

PUBLIC NOTICE: Opportunity for Public Comment on Proposed Amendments to Several Local Bankruptcy Rules Effective December 1, 2018

United States Bankruptcy Court
Northern District of New York
September 25, 2018

The Local Rules Standing Committee and the Judges for the United States Bankruptcy Court for the Northern District of New York are proposing amendments to several local rules and have requested that the proposed amendments be circulated to the bar for comment. The amended rules will become effective December 1, 2018. Please submit all comments electronically to: rules_comments@nynb.uscourts.gov . The deadline to submit comments is October 25, 2018.

Amendments are being proposed to the following rules:

- Rule 1006-1 (NEW)
- Rule 1017-1
- Rule 4001-4 (NEW)
- Rule 5005-1
- Rule 5010-1
- Rule 6005-1
- Rule 8007-1
- Rule 9013-1
- Rule 9013-6
- Rule 9025-1

The current version of the rules with the proposed amendments appearing in redline are attached.

RULE 1006-1 FILING FEE

- (a) **Filing Fee.** A petition to commence a case shall be accompanied by: (1) the applicable filing fee; (2) an application pursuant to Fed. R. Bankr. P. 1006(b)(1) to pay the filing fee in installments (Official Form 103A); or (3) an application pursuant to Fed. R. Bankr. P. 1006(c) requesting a waiver of filing fee (Official Form 103B).
- (b) **Waiver of Fee.** If the Court waives the filing fee in a case for a debtor in accordance with 28 U.S.C. § 1930(f), that waiver shall apply to all future fees assessed by the Clerk in the case unless otherwise ordered by the Court.
- (c) **Form of Payment for Electronically Filed Documents.** Any fee due in connection with a document filed electronically must be paid via the on-line payment program on the same day it is incurred. Failure to pay a filing fee will result in the suspension of the filer's ability to file documents electronically via the CM/ECF system.

Comment

Filing fees for the commencement of a case under the respective chapters of the Bankruptcy Code are set forth in 28 U.S.C. § 1930(a). Filing fees for the commencement of an adversary proceeding are authorized by 28 U.S.C. § 1930(b) and set forth in the Judicial Conference Schedule of Fees.

**RULE 1017-1 DISMISSED CASE – MOTION TO VACATE ORDER OF
DISMISSAL AND TO REINSTATE CASE**

(a) Filing in a Dismissed Case. The only permissible filings in a dismissed case are (i) a required filing by a trustee, (ii) an administrative filing by the Clerk and the Bankruptcy Noticing Center, (iii) an **ex parte** motion to redact, and (iv) a motion to vacate or reconsider a dismissal order. Any filing made in contravention of this paragraph may be stricken sua sponte by the Court.

(b) Time to File a Motion. A motion to vacate or reconsider an order of dismissal shall be filed in accordance with the requirements of [Fed. R. Bankr. P. 9023](#) and/or [9024](#), as applicable. The motion shall be served upon all creditors and parties in interest, at the address listed on the certificate of service of the notice of dismissal.

(c) Case Dismissed for Non-Payment. A motion filed in a case dismissed for failure of the debtor to make plan payments shall state with particularity:

- (1) The circumstances that caused the debtor’s non-payment;
- (2) The circumstances that have changed so as to permit the debtor to make future payments;
- (3) The date and manner of the proposed future payments by the debtor to the trustee; and
- (4) Any new debt incurred by the debtor since the date of dismissal.

(d) Submission of Proposed Order. A proposed order granting a motion under this Rule shall be titled “Order Vacating Order of Dismissal and Reinstating Case.”

(e) Service of Order. The debtor shall serve the order vacating the order of dismissal and reinstating the case upon all creditors and parties in interest at the address listed on the certificate of service of the notice of dismissal. The debtor shall file a certificate of service.

Comment

This motion may be pursued on a default basis under [LBR 9013-3](#).

This Rule does not apply to a closed case. If the case is closed, parties must proceed under [§ 350](#) and [Fed. R. Bankr. P. 5010](#), which require payment of a fee for reopening the case pursuant to [28 U.S.C. § 1930\(b\)](#). The fee to be charged for reopening shall be the same as the filing fee in effect for commencing a new case as of the date of reopening.

**RULE 4001-4 PAYMENT AND CURE OF PRE-PETITION JUDGMENT OF
POSSESSION INVOLVING RESIDENTIAL PROPERTY**

- (a) **Compliance by the Debtor with § 362(l)(1).** A debtor is deemed to have complied with § 362(l)(1) by:
- (1) Making the required certification by fully completing the Initial Statement About an Eviction Judgment Against You (Official Form 101A), including the lessor's name and address; and
 - (2) Delivering to the Clerk, together with the petition or by the close of business on the day of filing if the petition is filed electronically, a certified or cashier's check or money order, made payable to the lessor, in the amount of any rent that would become due during the thirty-day period after the filing of the petition ("rent payment").
- (b) **Response by Lessor.** If the debtor complies with the requirements set forth in paragraph (a) of this Rule, the Clerk shall, within one day, send a Notice of Compliance to the lessor. The lessor shall then have the option, exercisable no later than fourteen (14) days after the date of the notice, to consent to receive the rent payment (in which event the lessor shall provide delivery instructions) and, if deemed necessary by the lessor, to file an objection to the debtor's certification(s). The filing of an objection shall constitute a request for hearing. A lessor is deemed to have consented to receive the check if the lessor does not respond within the fourteen (14) day deadline, in which event the Clerk shall send the check to the lessor at the address set forth in the Initial Statement About an Eviction Judgment Against You (Official Form 101A). If the lessor declines to receive the check, the Clerk shall return the check to the debtor at the address provided in the petition or any address previously provided by the debtor pursuant to LBR 4002-1. Compliance with this paragraph shall constitute the prompt transmittal of the rent payment by the Clerk in accordance with § 362(l)(5)(D).
- (c) **Noncompliance by Debtor.** If the debtor fails to comply with the requirements set forth in paragraph (a) of this Rule, the Clerk shall send notice of noncompliance to the lessor pursuant to § 362(l)(4)(B). Said notice shall clearly outline the exception to the automatic stay under § 362(b)(22).
- (d) **Objection by Lessor.** If the debtor complies with the requirements of § 362(l)(2) and files the Statement About Payment of an Eviction Judgment Against You (Official Form 101(B)), the lessor shall have the option, exercisable no later than fourteen (14) days after the service of the Statement About Payment of an Eviction Judgment Against You (Official Form 101(B)) upon the lessor, to file an objection to the debtor's certification(s). The filing of an objection shall constitute a request for hearing.

RULE 5005-1 ELECTRONIC FILING AND SERVICE

(a) Filing of any Petition, ~~A~~ List, ~~s~~ Schedule, ~~s~~ Statement, Amendment, Pleading, Affidavit, ~~p~~ Proof of ~~e~~ Claim, ~~e~~ complaint, ~~m~~otion, ~~a~~pplication, ~~o~~bjection and ~~o~~ther ~~p~~Papers (each a “document”).

(1) By a Represented Entity. An entity represented by an attorney must be filed documents electronically in accordance with the Administrative Procedures, unless otherwise ordered permitted by the eCourt.

(2) By an Unrepresented Individual. An individual not represented by an attorney must file documents in paper format. Documents may be filed in any of the Clerk’s offices in the district.

(a)(b) Deficient Documents. The Clerk may issue to the filer of a document a notice of deficiency that specifies the error and contains instructions on how to correct a filing that does not conform to the Administrative Procedures.

(c) Signature. The authorized electronic filing of a document bearing an electronic signature (example: /s/Jane Smith) constitutes the signature of the filer under Fed. R. Bankr. P. 9011.

(d) Service via CM/ECF. A document is considered served when sent to a registered user by filing it through CM/ECF.

(b)(e) Email and Facsimile. The Clerk will not accept documents submitted via email or facsimile for filing.

(e)(f) Use of Court’s Website to File an Electronic Proof of Claim (EPOC). Any proof of claim filed electronically, using this eCourt’s website, shall have the same force and effect as if the individual signed a paper copy of the proof of claim.

(d)(g) Use of Court’s Website to Submit an Electronic Registration for CM/ECF Password. Any CM/ECF Registration form submitted electronically, using this the eCourt’s website, shall have the same force and effect as if the individual signed a paper copy of the registration form.

(e) Filing Fees. A filing fee is to be paid via the on-line payment program on the same day it is incurred. Failure to pay a filing fee will result in the suspension of the filer’s ECF ability to electronically file documents. Said suspension will be lifted once the fee is paid.

(f) Filing in a Dismissed Case. Until an order revoking a dismissal order is entered, the only permissible filings in a dismissed case are a required filing by a trustee, an administrative filing by the Clerk and the Bankruptcy Noticing Center, and a motion to vacate or reconsider a dismissal order.

(g) Filing in a Closed Case. The only permissible filing in a closed case is a motion to reopen, unless otherwise ordered by the court.

(h) Violation. Any filings made in contravention of paragraphs (g) or (h) may be stricken sua sponte by the Court.



RULE 5010-1 REOPENING A CASE

- (a) **Closed Cases.** ~~The only permissible filing in a closed case is a motion to reopen. The only motions that will be acted upon in a closed case are motions to reopen a case or to redact. No other relief may be requested in a closed case until the order reopening the case is entered. Unless otherwise ordered by the Court, motions filed in contravention of this paragraph will result in a deficiency notice being issued by the Clerk and may be stricken sua sponte by the Court.~~
- (b) **Filing Fee.** A motion to reopen a case pursuant to Fed. R. Bankr. P. 5010 shall be in writing and shall be accompanied by the appropriate filing fee.
- (1) **Waiver.** The Court may waive payment of the filing fee when a case is reopened to correct an administrative error or on account of actions relating to the debtor's discharge.
- (2) **Deferral.** The Court may defer payment of the filing fee when a case is reopened by a trustee and there is no asset available from which to pay the filing fee. The filing fee shall be paid promptly upon the trustee's ability to do so. The trustee shall notify the Court if no assets are discovered and payment of the filing fee will be waived.
- (c) **Retrieval Fee.** A separate retrieval fee must accompany the motion if the case has been transmitted to the Federal Records Center for storage. The retrieval fee may not be waived by the Court.
- (d) **Notice of Motion to Reopen.** Unless the Court orders otherwise, notice of a motion to reopen shall be given to the former trustee, the United States trustee and, when the moving party is not the debtor, to the debtor and debtor's counsel. Except as provided in paragraph (e) of this Rule, a motion to reopen a case must be noticed for a hearing pursuant to LBR 9013-3.
- (e) **Ex Parte Relief.** A motion to reopen a case may be considered ex parte if the purpose of the motion is (1) to file a debtor's certificate of completion of financial management course, (2) to correct an administrative error, (3) on account of actions relating to the debtor's discharge, or (4) to avoid a judicial lien pursuant to § 522(f). [A motion to redact may be considered ex parte.](#)
- ~~(f) **Request for Other Relief.** No other relief may be requested in a closed case until the order reopening the case is entered. A motion filed in a closed case will not be acted upon and will result in a deficiency notice being issued by the Clerk.~~

RULE 6005-1

APPRAISERS AND AUCTIONEERS

- (a) **Compensation of Auctioneers.** An auctioneer appointed by the Court shall be allowed compensation and reimbursement of expenses as follows, unless the Court orders otherwise:

(1) **Maximum Commissions.** The ~~maximum~~ allowable commissions, whether in the form of a “buyer’s premium,” “buyer’s surcharge,” or “auctioneer’s commission,” or by any other nomenclature, shall be determined and set by the Court in the Order approving employment of the auctioneer upon proper application demonstrating that the proposed commission is reasonable and customary for the kind of proposed auction of the type and amount of property to be sold. In no event, however, shall the total of all allowable commissions exceed 15% of gross proceeds of sale. An auctioneer may, if provided in the Order approving employment of the auctioneer upon proper application, utilize the services of a third-party online bidding service and pass through for payment by the successful online bidder an online bidding charge not to exceed an additional 3% of gross proceeds of sale from such successful online bid.

~~(1) **Expenses.**~~

~~(2)~~

~~(3)~~(2) The auctioneer shall be reimbursed for the reasonable and necessary expenses directly related to the sale, including bond or blanket bond premium costs attributable to said sale, ~~labor, printing, advertising and insurance,~~ but excluding worker’s compensation, social security, unemployment insurance or other payroll taxes. The auctioneer’s application for employment provided to the Court shall contain a proposed itemized budget setting forth a good faith estimate of the reasonable and necessary expenses expected to be incurred by the auctioneer. An auctioneer shall be reimbursed for a blanket bond at the rate of \$100 per case or 10% of the gross proceeds from an auction, whichever is less, less any amounts previously reimbursed for said bond, unless the Court orders otherwise.

~~(A) If directed by the trustee to transport goods, the associated costs shall be reimbursable.~~

- (b) **Bond.** An auctioneer employed with Court approval shall not act until a surety bond in favor of the United States of America is provided in each estate, at the auctioneer’s expense. The bond shall be approved by the Court and shall be in an amount sufficient to cover the aggregate appraised value of all property to be sold, or in such sum as may be fixed by the Court, conditioned upon:

(1) The faithful and prompt accounting for all monies and property which may come into the possession of the auctioneer;

~~(2) Compliance with all rules, orders, and decrees of the Court; and~~

~~(3)~~(2)

~~(4)~~(3) The faithful performance of duties in all respects in all cases in which the auctioneer may act.

(c) **Report of Sale.** The auctioneer shall file a report with the Clerk and serve the United States trustee within thirty (30) days after conclusion of the sale. The report of sale shall set forth:

(1) The time, date and place of sale;

~~(2)~~ The gross amount realized by the sale;

~~(3)~~(2)

~~(4)~~(3) An itemized statement of commissions sought under this Rule and disbursements made, including the name of the payee and the original receipts or cancelled checks, or copies thereof, substantiating the disbursements. Where labor charges are included, the report shall specify the name(s) of the person(s) employed, the hourly wage, and the number of hours worked by each person. If the cancelled checks are not available at the time the report is filed, then the report shall so state, and the cancelled checks shall be filed as soon as they become available;

~~(5)~~(4) Where the auctioneer has a blanket insurance policy covering all sales conducted for which original receipts and cancelled checks are not available, an explanation of how the insurance expense charged to the estate was allocated;

~~(6)~~(5) The names of all purchasers at the sale;

~~(7)~~ The sign-in sheet, indicating the number of people attending the sale;

~~(8)~~(6)

~~(9)~~(7) The disposition of any items for which there were no bid;

~~(10)~~—The terms and conditions of sale read to the audience immediately prior to the commencement of the sale;

~~(11)~~(8)

~~(12)~~(9) A statement of the manner and extent of advertising the sale and the availability of the items for inspection prior to the sale;

~~(13)~~(10) The amount of sales tax collected; and

~~(14)~~(11) Such other information as the Court may require.

- (d) **Proceeds of Sale.** Unless the Court orders otherwise, the proceeds of sale less the auctioneer's reimbursable expenses, shall be turned over to the trustee as soon as practicable and not later than ~~twentyfourteen-one~~ (2114) days from the date of sale ~~or shall be deposited in a separate interest-bearing account.~~ The Court retains the jurisdiction to review the auctioneer's reimbursable expenses ~~for reasonableness.~~ In the event the Court determines that a portion of the expenses deducted from the proceeds of the sale are unreasonable or unnecessary, the auctioneer shall be required to return those funds to the trustee.
- (e) **Application for Commissions and Expenses.** An auctioneer shall apply to the Court for approval of allowable commissions and expenses on not less than twenty-one (21) days' notice as required by Fed. R. Bankr. P. 2002 and in conformance with LBR 2002-1. No such application shall be granted unless (i) the report referred to in paragraph (c) has been filed and (ii) the auctioneer has complied with all other provisions of this Rule.
- (f) **Purchase Prohibited by Auctioneer, Appraiser, and/or Agent.** An auctioneer or officer, director, stockholder, agent, or employee of an auctioneer shall not purchase, directly or indirectly, or have a financial interest in, the purchase of any property of the estate which the auctioneer has been employed to sell. Likewise, an appraiser or officer, director, stockholder, agent, or employee of an appraiser shall not purchase directly or indirectly, or have a financial interest in, the purchase of any property of the estate that the appraiser has been employed to appraise.

Proposed Changes to the LBR 8007-1

RULE 8007-1 STAY PENDING APPEAL (~~SUPERSEDES BOND~~)(**BOND OR OTHER SECURITY**)

(a) **Amount of Bond or Value of Security When Money Judgment Only.** A ~~supersedeas bond~~ **or other security**, where the judgment is for a sum of money only, shall be in the amount of or of a value equivalent to, the judgment, plus 11% to cover interest and such damages for delay as may be awarded, plus an amount to be determined by the Court, ~~to cover costs.~~

(b) **Amount of Bond or Value of Security When Judgment Not Solely for a Sum of Money.** When the stay may not be effected solely by the giving of the ~~supersedeas bond~~ **or other security**, because the judgment or order is not solely for a sum of money, the Court, on notice, shall fix the amount of the bond or value of security and grant a stay on such terms ~~as to security and otherwise~~ as it may deem proper.

(c) **Objections.** Upon approval, a ~~supersedeas bond~~ shall be filed with the Clerk or other security delivered as directed by the Court, and a copy of the bond or description of the security thereof, with notice of filing or delivery, promptly served on all parties affected thereby. If the appellee raises objections to the form of the bond, ~~or to~~ the sufficiency of the surety, or the nature or value of the security, the Court shall hold a hearing on expedited notice to all parties.

RULE 9013-1 MOTION PRACTICE

- (a) **Notice.** Unless otherwise ordered by the Court, notice of a motion shall be provided in the time and manner prescribed by the [Federal Rules of Bankruptcy Procedure](#), Local Bankruptcy Rules, and the [Administrative Procedures](#).
- (1) **Identification of Hearing Date, Time, and Location.** The date, time, and location of the hearing shall be included in the body of the notice of motion and above the case number in the caption.
 - (2) **Identification of Relief Sought and Statutory Basis.** The notice of motion shall set forth, in concise, plain terms, the specific relief sought, the party or parties against whom such relief is sought, and the rule or statute upon which the motion or application is predicated. Failure to provide the basis for relief sought is cause for the Court to deny the relief requested.
- (b) **Notice of Electronic Filing.** When a pleading or other document is electronically filed, the CM/ECF system generates a “Notice of Electronic Filing” that is transmitted to the filing party and all registered users of the CM/ECF system having appeared in the case in which the filing is made.
- (1) **Service Upon a Registered User Who Has Appeared in the Case.** Transmission of the Notice of Electronic Filing to a registered user via the CM/ECF system, constitutes service of the pleading or other document.
 - (2) **Service Upon a Non-Registered User or a Registered User Who Has Not Appeared in the Case.** A party who is not a registered user of the CM/ECF system must be served with the filed pleading or other document in compliance with the [Federal Rules of Bankruptcy Procedure](#) and these rules.
- (c) **Certificate of Service.** A certificate of service upon both registered and non-registered users of the CM/ECF system is required. The certificate must state the manner in which service or notice was accomplished on each party. The moving party shall file a certificate of service, not later than seven (7) days prior to the return date of the motion. Failure to file a certificate of service may result in the motion not appearing on the Court's calendar. Sample language for a certificate of service can be found in the [Administrative Procedures](#).
- (d) **Supporting Affidavit, Application, and Exhibits.**
- (1) **Service Not Required.** Except as provided in the subparagraphs below, where a motion is made for the relief set forth in subparagraphs (a)(1), (2), (3), and (5) of [LBR 2002-1](#) and the relief sought and the affected parties are clearly and unambiguously stated in the notice of motion, a supporting affidavit, application, or exhibits need not be served on all parties in interest. In such case, the notice of motion must clearly indicate that a copy of the supporting affidavit, application, or exhibit is available, without charge, from the movant upon request. The movant

must provide a contact name and telephone number and/or email address to which such a request may be made.

- (2) **Service Required.** A complete copy of a motion with any supporting affidavit, application, and exhibits shall be served upon the United States trustee, the trustee, any official committee, opposing counsel, and any party that may be directly adversely affected by the granting of the requested relief.
 - (3) **Filing Requirements.** Any motion, supporting affidavit, and application must be filed with the Court. For filing requirements related to exhibits, see [LBR 9013-2](#).
- (e) **Timeliness of Filing and Service of a Motion.** Unless otherwise specified in the Federal Rules of Bankruptcy Procedure (particularly [Rules 2002](#), [3007](#), and [4007](#)), these rules, the [Administrative Procedures](#), or as ordered by the Court, any motion shall be filed and served at least twenty-one (21) days before the return date of the motion.
- (f) **Filing Deadlines.** An electronic filing is considered timely if received by the Court before midnight on the date set as a deadline, unless the Court or these rules specifically require an earlier filing.
- (g) **Answering Papers.**
- (1) **Timeliness of Filing and Service.** Answering papers shall be served and filed so as to be received not later than seven (7) days prior to the return date of the motion. The date, time, and location of the hearing shall be included above the case number in the caption.
 - (2) **Form.** Answering papers shall identify the date, time and location of the hearing above the case number in the caption.
 - (3) **Oral Opposition.** If the Court permits oral opposition to a motion without an answer or response being filed and adjourns the hearing, the answer or response substantiating the oral opposition shall be filed and served within seven (7) days of the original hearing date.
- (h) **Chambers Copy.** A paper chambers copy is required for the matters listed below. The chambers copy is to be submitted to the Clerk contemporaneously with the electronic filing of the pleading or other document. The copy must be clearly marked as “ECF CASE – CHAMBERS COPY.” The chambers copy need not contain a copy of the original signature. Unless otherwise directed by the Court, copies should be sent via regular mail or hand delivery, not by facsimile. Parties who fail to provide a chambers copy may be billed for copies.
- (1) **Albany Chambers:**

 - (A) Notice of motion, motion, application, and certificate of service, except for chapter 13 trustee’s motion to dismiss and to determine/expunge claim;

- (B) Opposition, response, or any pleading relating to a hearing;
- (C) Opposition to disclosure statement in a chapter 11 case;
- (D) Objection to confirmation of a chapter 11 plan;
- (E) Pretrial statement;
- (F) Memoranda of law and any pleading and other document filed in regard to a submitted matter; and
- (G) All pleadings related to loss mitigation.

(2) Syracuse and Utica Chambers:

- (A) Notice of motion, motion, application and certificate of service;
- (B) Any pleading filed in an adversary proceeding;
- (C) Pretrial statement;
- (D) Memoranda of law and any pleading or other document filed in regard to a submitted matter;
- (E) Any document regarding an appeal;
- (F) Withdrawal of reference;
- (G) Any objection pursuant to [Fed. R. Bankr. P. 9033](#); and
- (H) All pleadings related to loss mitigation.

(i) **Adjournment Generally.** The Court requires a written request for an adjournment that affirmatively indicates the consent of opposing counsel, states the reasons for the request, and states whether any previous request for an adjournment has been made. Chambers will notify the requesting party only if the request is denied.

(j) **Procedure for Requesting Adjournment.** An adjournment request shall be made by electronically filing not later than 2:00 p.m. the day prior to the hearing an [Adjournment Request/Withdrawal/Settlement Notification for Motion Related Matters](#) form or an [Adjournment Request/Withdrawal/Settlement Notification for Confirmation Hearings](#) form.

(l) **Inability to Obtain Opposing Counsel's Consent.** The inability to affirmatively indicate opposing counsel's consent to an adjournment will require an appearance for the purpose of requesting the adjournment, unless the Court directs otherwise.

(k) **Withdrawal of Pleading or Other Document Generally.** Any party who seeks to withdraw a motion, pleading or other document shall provide written notification to the Court and all parties who have filed and served related papers.

- (l) **Procedure for Notification of Withdrawal.** Notice of the withdrawal of a motion shall be provided not later than 2:00 p.m. the day prior to the hearing by electronically filing an [Adjournment Request/Withdrawal/Settlement Notification for Motion Related Matters](#) form.
- (m) **Notification of Settlement – Generally.** Where movant and opposing counsel have agreed to the terms of an order, movant shall provide written notification to the Court and all parties who have filed and served responding papers.
- (n) **Procedure for Notification of Settlement.** Notice of the settlement of a motion shall be provided not later than 2:00 p.m. the day prior to the hearing by electronically filing an [Adjournment Request/Withdrawal/Settlement Notification for Motion Related Matters](#) form.
- ~~(o) **Motion to Avoid Judicial Lien Pursuant to § 522(f).** A motion to avoid a judicial lien pursuant to § 522(f) shall be served upon the judgment creditor pursuant to Fed. R. Bankr. P. 7004 and upon the attorney who obtained the judgment on behalf of the creditor.~~

Comment

The service fee for copies made by Clerk's Office staff is governed by the Bankruptcy Court Miscellaneous Fee Schedule.

(a) Contents. A motion to avoid a judicial lien shall include:

- (1)** The date the bankruptcy was filed (“petition date”);
- (2)** A description of the real property owned by the debtor on the petition date to which the lien has attached;
- (3)** A statement that the debtor has claimed the property as exempt on Schedule C, the amount of the claimed exemption and the statutory basis for the exemption (i.e., 11 U.S.C. § 522(b)(3) and N.Y. CPLR 5206(a), or, 11 U.S.C. § 522(b)(2) and (d)(1) and/or (d)(5));
- (4)** Whether the debtor owns the property solely or jointly and, if owned jointly, the nature of the debtor’s ownership interest in the property (e.g., joint tenant, tenant by the entirety or tenant in common);
- (5)** Proof as to the value of the real property as of the petition date;
- (6)** The name(s) of the judicial lien creditor(s), listed in order of their priority, the amount(s) of the lien(s) sought to be avoided, and the recording information for each judgment;
- (7)** For each lien sought to be avoided, a statement that the lien does not secure a debt arising out of a domestic support obligation of the kind described in § 523(a)(5);
- (8)** A copy of the recorded judgment or transcript of the judgment that reflects recording information and the name and address of the attorney who obtained the judgment on behalf of the creditor;
- (9)** The name(s) of the holder(s) of each additional lien against the property, the nature of such lien(s) (e.g., mortgage, tax, or statutory) and proof of the amount of each lien as of the petition date;
- (10)** The address of all other real property owned by the debtor (i.e., rental property, commercial property);
- (11)** The date on which the debtor acquired an interest in the real property; and
- (12)** A showing that the lien impairs the claimed exemption in that the sum of the amounts described in subparagraphs (3), (6) and (9) above exceeds the value that the debtor’s interest in the property would have in the absence of any liens.

~~**(b) Service.** A motion to avoid a judicial lien pursuant to § 522(f) shall be served upon the judgment creditor pursuant to Fed. R. Bankr. P. 7004.~~

Comment

In a chapter 13 case, relief under § 522(f)(1)(A) should be sought through the Local Form Plan and not by motion practice.

With reference to establishing the fair market value of the property or the balances owed on outstanding liens as of the petition date, values contained in debtors’ schedules shall not constitute adequate proof thereof. Among other things, the court may consider a broker’s price opinion or appraisal as evidence of value of real property and a proof of claim, payoff letter or account statement as evidence of a lien amount.

Code § 522(f) operates solely with respect to judicial liens. See § 101(36) for the definition of “judicial lien.” A statutory lien, as *e.g.* a mechanic’s lien, cannot be avoided under this section. See § 101(53) for the definition of “statutory lien.” Papers submitted in support of the motion should allow the court to readily ascertain the nature of the lien. See *In re Schick*, 418 F.3d 321 (3d Cir. 2005) (discussing the distinction between judicial liens, which are avoidable under § 522(f), and statutory liens, which are not.)

RULE 9025-1 SURETIES AND OTHER PROVIDERS OF SECURITY

- (a) **Execution by Surety or Providers of Security Only.** Whenever a bond, undertaking or stipulation is required, it shall be sufficient if the instrument is executed by the surety, provider or sureties and providers only.
- (b) **Security for Bond.** Except as otherwise provided by law, every bond, undertaking or stipulation must be secured by:
- (1) The deposit of cash or government bonds in the amount of the bond, undertaking or stipulation, or
 - (2) The undertaking of a corporate surety holding a certificate of authority from the United States Secretary of the Treasury.
- (c) **Affidavit by Individual Surety or Provider.** In the case of a bond, undertaking or stipulation executed by an individual surety or provider, each surety or provider shall attach an affidavit of justifications, giving the full name, occupation, residence and business address, and showing that the individual is qualified as an individual surety or provider under paragraph (b) of this Rule.
- (d) **Persons Who May Not Act as Surety or Provider.** Unless otherwise ordered by the Court, a member of the bar, administrative officer, Court employee, the marshal, deputy or assistant, may not act as surety or provider in any case, adversary proceeding, contested matter or action pending in this Court.