

**Chapter 13 Confirmation Procedures
FOR CHAMBERS OF HON. HOWARD R. TALLMAN
INTRODUCTION**

The Bankruptcy Abuse Prevention and Consumer Protection Act (“BAPCPA”) has limited the Court’s options in managing the Chapter 13 process. The Confirmation hearing must be held not sooner than 20 days and not later than 45 days from the section 341 meeting. The Court has a confirmation hearing process in place pursuant to Transitional Local Bankruptcy Rule (T.L.B.R.) 3015-1 (see www.cob.uscourts.gov, section “Recent Rules, Forms, Guidelines and General Procedure Orders”, sub-section “GPO 2005-5”, pages 14-18). The following information is intended as a cursory guide to the chapter 13 process. Counsel should note that their personal appearance at the confirmation hearing is *mandatory* if he/she fails to comply with the T.L.B.R. 3015-1 and/or fails to *timely* file the required documents therein.

Chief Judge Tallman conducts confirmation hearings approximately 20 days after the 341 meeting on Thursday mornings beginning at 9:00 a.m. If a conflict should arise, upon the timely filing of a written request, the Court will reschedule the hearing to a more convenient date, but extensions will be limited to two weeks. Counsel should list available Thursdays and the Court will try to be accommodating. If the Debtor is represented by counsel, the Debtor’s attendance is not required at the initial confirmation hearing (the date, time and location of which are located on the Notice of Chapter 13 Bankruptcy Case, meeting of Creditors, & Deadlines, and Notice of Hearing on Confirmation of Chapter 13 Plan). Debtors should consult with their attorney for specific advice.

PLAN FILING AND NOTICING

If the Debtor files a Chapter 13 Plan with the petition, the Court will mail it via first class mail to creditors listed on the Debtor’s creditor’s address matrix together with the Notice of

Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines, and Notice of Hearing on Confirmation of Chapter 13 Plan (Notice to Creditors). The Debtor is responsible for complying with any additional service requirements under Bankruptcy Rules 9014 and 7004, and 11 U.S.C. § 324, and should file an appropriate certificate of service evidencing same with the Court (as applicable). The Debtor must also file a certificate of service evidencing compliance with T.L.B.R. 3015-1(b)(4) if any additional creditors are added subsequent to the filing of the case and service of the Plan.

If the Debtor *does not* file a Chapter 13 Plan with the Petition, it is the Debtor's responsibility to mail the Plan (*due to be filed within fifteen days of the petition*), together with a copy of the Court's Notice to Creditors, to all creditors and interested parties providing the date and time of the meeting of creditors, the date and time of the confirmation hearing, and the deadline (including the specific date) to object to confirmation. The Debtor must file a Certificate of Mailing verifying the mailing within three (3) days or confirmation of the Plan may be denied.

CONFIRMATION PROCESS

1. Continuation of 341 Meeting and Confirmation Hearing

If the 341 Meeting is continued, the Debtor must file with the Court a notice of the continued 341 Meeting with the date agreed upon by the Chapter 13 Trustee and the Debtor. The notice must be sent to all creditors and all interested parties. If the 341 Meeting is rescheduled or continued to a date beyond the date set for the confirmation hearing, the Debtor shall promptly file a motion requesting a continuance of the confirmation hearing, and give notice (**Exhibit A**) of any Order granting same to the 13 Trustee, plan objectors, and any party who has entered an appearance and requested notice in the case. Debtor is advised that the

confirmation hearing may not be held less than twenty (20) days after the meeting of creditors is conducted unless the Court determines otherwise (11 U.S.C. § 1324(b)).

If the Debtor seeks a continuance of the confirmation hearing only, the motion should be filed after the deadline to object to confirmation has run but no later than the deadline to file a Certification pursuant to T.L.B.R. 3015-1(d)(3). Debtor shall mail the Motion to the Standing Chapter 13 Trustee, plan objectors and all entries of appearance. If the Plan is uncontested and no further amendments are necessary, Debtor may file a Verification of Confirmable Plan in lieu of filing a motion to continue the confirmation hearing.

2. No Objections Filed

If there are no objections to confirmation, the Debtor must, among other things, affirm that the service requirements of the applicable rules have been met and file a Motion and Verification Regarding Confirmable Plan (“Debtor’s Verification” **Exhibit B**) in compliance with T.L.B.R. 3015-1(f)(1). Upon the timely filing of Debtor’s Verification (*which may be filed no earlier than ten days following the 341 Meeting*), the Court may confirm the Debtor’s Plan and vacate the confirmation hearing without further notice or hearing; or, if the Court has questions, it may conduct the hearing by telephone. Parties should check the calendar on the Court’s website at www.cob.uscourts.gov 24 hours in advance to ascertain whether or not the hearing is vacated.

3. Objections Filed

If objections to confirmation are filed, the Debtor must timely file (*within 14 days following the 341 meeting*) a Certification Regarding Objections to Plan (**Exhibit D**). Please see Sections 4 and 5 regarding the recommended nature and substance of the Certification.

4. Plan Amendments (either in response to Objections or otherwise)

Every effort should be made to file an amended Plan and serve on the chapter 13 trustee and plan objectors prior to the confirmation hearing. Where the Debtor has filed an Amended Plan in response to objections prior to the confirmation hearing, Debtor must promptly mail or provide the Amended Plan, along with a Notice Pursuant to T.L.B.R. 3015-1(e) (**Exhibit C**), to the objectors, the Standing Chapter 13 Trustee, and all entries of appearance; not to all creditors. Plan amendments filed prior to the initial confirmation hearing should not be submitted any sooner than the first day following the date the meeting of creditors is conducted and no later than thirteen (13) days following the meeting (T.L.B.R. 3015-1(e)(2)). The pre-confirmation hearing notice of the Amended Plan contained in Exhibit C will help alert the objectors of their responsibilities in the confirmation process. The Debtor must also file a Certification in accordance with T.L.B.R. 3015-1(d) (**Exhibit D**) certifying the parties met and conferred, identifying the changes made in the amended plan, and, if the Debtor still resists certain objections, estimating the court time necessary for a contested hearing.

The Debtor may file an Amended Plan prior to the confirmation hearing even though no objections were filed in order to correct an inadvertent error or omission, or as otherwise necessary to meet the Debtor's economic circumstances. The Debtor should provide a copy of the amended Plan to the chapter 13 trustee and parties who have entered an appearance and requested notice. At the confirmation hearing the Court will determine what further notice is appropriate to creditors affected by the Amended Plan or to those against whom relief is sought.

In virtually all cases the Court will conduct the confirmation hearing as scheduled, unless (a) an Amended Plan results in the written withdrawal of the confirmation objections; (b) the Court is able to determine from the Amended Plan, the Certification Regarding Objections to

Plan pursuant to T.L.B.R. 3015-1(d), and the file that no further notice of the Amended Plan is required; (c) the Verification pursuant to T.L.B.R. 3015-1(f) is timely filed; and, (d) it is satisfactory to the Court. The Debtor may check the Court's calendar on the website 24 hours in advance to ascertain whether the confirmation hearing is vacated.

PLEASE NOTE: IN GENERAL THIS DIVISION DOES NOT USE THE RULE 202 NOTICE PROCEDURE FOR AMENDED PLANS, ALTHOUGH THE COURT MAY DIRECT ITS USE IN APPROPRIATE CASES AFTER HEARING FROM INTERESTED PARTIES AT THE CONFIRMATION HEARING. Use of such notices for amended plans prior to the confirmation hearing will usually force the Court to delay confirmation until after the Rule 202 notice period has expired. The filing of a 202 Notice establishing an objection deadline beyond the confirmation hearing will NOT result in the initial confirmation hearing being vacated, and may result in the Debtor and counsel having to attend a subsequent hearing on confirmation.

If the confirmation hearing is held, the Court will consider the views of the Debtor, the Chapter 13 Trustee, plan objectors and/or other parties-in-interest regarding whether any further plan amendments are necessary, and what, if any, further noticing may be required. After hearing from the parties, the Court may set a deadline regarding service of the Amended Plan.

If the Court determines that notice and service of the Amended Plan is required, the Debtor shall provide a copy of the Amended Plan together with the Notice of filing the Amended Plan (**Exhibit E**) to creditors and parties as the Court directs. This Notice must provide all the pre-hearing deadlines and hearing date as Ordered by the Court. Failure to do so may result in further delays confirming the Plan or denial of confirmation. Objections to a Plan will be

deemed withdrawn when the Court directs that Notice of an Amended Plan be provided to any objectors and other parties in interest as applicable pursuant to T.L.B.R. 3015-1(e)(4).

If no further objections to the Amended Plan are filed, the Debtor shall file a Verification **(Exhibit B)**.

If objections to the Amended Plan are filed, repeat the procedure for the Debtor's Certification of Objections based on the dates in the notice or T.L.B.R. 3015, as appropriate. As this Amended Plan did not resolve the objection(s), parties must, within 3 court days of the hearing (or as otherwise ordered by the Court), file witness and exhibit lists, exchange exhibits, and be prepared for an evidentiary hearing on the noticed plan. If objections are withdrawn in writing 24 hours or more prior to the hearing the Court will consider conducting the hearing by phone or vacating it. If objections are not withdrawn 24 hours prior to the hearing, the parties must appear in Court.

5. **No Plan Amendments - Resisting Objections**

If objections to confirmation are filed, and the Debtor intends to resist the objections instead of filing an Amended Plan, then Debtor's Certification (**Exhibit D**), (*due within 14 days following the 341 meeting*), shall conform to T.L.B.R. 3015-1(d)(ii) or (iii). The Certification shall (a) state the date(s) the parties met and conferred; (b) succinctly describe the issue(s) in dispute; (c) advise the Court of the estimated court time necessary for a contested hearing; and, (d) explain any other matter affecting plan confirmation. All parties and their respective counsel, if represented, shall appear for the scheduled confirmation hearing (*the date, time and location appearing on the section 341 notice*) which will be used as a status and scheduling conference upon the timely filing of Debtor's Certification. Parties may appear by telephone at the status and scheduling conference if the Debtor's Certification is filed timely and includes a proper

request to appear by telephone at the confirmation hearing. Parties should check the calendar on the website or call chambers if there are questions. The Court will attempt to set the date of the contested confirmation hearing within as short a time as possible to comply with statutory requirements.

6. Order

The Debtor must submit a proposed order in the form of T.L.B.F. 3015-2, 13 Order, with the following additional language:

This order binds those creditors and parties in interest that have been served in accordance with applicable rules.

7. Grand Junction Cases

For Grand Junction matters, the Court will conduct all initial confirmation hearings by telephone. All other procedures provided herein are applicable to Grand Junction cases. After considering the presentations by the parties, the Court will issue appropriate orders, including the setting of a confirmation hearing to be conducted by video transmission between Denver and Grand Junction courtrooms.

8. Post-Confirmation Modification

This division follows the procedure for post-confirmation modification contained in Local Bankruptcy Rule 319(c) and 202(a)(2). If the modification is requested after the claims bar date has expired, service of the Modified Chapter 13 Plan, Motion to Modify, and 202 Notice may be limited to the Chapter 13 Trustee, any party expressly affected by the modification, and upon those creditors who have filed proofs of claims.

Commentary

Parties are reminded that until the Chapter 13 Trustee waives service by mail, all documents must be sent to her office in paper, as opposed to electronic, form.

Debtors are reminded to file a certificate of service as required by T.L.B.R. 3015-1(b)(2) and (3) when they file the initial Plan following the commencement of (or conversion to) a chapter 13 case.

All Certificates of Service required under these guidelines must be filed with the Court within three days of the mailing.