



Notice of Proposed Amendments to Bankruptcy Court Local Rules of Procedure

The Local Rules of Procedure for the United States Bankruptcy Court, Southern District of Texas, Rules 1007(d), 1017(c), 2016(c)(1), 4001(e), and 4001(f)(4), are proposed to be amended as indicated in the attachment to this Notice.

A new form Application for Waiver of Requirement to File Form B22A, together with an Order Granting Provisional Relief from the Requirement have also been proposed for use in Chapter 7 cases.

Written comments on the proposed amendments and new form may be addressed to the Court by October 1, 2007, as follows:

Clerk, U.S. District Court
Attn: Chief Deputy Clerk
Room 5401
P.O. Box 61010
Houston, TX 77208

OR

by E-Mail: bankruptcyrule@txs.uscourts.gov

Dated: August 31, 2007

Attachments:

Proposed Amended Rules 1007(d), 1017(c), 2016(c)(1), 4001(e), and 4001(f)(4);
Proposed Form Application for Waiver of Requirement to File B22A,
and proposed Order

Proposed Amendment to BLR 1007.

- (d) In all Chapter 13 Cases, the debtor must file with the plan:
 - (1) If the debtor is a wage or salary employee, the debtor must file a wage order with service on the Trustee; or
 - (2) If the debtor is not a wage or salary employee, the debtor must complete the information for the submission of an electronic funds transfer order providing that funds may be drafted by the Trustee; or
 - (3) If the debtor feels there are extraordinary circumstances justifying an exception to (1) or (2) above, file a motion to allow direct payment of funds to the Trustee.

Proposed Amendment to BLR 1017(c):

- (c) In chapter 13 cases, federal tax issues will be governed by the following procedures:
 - (1) The Internal Revenue Services must either (i) at or before seven days before the date first set for the first § 341 meeting of creditors, send a tax transcript to the chapter 13 trustee, the debtor and debtor's counsel; or (ii) appear at the § 341 meeting of creditors and advise the chapter 13 trustee whether the Internal Revenue Service alleges that the debtor has failed to file all tax returns as required by 11 U.S.C. § 1308.
 - (2) Within 5 days after the § 341 meeting of creditors, the trustee must file a motion to dismiss any chapter 13 case if the information provided pursuant to BLR 1017(c)(1) reflects that the debtor has not filed all tax returns as required by 11 U.S.C. § 1308. The motion shall be in a form published from time-to-time on the Court's website.
 - (3) Within 20 days after the chapter 13 trustee has filed a motion to dismiss a case based on delinquent tax returns, the debtor must file a response to the motion.
 - (4) If all tax returns that are the subject of a motion under BLR 1017(b) have not been filed, the plan will not be confirmed. If all tax returns have been filed, the court may confirm the plan or may deny confirmation based on an estimate of the IRS's claim pursuant to § 502(c). The order confirming the plan will provide that the plan has been confirmed based on an estimate of the debtor's tax liability and that the actual amount payable by the debtor in order to discharge the tax liability will be the actual amount determined based on the allowance of the tax claim, without regard for any provision in the plan to the contrary.
 - (5) The proposed order dismissing for failure to file tax returns will provide for dismissal with prejudice until all delinquent returns have been filed.

Proposed Amendment to BLR 2016 (c) (1).

Fixed fee agreements must be filed within ~~15~~ 20 days of the petition date and be in the form promulgated from time-to-time by the Bankruptcy Court.

Proposed Amendment to BLR 4001

(e) In each chapter 13 case, the Court will issue an ~~an~~ order that authorizes the use of estate vehicles under § 363 and provides adequate protection to the holders of liens on the vehicles.

(1) The adequate protection order will require the debtor to (i) maintain insurance on the vehicle in the amount required by the debtor(s) prepetition contract; (ii) provide proof of insurance to the lien holder; and (iii) enter into a wage order of EFT Order not later than 15 days after the petition date. the date of the § 341 meeting of creditors.

(2) As additional adequate protection, the lien holder will be given an administrative claim, with priority under § 507(b), in an amount equal to ~~1.5%~~ 1.25% of the value of the vehicle for each 30 days that elapses from the date of the adequate protection order. For example, if the vehicle is valued at \$10,000, a § 507(b) adequate protection claim in the amount of ~~\$150~~ \$125 will accrue each month. In the event of a dismissal or conversion of the chapter 13 case, the trustee will distribute the proceeds in accordance with § 1326(a)(2). This will result, in most cases, in payments being made in the following order of priority:

(A) First, to the vehicle lien holders in the amount of the adequate protection reserve;

(B) Second, to debtor's counsel for unpaid fees for which an application is filed on or before 20 days after entry of the order of dismissal and that have been allowed by court order;

(C) Third, to the debtor (directly and not through counsel).

(D) Payments under paragraph "1" shall be made following the expiration of 10 days of entry of the dismissal order, unless the dismissal order is stayed.

(3) The debtor or any other party in interest may object to the adequate protection order not later than ~~10-30~~ days after entry of the court's order. The objecting party must state the date that the hearing will be conducted, which date will be the next chapter 13 panel after the expiration of 15 days from the date of the objection. The objection must be served on the debtor, the debtor's counsel, the chapter 13 trustee, and any party holding security interest in the vehicle. The objecting party must attend the hearing and present evidence in support of the objection.

(4) For purposes of valuation in the absence of any objection, the vehicle value will be determined as of the date of the filing of the chapter 13 petition and will be equal to the average wholesale and retail value listed by NADA (without options or mileage adjustments). In determining the principal amount due to the lien holder under the plan, the § 507(b) payments will be (i) deducted from the value of the vehicle, if the value of

the vehicle is less than the lien, ~~resulting in a Confirmation Date Value~~; and (ii) applied to interest if the value of the vehicle is greater than the lien. If the value of the vehicle is less than the lien, interest will begin to accrue on the confirmation date ~~based on the Confirmation Date Value~~.

(5) The adequate protection order will not provide protection to a vehicle lender if the debtor voluntarily surrenders the vehicle by delivering the vehicle to the vehicle lender within 30 days of the petition date.

(6) If a debtor proposes to make direct, post-petition payments to a lender on a vehicle loan that was not in default as of the petition date, no additional adequate protection payments are required, unless otherwise ordered by the Court. If a debtor defaults on direct payments, the debtor must make a cash payment to the lien holder at or before the time of any plan modification. The cash payment must equal or exceed 1.25% of the vehicle's value (determined in the manner set forth in paragraph 4 above) for each one month of missed direct payments.

Proposed Amendment to BLR 4001(f)(4).

Prior to filing a Consumer Lift Stay Motion, the movant must attempt to contact the debtor(s)' counsel to discuss whether an agreement can be reached utilizing the court's agreed order forms. If such an agreement can be reached, the parties may submit a Motion for Entry of Agreed Order under FRBP 4001. Conferences may be attempted by telephone or by e-mail. In all conferences, movant's counsel must provide a contact person with a direct telephone number for future discussions. The motion may be filed by the movant if settlement is not concluded in writing within two (2) business days of the initial attempt to confer.

**United States Bankruptcy Court
Southern District of Texas
_____ Division**

Debtor

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Case No. _____

Chapter 7

APPLICATION FOR WAIVER OF REQUIREMENT TO FILE FORM B22A

I (we) certify, under penalty of perjury, that **LESS THAN 50%** of the debts in this case were for personal, family or household use. We ask to be excused from the requirement to file Form B22A.

Date

(Signature of Debtor)

Date

(Signature of Co-Debtor)

Respectfully submitted,

Date

Debtor counsel
[Signature Block of Debtor's Counsel]

**ORDER GRANTING PROVISIONAL
RELIEF FROM REQUIREMENT TO FILE FORM
B22A AND NOTICE OF OPPORTUNITY TO OBJECT**

This order is issued under authority of Bankruptcy Code § 521(a)(1)(B) to “order otherwise” with respect to a debtor’s obligation to file schedules and other information. The debtor has filed the requisite certification that debtor’s debts are not primarily consumer debts. Accordingly, the Court orders:

1. Subject to further order of the Court, the debtor is relieved from the requirement to file Form B22A.
2. This case will not be dismissed pursuant to § 521(i) based in whole or in part on the debtor’s failure to file Form B22A.
3. Within 90 days, any party in interest may file a motion to require the debtor to file a Form B22A. The motion must be served on all parties in interest. The Court will consider the motion after notice and an opportunity for hearing. If the Court grants the motion, the Court will issue an order setting a deadline for the debtor to file the Form B22A.
4. If the debtor fails to comply with an order issued pursuant to paragraph 3 of this order, the Court may dismiss this case.
5. Within five business days of entry of this order, debtor shall serve a copy of this order on all parties in interest and file a certificate of service with the Court.