

QUICK REFERENCE GUIDE TO 2017 CHANGES TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AFFECTING CHAPTER 13 CASES

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This Quick Reference Guide is a summary of certain changes to the Federal Rules of Bankruptcy Procedure to be effective December 1, 2017. It is based on my present interpretation of the proposed Rules. I might be wrong; I might change my mind. Therefore, read the Rules and Official Comments; conduct your own research; and formulate your own conclusions. Do not rely solely on this guide.

<u>What:</u>	<u>Where:</u>	<u>How:</u>	<u>When:</u>	<u>Service:</u>	<u>Comments:</u>
Proof of claim by secured creditor or unsecured creditor, other than governmental units and other existing exceptions	Rule 3002(a) and (c)	Proof of claim	In a chapter 13 case, 70 days after: <ul style="list-style-type: none"> • Petition date (order for relief); or • Date of the order of conversion to chapter 13. <p>No change in bar date for governmental units.</p>		Creditor, including a secured creditor, must file proof of claim to have an allowed claim. Bar date applies to secured creditors. “A lien that secures a claim against the debtor is not void due only to the failure of any entity to file a proof of claim.”
Proof of claim by holder of a claim that is secured by a security interest in the debtor’s principal residence	Rule 3002(c)(7)	Proof of claim & attachments	In a chapter 13 case, <ul style="list-style-type: none"> • 70 days after order for relief to file proof of claim and attachments required under Rule 3001(c)(2)(C); and • 120 days after order for relief to file attachments required by Rule 3001(c)(1) and (d) as a supplement to claim. 		The Rule 3001(c)(2)(C) attachment is Mortgage Proof of Claim Attachment Form B410A and an escrow statement if applicable. Rule 3001(c)(1) requires a copy of the “writing” on which the claim is based. Rule 3001(d) requires proof of perfection.

<u>What:</u>	<u>Where:</u>	<u>How:</u>	<u>When:</u>	<u>Service:</u>	<u>Comments:</u>
Proof of claim by creditor with insufficient notice of deadline for filing claims	Rule 3002(c)(6)	Motion to extend time for filing proof of claim, which must be granted before claim is filed.	Motion may be filed before or after bar date. Claim must be filed within 60 days after order is entered granting motion for extension of time to file claim.	Serve motion per Rule 7004 via Rule 9014.	Extension allowed if notice was insufficient to give creditor time to file claim: <ul style="list-style-type: none"> • “because the debtor failed to timely file the list of creditors’ names and addresses required by Rule 1007(a)”; • notice was mailed to creditor at foreign address.
Objection to claim	Rule 3007(a)	<ul style="list-style-type: none"> • Objection; and • a Notice of Objection (Official Form) 	Serve at least 30 days before: <ul style="list-style-type: none"> • any scheduled hearing on the objection, or • any deadline for claimant to request hearing 	<ul style="list-style-type: none"> • Serve claimant by first-class mail to notice address in POC; and • If claimant is U.S. or U.S. officer or agency, serve per 7004(b)(4) or (5); • If claimant is insured depository institution, serve per 7004(h); and • Serve debtor, trustee, (and if applicable a codebtor who filed claim under Rule 3005) by first class mail “or other permitted means.” 	<p>For service on U.S., mail copy to:</p> <ul style="list-style-type: none"> • civil process clerk at U.S. Attorney for district; • U.S. Attorney General at Washington DC; • Affected agency or officer; and • If agency is a corporation, to the attention of an officer or agent authorized to accept service of process. <p>For service on insured depository institution: send by certified mail addressed to an officer (with exceptions).</p>

<u>What:</u>	<u>Where:</u>	<u>How:</u>	<u>When:</u>	<u>Service:</u>	<u>Comments:</u>
Determining amount of secured claim under § 506(a) – claims of nongovernmental units	Rule 3012(a) and (b)	<ul style="list-style-type: none"> • Motion; • Objection to claim; or • In plan. <p>But not by adversary proceeding (Rule 7001(2)).</p>	<p>If by motion, give at least 7 days’ notice per Rule 9006(d) or notice required by local rules.</p> <p>If by objection to claim, give 30 days’ notice per Rule 3007.</p> <p>If in plan, creditor gets 21 days’ notice of deadline to object to confirmation and 28 days’ notice of confirmation hearing per Rule 2002.</p>	<ul style="list-style-type: none"> • If by motion, serve per Rule 7004 via Rule 9014. • If by objection to claim, serve per Rule 3007 (see above). • If by plan, serve holder of claim and any other entity the court designates, per Rule 7004 via Rule 3012(b). 	<p>Upon confirmation, “any determination in the plan made under Rule 3012 about the amount of a secured claim is binding on the holder of the claim”</p> <p>Notice requirements for plans amended before confirmation – determined by local rules.</p>
Determining amount of secured claim under 506(a) – claims of governmental units	Rule 3012(a) and (c)	<ul style="list-style-type: none"> • Motion; or • Objection to claim. 	<p>File after:</p> <ul style="list-style-type: none"> • Governmental unit files claim or • Time for filing claim under Rule 3002(c)(1) has expired. <p>If by motion, give at least 7 days’ notice per Rule 9006(d) or notice required by local rules.</p> <p>If by objection to claim, give 30 days’ notice per Rule 3007.</p>	<ul style="list-style-type: none"> • If by motion, serve per Rule 7004 via Rule 9014. • If by objection to claim, serve per Rule 3007 (see above). 	<p>Claims bar date in Rule 3002(c)(1) for governmental units is not changed.</p> <p>Amount of secured claim of governmental units cannot be determined in the plan.</p> <p>If governmental unit does not timely file claim under Rule 3002(c)(1) and debtor files claim under Rule 3004, does debtor also have to file motion or objection to its own claim to determine secured amount?</p>

<u>What:</u>	<u>Where:</u>	<u>How:</u>	<u>When:</u>	<u>Service:</u>	<u>Comments:</u>
Determining amount of any claim entitled to priority	Rule 3012(a) and (b)	<ul style="list-style-type: none"> • Motion; or • Objection to claim. 	<ul style="list-style-type: none"> • File motion after a claim is filed; or • File a claim objection (presumably after claim is filed). <p>If by motion, give at least 7 days' notice per Rule 9006(d) or notice required by local rules.</p> <p>If by objection to claim, give 30 days' notice per Rule 3007.</p>	<ul style="list-style-type: none"> • If by motion, serve per Rule 7004 via Rule 9014. • If by objection to claim, serve per Rule 3007 (discussed above). 	Amount of claim entitled to priority cannot be determined in the plan.
Objection to confirmation	Rule 3015(f)	Objection	File objection at least 7 days before the date set for hearing on confirmation unless court orders otherwise.	Serve per Rule 7004 via Rule 9014.	<p>Creditors are to get:</p> <ul style="list-style-type: none"> • 21 days' notice of the deadline for filing objections to confirmation (Rule 2002(a)(9)); and • 28 days' notice of the confirmation hearing (Rule 2002(b)(3)). <p>Notice requirements for plans amended before confirmation – determined by local rules.</p>

<u>What:</u>	<u>Where:</u>	<u>How:</u>	<u>When:</u>	<u>Service:</u>	<u>Comments:</u>
Avoid a lien or other transfer of exempt property under § 522(f)	Rule 4003(d)	<ul style="list-style-type: none"> • Motion; or • In plan. <p>But not by adversary proceeding (Rule 7001(2)) (no change).</p>	<p>If by motion, give at least 7 days' notice per Rule 9006(d) or notice required by local rules.</p> <p>If in plan, creditor gets 21 days' notice of deadline to object to confirmation and 28 days' notice of confirmation hearing per Rule 2002.</p>	<ul style="list-style-type: none"> • If by motion, serve per Rule 7004 via 9014. • If in plan, serve affected creditor per Rule 7004 via Rule 4003(d). 	
Request for order declaring lien satisfied	Rule 5009(d)	Debtor may request by motion an order declaring that "secured claim has been satisfied and the lien has been released under the terms of a confirmed plan."	Likely file motion at time a case is being closed, but rule does not prohibit request at another time.	Service on claim holder per Rule 7004.	New.
Alteration of Official Forms	Rule 9009(a)	Eff. 12/1/17, the Official Forms shall be used "without alteration, except as otherwise provided in these rules, in a particular Official Form, or in the national instructions for a particular Official Form. Official Forms <u>may be modified to permit minor changes not affecting wording or the order of presenting information . . .</u> "			Before 12/1/17, Official Forms shall be used "with alterations as may be appropriate."