

May 26, 2006

By Electronic Transmission

Peter G. McCabe, Secretary
Committee on Rules of Practice and Procedure
Judicial Conference of the United States
Washington, DC 20544

Re: Need for Official Bankruptcy Form 1 (Voluntary
Petition) to Include a Direction That When a §
362(1)(1) Certification is Made, a Certificate of
Service on the Lessor Should be Filed

Dear Mr. McCabe:

I recommend that Official Bankruptcy Form 1 (Voluntary
Petition) be amended by adding language to the window at the
bottom of page 2 as follows (with the added language noted by
underlining):

<p style="text-align: center;">Statement by a Debtor Who Resides as a Tenant of Residential Property</p> <p>Check all applicable boxes <u>and attach (or file separately) a certificate of</u> <u>service on the lessor if all three boxes are checked.</u></p> <p>...</p>

When all three boxes are checked, this constitutes a
certification under 11 U.S.C. § 362(1)(1) which the statute
requires be served on the lessor. The added language reminds the
debtor of this obligation.

In greater detail, my reasons for making this recommendation
follow.

Under 11 U.S.C. § 362(1)(1):

Except as otherwise provided in this subsection,
subsection (b)(22) shall apply on the date that is 30
days after the date on which the bankruptcy petition is
filed, if the debtor files with the petition **and serves**
upon the lessor a certification under penalty of
perjury that--

(A) under nonbankruptcy law applicable in the

jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and (B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.

[Emphasis added.] Indeed, § 362(1)(5)(C) provides:

The standard forms (electronic and otherwise) used in a bankruptcy proceeding shall be amended **to reflect the requirements of this subsection.**

[Emphasis added.]

As already noted, Official Bankruptcy Form No. 1 (Voluntary Petition) already includes a window (entitled "Statement by a Debtor Who Resides as Tenant of Residential Property"), with three boxes to check if applicable, addressing the § 362(1)(1) requirements. When all three boxes are checked (and the petition is signed in the space calling for signing under penalty of perjury) that serves as a § 362(1)(1) "certification" even though the Statement does not refer to it as a § 362(1)(1) certification. However, the Official Form does not address the requirement of serving the certification on the lessor.

Section 362(1)(1) is silent regarding when the certification must be served. **The language I propose is deliberately sufficiently ambiguous to sidestep the issue of when service must be made,¹ and would leave that to courts interpreting the**

¹ It is possible to read § 362(1)(1), particularly in conjunction with § 362(1)(2), as contemplating that § 362(1)(1) can be complied with as late as 30 days after the filing of the petition as one of the prerequisites to the debtor's enjoying the benefit of § 362(1)(2). Compliance with § 362(1)(1) within the 30-day period after the filing of the petition is one of the prerequisites that § 362(1)(2) imposes for making 11 U.S.C. § 362(b)(22) (an exception to the automatic stay) inapplicable. If, as § 362(1)(2) contemplates, § 362(1)(1) can be complied with as late as the 30-day mark, this suggests that filing a certificate of service as late as the 30-day mark can constitute sufficient service to comply with the statute. Nevertheless,

statute. The language would most likely prompt most debtors to file the certificate of service with the petition, and I think that would be desirable.

In any event, directing attachment of a certificate of service (or separate filing of the certificate of service) would further congressional intent: it should help remind debtors not to overlook the requirement of service on the lessor, thereby protecting both the lessor--by the lessor being alerted to the certification--and the debtor--by the debtor being reminded of one of the prerequisites to enjoying the benefit of § 362(1)(2).

Accordingly, I suggest that the Official Form be modified as set forth at the beginning of this letter to indicate that a certificate of service on the lessor is to be attached (or separately filed) when the Statement by a Debtor Who Resides as a Tenant of Residential Property serves as a § 362(1)(1) certification via all three of its boxes being checked.

Sincerely yours,

S. Martin Teel, Jr.
United States Bankruptcy Judge

most rules of procedure requiring both filing and service of a document contemplate that service will be made on the same date as filing of the document. And delaying service until a date after the filing of the petition could delay the lessor in learning of the existence of the certification and in exercising its right to object under § 362(1)(3) to the debtor's certification under § 362(1)(1).

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