

Motion to Value Guidelines (Updated)

December 11, 2017

A Chapter 13 debtor seeking to modify a claim that is secured only by a security interest in real property that is the debtor's principal residence must provide for that modification in the plan and must bring a motion to determine the value of the secured claim. LR 3012-1(a).

The plan should include text similar to the following:

The Debtors' principal residence located at _____ and legally described as _____, _____ County, Minnesota (hereinafter "the subject real property"), is encumbered by a first mortgage in favor of _____ with a balance as of the date of filing of this petition of \$ _____, and a second mortgage in favor of _____ (hereinafter "the second-mortgage holder") with a balance as of the date of filing of this petition of \$ _____. The Debtors have obtained an independent appraisal of the subject real property on _____, which appraised the fair market value of the subject real property as \$ _____. Claims filed by or on behalf of the second-mortgage holder are included in the unsecured non-priority class of claims described above, notwithstanding the second mortgage in favor of the second-mortgage holder encumbering the subject real property. Debtors will cause to be filed a Motion to Value Claim of the second-mortgage holder to be heard concurrent with the hearing to confirm this plan, which will seek to have the claim of the second-mortgage holder classified, treated, and considered as wholly unsecured pursuant to 11 U.S.C. § 506(a) for purposes of administration of this Chapter 13 plan. Upon completion of all payments by the Debtors due to the Trustee under this Plan or any modified Plan, the Debtors may request supplemental relief as specified in Local Rule 3012-1.

The hearing on the motion must be scheduled to be held contemporaneously with the confirmation hearing on the Chapter 13 plan. LR 3012-1(a)(4).

The motion should include the following text or information:

- 1) In the motion title: the name of the affected creditor determined no more than 30 days before the hearing originally scheduled on the motion. LR 3012-1(a)(1)(A).
- 2) The statement that "[t]he motion is to determine the secured status of the creditor's claim for the purpose of confirmation of the debtor's plan." LR 3012-1(a)(1)(B).
- 3) The appraised value of the property on the petition date. LR 3012-1(a)(1)(C).
- 4) The statement that "[t]he debtor's plan proposes to treat the creditor's claim as unsecured in its entirety." LR 3012-1(a)(1)(D).
- 5) The address and legal description of the property. LR 3012-1(a)(1)(E).
- 6) The balance of the debt owing to the creditor on the petition date. LR 3012-1(a)(1)(F).

- 7) Determined within 30 days of the original hearing date: the name of each lienholder and any related lender and servicer, the amount of debt owing with respect to each lien, and the priority of each such lien. LR 3012-1(a)(1)(G).
 - a) This includes judgment creditors, e.g., HOAs.
 - b) Clearly explain complicated or unusual “chains of ownership” and include proper POAs, evidence of merger, name changes, assignments, or any other document necessary to complete the chain.
- 8) The motion should state the date that the case was filed. Local Form 9013-2.

The motion must include the following attachments:

- 1) Per LR 3012-1(a)(2), the motion must include the documents required by LR 9013-2(a):
 - a. A notice of hearing (generally part of the motion) that states the time by which a response must be filed and that unless a response opposing the motion is timely filed, the court may grant the motion without a hearing;
 - b. An affidavit or verification of the motion (by someone with knowledge, e.g., the debtor(s), not the attorney). Use the motion verification form, not the signature declaration form;
 - c. A memorandum of facts and law;
 - d. A proposed order. Generally, the proposed order should only be one sentence; e.g. “The claim of [lienholder] associated with a mortgage against the debtor’s principal residence is wholly unsecured pursuant to 11 U.S.C. 506.” See LR 3012-1(a)(5).
 - e. A document showing proof of service on parties not automatically served through the court’s ECF system (although listing the parties served through ECF is helpful).
- 2) Copies of all recorded lien instruments, including all recorded assignments and amendments, evidencing the lien which is the subject of the motion. LR 3012-1(a)(2)(A).
- 3) An owners and encumbrance report certified no more than 30 days before the original hearing date. LR 3012-1(a)(2)(B).
- 4) A copy of the debtor’s current plan. LR 3012-1(a)(2)(C). Note: additional service may be required if the plan is modified after service of the motion but before it is granted.
- 5) An appraisal of the fair market value of the property as of the commencement of the Chapter 13 case. LR 3012(a)(2)(D).
- 6) Any additional documentation necessary to conclusively demonstrate the information required by LR 3012-1(a)(1). See section 7 above.

Service Requirements

- 1) The motion must be served on:
 - a. All parties identified in LR 9013-3(a)(1);

- i. The debtor;
 - ii. The debtor’s attorney;
 - iii. The trustee;
 - iv. The U.S. Trustee;
 - v. All entities that have filed requests for notice or notices of appearance;
 - vi. Each entity claiming a lien or other interest in the property (this may include spouses and ex-spouses); and
 - vii. Each entity against whom relief is sought.
 - b. All creditors identified pursuant to LR 3012-1(a)(1)(G);
 - c. If MERS is acting as nominee, MERS and the underlying “holder/lender” should be served;
 - d. If there is a servicer, both the holder and servicer should be served;
 - e. If there is a POC, the POC notice party should also be served.
- 2) Service must comply with Fed. R. Bankr. P. 9014(b), which states: “[t]he motion shall be served in the manner provided for service of a summons and complaint by Federal Rule 7004 and within the time determined under Rule 9006(d).”
- a. Federal Rule 7004(b) allows for service via first-class mail, to the following entities:
 - i. Individuals: must mail a copy of the motion to the individual’s dwelling house or usual place of abode or to the place where the individual regularly conducts business.
 - ii. Corporations/Partnerships/Unincorporated Business Entities: must mail a copy of the motion to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service.
 - iii. United States: must mail a copy to the civil process clerk at the office of the United States attorney for the district in which the action is brought AND to the Attorney General of the United States at Washington, District of Columbia.
 - iv. An Officer or Agency of the United States: serve in the same way as service on the United States, in addition to serving the officer or agency.
 - v. State/Municipal Corporations/Other Government Organizations: must mail a copy of the motion to the person or office upon whom the law of the state in which the motion is served would dictate if a lawsuit was brought in the state’s courts of general jurisdiction, or in the absence of such a person or office, then on the chief executive officer of the state/municipal corporation/government organization.
 - 1. Service upon the State: motion must be served on the attorney general, a deputy attorney general, or an assistant attorney general. MNRCP 4.03(d).
 - 2. Service upon Public Corporations: Refer to the list that essentially requires service on the person or persons in charge of the corporation. MNRCP 4.03(e).
 - b. When serving an Insured Depository Institution, Federal Rule 7004(h) requires, with narrow exceptions, service by certified mail addressed to an officer, unless the institution has appeared by its attorney.
 - i. Note: do not assume an attorney who filed a notice of appearance “appeared” for the institution for purposes of a motion to value.

- 3) The proof of service must indicate how the identity and address were determined for the recipient of service on behalf of the creditor whose claim is the subject of the motion. LR 3012-1(a)(3)(B).
 - a. This should be provided for all holders of claims against the property.
 - b. Acceptable sources: the creditor, the SEC, and the applicable Secretary of State.
 - c. If using a webpage, provide a screenshot of the webpage and the date of access.
- 4) Any amended motion must be served on all parties served with the original motion and on any other entity that holds an interest in the property at the time the amended motion is filed. LR 3012-1(a)(3)(C).
- 5) In general, “over-serve” the motion. (It may not be over-service). For example, send a copy first-class to the address indicated on the proof of claim in addition to the certified copy to the CEO, and serve any counsel.
- 6) File a supplemental proof of service with copies of the certified mail return receipts or electronic proof the certified mail was received.