AMERICAN BANKRUPTCY INSTITUTE

Southeast Bankruptcy Workshop

CONCURRENT SESSION

Consumer Session

Using Bankruptcy Rules Effectively: Tips and Traps

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Bankruptcy Rule 1001

Purpose

"These rules shall be construed, administered, and employed **by the court and the parties** to secure the just, speedy, and inexpensive determination of every case and proceeding."

Bankruptcy Rule 3002(c)

Time for filing proof of claim

"In a voluntary chapter 7 case, chapter 12 case, or chapter 13 case, a proof of claim is timely filed if it is filed not later than 70 days after the order for relief under that chapter or the date of the order of conversion to a case under chapter 12 or chapter 13."

Enlargement of time for filing proof of claim

Bankruptcy Rule 9006(b)(3)	Bankruptcy Rule 3002(c)(6)
"The court may enlarge the time for taking action under . . . [Rule] 3002(c) . . . only to the extent and under the conditions stated in those rules."	"On motion filed by a creditor before or after the expiration of the time to file a proof of claim, the court may extend the time by not more than 60 days from the date of the order granting the motion. The motion may be granted if the court finds that the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim."

Bankruptcy Rule 3007(a)(2)(A)

Objections to Claim: Service Tip

"The objection and notice shall be served on a claimant by first-class mail to the person most recently designated on the claimant's original or amended proof of claim as the person to receive notices, at the address so indicated; . . . ."

Bankruptcy Rule 3007(a)(2)(A)(i)

Objection to Claim: Service Trap – United States

"The objection and notice shall be served on a claimant [to the person to receive notices on the proof of claim]; *and*

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

Bankruptcy Rule 3007(a)(2)(A)(ii)

Objection to Claim: Service Trap – Rule 7004(h)

"The objection and notice shall be served on a claimant [to the person to receive notices on the proof of claim]; *and* . . .

(ii) if the objection is to a claim of an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act, in the manner provided in Rule 7004(h)."

Bankruptcy Rule 3002.1

Claims Secured by Debtor's Principal Residence

3002.1(a): Applicability

"**(a) In general**. This rule applies in a chapter 13 case to claims

(1) that are secured by a security interest in the debtor's ***principal residence***, and

(2) for which the plan provides that either the trustee or the debtor will make ***contractual installment payments***.

[R]equirements of this rule cease to apply [upon] . . . order terminating or annulling the automatic stay . . ."

Bankruptcy Rule 3002.1 – Applicability

What Exactly is a Contractual Installment Payment?

Depends…How about payments on **valued claims under 506(a)?**

The plain meaning of the term contractual installment payments refers to payments made pursuant to the *original contract* between the debtor and the secured creditor. "Plainly, a secured creditor whose **claim** is **bifurcated** pursuant to §§ 1322(b)(5) and 506(a) **no longer enjoys the benefit of its original contract** negotiated with the debtor. . . . [P]lan payments to the affected secured creditor **are not contractual installment payments** for purposes of Bankruptcy Rule 3002.1." In re White, 641 B.R. 717 (Bankr. S.D. Ga. 2022).

Bankruptcy Rule 3002.1 – Applicability

What Exactly is a Contractual Installment Payment?

How about payments on **Reverse Mortgages**?

In re LeGare-Doctor, 634 B.R. 453 (Bankr. D.S.C. 2021).

1) Court found that **tax advance** made post-petition should be **considered a "contractual payment"** because the Lender used this amount as a basis for default.
2) In determining applicability, Lender **violated the rule for failing to notice** the tax advance, and further violated the rule by attempting to collect the tax advance post-discharge.
3) Even though a reverse mortgage does not have a traditional contractual payment requirement, this court found applicability of Rule 3002.1, and thus Creditor was bound by the notice requirements, timing constraints, and all other provisions of the Rule.

Bankruptcy Rule 3002.1

Best Practices

Practice Pointer #1 – File Something! (Motion to Reimburse [§ 503(b)], Post-Petition Fee Notices [Rule 3002.1(c)], Application for Admin Expense [2016(a)]. Consider also filing a motion requesting for an order requiring the debtor to pay the amount through the chapter 13 plan.

Practice Pointer #2 – Avoid *not* filing anything. While there are Code provisions and case law that protect secured claims, you don't want to put your tax and/or insurance advance at risk of scrutiny – and possibly waiver – due to a failure to notify.

Bankruptcy Rule 2004

Examination; Discovery

(a) EXAMINATION ON MOTION. On motion of **any party in interest**, the court may order the examination of **any entity**.

(b) SCOPE OF EXAMINATION. The examination of an entity under this rule or of the debtor under § 343 of the Code **may relate only to** the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. In a family farmer's debt adjustment case under chapter 12, an individual's debt adjustment case under chapter 13, or a reorganization case under chapter 11 of the Code, other than for the reorganization of a railroad, the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.

Bankruptcy Rule 2004 Limits: Pending Proceedings

One of the "limits" imposed by most courts is that Rule 2004 does not apply to discovery from an adversary party, once an adversary proceeding has actually been initiated. *In re Summit Glob. Logtics*, No. 08-11566(DHS), 2008 WL 1446722, at *2 (Bankr. D.N.J. Apr. 9, 2008) (quoting *In re 2435 Plainfield Ave.*, Inc. 223 B.R. at 455-56); *In re Valley Forge Plaza Assocs*., 109 B.R. 669, 674 (Bankr. E.D. Penn. 1990) (stating that "once an adversary proceeding or a particular contested matter is under way, discovery sought in furtherance of litigation is subject to the F. R. Civ. P. rather than the broader bounds of R2004").

"The reason for this limitation on the availability of Rule 2004 as a discovery device stems from the distinction between the broad scope of a Rule 2004 examination and the more restricted nature of discovery permitted under the [FRCP]. For example, while the scope of an examination under Rule 2004 is far-reaching, discovery rules in adversary proceedings and contested matters are more restrictive with respect to the threshold requirement of relevance and in regards to protections available to subpoenaed parties. . . . Moreover, the expansive nature of Rule 2004 should not be permitted to exact prejudice or injustice on the subpoenaed party." *Summit Glob. Logtics*, 2008 WL 1446722, at *3

Are Federal Rules More Restrictive in Discovery?

"*Scope in General.* Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable." Fed. R. Civ. P. 26(b)(1).

v.

The scope of Rule 2004 is "unfettered and broad." *In re GHR Energy Corp.*, 33 B.R. 451, 453-54 (Bankr. D. Mass. 1983*)*; *In re GHR Companies, Inc.*, 41 B.R. 655, 660 (Bankr. D. Mass. 1984). Examinations under Rule 2004 are allowed for the "purpose of discovering assets and unearthing frauds" and have been compared to "a fishing expedition." *GHR Energy Corp.*, 33 B.R. at 453.

Responding After the 2004 Order is Entered

Motion to Reconsider.

Motion to Set Aside.

Motion to Quash.

Protective Order.

Responding After the 2004 Order is Entered

- Motion to Reconsider. There is no "motion to reconsider" in the FRCP. Rather, if timely filed, Bankruptcy Rule 9023 (i.e., Motion to Amend, adopting FRCP 59).
- Motion to Set Aside. Rule 9024
- Motion to Quash. Unduly burdensome, reasonable time to comply
- Protective Order. Bankruptcy Rule 9018; FRCP 26(c)
- Note: Rule 9016 – applies FRCP 45 (Although Rule 7004(d) authorizes nationwide service of process, Rule 45 F.R.Civ.P. limits the subpoena power to the judicial district and places outside the district which are within 100 miles of the place of trial or hearing.)
- Contested matter: Rule 9014? Compare Rule 7001 – an adversary proceeding

Bankruptcy Rule 3015(f)

Objection to Confirmation of Chapter 13 Plan

"An objection to confirmation of a plan shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee, at least seven days before the date set for the hearing on confirmation, **unless the court orders otherwise**."

Bankruptcy Rule 3015(h)

Postconfirmation Chapter 13 Plan Modifications

The movant "shall give the debtor, the trustee, and all creditors not less than 21 days' notice by mail of the time fixed for filing objections and, if an objection is filed, the hearing to consider the proposed modification, **unless the court orders otherwise with respect to creditors who are not affected by the proposed modification**."

Bankruptcy Rule 4001

Relief from Stay v. Dismissal

Conduit Jurisdiction (avoid "toe-stepping"). Chapter 13 is the "gate-keeper," stepping into the shoes for mortgage creditor, accepting ***both*** "cure" and "ongoing" payments.

Motion for Relief.

Under § 362(d), a creditor could file a relief motion in a chapter 13 conduit case for a debtor's failure to make payments.

Motion to Dismiss.

Under § 1307(c), on request of a party in interest, the court may dismiss a case for (1) unreasonable delay by the debtor that is prejudicial to creditors, [or] . . . (6) material default by the debtor with respect to a term of a confirmed plan.

Bankruptcy Rule 6007

Abandonment vs. Stay Relief

Rule 6007 (Abandonment or Disposition of Property). (a) Unless otherwise directed by the court, the trustee or debtor in possession shall give notice of a proposed abandonment or disposition of property. . . . (b) A party in interest may file and serve a motion requiring the trustee or debtor in possession to abandon property of the estate.

Stay Relief Order "Good Enough"…? *Maybe…?*

> Where creditor has invoked remedies and settled its property rights in good-faith reliance upon termination of automatic stay in bankruptcy, bankruptcy court should not and may not invoke its broad equitable powers to avoid results of creditor's action, even if doing so would enable debtor to make full use of statutory remedies previously available to him under Bankruptcy Code. 11 U.S.C. § 105(a); *In re Spaude*, 112 B.R. 304 (Bankr. D. Minn. 1990).

Bankruptcy Rule 6007

Abandonment vs. Stay Relief

Best Practices

Practice Pointer #1. Include language in your stay relief order, specifically authorizing what your client seeks to do. For example, this "order authorizes creditor to proceed against the debtor in collection of its debt, complete a foreclosure sale regarding the property at issue; and authorizes creditor to file any documentation necessary under state law to satisfy its lien."

Practice Pointer #2. File separate motion for abandonment and/or seek such relief in your stay relief motion.

Bankruptcy Rule 4004(a)

Objections to Discharge

- Deadline: 60 days after first date set for the 341 meeting.
- Motion: §§ 727(a)(8), (a)(9), or 1328(f) (prior discharge), on 28 days' notice.
- Complaint: All other reasons in § 727(a).
- Chapter 13: No reasons for objection other than § 1328(f).

Bankruptcy Rule 4004(a)

Objections to Discharge

- Extension of 60-day deadline:
  - Before the deadline, on motion for cause shown.
  - After deadline and before discharge is entered:
    - Facts would warrant revocation of discharge;
    - Movant lacked knowledge;
    - Motion is filed "promptly" after discovery of facts.
  - Rule 9006 is not applicable.

Bankruptcy Rule 4007

Objections to Dischargeability of Particular Debts

- Deadlines:
  - Under 523(c), 60 days after first date set for 341 meeting.
  - Anything else: any time.

- Extension of deadline:
  - On motion filed before the deadline, for cause.
  - Rule 9006 is not applicable.

Bankruptcy Rule 4007

Objections to Dischargeability of Particular Debts

Traps in chapter 13 case:

- See §1328(a) for exceptions to discharge in chapter 13.
- § 523(a) exceptions only for hardship discharge under 1328(b).
- 60-day deadline applies for 523(a)(2) and (a)(4) debts.
- 523(a)(6) debts: court sets deadline if debtor seeks hardship discharge.

Bankruptcy Rule 7055/Civil Rule 55(a)

Clerk's Entry of Default

"When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default."

Bankruptcy Rule 7055/Civil Rule 55(b)

Entering a Default Judgment

"(1) By the Clerk. If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk—on the plaintiff's request, with an affidavit showing the amount due—must enter judgment for that amount and costs . . . .

(2) By the Court. In all other cases, the party must apply to the court for a default judgment."

Bankruptcy Rule 8003: *Final and appealable post-Ritzen*

(5) *Final Judgment*. The notice of appeal encompasses the final judgment, whether or not that judgment is set out in a separate document under Rule 7058, if the notice identifies:

(A) an order that adjudicates all remaining claims and the rights and liabilities of all remaining parties; or

(B) an order described in Rule 8002(b)(1).

"Because the appropriate 'proceeding' in this case is the adjudication of the motion for relief from the automatic stay, the Bankruptcy Court's order conclusively denying that motion is 'final.' The court's order ended the stay-relief adjudication and left nothing more for the Bankruptcy Court to do in that proceeding. The Court of Appeals therefore correctly ranked the order as final and immediately appealable, and correctly affirmed the District Court's dismissal of Ritzen's appeal as untimely." *Ritzen Group, Inc. v. Jackson Masonry*, LLC, 140 S. Ct. 582 (2020).

Final and appealable cases decided post-Ritzen

- Dismissal Order
- Remand Order
- Denial of Leave
- Discovery Orders (Protective Orders from Subpoenas)
- Orders Allowing Discovery
- Order Denying Reconsideration
- Orders Determining Claimant is No Longer a Party in Interest
- Order Denying Motion to Convert Chapter 11 to 7
- Contempt / Sanctions Order
- Order Finding Ineligibility for Subchapter V
- Backstop Order
- Bar Date Orders
- Joinder Deadline Order and Order Denying Joinder Motion When Merged with a Dismissal Order
- Entry of a Stipulation Order in Adversary and Incorporated in Plan
- Order Granting Recognition of a Foreign Proceeding
- Order Denying Removal of a Trustee

Questions?

Thank You!

…oh, we still have time? Well then,

Bankruptcy Rule 9029

- Local Rules must be "consistent with—but not duplicative of—Acts of Congress and these rules and which do not prohibit or limit the use of the Official Forms." Fed. R. Bankr. P. 9029(a)(1).
- "A local rule imposing a requirement of form shall not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement." Fed. R. Bankr. P. 9029(a)(2).
- "A judge may regulate practice in any manner consistent with federal law, these rules, Official Forms, and local rules of the district." Fed. R. Bankr. P. 9029(b).

Using Bankruptcy Rules Effectively: Tips and Traps

ABI Southeast Bankruptcy Workshop 2024

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Materials Outline:

I. Policy Underlying Using Bankruptcy Rules Effectively (Rule 1001)

a. "These rules shall be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every case and proceeding." Fed. R. Bankr. P. 1001.

   i. This portion of Bankruptcy Rule 1001 reflects the same objective as that contained in Federal Rule of Civil Procedure 1. *See* Fed. R. Civ. P. 1; *see also Katchen v. Landy*, 382 U.S. 323, 329 (1966) ("[T]his Court has long recognized that a chief purpose of the bankruptcy laws is 'to secure a prompt and effectual administration and settlement of the estate of all bankrupts within a limited period,' and that provision for summary disposition, 'without regard to usual modes of trial attended by some necessary delay,' is one of the means chosen by Congress to effectuate that purpose." (internal citations omitted)).

b. To secure the just, speedy, and inexpensive determination of every case and proceeding, "depends upon cooperative and proportional use of procedure by lawyers and parties." Fed. R. Bankr. P. 1001 advisory committee's note (2017).

   i. In 2017, according to Advisory Committee Notes, Rule 1001 was amended to add in the word "administered" to emphasize "the affirmative duty of the court to exercise the authority conferred by these rules to ensure that bankruptcy cases and the proceedings within them are resolved not only fairly, but also without undue cost or delay." *Id.*

   ii. The Committee also noted that this duty is shared by the attorneys as officers of the court. *Id.*

II. Notice of a Case and Other Important Case Deadlines (Rules 1007 and 2002(f))

a. Rule 1007 requires debtors in voluntary cases to file with their petition a list of the names and addresses of entities that are or will be included in their various schedules of creditors, executory contract counterparties and co-debtors. Fed. R. Bankr. P. 1007(a)(1).

   i. This list is typically referred to as the creditor matrix.

   ii. Federal Rule of Bankruptcy Procedure 1007 is the procedural corollary to § 521. *See* Fed. R. Bankr. P. 1007; *see also* 11 U.S.C. § 521(a) (requiring

debtors to file a list of creditors, schedules of the debtor's liabilities, and various statements indicating the debtor's intent to either retain or surrender property subject to security interests or liens).

iii. Section 342(a) reaffirms the fundamental guarantee of due process for creditors by requiring that "[t]here shall be given notice as is appropriate . . . of an order for relief" under the Bankruptcy Code. 11 U.S.C. § 342(a).

b. In general, unless the court has directed otherwise, Federal Rule of Bankruptcy Procedure 2002(f) requires the clerk to provide *all* creditors notice of the order for relief. Fed. R. Bankr. P. 2002(f)(1).

i. The clerk of the court in doing so must rely on accurate disclosures by the debtor (and by proxy, debtor's counsel). Relying on the debtor's creditor matrix and the names and mailing addresses contained therein, the clerk utilizes the appropriate version of Official Form 309 (the "notice of bankruptcy") to send out notice of the case to parties-in-interest.

ii. The creditor matrix is generally the "only information about the identities and addresses of creditors" available to the clerk for noticing purposes, and that information must come, at least initially, from the debtor. *In re Hicks*, 184 B.R. 954, 957 (Bankr. C.D. Cal. 1995).

c. On top of providing knowledge that a bankruptcy case has been filed, the notice of bankruptcy informs creditors of other significant dates and deadlines. Through the notice of bankruptcy, the clerk provides notice of, among other details, (i) the claims bar date, (ii) the deadline to file a complaint objecting to the discharge under § 727, and (iii) the deadline for filing a complaint to determine the dischargeability of a debt pursuant to § 523(c). Fed. R. Bankr. P. 2002(f)(3)–(5).

d. Amendments to the debtor's schedules, statements and lists

i. Federal Rule of Bankruptcy Procedure 1009(a) expressly contemplates voluntary amendments to the debtor's schedules, statements and lists, noting the debtor has a "general right to amend" "as a matter of course at any time before the case is closed." Fed. R. Bankr. P. 1009(a).

ii. But such amendments require the debtor to give notice "to the trustee and to any entity affected thereby." Fed. R. Bankr. P. 1009(a).

III. Limitation of Notice (Rule 2002(h))

a. Rule 2002(h) provides that the court may order that notice required by Rule 2002(a) be mailed only to the debtor, the trustee, all indentured trustees, creditors that hold claims for which proofs of claim have been filed; and creditors, if any, that are still permitted to file claims because an extension was granted under Rule 3002(c)(1) or (c)(2). Fed. R. Bankr. P. 2002(h).

b. In *voluntary* cases, this is only available once the claims bar date has run in voluntary chapter 7, chapter 12, or chapter 13 cases.

c. In *involuntary* cases, this is only available once the claims bar date has run in an involuntary chapter 7 case.

IV. Filing Proof of Claim or Interest (Rule 3002) (as amended 12/01/2017 and 12/01/2022)

a. Necessity for Filing (Rule 3002(a)):

   i. A secured creditor, unsecured creditor, or equity security holder must file a proof of claim or interest to be allowed except as provided in certain other rules (*e.g.*, Rule 3004 which allows the debtor or trustee to file a proof of claim on behalf of the entity). A lien that secures a claim against the debtor is not void due only to the failure of an entity to file a proof of claim.

   ii. The 2017 amendments to the Rules added the requirement that a secured creditor file a proof of claim in order to be allowed. However, in some jurisdictions, a chapter 13 trustee may pay a claim listed in the chapter 13 plan even if a proof of claim has not been filed.

b. Time for Filing (a/k/a "bar date") (Rule 3002(c)).

   i. In a voluntary chapter 7, chapter 12, or chapter 13 case, a proof of claim is timely filed if it is filed not later than 70 days after the date of petition ("order for relief") under that chapter or the date of conversion to a case under chapter 12 or chapter 13.

   ii. There are exceptions, significantly:

      1. A proof of claim filed by a governmental unit, other than a claim resulting from a tax return filed under section 1308, is timely filed if it is filed no later than 180 days after the order for relief or 60 days after the filing of the tax return. The court may, for cause, enlarge

the time only upon motion of the governmental unit made before the deadline. Fed. R. Bankr. P. 3002(c)(1).

2. On motion filed by a creditor before or after the bar date, the court may grant the motion and extend the deadline by no more than 60 days after the order granting the motion if the court finds that the notice was "insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim." Fed. R. Bankr. P. 3002(c)(6) (amended as of 12/01/2022).
3. A proof of claim filed by a creditor secured by a security interest in the debtor's principal residence is timely filed if:
    a. The proof of claim with the forms required by Rule 3001(c)(2)(C) (the mortgage proof of claim attachment and escrow analysis) is filed not later than 70 days after the petition/conversion date; and
    b. The attachments required by Rule 3002(c)(1) and (d) (*e.g.*, the note and mortgage) are filed as a supplement to the claim no later than 120 days after the petition/conversion date.

iii. Read Rule 3002(c) in conjunction with11 U.S.C. § 502(b)(9) which specifies that a proof of claim not timely filed must be disallowed.

iv. TRAPS:

1. Excusable neglect is not a basis for obtaining an extension of time other than as provided within Rule 3002(c). *See* Rule 9006(b)(3) ("The court may enlarge the time for taking action under Rule[] . . . 3002(c) . . . only to the extent and under the conditions stated in those rules.").
2. The Supreme Court case of *Pioneer Investment Services Co. v. Brunswick Associates LP*, 507 U.S. 380 (1993) is inapplicable. *Pioneer Investment Services* addressed Rule 3003(c)(3) (filing proofs of claims in chapter 11 cases).
3. Be wary of citing cases decided before October 1994 in support of a motion to extend the bar date. Section 502(b)(9) was amended in

October 1994 to "overrule *In re Hausladen*, 146 B.R. 557 (Bankr. D. Minn. 1992), and its progeny by disallowing claims that are not timely filed."

4. Although 11 U.S.C. § 726 provides for the allowance of certain late-filed claims other than as provided in Rule 3002, section 726 does not apply in chapter 13 cases.

v. If a creditor does not timely file a proof of claim, the debtor (or trustee) may file a proof of claim on behalf of a creditor within 30 days after the bar date. The Rule 3004 deadline may be extended for excusable neglect under Rule 9006.

V. Stay Relief and Claims Secured by Debtor's Principal Residence (Rule 3002.1)

a. **3002.1(a): Applicability:** "(a) In general. This rule applies in a chapter 13 case to claims (1) that are secured by a security interest in the debtor's **principal residence**, and (2) for which the plan provides that either the trustee or the debtor will make **contractual installment payments**. Unless the court orders otherwise, the notice requirements of this rule cease to apply when an order terminating or annulling the automatic stay becomes effective with respect to the residence that secures the claim." Fed. R. Bankr. P. 3002.1(a) (emphasis added).

b. **3002.1(c) and (e): Notice and Determination of Fees, Expenses, and Charges:** "(c) Notice of Fees, Expenses, and Charges. The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a **notice itemizing all fees, expenses, or charges** (1) that were incurred in connection with the claim **after the bankruptcy case was filed**, and (2) that the holder asserts are recoverable against the debtor or against the debtor's principal residence. The notice shall be served **within 180 days** after the date on which the fees, expenses, or charges are incurred." Fed. R. Bankr. P. 3002.1(c) (emphasis added).

c. Applicability (What is a Contractual Installment Payment?)

i. *Valued Claims Under §506 and §1325(a)(5)*

1. *In re White*, 641 B.R. 717 (Bankr. S.D. Ga. 2022). The plain meaning of the term contractual installment payments refers to payments made pursuant to the original contract between the debtor

and the secured creditor. "Plainly, a secured creditor whose **claim** is **bifurcated** pursuant to §§ 1322(b)(5) and 506(a) **no longer enjoys the benefit of its original contract** negotiated with the debtor. Rather, '[i]t is the Chapter 13 Plan, by which the debtor commits him[-] or herself, which becomes the modified contract between the debtor and creditors.' . . . As such, following bifurcation, a debtor's plan payments to the affected secured creditor **are not contractual installment payments for purposes of Bankruptcy Rule 3002.1 because the parties' original contract is no longer in force**." *Id.* at 725 (citations omitted) (emphasis added). As a result, even though it was undisputed that the debtor was paying the creditor through the plan, and that the property was in fact the debtor's primary residence, Rule 3002.1(a) did not apply because cramdown payments were not deemed "contractual installment" payments.

ii. *Reverse Mortgages*

1. *In re LeGare-Doctor*, 634 B.R. 453 (Bankr. D.S.C. 2021). South Carolina court determined that tax advance made post-petition should be considered a "contractual payment" because the Lender used this amount as a basis for default. As a result, the court found that Rule 3002.1(a) applied, and found that Lender violated the rule for failing to notice the tax advance, and further violated the rule by attempting to collect the tax advance post-discharge. As such, even though a reverse mortgage does not have a traditional contractual payment requirement, this court found applicability of Rule 3002.1, and thus Creditor was bound by the notice requirements, timing constraints, and all other provisions of the Rule.

d. Best Practices (Know Your District)

i. *What if there is a default in taxes and insurance?*

1. **Post-Petition Fee Notice (Rule 3002.1(c)).** Notice itemizing all fees, expenses, or charges incurred after bankruptcy case was filed.

Such notice must be filed within 180 days on which the fees, expenses, or charges were incurred.

2. **Motion for Reimbursement (§503(b)).** Seek reimbursement of tax/insurance advance as an administrative expense pursuant to §503(b), on grounds that the advanced funds should be classified as an "actual, necessary cost and/or expense of preserving the estate." As a result, this could be an avenue for reimbursement of this expense, and request for the same to be paid through a chapter 13 plan.
3. **Application for Administrative Expense (Rule 2016(a)).** Filing an application with the court seeking reimbursement of necessary expenses from the estate.
4. **Motion for Relief (§ 362(d)).** Seek relief from the automatic stay, on grounds that failure to maintain taxes/insurance constitutes a lack of adequate protection.

ii. *What if not principal residence?*

1. The intent of the rule was to promote transparency, and to limit "surprise" charges for debtors at the end of chapter 13 case.
2. If questionable applicability in your district, consider filing either Rule 3002.1 notice (anyway), or other notice. Some districts (for example the Southern District of Florida) amended local rules to extend applicability of Rule 3002.1 to non-homestead claims.

iii. *Best Practice – Know your district's preference.*

1. **Practice Pointer #1**. If district requirements are unclear, file at least one of the options for inclusion in the chapter 13 plan. If a Rule 3002.1 notice or application for administrative expense, consider also filing a motion acknowledging the notice and request for an order requiring the debtor to pay the amount through the chapter 13 plan.
2. **Practice Pointer #2.** Avoid *not* filing anything. While there are Code provisions and case law that protect secured claims, you don't

want to put your tax and/or insurance advance at risk of scrutiny – and possibly waiver – due to a failure to notify.

e. Stay Relief Issues – Relief vs. Abandonment

i. *Relief from the Automatic Stay*

1. **11 U.S.C. § 362.** Arises the moment a debtor files for bankruptcy protection and operates as a stay, applicable to all entities of all judicial, administrative or other proceedings that were or could have commenced prior to the date the petition was filed, so that the debtor's property can be distributed and/or protected under the provisions of the Bankruptcy Code.
2. The automatic stay remains in place until the bankruptcy case is closed, dismissed/discharged, or until the property at issue is no longer considered part of the bankruptcy estate.
3. A party in interest, upon filing a motion, may seek relief from the automatic stay (for cause) in connection to a particular piece of property. Orders modifying the automatic stay are deemed final and appealable at the time they are entered. *Borg-Warner Acceptance v. Hall*, 685 F.2d 1306 (11th Cir. 1982).

f. *Abandonment*

i. **11 U.S.C. § 554.** (a) After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate. Under subsection (d), unless the court orders otherwise, property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate.

ii. **Rule 6007 (Abandonment or Disposition of Property).** (a) Unless otherwise directed by the court, the trustee or debtor in possession shall give notice of a proposed abandonment or disposition of property. . . . (b) A party in interest may file and serve a motion requiring the trustee or debtor in possession to abandon property of the estate.

g. One in the Same? Best Practices

i. *Not exactly the same*

1. Relief from an automatic stay in bankruptcy entitles the creditor to realize its security interest in the property, but all proceeds in excess of the creditor's interest must be returned to the trustee; thus, an order lifting automatic stay by itself does not release the estate's interest in the property, and the act of lifting the automatic stay is not analogous to an abandonment of the property by the bankruptcy estate. 11 U.S.C. § 362; *Catalano v. Comm'r*, 279 F.3d 682 (9th Cir. 2002).

ii. *Relief order "good enough" and "serves the purpose"?*

1. Where creditor has invoked remedies and settled its property rights in good-faith reliance upon termination of automatic stay in bankruptcy, bankruptcy court should not and may not invoke its broad equitable powers to avoid results of creditor's action, even if doing so would enable debtor to make full use of statutory remedies previously available to him under Bankruptcy Code. 11 U.S.C. § 105(a); *In re Spaude*, 112 B.R. 304 (Bankr. D. Minn. 1990).

iii. *Best Practice*

1. **Practice Pointer #1.** Include language in your stay relief order, specifically authorizing what your client seeks to do. For example, this "order authorizes creditor to proceed against the debtor in collection of its debt, complete a foreclosure sale regarding the property at issue; and authorizes creditor to file any documentation necessary under state law to satisfy its lien."
2. **Practice Pointer #2.** File separate motion for abandonment and/or seek such relief in your stay relief motion.

h. Motion to Dismiss or Motion for Relief in Chapter 13

i. *Conduit Jurisdiction*

1. A conduit chapter 13 district is where a debtor includes both his/her monthly mortgage payment along with his/her past due amount in a chapter 13 plan, paid "through" the chapter 13 trustee. Effectively,

the chapter 13 trustee steps into the shoes for the mortgage creditor and accepts and distributes "cure" and "ongoing" payments.

ii. *Motion for Relief or Motion to Dismiss*

1. Motion for Relief. Under § 362(d), a creditor could file a relief motion in a chapter 13 conduit case for a debtor's failure to make payments.
2. Motion to Dismiss. Under § 1307(c), on request of a party in interest, the court may dismiss a case for (1) unreasonable delay by the debtor that is prejudicial to creditors, [or] . . . (6) material default by the debtor with respect to a term of a confirmed plan.

iii. *Best Practice*

1. **Practice Pointer.** Communicate with the chapter 13 trustee in a specific district, so as to avoid any perceived overstepping as it relates to that trustee's administration.

VI. Objections to Claim (Rule 3007)

a. As a specific rule governing objections to claim, Rule 3007 controls service and notice of objections to claim (as opposed to the more general Rule 9014 governing other contested matters).

b. Time of Service

i. "An objection to the allowance of a claim and a notice of objection . . . shall be filed and served at least 30 days before any scheduled hearing on the objection or any deadline for the claimant to request a hearing." Fed. R. Bankr. P. 3007(a)(1).

ii. This 30-day time period may be shortened "for cause shown." Fed. R. Bankr. P. 9006(c).

iii. Of note, there is no federal rule governing when objections must be filed (although frequently in chapter 11 cases a time for filing objections to claim may be set).

c. Manner of service

i. For every objection to claim, "[t]he objection and notice shall be served on a claimant by first-class mail to the person most recently designated on the

claimant's original or amended proof of claim as the person to receive notices, at the address so indicated." Fed. R. Bankr. P. 3007(a)(2)(A).

1. Item number 3, under Part 1 of Official Form 410 (Proof of Claim), asks "Where should notices to the creditor be sent?"; it is this name and address provided by the claimant that should be used to satisfy the basic service requirement of Rule 3007(a)(2)(A).
2. The failure of a claimant to keep its address up to date (if the claimant moves) may constitute a waiver of the right to notice. *See, e.g.*, *In re Auto-Train Corp.*, 57 B.R. 566 (Bankr. D.C. 1986); *see also In re Martin-Trigona*, 763 F.2d 503 (2d Cir. 1985).

ii. Additional service is required "if the objection is to a claim of the United States, or any of its officers or agencies"; service must be made "in the manner provided for service of a summons and complaint by Rule 7004(b)(4) or (5)." Fed. R. Bankr. P. 3007(a)(2)(A)(i).

1. "Upon the United States . . . addressed to the civil process clerk at the office of the United States attorney for the district in which the action is brought and by mailing a copy of the summons and complaint to the Attorney General of the United States at Washington, District of Columbia." Fed. R. Bankr. P. 7004(b)(4).
2. "Upon any officer or agency of the United States, by mailing a copy of the summons and complaint to the United States as prescribed in paragraph (4) of this subdivision and also to the officer or agency. If the agency is a corporation, the mailing shall be as prescribed in paragraph (3) of this subdivision of this rule." Fed. R. Bankr. P. 7004(b)(5).

iii. Additional service is also required "if the objection is to a claim of an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act"; service upon these claimants must be made "in the manner provided in Rule 7004(h)." Fed. R. Bankr. P. 3007(a)(2)(A)(ii).

1. This updated language, as amended in 2021, clarified that this heightened service does not apply to credit unions, thus resolving an earlier split among courts.

iv. Rule 3007(a)(2)(B) also requires that "[s]ervice of the objection and notice shall also be made by first-class mail or other permitted means on the debtor or debtor in possession, the trustee, and, if applicable, the entity filing the proof of claim under Rule 3005." Fed. R. Bankr. P. 3007(a)(2)(B).

d. Form of Notice

i. The objection to claim must be accompanied by a notice of the objection, which must "substantially conform[] to the appropriate Official Form." Fed. R. Bankr. P. 3007(a)(1).

ii. While there is no Official Form for the substantive objection to claim, Official Form 420B is the Official Form for the "Notice of Objection to Claim."

VII. The Chapter 13 Plan, Objections to Confirmation, and Plan Modifications (Rule 3015)

a. Filing a chapter 13 plan

i. Deadline for filing a chapter 13 plan (Rule 3015(b)):

1. The debtor "may" file a chapter 13 plan with the petition.
2. If a plan is not filed with the petition, it "shall" be filed within 14 days thereafter, "and such time may not be further extended except for cause shown and on notice as the court may direct."
3. If a case is converted to chapter 13, a plan "shall" be filed within 14 days thereafter, "and such time may not be further extended except for cause shown and on notice as the court may direct."

ii. If the plan is not included with the notice of confirmation hearing, the debtor shall serve the plan on the trustee and all creditors when it is filed with the court. Fed. R. Bankr. P. 3002(d).

b. Objections to confirmation:

i. An objection to confirmation of a plan shall be filed and served on the debtor, trustee, and any other entity designated by the court, and shall be

transmitted to the U.S. trustee, at least 7 days before the date set for confirmation hearing, unless the court orders otherwise. Fed. R. Bankr. P. 3015(f).

1. Check local rules for other deadlines or notice requirements.
2. *See also* 11 U.S.C. § 1323(c) (a secured creditor that has accepted or rejected the plan is deemed to have accepted or rejected, as the case may be, a plan amended before confirmation, unless the amended plan provides for a change in the rights of the creditor and the creditor changes its previous acceptance or rejection).

ii. TRAPS:

1. Does the creditor need to (re)file an objection every time the debtor amends the plan? Or only if the treatment of that creditor's clam is affected? If the creditor misses the deadline for objecting to confirmation of the initial plan, may the creditor file an objection to an amended plan?
2. Some of those matters may be addressed in local rules or practice, but the "unless the court orders otherwise" gives the creditor a chance to ask for an extension of time. Rule 3015(f) does not impose an express "for cause shown" requirement.

c. Modification of plan after confirmation (Rule 3015(h)):

i. A request to modify a confirmed plan:

1. must be served on the debtor, trustee, and all creditors; and
2. Those parties must be given not less than 21 days' notice by mail of the time fixed for filing objections and, if an objection is filed, the hearing to consider the proposed modification;
3. "Unless the court orders otherwise with respect to creditors who are not affected by the proposed modification."
    a. Arguably creditors are affected by a proposed modification that would increase the dividend to unsecured creditors in a chapter 13 case; therefore, service on all creditors would

seem to be required but needlessly. Use the "unless the court orders otherwise" clause to limit service.

b. One suggestion would be to file a motion to limit notice concurrently with a motion to modify the plan and explain to the court why creditors are not affected and do not need to be served with the motion. Include in the order a statement as to which creditors (if any) are required to be served.

c. Another option would be to use Rule 2002(h) and ask the court to direct service only on the debtor, the trustee, and creditors who have filed claims.

ii. Unless required by another rule, service under Rule 3015(h) does not need to be made in accordance with Rule 7004.

iii. *See* 11 U.S.C. § 1329(a) (a plan may be modified on request of the debtor, trustee, or unsecured claim holder at any time after confirmation but before completion of payments under the plan).

VIII. Exemptions and Objections (Rule 4003)

a. Exemptions

i. Debtor "shall" list the property claimed as exempt on the schedule of assets required by Rule 1007.

ii. Exemptions are allowed unless a party in interest objects. 11 U.S.C. § 522(l).

b. Objections (Rule 4003(b)(1)):

i. Deadline:

1. A party in interest may file an objection to the list of property claimed as exempt within the later of:

a. 30 days after the section 341 meeting of creditors is concluded; or

b. 30 days after any amendment or supplemental schedule is filed.

2. The court may, for cause, extend the time for filing objections if, before the deadline expires, a party in interest files a request for an extension.
3. No additional extension of time is available under Rule 9006.

ii. The objection must be served on the debtor, the debtor's attorney, and the trustee. Fed. R. Bankr. P. 4003(b)(4).

IX. Discharge/Dischargeability Objections (Rule 4004; Rule 4007)

a. Objections to Discharge (Rule 4004):

i. In a chapter 7 case, a complaint objecting to discharge, or a motion objecting to discharge under 11 U.S.C. § 727(a)(8) or (a)(9) (prior discharge), shall be filed no later than 60 days after the first date set for the § 341 meeting of creditors.

ii. In a chapter 13 case, a motion objecting to the debtor's discharge under § 1328(f) (prior discharge) shall be filed no later than 60 days after the first date set for the § 341 meeting of creditors.

iii. Extension of the deadline:

1. On motion of any party in interest filed before the deadline has expired, and after notice and hearing, the court may for cause shown extend the time to object to discharge.
2. A motion to extend the time to object to discharge may be filed after the deadline and before the discharge is granted, if
   a. The objection is based on facts that would support a basis for revoking a debtor's discharge; and
   b. The moving party did not have knowledge of the facts in time to permit an objection; and
   c. The motion is filed promptly after the movant discovers the facts.
3. No extensions under Rule 9006 are permitted.

iv. Procedure: An objection to discharge is governed by the rules for adversary proceedings, except that an objection to discharge under § 727(a)(8), (a)(9), or 1328(f) is commenced by motion and is governed by Rule 9014.

b. Objections to Dischargeability of Particular Debts (Rule 4007).

i. A complaint other than under § 523(c) may be filed at any time.

ii. A complaint under § 523(c) (which is for nondischargeable 523(a)(2), (a)(4), and (a)(6) debts) shall be filed no later than 60 days after the first date set for the § 341 meeting of creditors. On motion filed before the deadline and after hearing on notice, the court may for cause extend the deadline.

iii. TRAPS regarding nondischargeability actions in chapter 13 cases:

1. In chapter 13 cases, the section 523 exceptions to discharge apply only in cases in which the debtor obtains a so-called "hardship discharge" under 11 U.S.C. § 1328(b).
2. Exceptions to discharge of particular debts in a chapter 13 case in which the debtor has completed plan payments are set forth in 11 U.S.C. § 1328(a). A few of those exceptions incorporate some of the § 523(a) exceptions by reference, but not all.
3. A debt that is excepted from discharge under 11 U.S.C. § 523(a)(6) (willful and malicious injury) IS discharged when a chapter 13 debtor completes payments under the plan.
4. The deadline for objecting to the dischargeability of a debt under section 523(a)(6) is inapplicable in a chapter 13 case, unless the debtor files a motion for a hardship discharge.
    a. If the debtor files a motion for a hardship discharge (a discharge under § 1328(b)), the court then sets a deadline for commencing a nondischargeability action under § 523(a)(6).
    b. The court must give not less than 30 days' notice of the deadline to all creditors pursuant to Rule 2002.
    c. On motion of a party in interest filed before the deadline has expired, after hearing on notice, the court may for cause extend the deadline.

iv. No extensions under Rule 9006 are permitted.

X. Obtaining Default Judgment (Rule 7055)

a. Federal Rule of Bankruptcy Procedure 7055 provides that Federal Rule of Civil Procedure 55 applies in adversary proceedings.
    i. Civil Rule 55 governs the grounds and procedures for granting judgments by default and for setting aside such default judgments.
    ii. Rule 9014(c) likewise makes Civil Rule 55 applicable in contested matters.
b. Obtaining a default judgment in the bankruptcy court is a two-step process.
    i. First, the party seeking default judgment must request the Clerk's entry of default on the docket.
        1. Rule 55(a) requires the requesting party to show that the party against whom judgment is sought has failed to plead or otherwise defend.
            a. This failure must be shown by "affidavit or otherwise." Fed. R. Civ. P. 55(a).
            b. The burden is on the requesting party to show that the party against whom judgment is sought was served and that no answer or motion under Bankruptcy Rule 7012 has been timely filed. If either requirement is not shown, entry of default is improper.
            c. The Instructions to Director's Form 2600 set forth facts that should "normally" be included in the affidavit: (i) Date of issuance of the summons; (ii) Statement of whether the court fixed a deadline for serving an answer or motion, or whether a time limit applies; (iii) Date of service of the complaint; (iv) Date of filing of an affidavit of service; (v) Statement that no answer or motion has been received within the time limit fixed by the court or by Fed. R. Bankr. P. 7012(a); (vi) Statement that the defendant is not in the military service, as required by 50 U.S.C. App. § 521. If the defendant is, or may be, in the military service, the defendant is afforded certain protections which must be addressed prior to the entry of a default; and (vii) Statement that the defendant is not an infant

or incompetent person, as is required by Fed. R. Civ. P. 55(b)(1).

2. The Clerk's function in entering default is simply to record the fact of default when shown; it is not a judicial determination of such fact.
3. An entry of default is not an appealable order; however, the defendant instead may file a timely motion to set aside the default.
    a. Rule 55(c) provides that "[t]he court may set aside an entry of default for good cause."
    b. The defendant bears the burden that good cause exists to set aside the entry of default.
    c. "Generally, good cause is shown where the defaulting party acts with reasonable promptness in seeking to set aside the default and presents a reasonable explanation or excuse for the default and a meritorious defense." *Senn v. Harrison Transp. Co., Inc.*, 826 F.2d 1060 (Table), 1987 WL 38480, at *1 (4th Cir. Aug. 14, 1987) (unpublished).

ii. Second, the party seeking a default judgment must request the entry of a default judgment.
    1. In some instances, the Clerk has the authority to enter a default judgment. *See* Fed. R. Civ. P. 55(b)(1) ("If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk—on the plaintiff's request, with an affidavit showing the amount due—must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person.").
    2. In all other matters, the court will consider whether to enter the default judgment. *See* Fed. R. Civ. P. 55(b)(2).
        a. The court may exercise its discretion in deciding whether to enter a default judgment. Stated differently, just because a party has failed to plead or otherwise defend does not mean that the entry of a default judgment is guaranteed. *See*

DIRECTV, Inc. v. Pernites, 200 F. App'x 257, 258 (4th Cir. 2006) ("'[A] defendant's default does not in itself warrant the court in entering a default judgment. There must be a sufficient basis in the pleadings for the judgment entered.'" (quoting *Nishimatsu Constr. Co. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975))); *Johnson v. Dayton Mfg. Co.*, 140 F.3d 781 (8th Cir. 1998) ("Entry of default raises no protectible expectation that a default judgment will follow, and a party's belief in the integrity of the system must include, to be reasonable, knowledge that a system of integrity makes exceptions 'for good cause shown.'").

b. To assist in determining whether default judgment is appropriate, the court may decide to hold a hearing if it needs to "(A) conduct an accounting; (B) determine the amount of damages; (C) establish the truth of any allegation by evidence; or (D) investigate any other matter." Fed. R. Civ. P. 55(b)(2).

c. Civil Rule 55(c) provides that "[t]he court . . . may set aside a final default judgment under Rule 60(b)." Fed. R. Civ. P. 55(c).

   i. "Rule 60 allows a court to grant relief from a default judgment on any of six grounds: excusable neglect, newly discovered evidence, fraud, a void judgment, a satisfied or vacated judgment, and 'any other reason justifying relief from the operation of the judgment.'" *Bank United v. Hamlett*, 286 B.R. 839, 842 (W.D. Va. 2002) (quoting Fed. R. Civ. P. 60(b)).

   ii. "In addition to satisfying one of the six requirements of Rule 60, the Fourth Circuit has held that a party seeking to set aside a default judgment must also show timeliness, a meritorious defense, and a lack of unfair prejudice to the plaintiff." *Id.* (citing *Werner v. Carbo*, 731 F.2d 204, 206–07 (4th Cir. 1984)).

iii. The decision to set aside a default judgment is within the court's discretion. *See, e.g.*, *McLawhorn v. John W. Daniel Co., Inc.*, 924 F.2d 535, 538 (4th Cir. 1991).

1. However, this discretion is not limitless, should be exercised within the bounds of accepted legal principles, and should be made keeping in mind that there is a clear preference for judgments on the merits as opposed to judgments by default. *Bank United*, 286 B.R. at 842.

XI. Appeals (Part VIII of the Federal Rules of Bankruptcy Procedure)

a. "Part VIII of the Federal Rules of Bankruptcy Procedure govern the procedure in the district court on appeal from a judgment, order, or decree of a bankruptcy court. These rules also govern certain procedures on appeal to a United States court of appeals under 28 U.S.C. § 158(d)." Fed. R. Bankr. P. 8001(a) ("General Scope").

b. General Rules for the Notice of Appeal

i. "A prerequisite to jurisdiction, however, is the timely filing of a notice of appeal." *In re Fifer*, No. 7:15-CV-00163, 2015 WL 3542798, at *1 (W.D. Va. June 4, 2015) (quoting *Smith v. Dairymen, Inc.,* 790 F.2d 1107, 1109 (4th Cir. 1986)); *see also Lowe's of Va., Inc. v. Thomas*, 60 B.R. 418, 420 (W.D. Va. 1986) ("The timely filing of a notice of appeal is a prerequisite to this court's jurisdiction to review a final judgment or order of the bankruptcy court.").

ii. Pursuant to Rule 8002, a notice of appeal must be filed with the bankruptcy clerk within 14 days after entry of the judgment, order, or decree being appealed. If one party files a timely notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed.

iii. If, however, a motion to amend or make additional findings under Rule 7052, to alter or amend the judgment or for a new trial under Rule 9023, or for relief under Rule 9024 is filed, the time to file an appeal runs from the entry of the order disposing of such motion. Fed. R. Bankr. P. 8002(b)(1).

iv. The bankruptcy court may also extend the time to file an appeal upon motion filed within the time prescribed by Rule 8002 or within 21 days after that time upon showing of excusable neglect. Fed. R. Bankr. P. 8002(d)(1).

1. Excusable neglect requires a two-step inquiry. The Court must ask if the delay was the result of neglect and if so, then determine if that neglect was excusable. Factors to weigh when determining whether the neglect is excusable include: "1. Danger of prejudice to the non-movant; 2. Length of the delay; 3. Impact on judicial proceedings; 4. Reason for the delay, including whether it was within the reasonable control of the movant; and 5. Whether the movant acted in good faith." *Huennekens v. Marx* (*In re Springfield Contracting Corp.*), 156 B.R. 761, 766 (Bankr. E.D. Va. 1993).

v. The court may not extend the time if the judgment, order or decree appealed from grants relief from automatic stay, authorizes the sale or lease of property or the use of collateral under 11 U.S.C. § 363, authorizes the obtaining of credit, assumption or assignment of an executory contract or unexpired lease, approves a disclosure statement under 11 U.S.C. § 1125 or confirms a plan. Fed. R. Bankr. P. 8002(d)(2).

vi. However, pursuant to Rule 8002(d)(3), no extension may exceed 21 days after the time prescribed or 14 days after the order granting the motion to extend time is entered, whichever is later.

c. Appeal as of Right

i. Pursuant to Rule 8003, a notice of appeal must be timely filed with the bankruptcy clerk. The notice of appeal must conform substantially to Official Form B 417A, be accompanied by the judgment, order or decree being appealed, and be accompanied by the prescribed fee.

d. Appeal by Leave

i. Pursuant to Rule 8004, to appeal from an interlocutory order or decree under 28 U.S.C. § 158(a)(3), a party must timely file a notice of appeal and a motion for leave to appeal.

ii. The motion must include the facts necessary to understand the question presented, the question itself, the relief sought, and the reasons why leave to appeal should be granted, along with a copy of the interlocutory order and any related opinion and a proof of service unless served electronically using the court's transmission equipment.

e. Certifying a Direct Appeal to the Court of Appeals

i. Under Rule 8006, a certification of a judgment, order, or decree of a bankruptcy court for direct review in a court of appeals under 28 U.S.C. § 158(d)(2) is effective when the certification has been filed, a timely appeal has been taken and the notice of appeal has become effective.

ii. The certification must be filed with the clerk of the court where the matter is pending.

iii. A joint certification by all appellants and appellees must be made by using Official Form 424.

iv. Within 30 days after the date the certification becomes effective, a request for permission to take a direct appeal to the court of appeals must be filed with the circuit clerk in accordance with Rule 6(c) of the Federal Rules of Appellate Procedure. Fed. R. Bankr. P. 8006(g).

v. Certification on the Court's Own Motion

1. The court where the matter is pending may certify a direct review on request of parties or on its own motion. Fed. R. Bankr. P. 8006(e).
2. This certification must be set forth in a separate document and be accompanied by an opinion or memorandum that contains the necessary information (i.e., the facts necessary to understand the question presented, the question itself, the relief sought, and the reasons why the direct appeal should be allowed).
3. Within 14 days thereafter, a party may file a short supplemental statement regarding the merits of certification.

vi. Certification by the Court on Request

1. A request by a party for certification must be filed within 60 days after the entry of the judgment, order or decree and contain the same

information above, along with a copy of the judgment and any related opinion. Fed. R. Bankr. P. 8006(f)(1).

2. A party may file a response to the request within 14 days after the request is served. A party may file a cross-request for certification within 14 days after the request is served or within 60 days after the entry of judgment, whichever occurs first. The request, cross-request and any response are submitted without oral argument unless the court orders otherwise.

f. Pursuant to 28 U.S.C. § 158(d)(2), the court of appeals has jurisdiction if the bankruptcy court or district court or all the appellants and appellees acting jointly certify that (i) the judgment, order or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States, or involves a matter of public importance; (ii) the judgment, order or decree involves a question of law requiring resolution of conflicting decisions; or (iii) an immediate appeal from the judgment, order or decree may materially advance the progress of the case in which the appeal is taken; and if the court of appeals authorizes the direct appeal of the judgment, order or decree.

XII. Extending and Reducing Time Under the Rules (Rule 9006)

a. **"**Enlargement" of Time

i. In general, "the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect." Fed. R. Bankr. P. 9006(b)(1).

ii. There are, however, exceptions. Fed. R. Bankr. P. 9006(b)(2). Specifically, the court, however, may not enlarge the time to take action under:

1. Rule 1007(d) (time for filing the list of 20 largest creditors in chapter 9 municipality case or chapter 11 reorganization case);

2. Rule 2003(a) (time for the United States trustee to call a meeting of creditors);
3. Rule 2003(d) (time for the United States trustee to file a motion for resolution of a trustee election dispute in chapter 7);
4. Rule 7052 (the time for filing a motion under Civil Rule 52(b) to amend or add findings after judgment is entered);
5. Rule 9023 (time for filing motion under Civil Rule 59 for a new trial or to alter or amend a judgment); and
6. Rule 9024 (the time for filing a complaint to revoke a discharge and to revoke an order confirming a plan).

iii. Certain extensions of time are not governed by Rule 9006 but instead "only to the extent and under the conditions stated in those rules." Fed. R. Bankr. P. 9006(b)(3). Those include:

1. Rule 1006(b)(2) (time for making filing fee installment payments);
2. Rule 1017(e) (time for filing a motion to dismiss a case for abuse under § 707(b) or (c));
3. Rule 3002(c) (time for filing a proof of claim in chapters 7, 12, and 13);
4. Rule 4003(b) (time for filing an objection to claim of exemption);
5. Rule 4004(a) (time for objecting to the debtor's discharge);
6. Rule 4007(c) (time for filing complaint under § 523(c) in a chapter 7 liquidation, chapter 11 reorganization, chapter 12 family farmer's debt adjustment case, or chapter 13 individual's debt adjustment case);
7. Rule 4008(a) (time for filing a reaffirmation agreement);
8. Rule 8002(time for filing a notice of appeal); and
9. Rule 9033 (time for filing objections to the bankruptcy court's proposed findings of fact and conclusions of law).
10. "In addition, the court may enlarge the time to file the statement required under Rule 1007(b)(7), and to file schedules and statements in a small business case under § 1116(3) of the Code,

only to the extent and under the conditions stated in Rule 1007(c)." Fed. R. Bankr. P. 9006(b)(3).

b. Reduction of Time

i. In general, "the court for cause shown may in its discretion with or without motion or notice order the period reduced." Fed. R. Bankr. P. 9006(c)(1).

ii. There are, however, exceptions. Fed. R. Bankr. P. 9006(c)(2). Specifically, the court, however, may not reduce the time to take action under:

1. Rule 2002(a)(7) (the time fixed for filing proofs of claims pursuant to Rule 3003(c));
2. Rule 2003(a) (time for the United States trustee to call a meeting of creditors);
3. Rule 3002(c) (time for filing a proof of claim in chapters 7, 12, and 13);
4. Rule 3014 (the time for making an election of application of § 1111(b)(2) of the Code by a class of secured creditors in a chapter 9 or 11 case);
5. Rule 3015 (time after filing of petition to file a chapter 13 plan);
6. Rule 4001(b)(2) (the time to commence a final hearing on a motion for authorization to use cash collateral);
7. Rule 4001(c)(2) (the time to commence a final hearing on a motion for authority to obtain credit);
8. Rule 4003(a) (the time for a dependent to claim exemptions if the debtor fails to claim exemptions or file the schedule within the time specified in Rule 1007);
9. Rule 4004(a) (time for objecting to the debtor's discharge);
10. Rule 4007(c) (time for filing complaint under § 523(c) in a chapter 7 liquidation, chapter 11 reorganization, chapter 12 family farmer's debt adjustment case, or chapter 13 individual's debt adjustment case);
11. Rule 4008(a) (time for filing a reaffirmation agreement);
12. Rule 8002 (time for filing a notice of appeal); and

13. Rule 9033(b) (time for filing objections to the bankruptcy court's proposed findings of fact and conclusions of law).
14. "In addition, the court may not reduce the time under Rule 1007(c) to file the statement required by Rule 1007(b)(7)." Fed. R. Bankr. P. 9006(c)(2).

XIII. Pending Amendments to the Federal Rules of Bankruptcy Procedure

a. In August 2022, the Committee on Rules of Practice and Procedure for the Judicial Conference of the United States published Proposed Amendments to Bankruptcy Rules 1007, 4004, 5009, 7001, and 9006, as well as new Rule 8023.1, with written comments due by February 16, 2023. The proposed amendments will become effective on December 1, 2024.

   i. Rule 7001. Scope of Rules of Part VII. The amendment to Rule 7001(1) creates an exception for "a proceeding by an individual debtor to recover tangible personal property under § 542(a)" to the general rule that "a proceeding to recover money or property" is an adversary proceeding.

      1. This amendment is in response to the Supreme Court's decision in City of Chicago v. Fulton, 592 U.S. 154 (2021) (holding that creditor's continued retention of estate property that it acquired prior to bankruptcy does not violate the automatic stay under § 362(a)(3)).

   ii. Rule 1007(b)(7). Lists, Schedules, Statements, and Other Documents; Time Limits. The amendments to Rule 1007(b)(7) would eliminate the requirement that the debtor file a statement on Official Form 423 and make filing of the certificate of debtor education provided by the approved provider of the course the exclusive means of establishing satisfaction of the requirement for discharge that a debtor has taken a postpetition course in personal financial management.

      1. Conforming amendments to Rules 1007(c)(4), 4004(c)(1)(H), 4004(c)(4), 5009(b), 9006(b)(3), and 9006(c)(2). The six other rules that referred to a "statement" required by Rule 1007(b)(7) would also be amended to refer to a "certificate."

iii. New Rule 8023.1. This new bankruptcy rule is modeled on Federal Rule of Appellate Procedure 43. The new rule will govern substitution of parties upon death or for any other reason in appeals to the district court or bankruptcy appellate panel from a judgment, order or decree of a bankruptcy court.

iv. Restyled Bankruptcy Rules. The Bankruptcy Rules are the fifth and final set of national procedural rules to be restyled. The amendments include formatting changes to achieve clearer presentation and stylistic changes to replace inconsistent, ambiguous, repetitive, or archaic words. The style changes are not intended to change substantive meaning.

XIV. Proposed Amendments to the Federal Rules of Bankruptcy Procedure

a. In August 2023, the Committee on Rules of Practice and Procedure for the Judicial Conference of the United States published Proposed Amendments to Bankruptcy Rules 3002.1 and 8006, as well as revisions to Official Forms 410, 410C13-M1, 410C13-M1R, 410C13-N, 410C13-NR, 410C13-M2, and 410C13-M2R. Written comments were due by February 16, 2024. The proposed amendments, absent other action, will become effective on December 1, 2025.

i. Rule 3002.1. Notice Relating to Claims Secured by a Security Interest in the Debtor's Principal Residence in a Chapter 13 Case.

1. *Midcase Review*. The most significant of the proposed amendments are to subdivision (f) of Rule 3002.1. A previous proposed amendment to Rule 3002.1 required a midcase notice of the status of the mortgage claim. Based on the comments to the proposed requirement, the amendment has been altered. The newly proposed amendments offer an optional procedure initiated by motion (not a notice) filed by either the trustee or the debtor at any time during the case. The claim holder would have to respond to the motion only if it disagreed with the facts set forth in the motion, rather than in all cases.

2. *End-of-Case Procedure*. The end-of case procedure would, like the current rule, start with a notice by the trustee indicating whether and

in what amounts he or she paid for any prepetition arrearage, postpetition arrearage, and made any payments to the claim holder that came due postpetition. Rather than triggered by the debtor's final cure payment, the notice must be filed "within 45 days after the debtor completes all payments due to the trustee" under the plan. As under the current rule, the claim holder would be required to file a response to the notice.

3. Official Forms 410, 410C13-M1, 410C13-M1R, 410C13-N, 410C13-NR, 410C13-M2, and 410C13-M2R. These forms have been created to implement the proposed amendments to Rule 3002.1.

ii. Rule 8006(g). Request for Leave to Take a Direct Appeal to a Court of Appeals After Certification. The proposed amendments to this Rule are intended to clarify that any party to the appeal may file a request that a court of appeals authorize a direct appeal. There is no obligation to do so if no party wishes the court of appeals to authorize a direct appeal.

Faculty

Beverly M. Burden has served as the chapter 13 trustee for the Eastern District of Kentucky in Lexington since 1999. She previously clerked for Hon. Joe Lee, and prior to that was an assistant attorney general for the Commonwealth of Kentucky in its Consumer Protection Division, concentrating on consumer fraud litigation. Ms. Burden has served on the faculty of the annual meeting of the National Conference of Bankruptcy Judges, the annual convention of the National Association of Chapter Thirteen Trustees (NACTT), the Judge Joe Lee Biennial Bankruptcy Institute, the UK Biennial Consumer Bankruptcy Law Conference, the Midwest Regional Bankruptcy Seminar, ABI's Southeast Bankruptcy Workshop, and other regional and local CLE programs. She writes a blog for practitioners in the Eastern District of Kentucky at www.ch13edky.wordpress.com and is the chair of the Biennial University of Kentucky Consumer Bankruptcy Law Conference. Ms. Burden is a member of the National Association of Chapter Thirteen Trustees (NACTT) and serves on the board of directors of the NACTT Academy for Consumer Bankruptcy Education (www.considerchapter13.org). She also served on the Chapter 13 Advisory Committee to the ABI Commission on Consumer Bankruptcy. Ms. Burden is a 2017 inductee as a Fellow in the American College of Bankruptcy. She received her J.D. from the University of Kentucky College of Law and holds a B.B.A. in accounting.

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Jeffrey S. Fraser is a partner at Albertelli Law in Fort Lauderdale, Fla., and serves as lead counsel on all contested matters in Florida and Texas, conducts on-site training and presentations at lending/servicer institutions on behalf of the firm, supervises and trains bankruptcy attorneys, and oversees all bankruptcy matters for the firm's nine (12) states. As an attorney, he represent lenders in bankruptcy proceedings (chapters 7, 13, 11 and 12). In such a capacity, Mr. Fraser assists in making sure that defaulting loans are properly accounted for in bankruptcy court through negotiations with debtor counsel, filing pleadings, attending hearings and advising lenders of the multiple options available through the bankruptcy system. His practice also has trended toward loss-mitigation options for lenders that, in turn, could be beneficial for borrowers in their attempts to save their property. Mr. Fraser was named a 2017 Blackshear Fellow by the National Conference of Bankruptcy Judges (NCBJ) and a 2020 ABI "40 Under 40" honoree, and he has published articles on consumer bankruptcy issues in the *American Legal & Finance Network* and *Default Servicing News*. Mr. Fraser has the highest rating by Martindale-Hubbell. He received his B.A. in 2007 from the University of Miami and his J.D. in 2010 from the University of Miami School of Law.

April A. Wimberg is a partner at Dentons in Louisville, Ky., and chair of the firm's Pro Bono Committee, and she has commercial and bankruptcy litigation experience. Her representations include creditors, committees, debtors, trustees and other interested parties involved in litigation arising out of corporate insolvencies. Ms. Wimberg's practice focuses on commercial and bankruptcy litigation, and her representations include debtors, creditors, committees, trustees and other interested parties involved in litigation arising out of corporate insolvencies. In addition, she has served in a variety of government positions, including city attorney and commissioner for the Executive Branch Ethics Commission for the Commonwealth of Kentucky. Ms. Wimberg co-chairs ABI's Commercial and Regulatory Law Committee. Prior to joining the firm, she spent 10 years working on Wall Street and in corporate strategy for *Fortune* 50 companies, where she gained experience in reviewing loan transactions and identifying business issues in litigation and opportunities with distressed assets. She has assisted companies across the globe with a wide range of business services and also served as a Peace Corps volunteer in the small business enterprises group in West Africa. Ms. Wimberg received her B.A. in political science in 2000 from the University of Kentucky and her J.D. in 2013 from the University of Louisville.