time to file a proof of claim because the debtor

37 failed to timely file the list of creditors' names
38 and addresses required by Rule 1007(a); or

39 (B) the notice was insufficient under the
40 circumstances to give the creditor a reasonable
41 time to file a proof of claim, and the notice was
42 mailed to the creditor at a foreign address.

43 (7) A proof of claim filed by the holder of a
44 claim that is secured by a security interest in the
45 debtor's principal residence is timely filed if:

46 (A) the proof of claim, together with the
47 attachments required by Rule 3001(c)(2)(C), is
48 filed not later than ~~60~~70 days after the order for
49 relief is entered; and

50 (B) any attachments required by
51 Rule 3001(c)(1) and (d) are filed as a supplement
52 to the holder's claim not later than 120 days after
53 the order for relief is entered.

Committee Note

Subdivision (a) is amended to clarify that a creditor, including a secured creditor, must file a proof of claim in order to have an allowed claim. The amendment also clarifies, in accordance with § 506(d), that the failure of a secured creditor to file a proof of claim does not render the creditor's lien void. The inclusion of language from § 506(d) is not intended to effect any change of law with respect to claims subject to setoff under § 553. The amendment preserves the existing exceptions to this rule under Rules 1019(3), 3003, 3004, and 3005. Under Rule 1019(3), a creditor does not need to file another proof of claim after conversion of a case to chapter 7. Rule 3003 governs the filing of a proof of claim in chapter 9 and chapter 11 cases. Rules 3004 and 3005 govern the filing of a proof of claim by the debtor, trustee, or another entity if a creditor does not do so in a timely manner.

Subdivision (c) is amended to alter the calculation of the bar date for proofs of claim in chapter 7, chapter 12, and chapter 13 cases. The amendment changes the time for filing a proof of claim in a voluntary chapter 7 case, a chapter 12 case, or a chapter 13 case from 90 days after the § 341 meeting of creditors to ~~60~~70 days after the petition date. If a case is converted to chapter 12 or chapter 13, the ~~60~~70-day time for filing runs from the order of conversion. If a case is converted to chapter 7, Rule 1019(2) provides that a new time period for filing a claim commences under Rule 3002. In an involuntary chapter 7 case, a 90-day time for filing applies and runs from the entry of the order for relief.

Subdivision (c)(6) is amended to expand the exception to the bar date for cases in which a creditor received insufficient notice of the time to file a proof of claim. The amendment provides that the court may extend the time to file a proof of claim if the debtor fails to file a timely list of names and addresses of creditors as required by Rule 1007(a). The amendment also clarifies that if a court grants a creditor's motion under this rule to extend the time to file a proof of claim, the extension runs from the date of the court's decision on the motion.

Subdivision (c)(7) is added to provide a two-stage deadline for filing mortgage proofs of claim secured by an interest in the debtor's principal residence. Those proofs of claim must be filed with the appropriate Official Form mortgage attachment within 60 days of the order for relief. The claim will be timely if any additional documents evidencing the claim, as required by Rule 3001(c)(1) and (d), are filed within 120 days of the order for relief. The order for relief is the commencement of the case upon filing a petition, except in an involuntary case. See § 301 and § 303(h). The confirmation of a plan within the 120-day period set forth in subdivision (c)(7)(B) does not prohibit an objection to any proof of claim.

Proposed revision – published amendments in red;
revisions in blue (newest revisions in darker blue)

1 **Rule 3007. Objections to Claims**

2 (a) ~~OBJECTIONS TO CLAIMS~~ **TIME AND**
3 **MANNER OF SERVICE.**

4 (1) *Time of Service.* An objection to the
5 allowance of a claim **and a notice of objection that**
6 **substantially conforms to the appropriate Official**
7 **Form shall be in writing and filed, and served at least**
8 **30 days before any scheduled hearing on the objection**
9 **or any deadline for the claimant to request a**
10 **hearing.** ~~A copy of the objection with notice of the~~
11 ~~hearing thereon shall be mailed or otherwise delivered~~
12 ~~to the claimant, the debtor or debtor in possession, and~~
13 ~~the trustee at least 30 days prior to the hearing.~~ **The**
14 **objection and notice shall be served as follows:**

15 (2) *Manner of Service.*

16 (A) **The objection and notice shall be**
17 **served on the a claimant by first-class mail to the**

Proposed revision – published amendments in red;
revisions in blue (newest revisions in darker blue)

18 person most recently designated on the
19 claimant’s original or amended proof of claim as
20 the person to receive notices, at the address so
21 indicated; and

22 (i) if the objection is to a claim of
23 the United States, or any of its
24 officers or agencies, in the manner
25 provided for service of a summons
26 and complaint by Rule 7004(b)(4) or
27 (5); or

28 (ii) if the objection is to a claim
29 of an insured depository institution,
30 in the manner provided by Rule
31 7004(h); ~~and.~~

32 (B) If, as authorized by Rule 3003(b)(1),
33 no proof of claim was filed, ~~or a proof of claim~~
34 ~~was filed by an entity other than the creditor~~
35 ~~under Rule 3004 or 3005,~~ the objection and

Proposed revision – published amendments in red;
revisions in blue (newest revisions in darker blue)

36 notice shall be served on the creditor by first-
37 class mail at the address contained in the
38 schedule of liabilities and, if applicable, in the
39 manner provided in subdivision (a)(2)(A)(i) or
40 (a)(2)(A)(ii).

41 (C) Service of the objection and notice
42 shall ~~{also}~~ be made by first-class mail or other
43 permitted means on the debtor or debtor in
44 possession, and on the trustee, and, if applicable,
45 the entity filing the proof of claim under Rule
46 3005 by first class mail or other permitted
47 means.

48 * * * * *

Committee Note

Subdivision (a) is amended to specify the manner in which an objection to a claim and notice of the objection must be served. It clarifies that Rule 7004 does not apply to the service of most claim objections. Instead, a claimant must be served by first-class mail addressed to the person that the claimant most recently designated on its proof of claim to receive notices, at the address so indicated. If, however, the claimant is the United States, an officer or

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revisions in blue (newest revisions in darker blue)

agency of the United States, or an insured depository institution, service must also be made according to the method prescribed by the appropriate provision of Rule 7004. The service methods for the depository institutions are statutorily mandated, and the size and dispersal of the decision-making and litigation authority of the federal government necessitate service on the appropriate United States attorney's office and the Attorney General, as well as the person designated on the proof of claim.

Subdivision (a)(2)(B) applies when a claim objection is made but ~~the creditor did not file a no~~ proof of claim was filed. This situation occurs when the creditor is not required to file a proof of claim in a chapter 9 or chapter 11 case because the claim was scheduled and not listed as contingent, disputed, or unliquidated, *see* Rule 3003, ~~or when someone other than the creditor filed the proof of claim under Rule 3004 or Rule 3005. In th~~atose situations ~~the creditor will not have designated on a proof of claim the person to receive notices, so~~ service on the creditor must be made at the address listed on the schedule of liabilities. In addition, if the creditor is the United States, an officer or agency of the United States, or an insured depository institution, service must also be made according to the method prescribed by the appropriate provision of Rule 7004.

As amended, subdivision (a) no longer requires that a hearing be scheduled or held on every objection. The rule requires the objecting party to provide notice and an opportunity for a hearing on the objection, but, by deleting from the subdivision references to “the hearing,” it permits local practices that require a claimant to timely request a hearing or file a response in order to obtain a hearing. The official notice form served with a copy of the objection will

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inform the claimant of any actions it must take. However, while a local rule may require the claimant to respond to the objection to a proof of claim, the court will still need to determine if the claim is valid, even if the claimant does not file a response to a claim objection or request a hearing.

Proposed revision – published amendments in red;
revisions in blue

1 **Rule 7001. Scope of Rules of Part VII**

2 An adversary proceeding is governed by the rules of
3 this Part VII. The following are adversary proceedings:

4 * * * * *

5 (2) a proceeding to determine the validity, priority, or
6 extent of a lien or other interest in property, ~~other than~~ **but**
7 **not** a proceeding under **Rule 3012** or Rule 4003(d);

8 * * * * *

Committee Note

Subdivision (2) is amended to provide that the determination of the amount of a secured claim under Rule 3012, ~~or the validity, priority, or extent of like a proceeding by the debtor to avoid a lien on or other transfer of exempt property~~ under Rule 4003(d), does not require an adversary proceeding. The determination of the amount of a secured claim may be sought **by motion or** through a chapter 12 or chapter 13 plan in accordance with Rule 3012. ~~Thus, a debtor may propose to eliminate a wholly unsecured junior lien in a chapter 12 or chapter 13 plan without a separate adversary proceeding. Similarly, the avoidance of a lien on exempt property may be sought through a chapter 12 or chapter 13 plan in accordance with Rule 4003(d).~~ An adversary proceeding continues to be required for lien avoidance not governed by Rule 4003(d).

4 FEDERAL RULES OF BANKRUPTCY PROCEDURE

1 **Rule 3012. ~~Valuation of Security~~Determining the**
2 **Amount of Secured and Priority Claims**

3 The court may determine the value of a claim secured
4 by a lien on property in which the estate has an interest on
5 motion of any party in interest and after a hearing on notice
6 to the holder of the secured claim and any other entity as
7 the court may direct.

8 (a) DETERMINATION OF AMOUNT OF CLAIM.
9 On request by a party in interest and after notice—to the
10 holder of the claim and any other entity the court
11 designates—and a hearing, the court may determine

12 (1) the amount of a secured claim under §
13 506(a) of the Code, or

14 (2) the amount of a claim entitled to priority
15 under § 507 of the Code.

16 (b) REQUEST FOR DETERMINATION; HOW
17 MADE. Except as provided in subdivision (c), a request to

18 determine the amount of a secured claim may be made by
19 motion, in a claim objection, or in a plan filed in a
20 chapter 12 or chapter 13 case. When the request is made in
21 a chapter 12 or chapter 13 plan, the plan shall be served on
22 the holder of the claim and any other entity the court
23 designates in the manner provided for service of a
24 summons and complaint by Rule 7004. A request to
25 determine the amount of a claim entitled to priority may be
26 made only by motion after a claim is filed or in a claim
27 objection.

28 (c) CLAIMS OF GOVERNMENTAL UNITS. A
29 request to determine the amount of a secured claim of a
30 governmental unit may be made only by motion or in a
31 claim objection after the governmental unit files a proof of
32 claim or after the time for filing one under Rule 3002(c)(1)
33 has expired.

6 FEDERAL RULES OF BANKRUPTCY PROCEDURE

Committee Note

This rule is amended and reorganized.

Subdivision (a) provides, in keeping with the former version of this rule, that a party in interest may seek a determination of the amount of a secured claim. The amended rule provides that the amount of a claim entitled to priority may also be determined by the court.

Subdivision (b) is added to provide that a request to determine the amount of a secured claim may be made in a chapter 12 or chapter 13 plan, as well as by a motion or a claim objection. When the request is made in a plan, the plan must be served on the holder of the claim and any other entities the court designates according to Rule 7004. Secured claims of governmental units are not included in this subdivision and are governed by subdivision (c). The amount of a claim entitled to priority may be determined through a motion or a claim objection.

Subdivision (c) clarifies that a determination under this rule with respect to a secured claim of a governmental unit may be made only by motion or in a claim objection, but not until the governmental unit has filed a proof of claim or its time for filing a proof of claim has expired.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**

Jeffrey S. Eaton
Acting Clerk of Court



11 Elmwood Avenue, Suite #240
P.O. Box 1663
Burlington, VT 05402-1663
(802) 657-6400 Phone
www.vtb.uscourts.gov

TO: Court Users
FROM: Jeffrey S. Eaton, Clerk of Court
DATE: July 7, 2016
RE: Court Call-In Telephone Number

**CLERK'S
ANNOUNCEMENT
16-102**

Please be advised the Court has established a permanent call-in telephone number to be utilized for all telephonic participants in Bankruptcy Court hearings and Bench/Bar meetings, **regardless of the location of the hearing or meeting.** This should eliminate any confusion in the future regarding which telephone number to call.

Please keep in mind, per VT. LBR 9074-1, in order to participate in a Court hearing or conference by telephone, at least one full business day prior to the hearing or conference, a party must obtain Court approval through the courtroom deputy. To ensure adequate audio quality of hearings and conferences, each party participating by telephone must use a land-line; only upon a showing of exigent circumstances and with the Court's approval will a party be allowed to participate in a hearing or conference by cellular telephone. See also Vt. LBR 5007-1(c); Vt. LBR 7016-1(c).

Effective immediately, all participants appearing via telephone in Bankruptcy Court hearings or Bench/Bar meetings should utilize the following telephone number and access code:

Toll-Free Number = (888) 398-2342
Access Code = 8466872

Please feel free to contact the Bankruptcy Court Clerk's Office at (802) 657-6400 or toll-free at (844) 644-7459 should you have any questions.

A QUICK GUIDE TO CHANGES AT THE VERMONT CHAPTER 13 TRUSTEE'S OFFICE

EFFECTIVE SEPTEMBER 2016

As has been the case for many law offices focusing on bankruptcy services, our office has had to significantly downsize during 2015 and 2016. Our office staff now consists of two Case Managers, a Financial & Office Manager and an independent contractor Staff Attorney. Margaret Katucki, who has 15 years of experience with our office is the Case Manager for the Conduit Mortgage cases. Jody Brown, who has been with us for 13 years, is the Case Manager for the non-mortgage cases. Darlene Sensenich, our senior staff member who has been part of the office since 1992, serves as the Office & Financial Manager. Michelle Kainen has been serving as our staff attorney since approximately March of this year.

The following outline will give you a sense of who does what as new cases come in and progress to completion.

New Case Setup

Darlene handles getting the new cases set up in our system. From the time we get notice of a new case Darlene makes sure the appropriate initial letters go out to debtors, their employer and counsel, providing information on the Sec. 341 meeting and making sure the employer is aware of any wage orders they need to comply with. These services include initial set-up to the point where a plan has been filed and the case is identified as either a conduit mortgage payment case or not. At that point the case is assigned to a case manager- either Jody or Margaret.

Case Manager Duties

As soon we know whether a plan calls for a mortgage cure or not, we assign the case to Margaret or Jody. The debtors introductory letter, which is copied to their counsel also indicates who the case manager is. Case managers then start preparing the cases for the Section 341 Meeting and confirmation hearing. Section 341 documents such as proof of insurance, **REDACTED** tax returns, mortgages, etc. should be transmitted by email to the case manager. Soon we hope to start providing training on using CMC docs, the program that we have used in the past, as an alternative to using email. Questions about cases should generally be addressed to the case

manager unless there is a specific issue in which the trustee is involved. Jody's work schedule is Monday – Thursday every week from 9:00-4:00. Margaret's schedule is Monday, Wednesday and Friday, 9:00-4:30.

Staff Attorney Duties

As Staff Attorney Michelle handles the bulk of motion practice, including motions to dismiss, adversary proceedings, objections to claims and modifications. She also handles the motions to declare cases current at the end of conduit mortgage cases and motions related to mortgage servicing issues. Michelle should be consulted in the first instance if the matter involves a motion to modify or a motion or objection which Michelle has filed.

Office Communications

Probably the best and most efficient way to communicate with our office is email. Email leaves a written record of the communication and makes clear timely responses easier. During working hours we will be using voice mail to augment our ability to take each call as it comes in. We hope before October 1st to have a menu driven phone system which will allow you to route your calls to any staff member or the trustee.

Email Addresses

Jan Sensenich, Trustee	jansensenich@vermont13trustee.com
Darlene Sensenich, Office Mgr.	dsensenich@vermont13trustee.com
Margaret Katucki, Conduit Mtg. Case Mgr.	MargaretK@13trusteedvt.com
Jody Brown, Case Manager	jodyb@vermont13trustee.com
Michelle Kainen, Esq., Staff Attorney	michellekainen@vermont13trustee.com

We hope this information helps you and your staffs adjust to our new configuration.

Jan