



*Judge Russ Kendig*

United States Bankruptcy Court  
Northern District of Ohio  
Ralph Regula Federal Building and  
United States Courthouse  
401 McKinley Ave., S.W.  
Canton, Ohio 44702  
(330) 458-2440

DATE: March 6, 2019  
TO: Attorneys practicing in the Canton and Youngstown Divisional Offices  
FROM: Judge Kendig  
RE: Chapter 13 Form Plan service requirements by section

In order to comply with General Order No. 17-1 in the Northern District of Ohio, any valuation or lien avoidance under sections 3.2 and 3.4 requires debtors to serve the plan and file a certificate of service with the clerk identifying the document served, the creditor served, and the creditor's address at which service is made. Additionally, any valuation or lien avoidance under sections 3.2 and 3.4 must be served pursuant to the special requirements of Bankruptcy Rule 7004, which is incorporated in Rules 3012 and 4003(d). Most entities can be served by first-class mail. Some entities must be served by certified mail. Other requirements, such as directing service to an officer or agent, may also apply. There is no simple explanation. You must read Rule 7004. Rule 7004 also contains requirements for specific types of service depending on the entity being served, including, but not limited to, special rules for corporations and insured depository institutions.

A separate certificate of service is not needed for creditors in sections 3.1 and 3.3. However, it is important to make certain service is made at a legally sufficient address. Nothing prohibits serving multiple locations in order to be sure good service is made. It is the attorney's job to make certain that good service is completed. The clerk's office and the court will not be checking addresses, and only you will know if items you serve are returned.

Each section is to be treated as follows:

- **Section 3.1 – Maintenance and cure**

This section provides for treatment of long-term secured claims, usually mortgages.

Nothing in this section requires any special form of service. Where there is any conflict between documents, a timely proof of claim controls the installment payment, amount of the claim, and the arrearage, while the plan controls the interest rate. You may object to the proof of claim as a “belt and suspenders” approach, but the plan controls.

- **Section 3.2 – Request for valuation of security, payment of fully secured claims, and modification of undersecured claims**

This section is used for personal property such as cars, or to strip off wholly unsecured mortgages. For governmental claims, the proof of claim controls, and the debtor must still move separately to value such claims if he seeks to hold them to be undersecured or wholly unsecured. For non-governmental creditors, the determination of the secured portion of the claim set forth in the plan is binding upon confirmation of the plan.

Cramdowns of interest rates are permissible, and the plan controls. The rate must be determined in accordance with Administrative Order 17-02. Service in accordance with Rule 3012, Rule 7004 and case law is required for alterations of the amount of the secured claim, but not of the interest rate. The certificate of service guidance outlined above is controlling.

- **Section 3.3 – Secured claims excluded from 11 U.S.C. § 506**

This section exclusively addresses 910-day claims and 1-year PMSI claims. Where there is any conflict, the proof of claim controls the amount of the claim, and the plan controls the interest rate. The amount of a 3.3 claim cannot be crammed down, and changes in interest do not require heightened service; therefore, the inclusion of creditors within this section does not necessitate a separate certificate of service or use of first-class mail.

- **Section 3.4 – Lien avoidance**

This section addresses the treatment of judicial liens or security interests that impair exemptions. Per the plan, liens avoided in this section will be treated as unsecured claims in Part 5 to the extent allowed. The amount not avoided, if any, will be paid in full as a secured claim. Rule 4003(d) requires service of the plan on affected creditors in the manner provided by Rule 7004.