

Changes to Plan Confirmation and Objections to Plans

03-26-2019

The Court has determined there was a conflict between the old Notice language which required creditors to file objections to confirmation before the conclusion of the 341 meeting and Bankruptcy Rule 3015(f) which requires creditors to file objections to confirmation no later than 7 days before a confirmation hearing. Starting Monday March 25th, the Court has revised the initial Notice the Court sends out when a case is filed. Depending on whether a plan was filed with the schedules or not, the Court is now using one of the following paragraphs in their Notice:

9. Filing and objecting to a plan. The debtor has filed a plan. The plan is enclosed. If a party files a written objection to confirmation of the proposed plan no later than 28 days after the completion of the Meeting of Creditors, the Court will schedule a hearing. The only person who will be notified of the hearing date will be the trustee, counsel for the debtor (or the debtor if the debtor is not represented by counsel), the Office of the United States Trustee, the objecting party, and all other persons who specifically request in writing to receive notice electronically. If no party files a written objection to the plan, the Court may confirm the plan without a hearing.

OR

9. Filing and objecting to a plan. The debtor has not filed a plan as of this date. A copy of the plan will be sent separately. If a party files a written objection to confirmation of the proposed plan no later than 28 days after the completion of the Meeting of Creditors, the Court will schedule a hearing. The only person who will be notified of the hearing date will be the trustee, counsel for the debtor (or the debtor if the debtor is not represented by counsel), the Office of the United States Trustee, the objecting party, and all other persons who specifically request in writing to receive notice electronically. If no party files a written objection to the plan, the Court may confirm the plan without a hearing.

WHY DO WE CARE? Creditors will now have 28 days AFTER the conclusion of the 341 meeting to file objections to confirmation. Assuming the trustee recommends confirmation and there are no other objections, the confirming order (CO) will not be signed until after the 28 days has run.

WILL THIS AFFECT TRUSTEE PROCEDURE? No, if confirmation is recommended, the completed Trustee Report and a proposed CO will be filed. The Court staff will have a new 28-day flag they will set and, assuming no objections to confirmation are filed within that timeframe, the proposed CO will then be sent to the Judge for signature.

WHAT IS THE IMPACT? The effect will be to delay payment to creditors compared to prior practice. First affected will be debtor attorneys who are used to assuming payment of their fees will start within a month of the 341 meeting on an uncontested case; that is now unlikely. Second, creditors who are receiving adequate protection payments will continue to receive those payments for a longer period of time. In a case where the adequate protection payment is minimal and the equal monthly payment to start at confirmation is much higher there will be questions as to why the lower amount is continuing to be received. Creditors may start objecting to low adequate protection amounts.

There may be other effects not anticipated at this time. This is a Court-directed procedural change we will all need to adjust to.