

# Ch, Ch, Changes

AARON BELL – KYLE ENGELS –
CAROL MILLS – SUZANNE HICKOK
BONNIE CROWDER – NICOLE LYNCH

### **CLE Credit:**

- ► Email: <u>clerk@id.uscourts.gov</u>
- ▶ Include:
  - ▶ Name
  - ▶ Bar Number
  - ▶ If attended via phone, what phone number
  - If attended via web/app your user name/email address used

## Ch, Ch, Changes . . .







RULES – FEDERAL AND LOCAL



**NEXTGEN** 

## Ch, Ch, Changes . . .







RULES – FEDERAL AND LOCAL



**NEXTGEN** 

## DISCLAIMER: Do Not Rely on the Sunset Dates on these Slides

"SUNSET.—Effective on the date that is 1 year after the date of enactment of this Act [the Code provision goes back to how it was before]"

► COVID-19 Bankruptcy Relief Extension Act

CARES ACT: SBRA "Debtor" debt limit increased to \$7,500,000

SUNSETS MARCH 27, 2021

CARES ACT: SBRA "Debtor" debt limit increased to \$7,500,000 is \$2,725,625 Stimulus payments are not property of the estate - § 541(b)(11)

Chapter 13 Discharge Now Available Even if All Payments Have Not Been Made If Specific Conditions Are Met

§ 1328(i): Court may grant discharge even if debtor has not completed payments to trustee or mortgage creditor of principal residence, if:

- ▶ Debtor defaults on not more than 3 monthly payments due on a residential mortgage under § 1322(b)(5) after March 13, 2020, and
- Default caused by material financial hardship due directly or indirectly to COVID-19;

OR

- ▶ Plan provides for curing default and maintenance of residential mortgage payments under § 1322(b)(5); AND
- Debtor entered into a forbearance agreement or loan modification with the holder or servicer of the mortgage

## No discrimination based on bankruptcy filing

## § 525(d): "A person may not be denied relief under sections 4022 through 4024 of the CARES Act (15 U.S.C. 9056, 9057, 9058) because the person is or has

### been a debtor under this title"

- ▶ 15 U.S.C. § 9056 foreclosure moratorium and right to request forbearance
- ► 15 U.S.C. § 9057 forbearance of mortgage payments for multifamily properties.
- ► 15 U.S.C. § 9058 temporary moratorium on eviction filings
- While the Bankruptcy Code provision expires December 27, 2021 – the moratorium/forbearance provisions expire June 30, 2021.

## Forbearance Claims – allowance and timeliness

## CARES forbearance claims: § 501(f) and § 502(b)(9)

#### §501 (f) – forbearance claim

- Supplemental claim for the amount of a federally backed mortgage loan or a federally backed multifamily mortgage loan that was not received by an eligible creditor
- Defines "eligible creditor"
- Special requirements where the mortgage is modified to cure forborne payments

#### § 502(b)(9)(C) – timeliness

► CARES forbearance claim "shall be timely filed if the claim is filed before the date that is 120 days after the expiration of the forbearance period of a loan granted forebearance under section 4022 or 4023 of the CARES act (15 U.S.C. 9056, 9057)"

§ 1329(e) allows modification of chapter 13 plans to allow for CARES forbearance claims – either debtors or any other party in interest may move for such modification

Extended Time for Performance under an Unexpired Non-Residential Real Property Lease in a Subchapter V Case

## § 365(d)(3)(B)

- SBRA debtor's time to perform under any unexpired lease of nonresidential real property
- If experienced material financial hardship due directly or indirectly to COVID-19

- 60 days after the order for relief
- ▶ 60-day further extension possible if continued financial hardships exist
- Any unpaid obligations constitute an administrative expense

Extended Time to Assume or Reject an Unexpired Non-Residential Real Property Lease

## § 365(d)(4)

► Was 120 days – now 210 days SUNSETS DECEMBER 27, 2022

### Preferences

## § 547(j)

Neither Debtor nor Trustee can avoid payments during the preference period of "covered rental arrearages" and "covered supplier arrearages"

- Entered into a lease/executory contract with lessor or supplier
- Amended the lease/contract after March 13, 2020
- Amendment must have deferred or postponed payments otherwise due under the lease/contract
- Fees/penalties/interest not covered

### Utilities

## § 366(d)

A utility may not alter, refuse, or discontinue service to a debtor who does not furnish adequate assurance of payment IF:

- Debtor is an individual
- Debtor pays utility for services provided during the 20-day period from the order for relief
- After the 20-day period continues to make payments as they become due

## Ch, Ch, Changes . . .







RULES – FEDERAL AND LOCAL



**NEXTGEN** 

## Fed. R. Bankr. P. 2004(c)

Added electronically stored information in addition to the production of documents as part of a 2004 examination

A subpoend for a Rule 2004 examination is now properly issued by an attorney authorized to practice in the court where the bankruptcy case is pending, even if the examination occurs outside the district.

### Fed. R. Bankr. P. 8012

 (a) the disclosure statement requirements for any nongovernmental corporation as a party in an appeal are similarly required if such party seeks to intervene

(b) disclosure requirements regarding the debtor – including each debtor not named in the caption and if the debtor is a corporation, the information required in (a).

### Fed. R. Bankr. P. 8013, 8015, 8021

▶ Removed several references to proof of service due to a 2018 amendment to Rule 8011(d) which eliminated the requirement of proof of service when filing and service are completed using a court's electronic filing system.

## General Order 385 New Model Chapter 13 Confirmation Order

#### UNITED STATES BANKRUPTCY COURT DISTRICT OF IDAHO IN RE: Case No. Debtor(s). ORDER CONFIRMING CHAPTER 13 PLAN IT HAVING BEEN DETERMINED AFTER NOTICE AND HEARING THAT: 1. The chapter 13 plan, Docket No. \_\_\_\_\_, complies with the provisions of 11 U.S.C. § 1325. 2. Debtor(s) filed all state and federal tax returns required by law to be filed for all taxable periods ending the 4-year period prior to the filing of this bankruptcy. 3. Debtor(s) have paid all domestic support obligations, as defined in 11 U.S.C. § 101(14A), that first became due and payable after the filing of this bankruptcy which they were required to pay by a judicial or administrative order or by statute. IT IS HEREBY ORDERED THAT: The chapter 13 plan is confirmed, and related motions contained therein are granted,

incorporating the following:

id.uscourts.gov/bankruptcy/forms\_fees\_rules/Forms.cfm

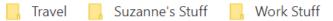
ookmarks















CM/ECF LIVE - U.S....

#### Search Website



#### **Bankruptcy Forms | Fees | Rules**

#### Forms|Fees|Rules

#### Forms

Fees

Rules

General Orders

Miscellaneous Forms

Retrieve a Court File

Local Rules Committee

**Archived Rules** 

Contact Us

COVID-19 Information

#### Forms

#### Adobe Acrobat



"Fillable" documents in 🃆 PDF format require Adobe Acrobat to work properly. Most modern browsers (e.g. Firefox, Chrome, Safari, Edge) have built in PDF Viewers, but these built in viewers may not allow you to interact with a Fillable PDF Form. Please download the document and open it in any version of Adobe Acrobat for full features.

A free version of Adobe Acrobat Reader is available here: https://get.adobe.com/reader/

#### Official and Procedural Bankruptcy Forms



**AO Official Forms** 



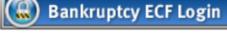
Bill of Costs - B2630



<u> Chapter 13 Plan (1/1/2019)</u>

cal form to be used for initial, an ended and modified plans filed on or after 1/1/2019.

Chapter 13 Confirmation Order



## LBR 2002.6 – Payment of Chapter 7 Administrative Expenses

- Trustee may pay actual, necessary costs and expenses under \$1,000 without a Court order
- Creditors are advised that they may file an objection and request a hearing on this procedure within 14 days from the date of the notice

NOTICE IS FURTHER GIVEN THAT: The trustee may need to pay necessary administrative expenses of the bankruptcy estate. If an expense does not exceed \$1,000, the trustee may pay the expense without obtaining a court order in advance. If you object to this procedure, then you must file an objection with the Bankruptcy Court within 14 days from the date of this notice.

## LBR 2002.6 – Payment of Chapter 7 Administrative Expenses

- Trustee may pay actual, necessary costs and expenses under \$1,000 without a Court order
- Creditors are advised that they may file an objection and request a hearing on this procedure within 14 days from the date of the notice

Trustee will obtain court approval before or at the time trustee seeks approval of the final report

## LBR 3003.1 – Filing Proofs of Claim in Chapter 11 Cases

Standardized the claims bar date in all chapter 11 cases - proofs of claim in a chapter 11 case shall be filed not later than seventy (70) days after the date of the order for relief and not later than 180 days for a governmental unit

## LBR 3014.1 - § 1111(b) Elections

- ► An election under § 1111(b) shall be made no later than 14 days before the first scheduled confirmation hearing if:
  - The Court has entered an order conditionally approving a disclosure statement
  - The disclosure statement and plan are combined and there is no hearing on the disclosure statements
  - ▶ The Court has not ordered application of § 1125 in a case under chapter 11 subchapter V

## LBR 8001.1 – Bankruptcy Appeals

- Appeals governed by:
  - ▶ Fed. R. Bankr. P. 8001–8028
  - ► General Order 349

### LBR 9004.1 – Form of Orders

Clarified that Orders are to be submitted in a format compatible with Word (as opposed to WordPerfect)

## LBR 9010.1(e)(5)(E) added

- an appearance before this court does not include the preparation, signing, and filing by a creditor of:
  - ► (A) a proof of claim, or an amendment, withdrawal, or notice of assignment of such proof of claim,
  - ▶ (B) a stipulation for relief from the automatic stay,
  - ▶ (C) a reaffirmation agreement,
  - ▶ (D) a request for service of documents, or
  - ▶ (E) an application for payment of unclaimed funds.

## Ch, Ch, Changes . . .







RULES – FEDERAL AND LOCAL



**NEXTGEN** 

## NextGen CM/ECF

BANKRUPTCY CM/ECF SYSTEM DOWN FRIDAY, MARCH 5
12:00 PM (MOUNTAIN) 11:00 AM (PACIFIC)

LIVE MARCH 8, 2021

## What you should already know or have done:

- Have an upgraded PACER account.
  - ▶ Legacy (6 characters) v. Upgraded (8 characters)
- Know your PACER username/login and password.
- Know your current CM/ECF username/login and password.
- ▶ Alert your private vendor of our go-live date.

### What you will do on March 8:

- Link your upgraded PACER account to your District of Idaho BANKRUPTCY CM/ECF account
  - ▶ 1. Log out of PACER
    - ► Clear your cache (Ctrl+Shift+Delete)
    - ▶ Delete any bookmarks to Idaho Bankruptcy ECF login
  - ▶ 2. Completely close your browser
  - 3. Open your browser and go to: https://www.id.uscourts.gov/clerks/Welcome.cfm
  - ▶ 4. Click the Bankruptcy ECF Login button
  - 5. At the login prompt, type your Upgraded PACER Account Login/Password
  - ▶ 6. Click "Link my filer account to my PACER account"
  - ▶ 7. Enter your CM/ECF login and password to link your accounts

## What you shouldn't do on March 8:

Do not link your NextGen account to a firm/shared PACER account

▶ Do not create a new PACER registration

## After your account is linked:

► All future access to CM/ECF starts with logging into <a href="https://pacer.uscourts.gov">https://pacer.uscourts.gov</a> (and that is where the ECF login links on the Court's website will direct you as of March 8)

- All changes to your account occur through PACER
- Once linked, the Court will not be able to assist with login and password issues

### Problems?

- ▶ Check the Court's NextGen CM/ECF website:
  - https://www.id.uscourts.gov/district/nextGen/Overview.cfm
- ► Contact the PACER Service Center at:
  - ▶ 800-676-6856 or
  - pacer@psc.uscourts.gov
- ► Contact the Clerk's office:
  - ▶ Boise: (208) 334-1361
  - ► Pocatello: (208) 478-4123
  - ► Coeur d'Alene: (208) 665-6850

### **CLE Credit:**

- ► Email: <u>clerk@id.uscourts.gov</u>
- ▶ Include:
  - ▶ Name
  - ▶ Bar Number
  - ▶ If attended via phone, what phone number
  - ▶ If attended via web/app your user name/email address used