

New Bankruptcy Rules that Creditors Need to Know and Follow

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On December 1, 2017, several changes to the Federal Rules of Bankruptcy Procedure took effect. The changes involve consumer cases under Chapter 13 and affect creditors with secured claims, unsecured claims, and judgment liens against customers in bankruptcy. The changes require creditors to give heightened attention to Chapter 13 plans to protect their rights. Here are some of the most significant changes:

Filing of Proofs of Claim. A secured creditor must file a proof of claim to have an allowed claim in the Chapter 13 plan. Failing to file a secured claim would not void a creditor's lien, but the creditor will receive no plan payments without filing a proof of claim.

Claims Bar Deadline. The amendments shorten the deadline to file a proof of claim. All creditors must now file a proof of claim within 70 days of the bankruptcy filing. The former claims bar deadline was 90 days after the Section 341 meeting of creditors. A creditor with a claim secured by a primary residence has an additional 50 days to supplement a proof of claim with the documentation supporting the claim (e.g., promissory note, deed of trust, and any assignments documents).

Removal of Judicial Liens. A debtor may now request the removal of a creditor's judicial lien (e.g., a judgment lien on real property owned by the debtor) within the debtor's Chapter 13 plan. Until now, a debtor had to request this relief in a separate motion.

Valuation of Collateral. A debtor may now request a binding valuation of collateral and reduction of a secured claim within the Chapter 13 plan. Up to now, a debtor had to request this relief in a separate motion. This means creditors now must be vigilant because debtors routinely seek to bifurcate a creditor's claims into secured and unsecured portions. The unsecured portion is then combined with the other unsecured claims in the case, and only a small percentage of the total is repaid.

Notice of Confirmation Hearing. A creditor will now receive notice 28 days before a hearing on confirmation of a Chapter 13 plan. The creditor must file an objection at least 7 days before the hearing.

Declaring Secured Debts Satisfied. A debtor may now file a motion at the close of a Chapter 7, 12, or 13 case to obtain an order declaring a secured debt satisfied.

The upshot of these changes is that creditors need to have procedures in place to scrutinize a customer's bankruptcy promptly and carefully. Otherwise, creditors may miss crucial deadlines and details to their detriment. In time, the changes should allow creditors to streamline their consumer bankruptcy cases and process them more efficiently. But until those processes are in place, creditors will need to accelerate the way they handle incoming Chapter 13 filings.

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