

Proposed revisions to Local Rules posted for notice and comment

The Judges of the United States Bankruptcy Court for the District of Minnesota have approved for notice and comment amendments to **Local Rules 2004-1 and 3012-1 and new Local Rule 2005-1 (formerly Local Rule 2004-2)**. The text of the proposed rules is available below. Comments will be accepted through **December 2, 2016**.

Comments can be mailed to Lori A. Vosejka, Clerk of Court, 301 US Courthouse, 300 South Fourth Street, Minneapolis, MN 55415 or sent via e-mail to lori_vosejka@mn.uscourts.gov.

Rule 2004-1. Examinations

(a) ORDER FOR EXAMINATION. A party seeking to examine ~~request for an order authorizing the examination of~~ the debtor or other entity under Federal Rule of Bankruptcy Procedure 2004 shall file with the court and serve on the United States Trustee an application for an order directing such examination. ~~Before issuing the order, the court may direct that further notice be given or that a hearing be held. The court may issue any appropriate order directing whether and the manner in which the examination shall be conducted~~ **be made by motion**.

(b) NOTICE OF EXAMINATION. If the ~~application~~ **motion** is granted, the party ~~requesting~~ **conducting** the examination shall serve on the entity to be examined a notice of examination which shall identify the entity to be examined and the time and place for taking the examination. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice. Upon objection and for cause shown, the court may issue any appropriate order regarding the conduct of the examination.

Rule ~~2004-2~~ **2005-1**. Special Relief with Respect to Debtor

A request under Federal Rule of Bankruptcy Procedure ~~2004(d)~~ or 2005 shall be made by motion.

Rule 3012-1. Valuation of ~~Mortgagee's~~ **Secured Claim on Principal Residence**

(a) **MOTION TO VALUE CLAIM**. 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.

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~~(b1)~~ Content of Motion ~~TO VALUE CLAIM~~. The motion must state, as of the commencement of the case, except as provided in subsections A and G:

~~(1A)~~ Title. The title of the motion must include The name of the creditor holding the claim, **determined as of 30 days before the hearing originally scheduled on the motion, in the title of the motion;**

~~(2B)~~ Content of Motion. The motion must state, as of the commencement of the case: The motion is to determine the secured status of the creditor's claim for the purpose of confirmation of the debtor's plan;

(C) The appraised value of the property;

~~(BD)~~ The debtor's plan proposes to treat the creditor's claim as unsecured in its entirety;

~~(E)~~ The address and legal description of the property;

~~(F)~~ The balance of the debt secured by the creditor's lien against the property; and

~~(G)~~ The name of each ~~creditor~~**entity** holding a lien against the property **and any related lender and servicer**, the amount of debt owing to each ~~creditor~~**entity holding a lien**, and the priority of each **such** lien. **Such entities shall be determined as of 30 days before the hearing originally scheduled on the motion.**

~~(32)~~ Attachments to Motion. In addition to the documents required by Local Rule 9013-2(a), the motion must include the following attachments:

~~(A)~~ A copy **Copies** of the ~~all~~ recorded mortgage **lien** instruments, ~~and a copy of~~ **including** all recorded assignments and amendments, **evidencing the lien which is the subject of the motion;**

~~(B)~~ A copy of all other evidence **An abstract or Owners and Encumbrance report, or any supplement, certified within 30 days of the hearing originally scheduled on the motion, to verify each entity holding a lien against the property;** ~~to establish that the identified creditor is the current holder of the mortgagee's rights under the mortgage;~~

~~(C)~~ A copy of the debtor's plan; and

~~(D)~~ Evidence **An appraisal** of the fair market value of the property as of the commencement of the Chapter 13 case.

~~(e3)~~ SERVICE OF MOTION TO VALUE CLAIM. **Service.**

(4A) The motion must be served in compliance with Fed. R. Bankr. P. 9014(b) on all parties identified in Local Rule 9013-3(a)(1), and all creditors **entities** identified pursuant to in paragraph (c)(2)(ED(a)(1)(G)) of this rule.

(2B) The proof of service ~~shall~~ **must** indicate how the identity and address were determined for the **each** recipient of service ~~on behalf of the creditor whose claim is the subject of the motion.~~

(3C) **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.**

(d4) Timing. The hearing on the motion to value claim must be scheduled to be held contemporaneously with the hearing on confirmation of the debtor's plan. The court may schedule an evidentiary hearing.

(e5) Order. The order will determine the secured status of the creditor's claim pursuant to 11 U.S.C. § 506.

(fb) **FUTURE RELIEF MOTION FOR RELEASE OF LIEN.** If the court determines that the creditor's claim is unsecured in its entirety, the debtor may ~~request supplemental relief~~ **bring a motion to release the lien** after the debtor's completion of payments under the plan. ~~The request must be made by motion and include a proposed order. The order must provide that: (i) the creditor was properly served and received adequate notice of the motion to value; (ii) the court entered an order on _____, determining that the creditor's claim was wholly unsecured pursuant to 11 U.S.C. § 506 (link is external); (iii) the actual date the debtor completed payments under the plan; (iv) the legal description of the property; (v) the creditor's lien is released from the property effective as of the debtor's completion of payments under the plan; and (vi) fully recite the recording information applicable to the original mortgage and any amendments or assignments related to the creditor's lien.~~

(1) **Content of Motion. The motion must state:**

- (A) **The date of confirmation of the debtor's chapter 13 plan;**
- (B) **The legal description of the property;**
- (C) **The date of the order determining the claim was unsecured;**
- (D) **The date the debtor completed payments under the plan;**

(2) **Attachments. In addition to the documents required by Local Rule 9013-2(a), the motion must include the following attachments:**

- (A) **Copies of all recorded lien instruments, including all recorded assignments and amendments, evidencing the lien which is the subject of the motion;**

(B) An abstract or Owners and Encumbrance report, or any supplement, certified within 30 days of the hearing originally scheduled on the motion, to verify each entity holding a lien against the property;

(C) A copy of the debtor's confirmed plan; and

(D) A copy of the order determining the claim was unsecured.

(3) Proposed Order. The motion must include a proposed order in the form of Local Form 3012-1(c).

(4) Service. The motion must be served in accordance with paragraph (a)(3) of this rule.