

PROPOSED BANKRUPTCY LOCAL RULE 6007-1

Rule 6007-1. Surrender of Collateral in Chapter 13 Cases.

- (a) If a chapter 13 plan is confirmed that provides for the surrender of collateral that is subject to a debtor's possession or control, this Rule governs the implementation of the surrender, unless the Court orders otherwise.
- (b) Debtors and holders of security interests may enter into written agreements (including agreements made by email) providing for the orderly surrender of collateral under a confirmed plan. No written or oral agreement may impose personal liability on a debtor or limit a debtor's discharge. If a written agreement is made, the Court will enforce it according to its terms. The balance of this Rule governs the method of surrender under a confirmed plan when there is not a written agreement.
- (c) The procedures for the surrender of collateral made pursuant to Paragraph 7 of the confirmed plan must commence not later than 7 days following entry of the order confirming the plan.
- (d) The procedures for the surrender of collateral made pursuant to Paragraph 19 of a confirmed plan must commence not earlier than 21 days nor later than 28 days after a Surrender Notice is filed.
- (e) The procedure for the surrender of real property is:
 - i. The Debtor(s) must send a letter, substantially in the form set forth on the Court's website, offering immediate possession of the real property to each holder of a security interest on the real property.
 - ii. The letter must be sent by prepaid United States Mail to (i) the last known address of the holder of the security interest; or (ii) if a proof of claim has been filed, to the address for notices set forth on the proof of claim; or (iii) if the holder of the security interest has appeared through counsel in the case, to the counsel who has appeared.
 - iii. If there is more than one security interest holder and a dispute arises between the security interest holders as to the disposition of the property, the security interest holders must promptly notify the Debtor(s). In the event of such a dispute, the Debtor(s) must vacate the property within 14 days of receipt of the notice.
 - iv. If a security interest holder requests possession of the property, the Debtors must fully cooperate in vacating the premises, turning over all keys, garage door openers, alarm codes, and other information that will allow the security interest holder unfettered access to the property. These items must be accomplished not later than the date set forth in writing by the security interest

holder, which date may not be sooner than 14 days following delivery of the request. Any request must be (i) sent by email to the Debtor's counsel (if any), and (ii) served on the Debtor in accordance with Fed. R. Bankr. P. 7004. Subject to Fed. R. Bankr. P. 9006(f), delivery of the request will be deemed to occur when the requirements of the preceding sentence have been satisfied.

- v. The procedures set forth in subparagraphs (iii) and (iv) of this subparagraph may be implemented by a holder of a security interest immediately following the 7 day period set forth in subparagraph (c) of this Rule and without waiting for the sending or receipt of the letter required by subparagraph (e)(1) of this Rule.
 - vi. If a document is required to be sent under this Rule to the United States or its agencies, the document must additionally be sent to the United States Attorney at 1000 Louisiana Street, Suite 2300, Houston, Texas 77002 (attention: Civil Process Clerk).
- (f) The procedure for the surrender of a vehicle that is permitted to operate on public roads is:
- i. The holder of a security interest must file a Delivery Notice. The Delivery Notice must instruct the Debtors (i) to deliver the vehicle to a specific location; and (ii) the disposition of the keys to the vehicle at the time of delivery. The Delivery Notice must be served by United States mail on the Debtors at their address as listed on the docket sheet. The Debtors must deliver the vehicle within 14 days of the filing of the Delivery Notice.
 - ii. The specific location in the Delivery Notice must be within 25 driving miles of the Debtors' home, as listed on the docket sheet.
 - A. If the specific location is a public street address, the Debtors must park the vehicle on the designated public street and within 2 city blocks of the address. No public street address may be designated by the security interest holder unless free parking is available on the public street. When the Debtors park the vehicle, the Debtors must photograph the exterior and interior of the vehicle. The exterior must be photographed such that the location is visible from the photograph. The car must be locked.
 - B. After the vehicle is parked and photographed in accordance with this Rule, the security interest holder will have the sole risk of loss as to the vehicle.
 - C. If the specified location is not an address on a public street, the location must be available for delivery of the vehicle and staffed with at least one person (i) not less than 4 days per week; (ii) at least one weekend day each week; (iii) by 7:00 a.m. on at least one day each week; and (iv) until at least 7:00 p.m. on at least one day each week. Upon delivery:

1. the staff person at the delivery location must execute and deliver a receipt to the Debtors, which receipt will merely reflect that the vehicle was delivered. The receipt will not be an acknowledgement that the vehicle was received in any particular condition.
 2. the Debtors and the staff person at the delivery location must each take pictures of the interior and exterior of the vehicle. The pictures will be taken after delivery, but prior to the execution of the receipt.
- D. If the holder of the security interest has not been provided with a current certificate of insurance, the vehicle is not operable, or the vehicle is not in the Debtors' possession or control, the holder of the security interest may repossess the vehicle in accordance with applicable non-bankruptcy law. Additionally, the Debtors must:
1. Within 3 days of the filing of a Delivery Notice, notify the security interest holder in writing of the circumstances that preclude the Debtors from delivering the vehicle. The notification must inform the security interest holder of the location of the vehicle. Notices to the security interest holder must be sent to (i) the last known address of the security interest holder; and (ii) if a proof of claim has been filed, to the address for notices set forth on the proof of claim; and (iii) if the security interest holder has appeared through counsel in the case, to the counsel who has appeared.
 2. Fully cooperate in allowing the security interest holder to retrieve the vehicle, including agreeing to meet the security interest holder at a specific date and time to allow the retrieval of the vehicle.
 3. The Debtor(s) may not drive a vehicle that is uninsured.
- (g) The surrender of any other property is governed by this Rule and by applicable non-bankruptcy law. Provided, the holder of a security interest must make reasonable efforts to take possession of the surrendered property before the expiration of 28 days following (i) the confirmation of a plan that provides for the surrender or collateral under paragraph 7 of a confirmed plan; or (ii) the filing of a Surrender Notice under paragraph 19 of a confirmed plan.
- (h) If a Debtor fails to comply with the provisions of this Rule, the holder of the security interest may seek (i) to compel compliance by the Debtor(s); and (ii) to recover the holder's reasonable costs and attorney's fees as an administrative expense to be paid under the confirmed plan.
- (i) If a holder of a security interest, secured by personal property, fails to comply with the provisions of this Rule, the Debtors may (i) seek to compel compliance by the

holder; and (ii) impose a monthly storage fee, secured by a lien on the holder's collateral, equal to 0.5% of the fair market value of the collateral for every day that the collateral is held by the Debtor after the expiration of 28 days following (i) the confirmation of a plan that provides for the surrender or collateral under paragraph 7 of a confirmed plan; or (ii) the filing of a Surrender Notice under paragraph 19 of a confirmed plan. If the holder retrieves the collateral after the 28 day period, the security interest lien holder must pay cash to the Debtor(s) in the amount of all accrued storage fees.

- (j) Subject to subparagraph (f) of this Rule, the Debtors may use any collateral pending the retrieval by the lien holder.
- (k) If a writing is required by this Rule, the writing may include an email communication, a facsimile signature, or a paper document.
- (l) This Rule applies only in Chapter 13 cases.