

Chapter 13 Challenges: Implementing the New Chapter 13 Plan and Amended Bankruptcy Rule Change

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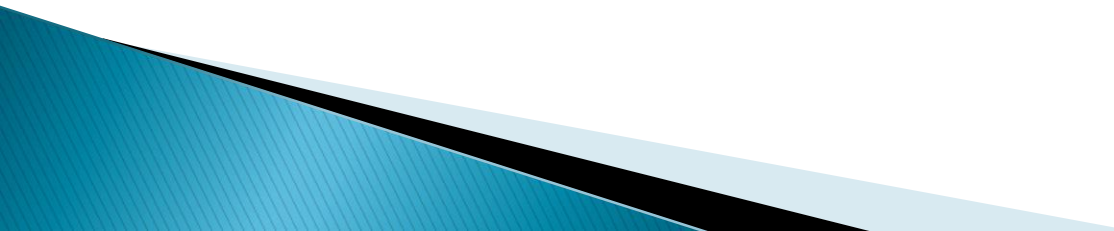
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On December 1, 2017, certain amendments and new changes to the *Federal Rules of Bankruptcy Procedure* become effective. While these new rules primarily impact consumer bankruptcy cases in Chapter 7 and 13, they also affect family farmer cases under Chapter 12. Chief among these changes is the required use of a uniform Chapter 13 Plan. The Northern District of Alabama has chosen to “opt-out” of the Model Plan (Official Form 113). The approved uniform Chapter 13 Plan for this district can be found by clicking the link below:

http://www.alnb.uscourts.gov/sites/alnb/files/forms/ALNBCh13Plan_Eff12012017.pdf

The following is a summary of the key changes to the Federal Bankruptcy Rules. This is only a guide and you should read the rule changes and make your own analysis.



Rule	What	Rule Changes	Service	Comments
3002(a)(2)	Proof of Claim filed by a secured creditor, and unsecured creditors other than governmental units	<p>In Chapter 7,12, and 13 cases:</p> <ul style="list-style-type: none"> • Requires POC to be filed 70 Days from the Petition Date (order for relief). • Date of order of conversion to Chapter 13 • No change as to governmental units. 		<p>Creditor, including secured creditors must file POC to be allowed</p> <p>“A lien that secures a claim against the Debtor is not void due to only the failure of an entity to file a proof of claim”</p>
3002(c)(6)	Proof of Claim -creditor insufficient notice due to time or improper address;	<p>In Chapter 7,12, and 13 cases:</p> <ul style="list-style-type: none"> • Motion to extend time to file POC may be filed before or after time to file POC; • Court may extend time by 60 days. 		<p>Extension allowed if notice insufficient to give creditor time to file claim because: (i) debtor failed to timely file list of creditors names and addresses; or (ii) notice was mailed to creditor at improper address.</p>
3002(c)(7)	Proof of Claim filed by a secured creditor with a security interest in Debtor’s principal residence	<p>In Chapter 7,12, and 13 cases:</p> <ul style="list-style-type: none"> • 70 Days after order for relief to file POC and attachments under Rule 3001(c)(2)(C); • 120 days after order for relief to file attachments to POC under Rule 3001(c)(1) & (d) as a supplement. 		<p>Rule 3001(c) attachment is mortgage proof of claim attachment Form B410A and an escrow statement. Rule 3001(c)(1) requires a copy of the “writing” on which the claim is based. Rule 3001(d) requires proof of perfection.</p>

Rule	What	Rule Changes	Service	Comments
3007(a)	Objection to Claim	Objection to Claim and Notice of Objection must be filed 30 days before any hearing on objection or any deadline for claimant to request hearing (negative notice).	<p>Serve claimant by first class mail to notice address in POC;</p> <p>if claimant is US or US officer or agency serve per rule 7004(b)(4) or (5).</p> <p>if claimant is insured depository institution serve per rule 7004(h).</p> <p>serve debtor, trustee, and if applicable co-debtor by first class mail or other permitted means.</p>	<p>For service on US:</p> <p>mail copy to civil process clerk at US attorney for district;</p> <p>US Attorney General in Washington DC; and</p> <p>affected agency or officer</p> <p>For service on insured depository institution: send by certified mail addressed to an officer;</p>
3012(a) and (b)	<p>Determining amount of secured claim under §506(a) – nongovernmental</p> <p>In Plan; or</p> <p>Objection to Claim</p>	Upon confirmation “any determination made in a plan under Rule 3012 about the amount of a secured claim is binding on the holder of such claim.” Thus, a plan can provide for the strip down or strip off of a secured claim. Adversary Proceeding is no longer required.	Served per Rule 2002 – Creditor gets 28 days notice of confirmation hearing. Serve all entities identified in Matrix and any other entity Court designates per rule 7004.	<p>Debtor can still value claim by objection Rule 3007. Must give 30 days notice and serve per Rule 7004. See revised Rule 3007.</p> <p>Motion? Disfavored</p>
3012(a) and (c)	<p>Determining amount of secured claim under §506(a) – government units</p> <p>(ex. Tax liens)</p>	<p>Amount of secured claim owed to governmental units <u>cannot</u> be determined in plan.</p> <p>By motion; or</p> <p>By Objection</p>	Serve objection per Rule 7004 give 30 days notice per Rule 3007. Serve motion per Rule 7004 provide at least 7 days notice per Rule 9006.	<p>File after government unit files POC or time for filing POC under Rule 3002(c)(1) has expired.</p> <p>Deadline for gov’t POC not changed;</p> <p>D may file claim and object</p>

Rule	What	Rule Changes	Service	Comments
3012(a) and (b)	Determining amount of priority claim	Amount of priority claim <u>cannot</u> be determined in plan. By motion; or By objection	Serve objection per Rule 7004; give 30 days notice per Rule 3007. Serve motion per Rule 7004; provide at least 7 days notice per Rule 9006.	File after priority claim files POC or time for filing POC under Rule 3002(c)(1) has expired. D may file claim and object.
3015(f)	Objection to Confirmation of 13 Plan	Objection must be filed at least 7 days prior to confirmation hearing	Served per Rule 7004	21 days for notice of deadline to file objection and 28 day notice for hearing on confirmation per Rule 2002(a)(9) & (b)(3).
4003(d)	Avoidance of lien under §522(f)	Lien avoidance can be done by either: By motion; or By Plan AP is not required -Rule 7001(2)	By motion creditor entitled to at least 7 days notice before hearing – Rule 9006(d) If by Plan must comply with notice requirements of 2002 (a)(9) & (b)(3).	
5009(d)	Motion for declaration of satisfaction of lien	Debtor may move for Order declaring that a secured claim has been satisfied and the lien has been released under the terms of the confirmed plan.	Request to be made prior to case being closed. Service of motion on claim holder per Rule 7004	