

Quick Reference Guide to Rules Requiring Notice or Service of Pleadings in Chapter 13 Cases

©Beverly M. Burden
March 2012

This quick reference guide is merely an abbreviated summary of a few rules governing notice requirements of certain events that often arise in chapter 13 cases. You must read the Code, Rules, and the local rules of your jurisdiction; conduct your own research; and formulate your own conclusions. Do not rely solely on this guide.

The information in this guide is based solely on my interpretation of the provisions of the Bankruptcy Code (as amended by BAPCPA), Federal Rules of Bankruptcy Procedure, and relevant case decisions. As the trustee in the Eastern District of Kentucky, I reserve the right to take a contrary position in any particular case depending on the facts of that case, and I reserve the right to argue an interpretation of the law that may differ from that set forth herein.

References below to “§” are to the relevant sections in Title 11. References to “FRBP” are to the Federal Rules of Bankruptcy Procedure.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

“DEFAULT RULES”: The following rules apply in the absence of any specific rule dealing with notice or service:

Event	Notice Requirements	Source	Comments
Notice Time	A written motion and notice of hearing must be served not later than 7 days before the hearing time, unless a different period is fixed by bankruptcy rules or court order.	FRBP 9006(d).	Check local rules for specific notice requirements. Otherwise, if the Federal Rules of Bankruptcy Procedure do not fix a different time, motions must give at least 7 days’ notice.
Motions.	A request for an order is requested by motion (unless an application is authorized by the rules). Moving party must serve trustee and, if not otherwise specified by rules, other entities as the court directs.	FRBP 9013.	Check local rules for specific notice and service requirements.
Contested Matters.	In a contested matter not otherwise governed by the bankruptcy rules, relief is requested by motion. “Reasonable notice and opportunity for hearing” must be given to the party against whom relief is sought. Moving party must serve motion in the manner for service of a summons and complaint by FRBP 7004.	FRBP 9014.	Service must be made in the manner of service of a summons and complaint in an adversary proceeding under Rule 7004. Special service problems: service on federally insured depository institutions (banks) – 7004(h); service on United States – 7004(b)(4); service on corporations – 7004(b)(3).

In addition, the due process requirement of giving notice reasonably calculated to apprise a party of an action, proceeding, motion, or hearing must always be considered

SPECIFIC RULES – The following rules provide specific service or notice requirements, or specifically refer to one of the default rules mentioned above..

Event	Notice Requirements	Source	Comments
Voluntary conversion by debtor	Chapter 13 case is converted when debtor files a notice of conversion.	FRBP 1017(f)(3). § 1307(a).	Motion and order are not required; no notice of hearing or opportunity to object are required.
Voluntary dismissal by debtor	Debtor must file motion to voluntarily dismiss chapter 13 case and give at least 7 days' notice to trustee and other entities the court directs.	FRBP 1017(f)(2), referencing FRBP 9013. FRBP 9006(d). § 1307(b).	Notice period is not specified in rules; default period is 7 days per Rule 9006(d).
Conversion or dismissal filed by party other than debtor.	Party in interest or U.S. Trustee may request dismissal or conversion by filing motion. Moving party must give at least 7 days' notice to trustee and other entities the court directs.	FRBP 1017(f)(2), referencing FRBP 9013. FRBP 9006(d). § 1307(b).	Notice period is not specified in rules; default period is 7 days per Rule 9006(d).
Motion to sell property.	Debtor must give 21 days' notice to trustee and all creditors of a proposed sale of property. The notice must identify the property; give time and place of public sale; give the terms and conditions of private sale; and give notice of the deadline for filing objections.	FRBP 2002(a)(2); 2002(c)(1). FRBP 6004(a). § 1303; § 363(b).	Debtor has, exclusive of trustee, right to sell property.
Fee application for compensation of more than \$1,000.	Applicant must give 21 days' notice to debtor, trustee, and all creditors.	FRBP 2002(a)(6).	Also check local rules governing compensation for debtors' attorneys.
Objection to proof of claim.	Party in interest objecting to claim must give 30 days' notice to claimant, debtor, and trustee. An objection to claim is arguably a contested matter, which would require service as if serving a summons and complaint under Rule 7004.	FRBP 3007(a). See also FRBP 9014; FRBP 7004. § 502.	If objection is a contested matter, service on the claimant must be made in the manner of service of summons under Rule 7004. See discussion above on Contested Matters and Rule 9014. Even if service under Rule 7004 is not required, at least use the notice address shown on the proof of claim, not just the address listed on the debtor's schedules.

Event	Notice Requirements	Source	Comments
Valuation of collateral.	Party in interest may file motion to determine value of a secured claim; must give notice to the secured creditor and any other entity as court directs.	FRBP 3012.	Usually done in chapter 13 plan and/or in objections to claims. Check local rules and local customary procedures.
Service of chapter 13 plan.	The plan or a summary must be included with each notice of the confirmation hearing. The clerk or some other person as the court directs must give 28 days' notice to the debtor, trustee, and all creditors of the confirmation hearing and deadline for filing objections to confirmation.	FRBP 3015(d). FRBP 2002(b).	Check local rules to find out if the debtor is required to serve a copy of the plan on all creditors.
Objection to confirmation of plan.	Objecting party must serve the debtor, trustee, and any other entity designated by the court, and objection must be transmitted to the U.S. Trustee, before confirmation of the plan. Objection is a contested matter governed by Rule 9014.	FRBP 3015(f), referencing FRBP 9014.	See discussion above on Contested Matters and FRBP 9014.
Motion to modify confirmed plan.	Debtor, trustee, or holder of unsecured claim may request that confirmed plan be modified. Request should be by motion. Moving party must give 21 days' notice by mail to debtor, trustee, and all creditors, unless court orders otherwise with respect to creditors not affected by proposed modification.	FRBP 3015(g). FRBP 9013 (by default). § 1329(a).	Check local rules and local customary procedures.
Motion for relief from stay.	Party in interest requesting relief from stay must give "reasonable notice and opportunity for hearing" to party against whom relief is sought. Matter is a contested matter; requires service as if serving a summons under Rule 7004.	FRBP 4001(a)(1), referencing FRBP 9014. § 362(d).	Check local rules for more specific deadlines and service requirements. See discussion above on Contested Matters.

Event	Notice Requirements	Source	Comments
Objection to exemptions.	<p>Party in interest may object to exemptions.</p> <p>Objecting party must serve trustee, debtor, debtor's attorney, person filing the list of exemptions (if not debtor), and that person's attorney; must give at least 7 days' notice.</p>	<p>FRBP 4003(b)(4).</p> <p>FRBP 9006(d).</p> <p>§ 522(l).</p>	<p>Notice period is not specified in rules; default period is 7 days per Rule 9006(d).</p>
Motion to avoid lien under § 522(f)	<p>Debtor may avoid lien under § 522(f) by filing motion and giving "reasonable notice and opportunity for hearing" to party against whom relief is sought.</p> <p>Motion to avoid lien under § 522(f) is a contested matter, which requires service as if serving a summons and complaint under Rule 7004.</p>	<p>FRBP 4003(d), referring to FRBP 9014.</p> <p>§ 522(f).</p>	<p>See discussion above on Contested Matters.</p> <p>Motion to avoid lien under 522(f) is NOT the same as "stripping off" a junior lien that is not supported by any equity.</p>