



UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK

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Clerk of Court

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Subj: Revised Model Chapter 13 Plan, Model Confirmation Order and
Certification Pursuant to Local Bankruptcy Rule 3015-1

From: Kim F. Lefebvre, Clerk of Court

Date: September 7, 2012

In July 2010 the Judges and Clerk met with the Chapter 13 Standing Trustees (“Trustees”) and the United States Trustee to discuss a uniform chapter 13 confirmation order. While initially the focus was on the Model Confirmation Order (“Model Order”), it became clear that uniformity of practice and a Model Chapter 13 Plan (“Model Plan”) would provide predictability for practitioners straddling division lines within the Northern District of New York and mirror the growing national trend.¹ To expedite dispositions and consolidate matters at the confirmation hearing, commonly sought relief including cram down of collateral value, establishing interest rates for secured claims and assuming or rejecting unexpired leases or executory contracts (“Allowed Contested Matters”) is included within the Model Plan. The Model Plan is also designed to highlight any requests for non-standard plan provisions in order to enable affected creditors, the Trustees and the court to easily recognize such requests for relief.

To make the process more predictable, efficient and uniform across the district, as long as the Model Plan is filed with the petition commencing the case, the Clerk of Court agreed to serve the Model Plan through the Bankruptcy Noticing Center (“BNC”). This arrangement will continue as long as resources allow or until the Advisory Committee on Bankruptcy Rules promulgates a chapter 13 plan summary. The requirements for mailing the Model Plan and service for Allowed Contested Matters gave rise to the creation of the Certification Pursuant to Local Bankruptcy Rule (“LBR”) 3015-1 (“Certification”). The Certification is designed in a checklist format to assist practitioners in understanding and meeting the requirements of the statute, national bankruptcy rules and local bankruptcy rules.

¹The Advisory Committee on Bankruptcy Rules had already embarked upon the task of drafting a Model Chapter 13 Plan that would be promulgated nationally. The national Chapter 13 Form Plan Working Group will report on this project to the Advisory Committee on Bankruptcy Rules at their September 2012 meeting.

The revised Certification eliminates certifying requirements already provided for in the local bankruptcy rules. For example, an Allowed Contested Matter in the Model Plan requires service pursuant to Fed. R. Bankr. P. 7004 and a certificate of service must be filed as directed by LBR 3015-1(c)(2). If the debtor files the Model Plan after the petition, LBR 3015-1(b)(2) directs that a certificate of service be filed. The revised Certification recognizes that compliance with the local bankruptcy rules will be monitored independently by the Trustees and court personnel to determine whether the appropriate certificates of service are on the docket. The crux of the Certification is the acknowledgment that the mailing matrix has been prepared in compliance with 11 U.S.C. § 342(c) and LBR 1007-2 to ensure that matrix addresses are valid for use by the debtor, the court or the Bankruptcy Noticing Center.

Use of the model chapter 13 forms became mandatory in the Northern District of New York as of **January 1, 2012**. In March 2012, at the request of the Trustees, an *ad hoc* group was formed to refine and amend the first set of forms to take into account the input and suggestions of the bar. **The revised forms are available on the court's website for all chapter 13 cases going forward as of September 1, 2012.**

The following is a brief summary of the revisions to the Model Chapter 13 Plan:

- payment of creditors is now based upon a "filed proof of claim," however, debtors in the Albany Division may opt in the non-standard plan provision section V for payment without a creditor's proof of claim and instead base payment upon a "deemed filed amount" included by the debtor;
- clarified the Standard Plan Term at section I(A) for an amount to be paid to unsecured creditors - eliminated the term "minimum," made clear Minimum Disposable Income is a reference to the B22C and expressly stated that "Disposable Income" from the B22C means Line 59 multiplied by 60;
- eliminated the word "minimum" from paragraph I(D)(iii) to clarify the disposable income requirement;
- eliminated the terms for the sale of collateral in section II(E);
- included in section II(I) executory contracts and leases that are rejected;
- added at section II(B) reference to Fed R. Bankr. Pro. 3002.1 addressing Post-Petition Fees and Costs for Claims Secured by Real Property;

The following is a brief summary of the revisions to the Model Confirmation Order:

- added provisions (preamble paragraph (4) and I(B)(I)) for the "based upon a filed Proof of Claim" and "deemed filed" scenarios, since both may be utilized dependent upon paragraph V in the Model Plan;
- eliminated references to "deemed filed" and replaced with "allowed claim" throughout to recognize the limitation to the opt-in provision of paragraph V for Albany Division cases;

- section I(B) inserted under Non-Standard Plan Terms, the paragraph I regarding “deemed filed” claims and a “NONE” box;
- section II(E) “on the terms and conditions set forth below” and "Terms of Sale" were removed;
- section XIV “Notice of Deemed Filed Claims in the Plan” clarifies the Clerk does not provide Fed. R. Bankr. P. 3004 notice for "deemed filed" claims, when that non-standard option is used;
- section II(B)(iv) eliminates the "deemed filed" language and adds “claim”.

The *ad hoc* committee hopes that these revised forms address the concerns raised and thank you to the bar for assisting with the implementation of this project. The revised forms are on the court’s website at <http://www.nynb.uscourts.gov/usbc/cmecf/FillableForms/FillableForms.htm>.