

Local Rule of Bankruptcy Procedure 1017. DISMISSAL OR CONVERSION OF CASE; SUSPENSION.

(a) Definition of "Want of Prosecution"

For purposes of Fed. R. Bankr. P. 1017 and as used in these Local Rules of Bankruptcy Procedure, "want of prosecution" includes, but is not limited to, the following:

- failure to timely file schedules, statements and other required documents, including the Chapter 12 or 13 plan;
- failure to timely and diligently prosecute the filing of a plan or disclosure statement;
- failure to timely and diligently prosecute the confirmation of a plan or approval of a disclosure statement;
- failure to appear at any hearing as ordered by the Court, including the first meeting of creditors;
- failure to pay fees required under 28 U.S.C. § 1930; or
- failure to furnish to the case or standing trustee, if any, or to the United States Trustee information which is reasonably required to supervise the administration of the estate, including, but not limited to, monthly operating reports, proof of insurance on estate assets and evidence of payment of post-petition taxes.

(b) Dismissals

1. A motion to dismiss a case filed by any party in interest must be served upon the master mailing list (matrix) as constituted by the Court on the date of service unless the dismissal is sought under §707(a)(3), §707(b), §1307(b), §1307(c), §1307(e) or for failure of the debtor to pay the required filing fee, in which service of the motion pursuant to the applicable section of LBR 9013(f)(1) shall suffice.
2. A trustee or the United States Trustee is given the discretion to schedule and provide notice of a hearing to consider a dismissal motion which he/she has filed. Such hearing may only be scheduled on the regularly-scheduled docket date for trustee dismissal motions under that chapter which is not less than: (1) 14 days from the date of filing for dismissal motions under §707(a)(3) or §707(b); or (2) 21 days from the date of filing for all other dismissal motions. Such trustee shall give notice of that scheduled hearing

in boldface, large font in the first paragraph of the dismissal motion in lieu of the negative notice language otherwise required.

3. Any dismissal motion, other than one filed by the trustee with a designated hearing date, must contain the following 14-day negative notice language, which must be in boldface, large font and located in the text of the notice/motion -- preferably in the first paragraph:

NO HEARING WILL BE CONDUCTED ON THIS MOTION UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS MOTION WITHIN FOURTEEN (14) DAYS FROM THE DATE OF SERVICE UNLESS THE COURT SHORTENS OR EXTENDS THE TIME FOR FILING SUCH OBJECTION. IF NO OBJECTION IS TIMELY SERVED AND FILED, THIS PLEADING SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT. IF AN OBJECTION IS FILED AND SERVED IN A TIMELY MANNER, THE COURT WILL THEREAFTER SET A HEARING. IF YOU FAIL TO APPEAR AT THE HEARING, YOUR OBJECTION MAY BE STRICKEN. THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER.

4. If a motion is requesting dismissal with prejudice to re-filing for any period of time, such request must be referenced in both the title of the motion and in the title of the proposed order.
5. A movant requesting dismissal of a case pursuant to Bankruptcy Code §1112(b) may waive the 30-day hearing requirement under §1112(b)(3), if desired, in the title of the motion.

Title Example: Motion to Convert or Dismiss Chapter 11 Case, Waiver of 30-Day Hearing Requirement, and Request for Hearing in Beaumont, Texas

If a waiver is not filed, the Court will convene a hearing within the required 30 days in the division most convenient to the Court.

(c) **Trustee's Motion to Waive Automatic Dismissal of Case**

A motion by a Chapter 7 trustee or the Chapter 13 trustee to waive the automatic dismissal provisions of §521(i)(1), pursuant to the grounds set forth in §521(i)(4), shall contain 14-day negative notice language, as utilized in LBR 1017(b)(3), and contain a certificate of service reflecting service on the master mailing list (matrix) as constituted by the Court on the date of service.

(d) **Conversion**

1. A debtor's right to convert a case from Chapter 12 to Chapter 7 pursuant to Bankruptcy Code §1208(a), or from Chapter 13 to Chapter 7 pursuant to Bankruptcy Code §1307(a), is accomplished by the filing of a notice of conversion served upon the master mailing list (matrix) as constituted by the Court on the date of service. A debtor's motion to convert pursuant to §1208(a) or §1307(a) shall be deemed a notice of conversion.
2. Any other conversion motion, including one filed by the debtor pursuant to §706(a) or §1112(a), must be served upon the master mailing list (matrix) as constituted by the Court on the date of service and must contain the following 14-day negative notice language, which must be in boldface, large font and located in the text of the notice/motion -- preferably in the first paragraph:

NO HEARING WILL BE CONDUCTED ON THIS MOTION UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS MOTION WITHIN FOURTEEN (14) DAYS FROM THE DATE OF SERVICE UNLESS THE COURT SHORTENS OR EXTENDS THE TIME FOR FILING SUCH OBJECTION. IF NO OBJECTION IS TIMELY SERVED AND FILED, THIS PLEADING SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT. IF AN OBJECTION IS FILED AND SERVED IN A TIMELY MANNER, THE COURT WILL THEREAFTER SET A HEARING. IF YOU FAIL TO APPEAR AT THE HEARING, YOUR OBJECTION MAY BE STRICKEN. THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER.

3. A movant requesting conversion of a case pursuant to Bankruptcy Code §1112(b) may waive the 30-day hearing requirement under §1112(b)(3), if desired, in the title of the motion.

Title Example: Motion to Convert or Dismiss Chapter 11 Case, Waiver of 30-Day Hearing Requirement, and Request for Hearing in Beaumont, Texas

If a waiver is not filed, the Court will convene a hearing within the required 30 days in the division most convenient to the Court.