



Chief Judge Russ Kendig

United States Bankruptcy Court, Northern District of Ohio
Ralph Regula Federal Building and U.S. Courthouse
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DATE: July 24, 2018
TO: Attorneys practicing in the Youngstown court
FROM: Judge Kendig
RE: Chapter 13 mortgage and lien avoidance

In the past, some have filed an adversary proceeding to avoid liens, including mortgages, in chapter 13 cases. With recent bankruptcy rule amendments and institution of the national chapter 13 form plan, adversary proceedings are not required and use of them for lien avoidance actions is discontinued.

Under Bankruptcy Rule 3012(b), requests to determine the value of nongovernmental secured claims generally “may be made by motion, in a claim objection, or in a plan filed in a chapter 12 or chapter 13 case.” Bankruptcy Rule 3012(b) was revised in 2017 for this specific purpose. Rule 4003(d) permits covered avoidance actions to be accomplished by motion as a contested matter or through the plan. Bankruptcy Rule 7001(2) specifically excepts “proceedings under Rule 3012 or Rule 4003(d)” from the adversary process. When the validity, priority, or more than valuation of a lien is at issue, an adversary complaint is appropriate. If the only issue is valuation, a complaint is unnecessary.

But the bankruptcy rules require service of the plan in accordance with Rule 7004. General Order 17-01, available at <https://www.ohnb.uscourts.gov/sites/default/files/general-orders/interim-general-order-17-1-service-ch-13-plans-electronic-signatures.pdf>, also governs service of plans containing embedded motions. When properly served, confirmation will serve as a ruling on the embedded avoidance motion in the plan. Counsel may desire to file a comfort motion in order to obtain a specific order for recording with county agencies.