

Commentary

[Source: L.B.R. 307]

LOCAL BANKRUPTCY RULE 3012-1 VALUATION OF COLLATERAL AND DETERMINATION OF SECURED STATUS PURSUANT TO 11 U.S.C. § 506

(a) Real Property:

(1) How Raised: A debtor's request for the valuation of real property and determination of secured status under 11 U.S.C. § 506 must be made by separate motion and referenced within the proposed plan. A separate adversary proceeding is not required.

(2) Required Information: The motion must include the name of the creditor, a description of the collateral, amount of debt owed to the creditor, and the debtor's contention of value of the collateral. The motion must also include the amounts owed to other senior lienholders. The description of collateral must include a legal description of the affected real property and any identifying information with respect to the affected mortgage lien, including the date of the deed of trust, recording date, county, book and page or reception number of the recording.

(3) Service: The debtor must serve creditors affected by the debtor's valuation of collateral in the manner specified in FED. R. BANKR. P. 9014 and 7004.

(4) Notice: Notice of the motion is governed by L.B.R. 9013-1.

(5) Objections: Objections to the motion must recite the basis of the objection, including the amount and basis of the alternative value proposed by the objector. In the absence of a written objection, the valuation asserted by the debtor will be accepted by the court and shall be used in the court's determination of the amounts to be distributed under the plan. Objections to the plan proposing treatment under 11 U.S.C. § 506 must be filed separately within the applicable deadlines.

(6) No Objections: If no objections are filed, the movant must file a Certificate of Noncontested Matter in substantial conformity with [L.B. Form 9013-1.3](#).

(7) Hearing: Objections to the valuation of collateral under 11 U.S.C. § 506 will be considered in conjunction with the hearing on plan confirmation. If the objection requires an evidentiary hearing, the court will use the hearing on confirmation as a status and scheduling conference to set an evidentiary hearing date and related deadlines.

(8) Order on Motion: The attorney must submit a proposed order in substantial conformity with [L.B. Form 3012-1.1](#).

(9) Order Extinguishing Lien: Upon successful completion of the debtor's plan, the debtor may request an order that the lien is extinguished. See [L.B. Forms 3015-1.11](#) and [3015-1.12](#) (Chapter 13 Debtor's Certification to Obtain Discharge) and [L.B. Form 3022-1.2](#) (Chapter 11 Individual Debtor Final Report and Motion for Final Decree).

(b) Personal Property:

(1) How Raised: A debtor's request for the valuation of personal property and determination of secured status under 11 U.S.C. § 506 may be made in the proposed plan. A separate motion or adversary proceeding is not required.

(2) Required Information:

(A) Motor Vehicles: Requests for valuation of a motor vehicle must include a description of the affected vehicle, including the year, make, model and vehicle identification number (VIN).

(B) Other Personal Property: Requests for valuation of other personal property must include a description of the affected property and any identifying information with respect to the underlying contract or transaction.

(3) Service, Objections, Hearing, and Order: Requirements regarding service, objections, hearing and order are governed by the confirmation requirements of the applicable chapter under which the case is pending.

Commentary

[Source: New]

See 11 U.S.C. § 506 and FED. R. BANKR. P. 3012.

Although the "lien-avoiding effect of the confirmed plan" is established at confirmation, actual lien avoidance is contingent upon the debtor completing the plan and receiving a discharge. If the case is dismissed or plan payments are not otherwise completed, liens avoided under § 506(d) are reinstated. 11 U.S.C. § 349(b)(1)(C).