

Local Bankruptcy Rules

LOCAL RULE 1016-1

Procedure Upon the Death or Incapacity of a Debtor
During the Pendency of a Bankruptcy Case.

- (a) Notice of Death. In a bankruptcy case which has not been closed, a Notice of Death of the debtor [Fed. R. Civ. P. 25(a), Fed. R. Bankr. P. 7025] shall be filed by the counsel for the deceased debtor or the person who intends to be appointed as the representative for or successor to a deceased debtor within sixty (60) days of the death of a debtor. The Notice of Death shall be served on the trustee, U.S. Trustee, and all other parties in interest. A copy of the death certificate (redacted as appropriate) shall be filed as an exhibit to the Notice of Death.

The Notice of Death may be combined with the single motion permitted by paragraph (b) of this Rule. If so combined, the title to the motion and notice of motion shall be: **“NOTICE OF DEATH AND MOTION FOR** [state relief requested].” The death certificate (redacted as appropriate) shall be filed as an exhibit to such motion.

- (b) Single Motion For Multiple Claims Upon Death of Debtor. When the debtor has died or became legally incompetent prior to a closing of a bankruptcy case, the provisions of Federal Rule of Civil Procedure 18(a) [Fed. R. Bankr. P. 7018, 9014(c)] apply to the following claims for relief which may be requested in a single motion:

- (1) Substitution as the representative for or successor to the deceased or legally incompetent debtor in the bankruptcy case [Fed. R. Civ. P. 25(a), (b); Fed. R. Bankr. P. 7025];
- (2) Continued administration of a case under chapter 11, 12, or 13 [Fed. R. Bank. P. 1016];
- (3) Waiver of post-petition education requirement for entry of discharge [11 U.S.C. §§ 727(a)(11), 1328(g)]; and
- (4) Waiver of the certification requirements for entry of discharge in a Chapter 13 case, to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications [11 U.S.C. § 1328]

LOCAL RULE 3015-1

Chapter 13 Debt Adjustment Cases

(d) Procedure to Confirm Modified Plans.

- (1) Modified Plans Proposed Prior to Confirmation. If the debtor modifies the chapter 13 plan before confirmation pursuant to 11 U.S.C. § 1323, the debtor shall file and serve the modified chapter 13 plan together with a motion to confirm it. The plan shall be filed as a separate document. Notice of the motion shall comply with Fed. R. Bankr. P. 2002(b), which requires twenty-eight (28) days' of notice of the time fixed for filing objections, as well as LBR 9014-1(f)(1). LBR 9014-1(f)(1) requires twenty-eight (28) days' notice of the hearing and notice that opposition must be filed fourteen (14) days prior to the hearing. In order to comply with both Fed. R. Bankr. P. 2002(b) and LBR 9014-1(f)(1), parties-in-interest shall be served at least forty-two (42) days prior to the hearing.
- (2) Modified Plans Proposed After Confirmation. If the debtor, trustee, or the holder of an allowed unsecured claim modifies the chapter 13 plan after confirmation pursuant to 11 U.S.C. § 1329, the plan proponent shall file and serve the modified chapter 13 plan together with a motion to confirm it. The plan shall be filed as a separate document. Notice of the motion shall comply with Fed. R. Bankr. P. 3015(g), which requires twenty-one (21) days' of notice of the time fixed for filing objections, as well as LBR 9014-1(f)(1). LBR 9014-1(f)(1) requires twenty-eight (28) days' notice of the hearing and notice that opposition must be filed fourteen (14) days prior to the hearing. In order to comply with both Fed. R. Bankr. P. 3015(g) and LBR 9014-1(f)(1), parties-in-interest shall be served at least thirty-five (35) days prior to the hearing.

(f) Plan Payments.

- (1) Due Date. Plan payments shall be made monthly and must be received by the trustee on the twenty-fifth (25th) day of each month beginning the month after the order for relief under chapter 13. All plan payments to the trustee by the debtor shall be by cashier's check, money order, or electronic transfer approved by the trustee.
- (3) Trustee's Fees on Certain Plan Payments. The trustee may collect, with the authorization of the U.S. Trustee, the percentage fee fixed under 28 U.S.C. § 586(e)(1)(B) on all receipts used to pay post-petition contract installment payments paid to holders of secured claims, whether made before or after confirmation of the chapter 13 plan, as well as on all adequate protection payments made by the trustee to holders of secured claims.

(i) Court Approval of Sales, Transfers, and Credit.

(1) Prior to Completion of Payments Under the Plan. Except for transfers made in the ordinary course by a business debtor, prior to completion of payments under the applicable plan, the debtor shall not sell or transfer property or incur debt except as provided herein.

(A) Vehicle Loans. The court may approve an ex parte motion by the debtor to finance the purchase of a motor vehicle if the trustee's written consent is filed with or as part of the motion. The debtor's motion and the trustee's approval are their certification to the Court that:

- (i) All payments required by the chapter 13 plan are current;
- (ii) The chapter 13 plan is not in default;
- (iii) A declaration, which may be in the format of Schedules I and J, by the debtor has been filed within the prior thirty (30) days that demonstrates an ability to pay all future plan payments, projected living and business expenses, and the new debt;
- (iv) The new debt is a single loan incurred to purchase a motor vehicle that is reasonably necessary for the maintenance or support of the debtor or a dependent of the debtor or, if the debtor is engaged in business, is necessary for the continuation, preservation, and operation of the debtor's business;
- (v) The only security for the new debt will be the motor vehicle to be purchased by the debtor; and
- (vi) The new debt does not exceed \$20,000.00.

(B) New Home Loans. The Court may approve an ex parte motion by the debtor to finance the purchase of a residence if the trustee's written consent is filed with or as part of the motion. The debtor's motion and the trustee's approval are their certification to the Court that:

- (i) All payments required by the chapter 13 plan are current;
- (ii) The chapter 13 plan is not in default;
- (iii) A declaration, which may be in the format of Schedules I and J, by the debtor has been filed within the prior thirty (30) days that

demonstrates an ability to pay all future plan payments, projected living and business expenses, and the new debt;

- (iv) The new debt is a single loan incurred to purchase a residence that is reasonably necessary for the maintenance or support of the debtor and his or her family;
- (v) The only security for the new debt will be the residence to be purchased by the debtor; and
- (vi) The monthly payment (the principal and interest payment on account of the new debt plus all impounds, taxes, insurance, association fees, and bonds and other assessments) will not exceed the greater of the debtor's current such monthly payment or rental payment or \$2,500.00.

(C) Refinance of Existing Home Loans. The Court may approve an ex parte motion by the debtor to refinance existing debt(s) encumbering the debtor's residence if the trustee's written consent is filed with or as part of the motion. The debtor's motion and the trustee's approval are their certification to the Court that:

- (i) All payments required by the chapter 13 plan are current;
- (ii) The chapter 13 plan is not in default;
- (iii) A declaration, which may be in the format of Schedules I and J, by the debtor has been filed within the prior thirty (30) days that demonstrates an ability to pay all future plan payments, projected living and business expenses, and the refinanced debt;
- (iv) The new debt is a single loan incurred only to refinance existing debt encumbering the debtor's residence;
- (v) The only security for the new debt will be the debtor's existing residence;
- (vi) All creditors with liens and security interests encumbering the debtor's residence will be paid in full from the proceeds of the new debt and in a manner consistent with the chapter 13 plan;
- (vii) The monthly payment (the principal and interest payment on account of the new debt plus all impounds, taxes, insurance,

association fees, and bonds and other assessments) will not exceed the greater of the debtor's current such monthly payment(s) on the existing debt(s) being paid or \$2,500.00. The Court will not approve ex parte motions to obtain secured credit pursuant to 11 U.S.C. § 364(d).

(D) Sale of Property. The Court may approve an ex parte motion by the debtor to sell real or personal property with a value of \$1,000.00 or more other than in the ordinary course of business if the trustee's written consent is filed with or as part of the motion. The debtor's motion and the trustee's approval are their certification to the Court that:

- (i) The sale price represents a fair value for the subject property;
- (ii) All creditors with liens and security interests encumbering the subject property will be paid in full before or simultaneously with the transfer of title or possession to the buyer;
- (iii) All costs of sale, such as escrow fees, title insurance, and broker's commissions, will be paid in full from the sale proceeds;
- (iv) The sale price is all cash;
- (v) The debtor will not relinquish title to or possession of the subject property prior to payment in full of the purchase price; and
- (vi) The sale is an arm's length transaction.

"Trading in" a vehicle as part of the purchase price for a new vehicle complies with the requirements of (E) and (F) of this Subparagraph. The Court will not approve ex parte motions to sell property pursuant to 11 U.S.C. § 363(f).

(E) Other New Debt and Transfers. If the trustee will not give the consent required by Subparagraphs (A), (B), (C), or (D) of this Subsection, or if the debtor wishes to incur new debt or transfer property on terms and conditions not authorized by those Subparagraphs, the debtor shall file the appropriate motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1.

(2) After Completion of Plan Payments. Except for transfers made in the ordinary course by a business debtor, after completion of payments under the plan but prior

to the closing of the case, the debtor shall not sell or transfer property or incur debt except as provided herein.

- (A) Ex Parte Motion. The debtor may request by *ex parte* motion the court authorize the debtor to sell or transfer property or to incur debt, without regard to the limitations provided in Subpart (i)(1), if the trustee's written consent is file with or as part of the motion. The debtor's motion and the trustee's approval are their certification to the court that:
- (i) All payments required by the chapter 13 plan have been paid to the trustee;
 - (ii) Debtor has completed and filed the certificate for the required post-petition education [11 U.S.C. § 1328(g)] or such requirement has been waived by order of the court;
 - (iii) Debtor has filed the certifications required in 11 U.S.C. § 1328(a) or such requirement has been waived by order of the court.
- (B) Noticed Motion. If the trustee does not provide approval for an *ex parte* motion under Subpart (i)(2)(A), the debtor may file the appropriate motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1.

LOCAL RULE 5005-1

Electronic Record Is the Official Record; Filing of Documents

- (b) Electronic Filing Mandatory. Except as provided in Subpart (d) below, all documents shall be submitted for filing in electronic form in strict compliance with instructions of the Clerk in a format approved by the Court.
- (c) Filing Proofs of Claim by Electronic Means Directly with the Court. In all cases, proofs of claim may be filed by electronic means directly with the Clerk of Court through the court's website according to those guidelines established by the Clerk. When filing proofs of claim, the claimant shall comply with the requirements of Bankruptcy Rule 3001(c) and (d). The filing of a proof of claim by electronic means directly with the Clerk shall constitute the filing claimant's approved signature by law, and the provisions of 18 U.S.C. §152(4) shall apply to the filing of a proof of claim under this procedure.
- (d) Exceptions to and Waivers of Requirement to File Documents in Electronic Form.

- (1) Pro Se Exception. Except as provided in Subpart (c), all unrepresented persons, sometimes referenced as “pro se litigants” or as “persons appearing in propria persona,” shall file and serve paper documents.
- (2) Attorney and Trustee Waivers. Attorneys who regularly practice and trustees assigned cases in the Eastern District of California shall register as users of the Court’s electronic filing system and file documents in electronic form, provided, however, that an attorney or trustee may apply for a waiver of this requirement. A request for waiver shall be submitted as an ex parte application supported by a declaration demonstrating cause for relief from the requirement to file in electronic form. The decision to permit the filing of paper documents is in the sole discretion of the Court and may be cancelled at any time upon notice to the attorney.
- (3) Sealed Document Exception. Unless otherwise ordered by the Court, requests to file documents under seal pursuant to 11 U.S.C. §§ 107(b) and (c) and Fed. R. Bankr. P. 9018 shall be filed as paper documents. A paper copy of the order sealing documents shall be attached to the documents under seal and be delivered to the Clerk’s Office. The Clerk shall maintain sealed documents in paper form.
- (e) Scanning and Disposition of Paper Documents. Paper documents filed pursuant to Subpart (c)(1) or (c)(2) of this Rule shall promptly be scanned by the Clerk into electronic form. Once scanned and made part of the ECF system, the paper documents may be discarded.
- (f) Violations. The Clerk shall not refuse to file any proffered paper document submitted in violation of this Rule, but following scanning into electronic form, shall bring such paper document to the attention of the Court. Any attorney or trustee who files a document in violation of this Rule may be subject to monetary or non-monetary sanctions.
- (g) Time of Filing.
 - (1) Documents Submitted on Paper. A document submitted on paper shall be deemed filed when the Clerk takes physical possession of such document.
 - (2) Documents Submitted in Electronic Form. Documents submitted in electronic form shall be deemed filed as of the date and time stated on the Notice of Electronic Filing issued by the Clerk.
 - (3) Technical Failures Affecting Filing of Documents in Electronic Form. Technical failure shall not alter the registered user’s responsibility to comply with all applicable filing deadlines, provided, however, that a registered user whose electronic filing is made untimely as the result of a documented, technical failure of the Court’s electronic filing system may seek appropriate relief from the Court.

Subdivision (c): Comment: The clerk's office maintains an online form on which users, without a password, can enter a claim. This local rules creates the authority for a pro se creditor to enter a claim directly to the claims register. Currently General Order 11-03.

LOCAL RULE 5010-1

Motions to Reopen Cases

- (b) Contents of Motion. A motion to reopen a case shall contain a statement of the grounds for reopening the case, and shall state whether, in the opinion of the moving party, the appointment of a trustee is necessary or advisable and the reasons why or why not, but shall not contain a request for any other relief. The motion shall state: (1) whether the debtor intends to amend the schedules and statements; and (2) if so, the particular additions, deletions or other changes to be made. The motion shall be served on the United States Trustee.

LOCAL RULE 7015-1

Motions to Amend Pleadings

A motion for leave to amend or supplement a pleading before trial must include as exhibits: (1) a copy of the proposed amendment, amended or supplemental pleading, which must be serially numbered to differentiate it from previous pleadings or amendments; and (2) either a redline copy, which compares the proposed pleading to the most recent applicable pleading, or a table that specifies the location by citation to the page, paragraph and recites verbatim each addition or deletion.

LOCAL RULE 7055-1

Default and Default Judgment Procedures in Adversary Proceedings

A party seeking entry of default must submit "Request for Entry of Default by Plaintiff(s)" (local form EDC.003-726) and "Entry of Default and Order Re: Default Judgment Procedures" (local form EDC.003-727).

LOCAL RULE 7067-1

Registry Funds

- (a) Registry funds maintained pursuant to 28 U.S.C. §2041 and Rule 67 of the Federal Rules of Civil Procedure shall include, but shall not be limited to, monies to be held in escrow pending resolution of a particular dispute before the Court.
- (b) Receipt of Funds

- (1) No money shall be sent to the Court or its officers for deposit in the court's registry pursuant to 28 U.S.C. §2041 without a court order signed by the presiding judge in the case or proceeding.
 - (2) The party making the deposit or transferring funds to the Court's registry shall serve the order permitting the deposit or transfer on the clerk of Court.
 - (3) Unless otherwise ordered, all monies ordered to be paid to the Court or received by its officers in any case pending or adjudicated shall be deposited with the Treasurer of the United States in the name and to the credit of this Court pursuant to 28 U.S.C. § 2041 through depositories designated by the Treasury to accept such deposit on its behalf.
- (c) Investment of Registry Funds
- (1) Where, by order of the Court, funds on deposit with the court are to be placed in some form of interest bearing account or invested in a court approved, interest-bearing instrument in accordance with Rule 67 of the Federal Rules of Civil Procedure, the Court Registry Investment System ("CRIS", administered by the Administrative Office of the United States Courts under 28 U.S.C. 2045, shall be the only investment mechanism authorized.
 - (2) Money from each case deposited in CRIS shall be "pooled" together with those on deposit with Treasury to the credit of other courts in CRIS and used to purchase Government Account Series securities through the Bureau of Public Debt, which will be held at Treasury in an account in the name and to the credit of the Director of Administrative Office of the United States Courts, hereby designated as custodian for CRIS.
 - (3) An account for each case will be established in CRIS titled in the name of the case giving rise to the investment in the fund. Income generated from fund investments will be distributed to each case based on the ratio each account's principal and earning has to the aggregate principal and income total in the fund. Reports showing the interest earned and the principal amounts contributed in each case will be prepared and distributed to each court participating in CRIS and made available to litigants and/or their counsel.
 - (4) Funds held in the CRIS remain subject to the control and jurisdiction of the court.
- (d) Registry and Investment Fees. The custodian is authorized and directed to deduct the registry fee for maintaining accounts deposited with the Court and the investment services fee for the management of investments in the CRIS. The registry fee is determined on the basis of the rates published by the Director of the Administrative Office of United States Courts as approved by the Judicial Conference and the investment services fee is assessed according to the Court's Miscellaneous Fee Schedule.

- (e) Order for Disbursement of Registry Funds. Payment of funds from any funds deposited pursuant to this Rule shall be by order of the Court only. The form of order submitted shall contain the names and addresses for each of the parties to whom funds are to be paid, the amounts to be paid and a statement acknowledging the fees on the interest earned will be deducted before payment of funds will be distributed. Taxpayer information for each party must be submitted on form AO 213 which is available on the Court's website. Funds shall be disbursed only after the time for appeal of the related judgment or order has expired, or upon approval by the court of a written stipulation by all parties.

Notes: This suggested modification to LR 7067-1 incorporates General Order 13-01, an order that deals with our transition to CRIS, a new AO organized registry account within the US Treasury. It also requires parties to submit form AO 213, allowing us to collect taxpayer identification information for disbursing funds. Finally, it allows for a time period to elapse before we release funds, which is important in that our office would otherwise need to seek reimbursement from a payee if a judgement was later reversed on appeal.

LOCAL RULE 9004-1

General Requirements of Form

- (e)(3) Approval by Counsel or Party. If the court at the hearing on the matter, or by separate order, requires that one or more designated counsel or party appearing in the matter be provided the opportunity to review and approve a form of order or judgment prior to its submission, the proposed order or judgment shall, just below the space reserved for placement of the judge's signature, contain the signatures of such counsel or party indicating their approval. Approval indicates only that the document accurately reflects the ruling of the court and does not constitute agreement or waiver of appellate rights. Orders not bearing the signature of an attorney, who has requested the right to approve the form of the order, shall not be lodged with the court for at least three days after transmission to that attorney. In the event a dispute arises regarding the form of order, the submitting counsel or party shall submit, along with the proposed order, a brief declaration summarizing the reason for the lack of approval by one or more designated counsel or party, along with a proof of service demonstrating service of the proposed form of order and the declaration on the non-approving counsel or party.
- (e)(4) Proposed Order as Exhibit. Nothing in these local rules prohibits a party from submitting a proposed form of order or judgment as an exhibit to a notice, motion, memorandum, or other document.

LOCAL RULE 9014-1

Motion Calendar and Procedure

- (d) Format and Content of Motions and Notices.
- (1) Contents of Motion. Except as otherwise provided in these rules, every

application, motion, contested matter or other request for an order, shall be filed separately from any other request, except that relief in the alternative based on the same statute or rule may be filed in a single motion. Without reference to any other pleading, the motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought.

- (2) Format. All pleadings and documents filed in support and in opposition to a motion shall contain in the caption the date and time of the hearing and the courtroom in which the hearing will be held and shall otherwise comply with LBR 9004-1, General Requirements of Form.
- (3) Separate Notice. Every motion shall be accompanied by a separate notice of hearing stating the Docket Control Number, the date and time of the hearing, the location of the courthouse, the name of the judge hearing the motion, and the courtroom in which the hearing will be held.
- (4) Contents of Notice. The notice of hearing shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition. If written opposition is required, the notice of hearing shall advise potential respondents that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition.
- (5) Service of Notice Only. When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion. However, the motion and supporting papers shall be served on those parties who have requested special notice and those who are directly affected by the requested relief.
- (6) Legal Authority. Each motion, opposition, and reply shall cite the legal authority relied upon by the filing party.
- (7) Evidence. Every motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(e).

LOCAL RULE 9014-2

Motions Involving Disclosure or Discovery Disputes

For any motion involving a disclosure or discovery disputes in adversary proceedings or contested matters shall comply with this rule.

- (a) Separate Statement Required. Except as provided herein, any motion under Fed. R. Civ.

P. 37, *incorporated by Fed. R. Bankr. P. 7037, 9014(c)* or other applicable rule involving the adequacy of a disclosure or discovery response under Fed. R. Civ. P. 26-37, *incorporated by Fed. R. Bankr. P. 7026-7036, 9014(c)*, or seeking monetary or other sanctions arising from the adequacy of the disclosure or discovery response shall be accompanied by a separate statement.

- (b) *Separate Statement Not Required.* A separate statement is not required when no disclosure or response to discovery has been provided.
- (c) *Contents of Separate Statement.* A separate statement is a separate document filed and served with the discovery motion that provides all the information necessary to understand each disclosure or discovery request and all the responses to it that are at issue. The separate statement must be full and complete so that no person is required to review any other document in order to determine the full request and the full response. Material must not be incorporated into the separate statement by reference. The separate statement must include--for each disclosure or discovery request (e.g., each interrogatory, request for admission, deposition question, or inspection demand) to which a further response, answer, or production is requested--the following:
 - (1) The text of the applicable portion of Rule 26 or the request, interrogatory, question, or inspection demand;
 - (2) The text of each Rule 26 disclosure, response, answer, or objection, and any further responses or answers;
 - (3) A statement of the factual and legal reasons for compelling further responses, answers, or production as to each matter in dispute;
 - (4) If necessary, the text of all definitions, instructions, and other matters required to understand each discovery request and the responses to it;
 - (5) If the response to a particular discovery request is dependent on the response given to another discovery request, or if the reasons a further response to a particular discovery request is deemed necessary are based on the response to some other discovery request, the other request and the response to it must be set forth; and
 - (6) If the pleadings, other documents in the file, or other items of discovery are relevant to the motion, the party relying on them must summarize each relevant document.
- (d) *Identification of Interrogatories, Demands, or Requests.* A motion concerning interrogatories, inspection demands, or admission requests must identify the interrogatories, demands, or requests by set and number.