

CHAPTER 9 PROCEDURES FOR THE EASTERN DISTRICT OF OKLAHOMA

General Information Regarding Chapter 9 Cases

Chapter 9 cases are generally similar to chapter 11 cases because creditors' committees are required, the debtor must file a disclosure statement, a plan must be voted on by impaired creditors, and a confirmation hearing must be held. Many of the statutory provisions relating to chapter 11 are made applicable to cases under chapter 9 by 11 U.S.C. § 901. Section 901 also lists the sections of chapters 3 and 5 of title 11 which apply to chapter 9 cases. Most notable among the Code sections not applicable to chapter 9 cases is section 341, which requires a meeting of creditors. Chapter 1 of title 11 also applies to chapter 9 cases. 11 U.S.C. § 103(e).

No U.S. Trustee Appointment

With the exception of the appointment of the creditors' committee, chapter 9 cases are not within the area of responsibility of the U.S. trustee. Thus, the court may set status conferences to monitor the events in a chapter 9 case.

Voluntary Petition

Chapter 9 cases, as with all voluntary cases, are commenced by the filing of a petition.

Judge Assignment

In Chapter 9 cases the usual Judge assignment procedures do not apply; instead, the chief judge of the court of appeals for the circuit embracing the district in which the case is commenced must designate the bankruptcy judge who is to preside over the case. 11 U.S.C. § 921(b). A form titled "Certificate of Designation," must be used for requesting an appointment of a bankruptcy judge. The chief bankruptcy judge may make this request or the bankruptcy clerk. The designation of a bankruptcy judge in a chapter 9 case are developed between the chief judge of the bankruptcy court and the bankruptcy clerk in conjunction with the district court and the court of appeals. To provide for an expeditious assignment a **Certification of Designation** and a copy of the Chapter 9 Petition should be faxed to the Circuit Court Judge along with the **Designation of Judge in Chapter 9**. As soon as the **Designation of a Judge** is returned from the circuit the Bankruptcy Court should docket and assign the Judge immediately.

Notice of Commencement of Case and Notice of time for filing Objections to the Petition

Unlike cases under other chapters, creditors in a chapter 9 case may object to the filing of the petition. 11 U.S.C. § 921(c). Municipalities, however, are not subject to an involuntary Bankruptcy petition. The Code and Federal Rules of Bankruptcy Procedure are silent with respect to the time for filing objections and any procedures relating thereto, but the court will set a date by which objections must be made. The time for filing Objections is set forth in the “**Notice of Commencement of Case.**” It states **forty-five days** after the mailing of the notice by the Debtor. As a result, the Clerk shall set the deadline for objections once the **Proof of Publication** has been filed.

Notice by Publication

Creditors are provided **notice of the objection period** in the notice which they must be given under section 923 of the Code regarding the commencement of the case. Section 923 specifies that in addition to notice by mail, **notice must be given by publication** at least once a week for

three successive weeks in at least one newspaper of general circulation within the district in which the case is commenced, and in such other newspaper(s) having general circulation among bond dealers and bondholders as the court designates. 11 U.S.C. § 923 The debtor shall perform all of the noticing required by section 923 (i.e. **notice of an order for relief and notice of dismissal of the case, if such is ordered, as well as notice of the commencement of the case, and to provide proof of service**). This information is in the **Notice of Commencement of Case**. The Debtor shall file **proof of publication** 14 days after the last publication. The last publication shall be not less than 14 days prior to the last day to file objections to the petition. The Publication will be made in the Wall Street Journal and one or two newspapers that the Court will determine based on address of the municipality.

Creditor Committee

As in a case under chapter 11, an unsecured creditors' committee should be appointed. In the larger chapter 9 cases, additional committees may be necessary (*e.g.*, bond holders, vendors and employee subcommittees). 11 U.S.C. §§ 901(a), 1102. Section 1102 of the Code, which applies to chapter 9 cases pursuant to section 901(a), provides that the United States trustee has the responsibility for making the appointment of committees in a chapter 9 case. However, the involvement of the United States trustee in a chapter 9 case is confined to this function. Section 901 of the Code does not contain any reference to section 341. **Therefore, the United States trustee does not have the right to convene and preside at a meeting of creditors. Nor does the United States trustee have the power to monitor creditors' committees appointed under chapter 9. 28 U.S.C. § 586(a)(3).**

Objections to Petition

If objections to the petition are filed timely, a hearing should be held at which the court may dismiss the petition if it finds that the debtor did not file the petition in good faith or if the petition does not meet the requirements of title 11. 11 U.S.C. § 921(c).

Order for Relief

A separate **order for relief** under this section must be entered if the petition is not dismissed under section 921(c), either because objections to the petition have not been filed or timely filed objections have been overruled. 11 U.S.C. § 921(d). (New 10/17/05) **In the Order for Relief the Court should fix a time for filing the Disclosure Statement and Plan we give 60 days from the Order of Relief for the filing of a Disclosure Statement and Plan.**

Chapter 9 Disclosure Statement

In a chapter 9 case, a **disclosure statement** or evidence showing compliance with section 1126(b) of the Code must be filed with the plan or within a time fixed by the court. 11 U.S.C. §§ 901(a), 1125 (b); Fed. R. Bankr. P. 3016. Pursuant to Fed. R. Bankr. P. 3017(a), a hearing must be held on the disclosure statement and a mere absence of objections does not eliminate the need for a hearing. Fed. R. Bankr. P. 3017 advisory committee note. As provided in Federal Rules of Bankruptcy Procedure 2002(b)(1) and 3017(a), at least 28 days notice of the hearing must be provided to the debtor, creditors, and other parties in interest.

Chapter 9 Plan

The debtor must file a **plan** for the adjustment of its debts with the petition or at a later time fixed by the court. 11 U.S.C. § 941. The debtor has the exclusive right to file a plan in a chapter

9 case. The contents of the plan of adjustment must conform to the requirements set forth in section 1123 (a)(1)-(5) and (b). 11 U.S.C. § 901(a).

Hearing on Disclosure Statement and Objection to Disclosure Statement

Objections to the disclosure statement must be filed and served on the debtor, the trustee, any committee appointed under the Code, and any other entity as may be designated by the court at any time prior to approval of the disclosure statement or by such earlier date as the court may fix. Fed. R. Bankr. P. 3017(a). The debtor is required to provide notice of the hearing on the disclosure statement, including the time fixed for filing objections to the disclosure statement.

Our hearing notice states a date certain for filing Objections which is 7 days prior to the hearing and the Debtor must file a Affidavit of mailing with the court 3 days after mailing the Disclosure Statement, Plan and the Notice of Hearing.

Plan Approval

As in a chapter 11 case, **once a disclosure statement has been approved**, the debtor can begin to solicit acceptances of the plan. Federal Rule of Bankruptcy Procedure 3017(d) requires that upon approval of a disclosure statement the following must be mailed to all creditors (unless the court orders otherwise with respect to one or more unimpaired classes of creditors):

- (1) the plan, or a court approved summary of the plan;
- (2) the disclosure statement approved by the court;
- (3) notice of the time within which acceptances and rejections of the plan may be filed;
- (4) ballots; and
- (5) such other information as the court may direct including any opinion of the court approving the disclosure statement or a court approved summary of the opinion. Fed. R. Bankr. P. 3017(d).

Hearing on Confirmation of Plan

Not less than 28 days notice of the time fixed for filing objections and the hearing on confirmation must be mailed to all creditors pursuant to Fed. R. Bankr. P. 2002(b), and a form of ballot conforming to Official Form No. 14 must be mailed to all creditors entitled to vote on the plan. Fed. R. Bankr. P. 3017(d). This rule provides that the mailing may be made by the debtor as the court may direct. **The debtor is required to send out the Approved Disclosure Statement, the Proposed Plan, the Ballot, the Notice of Hearing and time for filing Objections and the Date Establishing a Bar Date for filing Proof of Claims.**

Ballots

The Federal Rules of Bankruptcy Procedure do not contain any specific language as to the mechanics of tallying acceptances and rejections. As in a chapter 11 case, the debtor will handle this function. The court orders in the confirmation hearing Notice the Debtor file a **Summary of the ballots** be filed 7 days prior to the confirmation hearing.

Objections to Plan

Any party in interest may file an objection to confirmation of a plan. 11 U.S.C. §§ 901(a), 1128(b). Objections to confirmation of the plan must be filed with the court and served on the debtor, any committee appointed under the Code, and on any entity designated by the court,

within a time fixed by the court. Fed. R. Bankr. P. 3020(b)(1). An objection to confirmation is deemed to be a contested matter governed by Fed. R. Bankr. P. 9014. Fed. R. Bankr. P. 3020(b)(1). Chapter 9 contains a provision allowing a "special tax payer" (as defined in section 902(3) of the Code) to object to confirmation of a plan. 11 U.S.C. § 943(a). Care should be taken that "special tax payers" receive the order and notice relating to the approval of the disclosure statement which also should contain notice of the hearing on confirmation and the date by which objections to confirmation must be filed.

Plan Approval

The court must hold a hearing on the confirmation of a plan. 11 U.S.C. §§ 901(a), 1128(a). To be confirmed a plan must comply with the requirements of sections 943 and 1129(a)(2), (a)(3), (a)(6), (a)(8), (a)(10), (b)(1), (b)(2)(A), and (b)(2)(B) of the Code. A class of claims has accepted a plan if the plan has been accepted by creditors (other than those creditors whose acceptance may be voided pursuant to section 1126(e) of the Code) that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors that have accepted or rejected such plan. 11 U.S.C. §§ 901(a), 1126(c). As in a case under chapter 11, prepetition solicitation of acceptances of a plan is allowed pursuant to sections 901(a) and 1126(b) of the Code and Fed. R. Bankr. P. 3018(b). The filing of a plan for which the required acceptances have been received prior to the filing of the petition greatly compresses the procedures and time necessary for confirmation

Modified Plans

The debtor may modify the plan at any time **before confirmation**, but the plan as modified must meet all the requirements of chapter 9. 11 U.S.C. § 942. Federal Rule of Bankruptcy Procedure 3019 provides, in part, as follows with respect to the acceptance of modified plans:

If the court finds after hearing on notice to the trustee, any committee appointed under the Code and any other entity designated by the court that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan. Fed. R. Bankr. P. 3019.

If it is determined that the proposed modification does adversely change the treatment of the claims of nonconsenting creditors, then another balloting will have to be conducted. Fed. R. Bankr. P. 2002(a) requires that **not less than 21 days notice must be given of the time to accept or reject a modified plan to the debtor, all creditors and indenture trustees.**

Revocation of Confirmation

At any time within 180 days after the date of entry of the confirmation order, the court, upon the request of a party in interest and after notice and hearing, may revoke the order of confirmation if, and only if, the order was procured by fraud. 11 U.S.C. §§ 901(a), 1144.

Dismissal

After notice and hearing, the court may dismiss a case for cause including lack of prosecution or denial of confirmation of a plan under section 943(b) of the Code. 11 U.S.C. §930. Municipal debtors in chapter 9 cases do not have a right to have the case dismissed upon request.

The court, after notice and hearing, may dismiss a chapter 9 case for cause. 11 U.S.C. § 930. The Code lists the following grounds as examples of cause to dismiss a chapter 9 case: (1) want of prosecution; (2) unreasonable delay by the debtor that is prejudicial to creditors; (3) failure to propose a plan within the time fixed under section 941 of this title; (4) if a plan is not accepted within any time fixed by the court; (5) denial of confirmation of a plan under section 943(b) of this title and denial of additional time for filing another plan or modification of a plan; or (6) if the court has retained jurisdiction after confirmation of a plan

- (A) material default by the debtor with respect to a term such plan; or
- (B) termination of the plan by reason of the occurrence of a condition specified in such plan.

11 U.S.C. § 930(a).

In addition to the permissive dismissal provision of section 930(a), the court must dismiss a chapter 9 case if confirmation of a plan is refused. 11 U.S.C. § 930(b). A motion for dismissal of a chapter 9 case may be brought by a creditor.

Trustee Appointment

A trustee may be appointed by the court, if a Motion is filed, in a chapter 9 case if the debtor refuses to pursue a cause of action under the general avoiding powers of sections 544, 545, 547, 548, 549(a), or 550 of the Code, but only upon the request of a creditor and only for the limited purpose of pursuing such cause of action. 11 U.S.C. § 926. Secretary of the Treasury of the United States The Secretary of the Treasury of the United States may, or if requested by the court shall, intervene in a chapter 9 case. Representatives of the state in which the debtor is located may intervene in a chapter 9 case with respect to matters specified by the court. *Fed. R. Bankr. P. 2018(c)*.

Jurisdiction

The court may retain jurisdiction over the case as long as necessary for successful implementation of the plan. 11 U.S.C. § 945(a). Except to the extent that jurisdiction is retained, the case must be closed when administration of the case has been completed. 11 U.S.C. § 945(b).