

2020-10 COMMITTEE NOTE

Official Forms 309A-I are amended to update the links to the PACER website in the forms.

2020-02 COMMITTEE NOTE

Official Forms 309E2 and 309F2 are new. They are promulgated in response to the enactment of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079. That law gives a small business debtor the option of electing to be a debtor under subchapter V of chapter 11.

Because a trustee is always appointed in a subchapter V case, both forms require the name and contact information of the trustee to be provided.

Previously existing Official Forms 309E and 309F have been renumbered 309E1 and 309F1, respectively. Other changes are stylistic.

2017 COMMITTEE NOTE

Official Form 309F (For Corporations or Partnerships), *Notice of Chapter 11 Bankruptcy Case*, is amended at Lines 8 and 11. Both lines previously stated that a creditor seeking to have a debt excepted from discharge under § 1141(d)(6)(A) must file a complaint by the stated deadline. That statement has been revised in light of ambiguities in § 1141(d)(6)(A) regarding its relationship with § 523. Specifically, the provision is unclear about whether not only a debt “owed to a domestic governmental unit” but also a debt “owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 or any similar State statute” must be of the type described by § 523(a)(2)(A) and (B). The provision is also unclear about whether the procedural requirements of § 523(c)(1) apply, given that § 1141(d)(6)(A) specifically refers to § 523(a) but not to § 523(c). Rather than take a position on the proper interpretation of § 1141(d)(6)(A), the form leaves to creditors the determination of whether

§ 523(c) applies to their claims, in which case they must commence a dischargeability proceeding by the Rule 4007(c) deadline that is stated on the form.

Official Forms 309G, (For Individual Debtors), *Notice of Chapter 12 Bankruptcy Case*, 309H, (For Corporations and Partnerships), *Notice of Chapter 12 Bankruptcy Case*, and 309I, *Notice of Chapter 13 Bankruptcy Case*, are each amended at Line 9 to remove references to “plan summaries” in conformance with amendments to Rule 3015(d) made in 2017.

HISTORICAL COMMITTEE NOTES

2015 COMMITTEE NOTE

Official Forms 309A-I, collectively the Bankruptcy Case Commencement Notices, have been revised as part of the Forms Modernization Project to make them easier to read and understand. The notices, derived from Official Forms 9A-I are renumbered and stylistic changes have been made.

References to the limitations on the automatic stay imposed by 11 U.S.C. § 362(c)(3) and (4) in some repeat bankruptcy filings by individuals have been deleted from the three versions of the notice for cases filed by corporations and partnerships. Email addresses for the debtor's attorney and the trustee have been added to the form.

The parties are informed that they may review papers filed in the case through the judiciary's PACER system (Public Access to Court Electronic Records) as well as at the bankruptcy clerk's office.

The lettering scheme for the versions of Official Form 309 track the versions of Official Form 9 used in different types of bankruptcy cases with following exceptions. Official Forms 9E(Alt.) and 9F(Alt.) have been eliminated by including alternative language in Official Forms 309E and 309F to be used if the court sets a deadline for filing claims at the start of the chapter 11 case. In addition, the B and C versions have been reversed in order. That is, Official Form 9C has been designated 309B and Official Form 9B as 309C. This groups together the notices for chapter 7 individual debtors and for non-individual debtors. Finally, as a result of the reformatting, Official Form 309C has been reduced to a single page.

The four versions of the form for chapter 7 cases have been renamed to state whether the notice specifies a deadline for filing proofs of claim, rather than whether the case is an "asset" or "no-asset" case.

2012 COMMITTEE NOTE

All versions of the form have been updated on the first page and in the claims box on the explanation page to remind creditors that the form should not be included with or attached to any proof of claim or other filing in the case. Stylistic changes to the form are also made.

2011 COMMITTEE NOTE

The form's explanation of the "Meeting of Creditors" is amended to take account of the amendment of Rule 2003(e). When a meeting of creditors is adjourned to another date, the rule requires the official presiding at the meeting to file a statement specifying the date and time to which the meeting is adjourned. The explanation on all versions of the form is amended to reflect that requirement. Stylistic changes to the form are also made.

2010 COMMITTEE NOTE¹

Forms 9A, 9C, and 9I are amended in the "Deadlines" section on the front and the "Discharge of Debts" section on the back. The changes conform to amendments to Bankruptcy Rules 4004 and 7001 that direct that certain objections to discharge be brought by motion rather than by complaint.

2005-2007 COMMITTEE NOTE²

The form is amended in a variety of ways to implement the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005). All versions of the form are amended to advise creditors to consult an attorney concerning what rights they may have in the specific case. All versions of the form also are amended to

¹ The reference to the debtor's telephone number on Form 9F was deleted in 2008 to protect the debtor's privacy. The change was not published for public comment because it was technical and conforming.

²The 2005-2007 Committee Note incorporates Committee Notes previously published in 2005 and 2006.

provide to creditors with foreign addresses information about filing claims and to advise those creditors to consult a lawyer familiar with United States bankruptcy law regarding any questions they may have about their rights in a particular case. These amendments implement § 1514, which was added to the Code in 2005.

Forms 9A and 9C are amended to include a box in which the clerk can notify creditors in a chapter 7 case filed by an individual with primarily consumer debts if the presumption of abuse has arisen under § 707(b) of the Code as amended in 2005. Under § 342(d) of the Code, the clerk has a duty to notify creditors concerning the presumption within ten days of the filing of the petition. In cases in which the debtor does not file Official Form 22A with the petition, the forms provide for the clerk to state that insufficient information has been filed, and to inform creditors that if later-filed information indicates that the presumption arises, creditors will be sent another notice. Forms 9G and 9H are amended to add "family fishermen" to the notices used in chapter 12 cases, in conformity with the 2005 amendments to the Code extending the provisions of chapter 12 to family fishermen.

In cases involving serial filers (debtors who have filed more than one case within a specified period), the automatic stay provided by § 362(a) of the Code as amended in 2005 may not apply or may be limited in duration, unless the stay is extended or imposed by court order. The form contains a general statement alerting debtors to this possibility.

Section 1514, added to the Code in 2005, also requires that a secured creditor with a foreign address be advised whether the creditor is required to file a proof of claim, and Forms 9B, 9D, 9E, 9E (Alt.), 9F, 9F (Alt.), 9G, 9H, and 9I are amended to include general information addressing that question. Forms 9E, 9E (Alt.), 9F, and 9F (Alt.) also are amended to inform creditors that in a case in which the debtor has filed a plan for which it has solicited acceptances before filing the case, the court may, after

notice and a hearing, order that the United States trustee not convene a meeting of creditors.

Forms 9E and 9E (Alt.) are amended to state that, unless the court orders otherwise, an individual chapter 11 debtor's discharge is not effective until completion of all payments under the plan, as provided in § 1141(d)(5) which was added to the Code in 2005. Forms 9F and 9F (Alt.) are amended to include a deadline to file a complaint to determine the dischargeability of a debt, in conformity with § 1141(d)(6), which also was added to the Code in 2005.

Form 9I is amended to include a deadline to file a complaint to determine the dischargeability of certain debts. This amendment implements a 2005 amendment to § 1328(a) of the Code.

In addition, all versions of the form are amended to provide to the public only the last four digits of any individual debtor's taxpayer-identification number. This amendment implements Rule 9037.

2006 COMMITTEE NOTE

Forms 9G and 9H are amended to add “family fisherman” to the title and to the description of chapter 12. The 2005 amendments to the Code added a “family fisherman,” as defined in § 101(19A), to the persons eligible to file a bankruptcy case under chapter 12. Form 9I is amended to provide general notice to parties in interest of the potential for a claim to be filed late in the case.

2005 COMMITTEE NOTE

The form is amended in a variety of way to implement the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005). All versions of the form are amended to advise creditors to consult an attorney concerning what rights they may have in the specific case. All versions of the form are also amended to provide information about filing claims to creditors with foreign addresses and to advise those creditors to consult a

lawyer familiar with United States bankruptcy law regarding any questions they may have about their rights in a particular case. These amendments implement § 1514, which was added to the Code in 2005.

Forms 9A and 9C are amended to include a box in which the clerk can notify creditors in a chapter 7 case filed by an individual with primarily consumer debts whether the presumption of abuse has arisen under § 707(b) of the Code as amended in 2005. Under § 342(d) of the Code, the clerk has a duty to notify creditors concerning the presumption within ten days of the filing of the petition. If cases in which the debtor does not file Official Form 22A with the petition, the forms provide for the clerk to state that insufficient information has been filed, and to inform creditors that if later-filed information indicates that the presumption arises, creditors will be sent another notice.

In cases involving serial filers (debtors who have filed more than one case within a specified period), the automatic stay provided by § 362(a) of the Code as amended in 2005 may not apply or may be limited in duration, unless the stay is extended or imposed by court order. The form contains a general statement alerting debtors to this possibility.

Section 1514, added to the Code in 2005, also requires that a secured creditor with a foreign address be advised whether the creditor is required to file a proof of claim, and Forms 9B, 9D, 9E, 9E (Alt.), 9F, 9F (Alt.), 9G, 9H, and 9I are amended to include general information addressing that question. Forms 9E, 9E (Alt.), 9F, and 9F (Alt.) also are amended to inform creditors that in a case in which the debtor has filed a plan for which it has solicited acceptances before filing the case, the court may, after notice and a hearing, order that the United States trustee not convene a meeting of creditors.

Forms 9E and 9E Alt. are amended to state that, unless the court orders otherwise, an individual chapter 11 debtor's discharge is not effective until completion of all payments under the plan, as provided in § 1141(d)(5) which

was added to the Code in 2005. Forms 9F and 9F (Alt.) are amended to include a deadline to file a complaint to determine the dischargeability of a debt, in conformity with § 1141(d)(6) which was added to the Code in 2005.

Form 9I is amended to include a deadline to file a complaint to determine the dischargeability of certain debts. This amendment implements 2005 amendment to § 1328(a)(1) of the Code.

2003 COMMITTEE NOTE

The form is amended to add to the information provided to creditors, the trustee and the United States trustee, all the names used by the debtor during the six years prior to the filing of the petition. The form includes the debtor's full employer identification number, if any, as well as the last four digits of the debtor's social security number. Rule 2002(a)(1) also is amended to direct the clerk to include the debtor's full social security number and employer identification number on the notices served on the United States trustee, the trustee, and creditors. This will enable creditors to identify the debtor accurately. The copy of Official Form 9 included in the case file, however, will show only the last four digits of the debtor's social security number. This should afford greater privacy to the individual debtor, whose bankruptcy case records may be available on the Internet.

1997 COMMITTEE NOTE

Forms 9A, 9I (and the alternate versions of Forms 9E and 9F) have been amended, redesigned, and rewritten. Minor conforming changes have been made to respond to amendments made in the Bankruptcy Reform Act of 1994: the longer claims filing period for governmental units in section 502(b)(9) of the Code (see Forms 9C, 9D, 9E(Alt.), 9F(Alt.), 9G, 9H, and 9I); and a reference to dischargeability actions under section 523(a)(15) (see Forms 9A, 9C, 9E, and 9E(Alt.), 9G, and 9H). All of the forms have been substantially revised to make them easier to read and understand. The titles have been simplified.

Recipients are told why they are receiving the notice. Explanations are provided on the back of the form and are set in larger type. Plain English is used. Deadlines are highlighted on the front of the form. Recipients are told that papers must be received by the bankruptcy clerk's office by the applicable deadline. The box for the trustee has been deleted from the chapter 11 notices (Forms 9E and 9F and the alternates). Various alternatives are set out in brackets in many of the forms, permitting each bankruptcy clerk's office to tailor the forms even more precisely to fit the needs of a particular case. The court may use blank spaces on the form to include additional information applicable to the particular district.

1995 COMMITTEE NOTE

The form is amended to provide notice of the claims filing period provided to "a governmental unit" by section 502(b)(9) of the Code as amended by the Bankruptcy Reform Act of 1994. A court that routinely sets a deadline for filing proofs of claim at the outset of chapter 11 cases and, accordingly, uses Form 9E(Alt.) or Form 9F(Alt.) retains the option in any case in which no deadlines actually are set to substitute a message stating that creditors will be notified if the court fixes a deadline.

The form also is amended to add, in the paragraph labeled "Discharge of Debts," a reference to dischargeability actions under section 523(a)(15) of the Code, which was added by the 1994 Act.

1993 COMMITTEE NOTE

The title page of the form has been amended to conform to the headings used on Forms 9A - 9I. Alternate versions of Form 9E and Form 9F have been added for the convenience of districts that routinely set a deadline for filing claims in a chapter 11 case. When a creditor receives the alternate form in a case, the box labeled "Filing Claims" will contain information about the bar date as follows: "Deadline for filing a claim: (date)." If no deadline is set in a particular case, either the court will use Form 9E or

Form 9F, as appropriate, or the alternate form will be used with the following sentence appearing in the box labeled "Filing Claims": "When the court sets a deadline for filing claims, creditors will be notified."

1992 COMMITTEE NOTE

Forms 9B, 9D, 9F, and 9H are amended to make a technical correction in the reference to Rule 9001(5). Form 9H also contains a technical correction deleting the reference to a complaint objecting to discharge of the debtor.

1991 COMMITTEE NOTE

The form has been redesigned to facilitate electronic generation of notice to creditors concerning the filing of the petition, the meeting of creditors, and important deadlines in the case. Adoption of a box format, with significant dates highlighted, is intended to assist creditors who may be unfamiliar with bankruptcy cases to understand the data provided. Nine variations of the form, designated 9A through 9I, have been created to meet the specialized notice requirements for chapters 7, 11, 12, and 13, asset and no-asset cases, and the various types of debtors.