

Changes to the Massachusetts Local Bankruptcy Rules

The holiday season is fast approaching and so too is the December 1, 2009 effective date for changes to the Massachusetts Local Rules of Bankruptcy Procedure. Changes to the Local Rules will significantly alter how both lenders and debtors navigate the bankruptcy process including, but most certainly not limited to, the filing of reaffirmation agreements, proofs of claim, and motions for relief from stay.

1. Reaffirmation Agreements: Such agreements should be accompanied by the cover sheet included in Official Local Form 6 in order to more clearly set forth the terms of the agreement and the circumstances surrounding its negotiation.

2. Proofs of Claim in a Chapter 13 case: relating to a mortgage or security agreement must now have a copy of the original note and mortgage or security agreement attached. If the claimant is not the original holder, copies of any and all assignments or "other appropriate documentation sufficient to trace the chain of ownership" must be attached to establish standing. Claims relating to a mortgage or security agreement must now include a "detailed itemization of all amounts asserted to be due" which include the principal amount, interest and fees, costs, additional charges provided for under the agreement or by statute, a breakdown of attorneys' fees, and an accounting of the amount of prepetition arrearage.

3. Motions for Relief from Stay in a Chapter 13 case: First, there is a new requirement for a pre-filing conference between debtor's counsel and movant's counsel. Motions for relief from stay must be accompanied by a certificate indicating when the conference was held or why the conference was not held despite "reasonable efforts". A new Real Estate Worksheet to be completed by the movant, shall accompany the motion for relief. This Real Estate Worksheet requires more detailed information regarding the mortgage and note, the property subject of the motion, other encumbrances on the property, valuation, status of the debt as of the petition date, and the amount of alleged post-petition default including a schedule of all post-petition payments in default. Documents indicating the movant's interest in the subject property, including all assignments in the chain from original mortgagee to the current movant, must be attached in order to establish proof of standing to bring the motion.

In addition, there is also a new procedure for opposing counsel to address objections to proofs of claim and objections to the confirmation of a Chapter 13 plan. The goal is to increase communication between the parties and resolve or narrow issues in advance of a hearing on the subject objections.

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As always, should you have any questions or comments, concerning this or other matters, please feel free to contact us.

Sincerely,



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