

BANKRUPTCY LOCAL RULE 6007-2

Rule 6007-2. Surrender of Collateral in Chapter 13 Cases.

- (a) If a chapter 13 plan¹ requires 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 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 unless the agreement contravenes applicable law. 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 plan must commence not later than 7 days following entry of the order approving the plan.
- (d) The procedures for the surrender of collateral made pursuant to Paragraph 20 of a confirmed plan must commence no earlier than 21 days nor later than 28 days after a Surrender Notice is filed.
- (e) This subsection applies to the surrender of real property and for which no written agreement has been made under BLR 6007-2(b).
 - 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 that is listed as a secured creditor on the Debtor's Schedule D or that has filed a proof of claim asserting a secured claim in the real property to be surrendered.
 - ii. The letter must be sent by prepaid United States Mail to (i) the last known address of the security interest holder; and if a proof of claim has been filed, to the address for notices set forth on the proof of claim; or (ii) if the security interest holder 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.

¹ This rule applies equally to modified plans.

- iv. If a security interest holder requests possession of the property, the Debtor(s) must fully cooperate in vacating the premises. This includes, without limitation, complying with a written request from the security interest holder to deliver all keys, garage door openers, alarm codes, and other information that will allow the security interest holder unfettered access to the property in a prepaid package supplied by the holder of the security interest holder. The premises must be vacated 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 (i) to the United States Attorney at 1000 Louisiana Street, Suite 2300, Houston, Texas 77002 (attention: Civil Process Clerk); or (ii) in accordance with Bankruptcy Rule 7004.
- (f) This subsection applies to the surrender of a vehicle that is permitted to operate on public roads and for which no written agreement has been made under BLR 6007-2(b).
- i. The holder of a security interest must file a Delivery Notice. The Delivery Notice must instruct the Debtor(s) (i) to deliver the vehicle to a specific location; and (ii) as to 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 Debtor(s) at their address as listed on the docket sheet. The Debtor(s) 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 Debtor(s)' home, as listed on the docket sheet.
 - A. If the specific location is a public street address, the Debtor(s) 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 Debtor(s) park the vehicle, the Debtor(s) 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 in accordance with this Rule, the security interest holder will have the sole risk of loss as to the vehicle, and will be responsible for the payment of any traffic fines or other penalties arising out of compliance with the instructions in the Delivery Notice.
- 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 Debtor(s), which receipt will reflect that the vehicle was delivered. The receipt will not be an acknowledgement that the vehicle was received in any particular condition.
 - 2. the Debtor(s) 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 Debtor(s)' possession or control, the holder of the security interest may repossess the vehicle in accordance with applicable non-bankruptcy law. Additionally, the Debtor(s) must:
 - 1. Within 7 days of the filing of a Delivery Notice, notify the security interest holder in writing of the circumstances that preclude the Debtor(s) from delivering the vehicle. The notification must inform the security interest holder of the location of the vehicle if known. Notices to the security interest holder must be sent to (i) the last known address of the security interest holder; and if a proof of claim has been filed, to the address for notices set forth on the proof of claim; or (ii) 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; and,
 - 3. 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. 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 20 of a confirmed plan.
- (h) If the Debtor(s) fail 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 from the Debtor(s) the holder's reasonable costs and attorney's fees as an administrative expense to be paid under the confirmed plan; provided, there shall be no liability for the failure to take photographs as required by this Rule. The failure to take photographs as required by his Rule may result in an adverse evidentiary inference.
- (i) If a holder of a security interest, secured by personal property, fails to comply with the provisions of this Rule, the Debtor(s) may (i) seek to compel compliance by the holder; and (ii) impose a monthly storage fee, secured by a first priority 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(s) 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 20 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. The Debtor(s)' rights created by the lien under this subparagraph may be enforced through the Bankruptcy Court or any other court of competent jurisdiction.
- (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.