

## CHAPTER 13 GUIDELINES

(June 14, 2011)

Judge Wayne Johnson

The following procedures apply to chapter 13 cases.

1. Follow the local rules and timely provide all required documents to the trustee and timely file all required documents with the court (including proofs of service). The failure to timely deliver or timely file documents (including proofs of service) will usually result in the dismissal of a case.

2. Timely make all plan payments and all secured debt payments. Failure to timely make required payments will usually result in the dismissal of a case.

3. Judge Johnson has posted on the Court's website separate guidelines regarding motions to value junior liens secured by real property (also known as "lien strip motions," "motions to extinguish junior liens," "motions to value," "*Lam* motions," etc.). All valuation motions must be filed and served in such a manner so that they are timely heard on or before the date of the initial confirmation hearing. This procedure applies to both real property and personal property. If, for example, a debtor intends to "cramdown" a creditor holding a lien against a vehicle (or other personal property) or otherwise attempt a "lien strip" of any kind in chapter 13, the debtor must file and serve a valuation motion with respect to that creditor and its collateral in such a manner so that the motion is timely heard on or before the date of the initial confirmation hearing.

4. Payment History Declaration.

(a) Judge Johnson has posted a form document entitled "Declaration Of Debtors Regarding Secured Debt Payment History" ("Payment History Declaration"). This declaration should be completed, filed and served between seven to fourteen days prior to the confirmation hearing. It should be served upon the chapter 13 trustee and all creditors holding consensual liens against the property identified in the declaration.

(b) As set forth in the form, the Payment History Declaration should provide information regarding monthly payments covering the period from (i) January 1st of the calendar year preceding the year in which the bankruptcy case is filed to (ii) the petition date.

(c) The Payment History Declaration applies to encumbered real property only. It is never required for personal property.

(d) The Payment History Declaration is required when the debtor intends to modify in any manner a debt secured by real property (i.e. to cure an arrearage, lien strip or otherwise). It is not required if the chapter 13 case does not involve any real property. The declaration does not apply to unencumbered real property. The declaration is not required if the chapter 13 case involves encumbered real property but the debtor does not intend to modify any debt secured by the real property.

(e) For example, if the debtor intends to surrender or abandon real property, the Payment History Declaration is not required with respect to that property. Likewise, if the debtor intends to keep real property but the debtor is current on all debts secured by the real property (and does not intend to cure any arrearage, lien strip or otherwise modify such debts), the Payment History Declaration is not required with respect to that property.

5. Local Bankruptcy Rule 3015-1(m) requires debtors to file and serve a declaration of post-petition payments using mandatory court form 3015-1.4 prior to every confirmation hearing. However, this rule has not always been enforced in the Riverside Division. Judge Johnson requires compliance with this rule to the following extent.

(a) The form is not required in cases that do not involve any encumbered real property or only involve encumbered real property that the debtor intends to surrender or abandon.

(b) Likewise, if the debtor intends to keep real property but the debtor is current on all debts secured by the real property (and does not intend to cure any arrearage, lien strip or otherwise modify such debts), the form is not required with respect to that property.

(c) In chapter 13 cases involving real property secured by debts that debtors intend to modify, debtors have two options. They may (a) submit a Payment History Declaration that covers the period from January 1st of the prior year to a date between seven to fourteen days prior to the initial confirmation hearing (i.e. a declaration that covers the pre-petition and post-petition period) and not file Form 3015-1.14 or (b) file a Payment History Declaration that covers the period from January 1st of the prior year to the petition date and a Form 3015-1.14 that covers the entire post-petition period.

If an initial confirmation hearing is continued, the Court will usually require the filing of another Payment History Declaration between seven to fourteen days prior to the continued hearing date.