

## Rule 2082 - 1

### Chapter 12 - General

#### (a) Applicability

This rule applies only to cases under Chapter 12 of the Bankruptcy Code.

#### (b) Tax Returns

The debtor shall provide to the trustee, and any creditor who requests, at least 7 days before the meeting of creditors, file at the time the schedules are filed, a copy of income tax returns filed with the IRS for the three (3) years prior to the year in which the petition is filed together with all schedules thereto.

*Note: It is suggested that this sub-paragraph be amended to require tax information be provided to the trustee rather than being filed since the various privacy laws makes filing such information somewhat more complicated. It should be noted that FRBP 4002 has a similar requirement but only for "individual" debtors, and 11 USC 521, that now requires the debtor to provide certain tax information, does not apply to Chapter 12.*

#### (c) Debtor Eligibility Challenges

Challenges to the eligibility of the debtor should be initiated at the earliest possible time in the case. Such challenges may be made by fifteen (15) days notice and hearing to the Master Mailing List pursuant to LBR 2002 - 1.

#### (d) Funds of the Estate

- (1) The debtor shall open a new bank account immediately upon filing a case under Chapter 12. The bank account shall be in the name of the debtor as "CHAPTER 12 DEBTOR". The account shall be separate from any account used by the debtor prior to filing of the Chapter 12 case. All amounts from the debtor's previous bank accounts shall be transferred to the new account. All receipts, including cash, after filing the case shall be deposited into the new account. The debtor shall file with the Clerk, the Chapter 12 trustee, and the United States trustee information as to the identity and location of the debtor's bank and the new account number.
- (2) All bills shall be paid by check written to a named payee. Checks written to the debtor may only be for the payment of incidental family or household expenses.

**(e) Compensation of Attorney for Debtor**

- (1) Requests for Compensation to be paid from the estate shall be made pursuant to FRBP 2016(a) and LBR 2016.
- (2) A copy of the Attorney Statement of Compensation, and any amendments thereto, required to be filed by 11 USC 329 and FRBP 2016(b), shall be promptly served on the United States trustee and the Chapter 12 trustee.

**(f) Monthly Operating Statement**

- (1) The debtor shall file and serve upon the Chapter 12 trustee a monthly statement of the estate's cash receipts and disbursements. The first monthly statement shall be filed within fifteen (15) days of the close of the month during which the case was filed. A monthly statement shall be filed within fifteen (15) days of the close of each month thereafter until the plan is completed or the case is converted or dismissed. A copy of the bank statement for the corresponding month shall be attached to the monthly statement.
- (2) The monthly statement shall itemize each receipt according to the type and quantity of product sold. Disbursements relating to farming operations shall be similarly itemized. Disbursements for household and family living expenses shall not be itemized, but shall be shown as a single, lump sum amount. Disbursements made to an attorney shall be separately stated and itemized.
- (3) The monthly statement shall include a certification that all taxes due since the filing of the case have been paid or deposited. The amount paid or deposited during the month, the date of payment or deposit, and the taxing agency paid or the place the tax was deposited shall be indicated in the monthly statement.
- (4) The debtor shall keep a copy of all receipts, bills and invoices for all purchases or payments on behalf of the farming operation.
- (5) The Chapter 12 trustee or any party in interest may present, upon five (5) days notice and hearing, an order to dismiss if the debtor becomes delinquent in filing any monthly statement.

**(g) Valuation of Security, Determination of Extent of Lien, and Lien Avoidance**

- (1) Valuation of claims secured by a lien on property in which the estate has an interest shall be by a separate motion pursuant to LBR 3012 - 1. The order valuing the claim

voids the lien to the extent of the unsecured portion of the claim pursuant to 11 USC 506(d). In the event of dismissal of the case prior to discharge, this voided lien will be reinstated pursuant to 11 USC 349(b)(1)(C) unless otherwise ordered.

- (2) All actions to determine the validity, priority or, other than (1) above, the extent of a lien, shall be made by adversary proceeding, however, such relief may also be sought in an objection to allowance of claim pursuant to LBR 3007 - 1.
- (3) Actions to avoid judicial or non-possessory non-purchase money security interests under 11 USC 522(f) shall be by separate motion pursuant to LBR 4003 - 2.

**(h) Motion For Valuation Hearing**

- (1) If the debtor intends to treat any secured creditor as other than fully secured, the debtor shall file a motion to value the property claimed as security for the claim. This motion and notice thereof shall be filed no later than thirty (30) days from the date of filing the petition initiating the Chapter 12 case, or upon the filing of the plan, whichever is sooner. Service on the Master Mailing List shall be initiated at the same time the motion is filed.
- (2) Written objections for this motion shall be filed and served on the debtor within fifteen (15) days from the date of filing the notice. The objection shall state the specific grounds upon which it is based. Hearing on these objections will be held at the valuation hearing. An entity which fails to object to the motion to value may not participate at the valuation hearing.
- (3) The debtor, any objecting party, or the trustee may request that a status conference be conducted in the case at any time after the expiration of the time for objection to the motion to value. The status conference will be conducted by telephone upon five (5) days notice to the debtor, all parties who have filed objections, and the Chapter 12 trustee.
- (4) The valuation hearing shall be scheduled ninety (90) to one hundred five (105) days from the filing of the petition initiating the case. Notice of this hearing shall be included with the notice of the meeting of creditors.
- (5) At least ten (10) days prior to the valuation hearing all parties participating in the hearing shall exchange and deliver to the appropriate chambers a list of witnesses expected to testify at the hearing, a summary of the expected testimony, copies of the appraisals to be introduced at the hearing, and a list identifying the comparable sales information to be relied upon in supporting the valuation. Each appraisal submitted

shall identify the date of the appraisal and the name and credentials of the appraiser. Failure to comply with this rule may result in the imposition of sanctions.

- (6) The Court may limit, on its own motion or at the request of a party, introduction of evidence on direct examination by affidavit only, provided, however, that said affiant be present at the time of hearing and available for cross examination.
- (7) The moving party shall immediately notify the Court of the settlement of any valuation disputes prior to the valuation hearing and shall place into the record at that hearing the details of any such settlement.

**(i) The Plan**

(1) Filing

- (A) A plan shall be filed within ninety (90) days of the filing of the petition initiating the case. An extension of time to file the plan may be allowed if an application is made prior to the expiration of the ninety (90) days from the filing of the petition. The application shall be supported by an affidavit or unsworn declaration under penalty of perjury which clearly sets forth the basis for the extension and establishes good cause for the request. The application may be made ex parte. A copy of the order of extension shall be served upon the Master Mailing List as soon as practicable by the debtor.
- (B) Simultaneous with the filing of the plan the debtor shall serve upon the Master Mailing List a copy of the plan, notice of the time to file objections, and notice of the hearing on confirmation.

(2) Objections

Objection to the confirmation of the plan shall be made within fifteen (15) days of the mailing of the notice of the filing of the plan, shall include the specific basis for the objection of the plan, and shall be filed with the Court and served on the debtor, the debtor's attorney, and the Chapter 12 trustee. A party who has made an objection and who fails to appear at the hearing on confirmation or at any other hearing scheduled on the objection may be deemed to have waived such objection.

(3) Plans Filed Within Sixty (60) Days - Status Conference

If a plan is filed within sixty (60) days of the filing of the petition initiating the case, the Court will conduct a status conference as soon as practical after the expiration of the time for objections to the plan. The status conference will be conducted by

telephone conference upon five (5) days notice to the debtor, all parties who have filed objections and the Chapter 12 trustee. Among the matters to be discussed at this status conference will be possible revision of the hearing schedule in the case in light of the early filing of the plan.

(4) Contents of the Plan

The plan shall meet the requirements of 11 U.S.C. 1222 and shall also contain the following information:

- (A) a schedule showing the dates, amounts, and payees of all payments to be made by the debtor and the payments to be made through the office of the Chapter 12 trustee;
- (B) a cash flow budget for the current crop year and for all future crop years for the life of the plan. The cash flow budget shall describe the crops intended to be grown, the farm products intended to be produced, and the projected gross income expected to be received for each crop or product. Assumptions upon which the cash flow projections are based with historical or other data justifying such assumptions shall be included. Operating expenses and loan payments shall be detailed in the budget. Living expenses of the debtor and the debtor's family shall be listed as a lump sum and shall not be described in greater detail;
- (C) projected administrative expenses, including attorney fees;
- (D) the probable tax consequences to the debtor resulting from the plan;
- (E) a statement, with detailed information, specifying the need, if any, for the plan payments to be made over a period longer than three (3) years; and
- (F) a liquidation analysis.

**(j) Trustee's Confirmation Summary**

The Chapter 12 trustee shall file a confirmation summary no less than seven (7) days prior to the date set for the confirmation hearing. At the same time a copy shall be served on the debtor, the debtor's attorney, and any party objecting to the plan. The confirmation summary shall make a recommendation as to confirmation and shall comment on each of the following:

- (1) the debtor's eligibility for relief under Chapter 12;

- (2) the liquidation statement, the cash flow budget, and proposed order confirming the plan;
- (3) objections to the confirmation of the plan;
- (4) the status of any valuation disputes;
- (5) the feasibility of the plan;
- (6) the validity of the secured claims; and
- (7) the appropriateness of attorney fees disclosed by the Attorney Statement of Compensation and of the total attorney fees estimated to be paid either as a cost of administration or directly by the debtor.

**(k) Hearing on Confirmation**

- (1) The confirmation hearing shall be scheduled one hundred twenty (120) to one hundred thirty-five (135) days from the filing of the petition. Notice thereof shall be given with the notice of the meeting of creditors and at the time the plan is filed.
- (2) Objections to confirmation shall be heard at the confirmation hearing. The Court will require production of evidence supporting confirmation of the plan even if no objections are before the Court. This evidence will include, but is not limited to, proof of eligibility for relief under Chapter 12, a liquidation analysis supporting the assertion that the unsecured claims will not receive less than they would receive in a Chapter 7 liquidation, and projections of future operations supporting the contention that the plan is feasible. If no objection is before the Court, the Court may determine, without receiving additional evidence, that the plan has been proposed in good faith and not by any means forbidden by law. If no objection is before the Court and the debtor requests, evidence supporting confirmation of a plan may be submitted by affidavit and the confirmation hearing conducted by telephone conference; provided, however, in such a case that the debtor must participate in such phone conference and be available under oath to answer such questions as the Court may have relating to confirmation.

**(l) Preconfirmation Modification of the Plan**

If, in connection with the confirmation hearing, parties modify the plan as an accommodation or settlement, the Court may conditionally approve the modified plan, adjourn the hearing on confirmation, and order notice of the modification pursuant to 11 U.S.C. 1229(b) reserving the

signing of the order of confirmation until the time for objections to modification has passed without objection.

**(m) Postconfirmation Modification of the Plan**

- (1) A party requesting modification of the plan after confirmation shall give thirty (30) days notice and an opportunity to be heard to the debtor, all creditors, the Chapter 12 trustee, and all other parties on the Master Mailing List.
- (2) Once the plan has been modified as above, without objection, the proponent of the modification shall forthwith serve on the Chapter 12 trustee a copy of the modification together with a certificate stating that:
  - (A) the modification has been filed with the Clerk;
  - (B) notice has been given in accordance with this rule; and
  - (C) no objections have been filed or served. If the plan is modified after objection and Court hearing, the proponent of the modification shall serve a copy of the modification and order approving the modification on the Chapter 12 trustee.
- (3) If a modified plan provides for the payment of claims not listed on the original schedules, notice of the modification shall be given to the additional creditors.
- (4) The Chapter 12 trustee may pay postpetition claims only if the plan is modified as above and the postpetition creditor affirmatively agrees in writing to payment under the plan.

**(n) Dismissal of Case by Debtor**

Absent an order to the contrary, a debtor desiring to dismiss the case shall give notice to the Master Mailing List in accordance with LBR 2002 - 1.

## **Related Provisions**

FRBP 1017(D)	Procedure for Conversion or Dismissal
FRBP 2002	Notices
FRBP 2015	Duty to Make Reports
FRBP 2016	Compensation of Attorney
FRBP 3012	Valuation of Security
FRBP 3015	Filing of Plan
FRBP 3019	Modification of Plan
FRBP 3020	Confirmation of Plan
FRBP 9013	Motions; Form and Service
11 USC 329	Debtor's Transactions with Attorneys
11 USC 349	Effect of Dismissal
11 USC 704(8)	Duties of Trustee
11 USC 1106(a)	Duties of Trustee
11 USC 1203	Rights and Powers of Debtor
11 USC 1204	Removal of Debtor as Debtor in Possession
11 USC 1221	Filing of Plan
11 USC 1222	Contents of Plan
11 USC 1223	Modification of Plan Before Confirmation
11 USC 1224	Confirmation Hearing
11 USC 1225	Confirmation of Plan
11 USC 1229	Modification of Plan After Confirmation

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