

United States Bankruptcy Court
Eastern District of Missouri

**Detailed List of Additions & Modifications to
Bankruptcy Court's Implementation Order**

The following items are additions or modifications to the current Implementation Order (dated June 30, 2006). These changes will be effective October 16, 2006. The precise text of the additions or modifications should be read in the Implementation Order available at http://www.moeb.uscourts.gov/pdfs/impl_order_100606.pdf. This document is provided as a reference tool; its text may vary slightly from the final words adopted in the implementation order.

I. General Practice Changes from Bankruptcy Court's Chapter 13 Open Forum and other Comments Received.

#1 Insert reference to Updated Model Chapter 13 plan in existing ¶ 30

The first paragraph of the Mandatory Model Chapter 13 Plan is amended to require the debtor to pay to the Chapter 13 Trustee 50% of any distribution paid or payable to the debtor from the debtor's pension plan or as an employee bonus.
(The Model Plan is updated to read)

“In addition, Debtor shall pay to the Trustee and the plan base shall be increased by the following:

(1) Debtor shall send any tax refund received during the plan to the Trustee; however, debtor may retain a portion of a tax refund to pay income taxes owed to any taxing authority for the same period as the refund. Debtor may also retain from such refunds the lesser of the sum of two monthly plan payments or \$600 from such tax refunds, each year, for necessities. (2) **Fifty percent of any distribution paid or payable to the debtor from debtor's pension plan or as an employee bonus.** (3) Additional lump sum(s) consisting of _____, if any, to be paid to the Trustee.

#2 Insert new paragraph for Chapter 13 practice regarding Disclosure of Real Estate Mortgage Balances after existing ¶ 34

Insert new paragraphs:

1. **Disclosure of Real Estate Mortgage Payment Obligations.** The holders of claims secured by real estate shall provide accurate billing and account information directly to the debtor(s) regarding any post-petition obligation to be paid directly by the debtor(s) pursuant to the confirmed Chapter 13 Plan, or to both the debtor(s) and the Chapter 13 Trustee when the post-petition obligation is paid by the Chapter 13 Trustee pursuant to the confirmed Chapter 13 Plan. Such direct contact by mail from such claim holders for purposes of

providing this information shall not be considered a violation of the automatic stay. It is the intent of this rule to advise debtor(s) of their monthly mortgage obligation and to provide debtor(s) with information regarding any adjustments made to the mortgage obligation pursuant to applicable non-bankruptcy law which may arise during the pendency of their Chapter 13 case. Upon request by debtor and made at or near completion of the Chapter 13 case, mortgagee shall provide full payoff statement to debtor. Any dispute regarding payoff may be addressed by a motion prior to closing the case.

#3 Insert new paragraph for Chapter 13 practice regarding after existing ¶ 34 following insert #2

2. **Application of Payments Secured by Real Estate.** Holders of claims secured by real estate shall apply payments for mortgage payments accruing **post-petition**, whether made by the Chapter 13 Trustee or by the debtor(s) to post-petition monthly contractual mortgage obligations, including principal interest, interest, escrow obligations and other adjustments made to the mortgage obligation pursuant to non-bankruptcy law, if not otherwise noted on the payment. Holders of claims secured by real estate shall apply payments made by the Chapter 13 Trustee for **pre-petition** arrearage claims to the balance of unpaid monthly contractual mortgage obligations which accrued prior to the petition date, if not otherwise noted on the payment.

#4 Insert new paragraph for Chapter 13 practice regarding Adjustment of Mortgage Payments after existing ¶ 34 following insert #3

3. **Adjustment of Mortgage Payment.** Upon notice from the debtor or a holder of a claim secured by real estate of a change in the amount of a post-petition monthly payment obligation which the Trustee is paying under a plan, the Trustee shall adjust the monthly distribution on such claim in accordance with such notice.
(NOTE: This Rule supplements 3015-3 A. by allowing the holder of the claim to send notice to the trustee).

#5 Insert revised Motion for Relief Rule after existing ¶ 38

Insert: Local Rule 4001-1 Relief From the Automatic Stay is amended as follows:

L.B.R. 4001-1 Relief from the Automatic Stay.

A. **Service of Motions for Relief from the Automatic Stay.** The movant shall serve any motion for relief from the automatic stay and notice of hearing upon: the debtor, debtor's attorney, and the trustee, ~~and any entity actually known by movant to have a mortgage on or consensual interest in the collateral.~~ In Chapter 11 cases, unless otherwise ordered, the movant shall also serve the motion and notice upon the Master Service List (L.B.R. 9013-3 C.) or if no such list exists, upon those who would be on such list, and on any entity who may be affected by the motion.

B. Hearings on Motions for Relief from the Automatic Stay. Motions for relief from the automatic stay shall ordinarily be set giving a minimum of twenty (20) days notice. If Movant consents to having the motion set on a calendar date that is greater than thirty (30) days after the filing of the motion, the caption of the motion must state: "MOVANT WAIVES 30 DAY HEARING."

C. Content of Motion for Relief from the Automatic Stay.

1. Motion for Relief from the Automatic Stay to Foreclose on Collateral.

a. General Provisions. In a case filed under any chapter in which movant is seeking to foreclose on collateral, the motion shall ~~list all entities actually known by movant to have an interest in the collateral and shall~~ recite the legal and factual basis on which relief is sought including:

- i. the basis for the debt;
- ii. the balance of the indebtedness on the petition date or otherwise;
- iii. and
- iv. the date and manner of perfection, including book and page number, certificate of title, or UCC-1 recording.

Documentation in support of a motion for relief shall be summarized using an Exhibit summary following the procedures under L.B.R.9040-1 A. unless otherwise permitted in this Rule. On request, movant shall provide copies of all exhibits in their entirety as set forth in L.B.R. 9040-1 C.

b. Chapter 13 Cases. In a Chapter 13 case in which movant is seeking to foreclose on collateral, the following procedures apply:

i. Balance due. The motion must include a statement of the amount due including a breakdown of the following categories:

- (1) unpaid principal;
- (2) accrued interest from a specific date to a specific date;
- (3) late charges from a specific date to a specific date;
- (4) attorney's fees;
- (5) advances for taxes, insurance and the like; and
- (6) any other charges.

ii. Post-Petition Payments. In Chapter 13 cases, where the movant is seeking relief from the stay for failure to make post-petition payments on a claim secured by real property that is the Debtor's principal residence or is treated by the Debtor's Chapter 13 Plan pursuant to § 1322(b)(5), the motion or attachments thereto, shall contain a legible post-petition payment history. The payment history shall set forth:

- (1) the date each post-petition payment was received,
- (2) the amount of each post-petition payment received, and
- (3) how each post-petition payment was applied by movant.

Pursuant to § 362(g)(2), the Debtor has the burden to prove any post-petition payment(s) alleged to have been made but not set forth in the motion, or attachments thereto.

iii. **Exhibits.** ~~An Exhibit Summary prescribed by L.B.R. 9040-1 A. shall not be used with respect to motions for relief from the automatic stay to foreclose on collateral in Chapter 13 cases. Instead, Sselect~~ exhibits or page(s) may be attached to the motion provided the exhibit page(s) contain evidence of perfection. It is sufficient for movant to attach only the first page of a deed of trust, certificate of title, or UCC-1 form showing the recorder's stamp and verifying lien perfection. On request, movant shall provide copies of all exhibits in their entirety as set forth in L.B.R. 9040-1 C.

iv. **Order Granting Relief from Automatic Stay - Effect on Secured Claims.** All orders granting relief from the automatic stay in a Chapter 13 case shall contain the following language:

The Chapter 13 Trustee is directed to discontinue payment on all claims secured by the property against which relief from the automatic stay is granted in this Order. The Trustee is directed to resume payment on such claims on notification pursuant to L.B.R. 3021-1 A.

- D. Responses to Motions for Relief from the Automatic Stay.** Any response to a motion for relief from the automatic stay must be filed no later than five (5) **business** days before the hearing date set for the motion for relief. The response should specifically admit or deny the allegations in each paragraph. ~~A general denial or similar response is insufficient.~~ When a response asserts adequate protection, the response must state how movant will be adequately protected if the automatic stay remains in effect. The parties shall exchange and file exhibits following the procedures in L.B.R. 9040-1 C.
- E. Duty to Confer.** As required by L.B.R. 2093-1 B., in advance of hearing, attorneys for the parties involved in a motion for relief shall confer with respect to the issues raised by the motion to determine whether a consensual order may be entered or whether a stipulation may be reached concerning relevant facts.
- F. Consent Motions for Relief from the Automatic Stay.** ~~A consent motion for relief from the automatic stay must be styled as a "consent motion."~~ Pursuant to L.B.R. 9013-1 E., a consent motion for relief from the automatic stay need not be set for hearing and may be ruled upon without hearing. The Clerk of Court is authorized to waive the filing fee for a motion for relief from the automatic stay **when if** the motion is filed with the written consent and signature of the trustee and all respondents. ~~Consent may be shown by separate certificate of consent or certificate of no opposition signed by the responding party but such consent or no opposition must be and~~ filed as part of the consent motion. All consent motions for relief from stay must

be filed using the proper non-fee consent motion event in ECF to avoid automatic assessment of the filing fee. Consent Motions for relief to proceed with a domestic action do not require signature of the non-debtor spouse.

- G. Orders on Motions for Relief from the Automatic Stay.** Proposed Orders on any motion for relief from the automatic stay must follow the format in L.B.R. 9050-1 and must specifically describe the property (collateral) that is the subject of relief. “So Ordered” provisions in L.B.R. 9050-1 E. may not be used with motions for relief from the automatic stay. In Chapter 13 cases, the order must include the language set forth in L.B.R. 4001-1 C. iii. above.
- H. Emergency and Ex Parte Relief from the Automatic Stay.** Procedures for emergency and ex parte relief from the automatic shall be as stated in L.B.R. 9013-2 C. and D., respectively.
- I. Continuances.** If the court does not render a final decision on a motion for relief from stay during the 60-day period referenced in 11 U.S.C. § 362(e)(2), any party wishing to have the automatic stay extended until a continued hearing date shall submit a proposed order continuing the hearing and ordering that the stay be extended until such hearing.

#6 Insert provision re: Stipulation Form after existing ¶ 38 and after insert #5

The Bankruptcy Court adopts a Local Form “Consent Order and Stipulation in Settlement of Motion for Relief” attached to this Implementation Order as **Appendix B**.

#7 Replace existing ¶ 15 re: Trustee Dismissal Process with the following, and make corresponding changes to existing Paragraphs 6, 8 and 9

15. Dismissal for Failure to Provide Tax or Payment Advice Documents to Trustee. Pursuant to paragraph 6 and paragraphs 8 and 9, the debtor must provide the trustee with payment advices and certain tax records at or before the § 341 meeting. If not provided, or if inadequate information is provided, the trustee will continue the first setting of the § 341 meeting. The court will send written notice to the debtor of the continued § 341 meeting date and will advise debtor that failure to provide the trustee with the required documents may result in dismissal of the case without further notice or hearing. The debtor should provide the required documents to the trustee seven (7) days prior to the continued meeting. If the debtor fails to provide the documents at the continued meeting of creditors, the trustee may docket a request for dismissal and the court will immediately dismiss the case. If the debtor believes the case was dismissed in error, the debtor may file a motion to reinstate the case within ten (10) days of entry of the dismissal order.

#8 Change existing ¶ 6(a) § 521(a)(1) Filing Requirements - Payment Advices

Change this paragraph to be 6(a) and change the text to require the debtor to provide payment advice records to the trustee **seven (7) calendar days** prior to the **continued** § 341 meeting.

#9 Change existing ¶ 8 and ¶ 9 - Tax Returns

Change these paragraphs to require the debtor provide tax records to the trustee **seven (7) calendar days** prior to the § 341 meeting. Insert the following as the last sentence of the paragraph:

Failure to provide the trustee with the required tax returns will result in a Trustee's request for dismissal of the case following the continued meeting of creditors as further specified in paragraph ____ (existing paragraph 15)

#10 Insert provision re: provision of documents supporting claims (Modification to L.B.R. 3001-1 B.) after existing ¶ 39

Local Rule 3001-1 B. is amended as follows:

L.B.R. 3001-1 B. Service of Proof of Claim in Chapter 7, 13 and 12 Cases.

Immediately upon filing a proof of claim or interest, the claimant shall ~~provide a copy of~~ **serve** the proof of claim and its Exhibit Summary on ~~to~~ the debtor, debtor's attorney, and ~~to~~ the trustee, if any. The claimant ~~must~~ **shall also simultaneously serve** ~~provide a copy of the proof of claim and~~ a complete copy of all **supporting** exhibits ~~supporting~~ **referenced in the Exhibit Summary**, or relevant portions thereof ~~not merely the exhibit summary~~, **on the trustee in chapter 7 cases, and on the debtor's attorney and the trustee in Chapter 12 and 13 cases.** ~~On request of any entity, claimant must~~ **shall** provide such copies no later than seven (7) days after the request and at no charge to the requesting entity. Failure to promptly provide the exhibits ~~when requested~~ may be cause for disallowance of the claim. ~~The filing of a proof of claim electronically is the filer's representation that the filer has served a hard copy of all supporting documents referenced in the Exhibit Summary as required by this rule. No certificate of service is required for service of supporting documents.~~

II. National Official Forms & Amended Interim Rule 1007 Fed. R. Bankr. P. (Topics from BAPCPA - including statistics changes effective October 17, 2006 and other reform law revisions)

#11 Insert new Introductory Paragraph to adopt Interim Rule 1007 and Forms after existing ¶ 1

Insert:

The statistic and audit requirements of the Bankruptcy Abuse and Consumer Protection Act of 2005 (BAPCPA) take effect in October 17, 2006. To collect the statistics required by the BAPCPA and by other statistical reporting requirements, the Judicial Conference of the United States Courts has approved revised Official Forms 1, 5, and 6. Additionally, to provide clarification of other processes imposed by the BAPCPA, the Judicial Conference has adopted revised Official Forms 1 (new Exhibit D), 9, 22A, 22C, and 23 and has adopted an amendment to Interim Bankruptcy Rule 1007 with a recommendation that courts adopt the revised Interim Rule by local order. Amended Interim Rule 1007, and the revised Official Forms are hereby adopted and will be implemented in this U.S. Bankruptcy Court for the Eastern District of Missouri as outlined in this Order.

#12 Replace existing ¶ 16 re: Credit Counseling to add option of filing Exhibit D

Replace paragraph 16 with:

Pursuant to 109(h), Interim Rule 1007(b)(3), Exhibit D to the Voluntary Petition (Official Form 1), and as required by § 521(b) and determined by this Court, each individual debtor in a voluntary chapter 7, 11, 12 or 13 case must file one of four documents at commencement of the case: (1) a certificate of credit counseling; (2) Exhibit D signed by the debtor stating the debtor received a credit counseling briefing but the certificate is not available; (3) a motion for exigent circumstances; or (4) a motion for exemption from credit counseling. If Exhibit D is filed indicating counseling was obtained but the certificate is not available, the Court will issue a 15-day Order and Notice of Missing Documents and will dismiss the case on the 16th day if the certificate of credit counseling is not timely filed. Failure to file one of the four documents identified above with the voluntary petition will result in prompt dismissal of the case. A separate certificate of credit counseling or Exhibit D is required for each Debtor unless a motion for exemption or exigent circumstances is filed. The certificate of credit counseling or Exhibit D shall be appended to the voluntary petition or may be filed separately using the appropriate event: "Certificate of Credit Counseling" or "Exhibit D." The certification of exigent circumstances under § 109(h)(3)(A) shall be filed using the Miscellaneous event "Exigent Circumstances re: Credit Counseling." A motion for exemption under § 109(h)(4) shall

be filed using the “Motion for Exemption from Credit Counseling” event. The Court will look to the United States Trustee, or to the case or Chapter 13 trustee as applicable, to review the credit counseling certificate and to file a motion if the debtor has not met the requirements of § 109(h) to be eligible for bankruptcy relief.

#13 Modify existing ¶ 17 re: Financial Management to explain addition of Official Form 23

Replace the fifth sentence with:

Completion of a financial management course must be shown by each debtor, either by filing Official Form 23 (Debtor’s Certification of Completion of Instructional Course Concerning Financial Management) or by filing one or more certificates. If a single Form 23 is filed for both debtors in a joint case, the Form must include the names and signatures of both debtors.

Add at the end of the paragraph:

The Court will look to the United States Trustee or to the case or Chapter 13 trustee as applicable, to review the case and file a motion if the debtor has not met the requirements of § 727(a)(11) or § 1328(g) to be eligible for a discharge.

#14 Add paragraph re: Adversary Cover sheet after existing ¶ 39 after existing ¶ 39 and after insert #16

Insert:

A current Adversary Cover Sheet (with a revised date of 10/06) must be filed when commencing an adversary proceeding. The new cover sheet form is attached hereto as Appendix C.

III. CM/ECF Release 3.1 System Changes.

#15 Insert new paragraph re: Statistical Summary Form after existing ¶ 6

Insert:

Revised Official Form 6 includes a second page titled “Statistical Summary of Certain Liabilities and Related Data 28 U.S.C. § 159).” This Statistical Summary must be completed and filed with the voluntary petition by individual debtors with primarily consumer debts filing in chapters 7, 11 or 13. If not filed with the petition, the Court will issue its 15-Day Order and Notice of Missing Documents. Thereafter, if the form remains unfiled, the Court will issue a notice to the debtor advising that the case may be closed

without entry of a discharge. If filed after the voluntary petition, the form must be filed using the Miscellaneous Event: “Statistical Summary of Certain Liabilities.”

#16 Add paragraph re: Chapter 11 First Day Motions after existing ¶ 39

Insert:

To properly gather statistical information concerning Chapter 11 First Day Motions, first day motions must be filed using designated Motion/Application events within the CM/ECF system. Three specific first day matters have descriptively titled events and should be filed using those events: (1) “Applications to Employ,” (2) “Motion to Use Cash Collateral,” and (3) “Motion for Continuance of Utility Service.” Other first day matters should be filed using a new “Chapter 11 First Day Motion” event. A description of the motions should be typed into the available text box.

#17 Add paragraph re: Proposed Orders re: Valuation of Property after existing ¶ 39 and after insert # 16

Insert:

To properly gather statistical information required concerning valuation of property as compared to the value of a claim, any proposed order submitted concerning (1) the “Trustee’s Motion to Determine Value of Property;” or (2) a “Motion Setting Property Value,” must include a statement whether the property valuation is below the value of the claim. This statement should be added to the last paragraph of the proposed order.