

§ 362 MOTIONS

Standing. Unless the movant is the same creditor named in the note and mortgage/security agreement, motions should include specific allegations and attach necessary documents indicating that the movant is the present holder of the note and mortgage/security interest, the authorized agent of the holder, or is otherwise authorized or allowed to initiate the motion.

Certification of Facts. If not otherwise demonstrated by the certification of facts filed with any objection to the Motion, debtor(s) who have objected to the relief on payment grounds shall advise movant's counsel in writing and present evidence to support any dispute regarding the post petition payment history provided in the movant's certification of facts no later than 3 business days before the hearing.

Settlement Orders. A settlement order which resolves a motion for relief from stay or motion to dismiss due to a failure to make a direct post petition payment to a secured creditor by providing a cure period and ex parte relief shall provide a cure period which is within reasonable prospect of debtor(s)' performance. The Court does not have a presumptively reasonable period—it depends on the specific facts and circumstances of each case. A settlement order may be approved without a hearing if it provides for ex parte stay relief for a failure to make cure payments or a failure to make future payments for a period of up to 1 year after the cure period. The Court may set a hearing to consider the appropriateness of any proposed settlement order.

In all settlement orders, the attorney for the debtor(s) shall certify that the payment obligations set forth in the order, including the amounts, method, and timing of payments, and consequences of default have been previously reviewed with and agreed to by the debtor(s) and that the attorney has been authorized to consent thereto. Therefore, counsel's consent to such orders must be indicated by electronic (s/____) signatures.

Affidavits of Default on Settlement Orders. An affidavit of default under a settlement order regarding a motion for relief from stay or motion to dismiss for failure to make post petition direct payments to a secured creditor shall attach a certification of facts or affidavit demonstrating all direct post petition payments and their application and indicate payments which have not been received since the entry of the settlement order.

Rule 4001(a)(3) Stay. If the movant/declarant seeks a finding in a proposed order granting relief from stay that the 14-day stay of Fed. R. Bankr. P. 4001(a)(3) does not apply to the order, the attorney for the movant/declarant shall certify in the affidavit of default that either the debtor(s) did not object to a request for a such a finding or that the debtor(s) expressly agreed to such relief as a part of a previously entered settlement order. The language of a proposed order requesting that finding shall indicate the stay is not applicable to the order based thereon (e.g., "Based upon the debtor(s)' prior agreement or failure to object regarding the Fed. R. Bankr. P. 4001(a)(3) stay, this order is effective immediately.")

CHAPTER 13 MATTERS

Motions to Extend or Impose the Automatic Stay. Absent exceptional circumstances, an affidavit of debtor(s)' testimony which supports a request to extend or impose the automatic stay in re-filed cases should be filed in applicable cases no later than 5 business days before the hearing. Upon the trustee's consent and no other objections, the Court, if it finds the evidence sufficient, may extend the stay without a further hearing.

Mortgage Modification. When seeking court approval for a modification of a mortgage, the order should be titled "Order Allowing Mortgage Modification." It should contain the consent of the debtor(s)' counsel, mortgage creditor or its counsel, and the Chapter 13 trustee. If the creditor's express consent on the Order is not possible, it may be indicated via an attachment to the Order, or certified by the movant as agreed to and stated in the Order.

The Order may provide for relief from the automatic stay for the sole purpose of entering into the agreement; and should provide that there will be no extension of additional funds beyond what is already owed; that payments to other lien holders under the plan will not be affected; and that the proposed modification has no detrimental effect on other creditors and is in the best interest of the debtor(s) and the estate. The Order should also address whether any payments to the creditor, whose loan is to be modified, via the Chapter 13 Trustee will continue or terminate upon entry of the Order.

If the modification to the mortgage involves new debt, a motion to incur debt should also be filed and previously passively noticed to all creditors and parties in interest according to Local Rule.

Modifications through plan provisions should contain similar representations and must express the affected creditor's consent.

Valuation Objections. Within 7 days of the filing of an objection to a request to value a claim/collateral by motion or plan, debtor(s)' counsel shall contact counsel for the objecting creditor (if known) to discuss resolution of the request and schedule a reasonable opportunity for the inspection and valuation of the collateral (no later than 10 days thereafter). Upon any failure to timely act, counsel for the affected creditor shall initiate the contact and report such failure to the Court by correspondence e-mailed to chambers. Any resolution of a valuation dispute shall be reported to the Court and trustee at least 7 days prior to the hearing or counsel for the affected creditor and the debtor(s) and all necessary witnesses shall appear at the hearing.

Debtor(s)' Objections to Claims. Unless based on grounds which are evident on the face of the claim or its attachments, debtor(s)' objection to a proof of claim based upon substantive grounds (including the expiration of the statute of limitations), as opposed to technical grounds (such as timeliness of filing or duplicate claim), should attach an affidavit of testimony which meets the evidentiary requirements of 11 U.S.C. § 502. Otherwise, a hearing may be required. If challenging a claim, debtor(s) should ensure that the claim is not otherwise recognized in the schedules or statements. A proposed order sustaining an objection to claim should be clearly written and set forth in detail the grounds supporting the order. Orders should not merely refer to the objection or provide summary relief, such as "the objection is sustained and the claim is disallowed." The Court may set a *de minimis* claim amount at which the affidavit is unnecessary.

7 Days Prior to Confirmation Hearing

Local Rule 3015-4 Compliance. Upon the failure to timely provide to the trustee the information required by Local Rule 3015-4, the trustee shall advise or report such deficiency to the Court by correspondence, pleading, or CM/ECF event prior to the confirmation hearing and advise whether dismissal will be requested at the hearing. Upon a report of the failure to provide the information required by the Local Rule, debtor(s)' counsel and the debtor(s) shall attend the confirmation hearing. In the event the requested information may not be reasonably produced by the hearing, the Court may waive the requirement of appearance.

3 Days Prior to Confirmation Hearing

Amended Chapter 13 Plans Filed Prior to Confirmation Hearing. Except as indicated below, in order for any amended plan to be considered by the Court at a confirmation hearing on either the consent or dispute docket, the amended plan and all supporting schedules and statements shall be filed with the Court no later than 3 business days in advance of the hearing. Upon a failure to timely amend and file, the debtor(s) and debtor(s)' counsel shall attend the confirmation hearing and the case may be considered for dismissal at the confirmation hearing. Any amended plan which requires re-noticing to parties in interest shall be filed no later than 3 business days before the confirmation hearing or debtor(s) shall attend the confirmation hearing, along with debtor(s)' counsel.

In the event an amended plan resolves all objections by the trustee and all objecting creditors, the trustee may report to the Court that the amended plan appears confirmable and the requirement for attendance may be waived by the Court.

In the event that the timely filing of a proof of claim before the confirmation hearing requires either the filing of an amended plan or related schedules, or an objection to the claim, debtor(s) and debtor(s)' counsel shall make such amendment or file such objection within 7 business days of the filing of the proof of claim.

In the event that debtor(s)' counsel receives a writing from either the IRS or the South Carolina Department of Revenue which states a deficiency in the filing of tax returns, debtor(s) shall take immediate steps to file or produce such returns so as to avoid delays in confirmation.

2 Days Prior to any Hearing

Settlements, Withdrawals & Continuances. The deadline for reporting settlements, withdrawals, or requests for continuances in chapter 13 cases shall be no later than 10 a.m. 2 business days prior to the date of the hearings. If any matter remains contested at that time, a joint statement of dispute, which is subject to the Court's approval, shall be filed by the same deadline. If a request for continuance is denied, the affected parties and

their counsel shall attend the hearing. A joint statement of dispute should be prepared and immediately submitted upon any denial of a request for continuance.

If the joint statement of dispute is approved as an order of the Court and the parties have so requested, the Court may continue or otherwise excuse attendance at the initial hearing. Upon failure to file a joint statement or failure to obtain Court approval of the proposed joint statement, counsel for both the debtor(s) and objecting parties shall appear at the hearing. The matter will be treated as a pretrial hearing unless otherwise indicated in advance by the Court.

Certification of Debtor(s)' Counsel for Confirmation. As a condition precedent to the confirmation of a plan, counsel for the debtor(s) shall present a written certification (by pleading, correspondence or other event) that the following has been reviewed with and agreed by the debtor(s):

- (1) The obligations set forth in the plan, including the amount, method, and timing of payments made to the trustee or directly to creditors;
- (2) The consequences of any default under the plan;
- (3) That debtor(s) may not agree to sell or sell property, employ professionals, or incur debt (including modification of debt) without the advance authorization of the Bankruptcy Court.

Compliance with C-I & C-II Orders. Upon recommendation of a C-I or C-II form order, the Court may continue a confirmation hearing to ensure timely compliance with the order and confirmation of the plan.

Attorney Fees. The Court may consider the following in chapter 13 cases:¹

- (1) Upon a showing of cause at the confirmation hearing and with the consent of the debtor(s), the “no look” fee for counsel for the debtor(s) may be increased and/or additional costs may be approved by the Court. Upon evidence that confirmation or administration of the case has been delayed due to the neglect or other actions of counsel for debtor(s), the “no look” fee may be decreased.
- (2) Plans before the undersigned may provide in regards to the initial distribution of fees to debtor(s)' counsel that if the trustee has \$3,000 or more on hand at the time of the initial disbursement, the trustee shall disburse the remaining fee, not to exceed \$1,000, to the attorney from the initial disbursement.
- (3) If a plan is not confirmed in a BAPCPA case, funds received prior to the entry of an order of dismissal or conversion shall be disbursed by the chapter 13 trustee as follows unless otherwise ordered:
 - (a) First, the lesser of the amount due to debtor(s)' attorney, \$500, or the remaining balance of funds received by the chapter 13 trustee prior to dismissal or conversion;
 - (b) Second, adequate protection payments required by 11 U.S.C. § 1326(a) to the holders of allowed secured claims and allowed claims for

¹ The undersigned's proposals for changes in attorney fees are subject to discussion with the other judges of the Court for purposes of uniformity.

executory contracts scheduled to be paid through the most recently filed plan, divided based upon the monthly payments provided therein. Subject to the availability of funds, creditors will be paid a full payment for each full month beginning 30 days after the order for relief and continuing through the date of dismissal or conversion. No payment will be made for partial months.

(c) Third, any fees still due the debtor(s)' attorney after the above payments.

(d) Fourth, any funds remaining after these payments, and all funds received after conversion or dismissal shall be returned to the debtor.

CHAPTER 11

Motions to Dismiss or Convert Pursuant to 11 U.S.C. § 1112. Any party filing a motion to dismiss or convert a case pursuant to 11 U.S.C. § 1112 shall ensure that the Court has an available hearing date within the time required by the statute, the Federal Rules of Bankruptcy Procedure, and the Local Rules or shall specially request by separate emergency motion that such a hearing be scheduled. The absence of such a request shall be deemed to be a waiver of the scheduling and ruling deadlines imposed by the statute and rules.

TELEPHONE/VIDEO CONFERENCE PARTICIPATION IN HEARINGS

Requests to Participate by Telephone or Videoconference. The Court will consider written requests by counsel to participate by telephone or videoconference capabilities in hearings or trials in which counsel can demonstrate that travel or attendance creates an unnecessary expense or burden. All such requests must be made in writing to chambers as soon as possible and no later than 3 business days before the date of the hearing or trial. Counsel should indicate in their written request whether their participation will include mere listening, argument, questioning of witnesses or presenting evidence. The presentation or viewing of evidence by non attending counsel will require prior coordination with chambers and the appropriate courtroom deputy. Counsel should not rely on requests for such participation unless and until approved by the Court. Participation by these means may be limited based on the technical capabilities of the Court.