

Returning Repossessed Property and Retaining Creditor Abandoned Property

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Returning Repossessed Property and Retaining Creditor Abandoned Property

The Bankruptcy Code authorizes abandonment of property that is burdensome or of inconsequential value to the estate; and Chapter 13 Plans may surrender property. Lawyers and their clients (both debtors and creditors) must plan for the disposition of real or personal property leaving the debtor's control or the bankruptcy estate for these and other reasons, including stay relief and the court's refusal to approve a reaffirmation agreement.

Personal Property



We are going to focus on personal property because Judge Norman and Marquise Bryant did an amazing job representing “Dirt for Debt” just a few minutes ago.



For any one who missed it...that presentation was at 11:30.

11 U.S.C § 554 and FRBP Rule 6007

Abandonment of Property of the Estate

(a) After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

(b) On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

(c) Unless the court orders otherwise, any property scheduled under section 521(a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title.

(d) Unless the court orders otherwise, property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate.

How to Surrender?

Paragraph 7 of
a confirmed
plan

Surrender
Notice under
paragraph 20

What is a Surrender Notice?

NOTICE OF SURRENDER OF COLLATERAL

Pursuant to paragraph 20A confirmed chapter 13 plan in this case, the Debtor(s) file this Notice of Surrender of Collateral. Unless an objection is filed within 21 days of the date that this Notice of Surrender is filed, the surrender will become effective without the requirement of a Court Order.

1. Description of collateral: _____.

2. Creditors with a lien or other security interest in the collateral:

a. (Creditor name and address)

b. (Creditor name and address)

Local Rule 6007-1 (Houston) How to Surrender Collateral



Step 1: Debtors and Secured Lender¹ may enter into written agreements (including agreements made by email or fax) providing for the orderly surrender of collateral under a confirmed plan.



As long as the agreement does not impose personal liability on a debtor or limit a debtor's discharge.



LET'S ASSUME THIS FAILS



If it did not this would be a really short presentation!

¹For purposes of this presentation, Secured Lender is the security interest holder.

Local Rule 6007-1(f) (Houston) What must the Secured Lender do?

Step 2:

- The Secured Lender must file a Delivery Notice.
- The Delivery Notice must tell the Debtor:
 - where to deliver the vehicle; and
 - what to do with the keys for the vehicle.
- The delivery location must be within 25 miles of the Debtor's home.
- Delivery Notice must be served by U.S. mail to the address listed on the docket sheet.

- The Secured Lender must make reasonable efforts to take possession of the surrendered property before the expiration of 28 days following the:
 - confirmation of a plan that provides for the surrender; or
 - filing of a Surrender Notice.
- If the Debtor fails to comply with the provisions of this Rule, the Secured Lender may:
 - compel compliance by the Debtor; and
 - recover from the Debtor, reasonable costs and attorney's fees as an administrative expense to be paid under the confirmed plan.

Local Rule 6007-1(f) (Houston) What must the Secured Lender do?

Where to Deliver the Collateral? Public Street

- Secured Lender must –
 - Designate an address with free parking available on the public street.
- Debtor must –
 - Park the vehicle within 2 city blocks of the designated address.
 - Take photographs of the exterior and interior of the vehicle.
 - *Note: The exterior photographs of the vehicle must show the vehicle at the designated address*
 - Lock the vehicle.
 - Deliver the vehicle within 14 days of the Delivery Notice.
- After the vehicle is delivered in accordance with the Delivery Notice, the Secured Lender 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.

- Secured Lender must –
 - Designate an address; and
 - The location must be available for delivery of the vehicle and staffed with at least one person:
 - not less than 4 days per week;
 - at least one weekend day each week;
 - by 7:00 a.m. on at least one day each week; and
 - until at least 7:00 p.m. on at least one day each week.
- Upon delivery –
 - A staff member at the delivery location must execute and deliver a receipt to the Debtor reflecting that the vehicle was delivered.
 - The Debtor and staff member must each take their own pictures of the interior and exterior of the vehicle.
 - The pictures will be taken after delivery, but prior to the execution of the receipt.

Where to
Deliver the
Collateral?

Location
Other Than a
Public Street

What if the
Debtor Cannot
Deliver the
Vehicle?

Debtor will not be able to deliver the vehicle in the event such vehicle is not:

- insured;
- operable; or
- in the Debtor's possession or control.

If the Debtor cannot deliver the vehicle?

- The Secured Lender may repossess the vehicle in accordance with applicable non-bankruptcy law.
- The Debtor must:
 - notify the Secured Lender in writing why the Debtor cannot deliver the vehicle and provide the location of the vehicle, if known.
 - such notice to the Secured Lender must be sent within 7 days of the Secured Lender's filing of a Delivery Notice and be sent to:
 - the last known address of the Secured Lender; and
 - either (i) to the address for notices set forth on the proof of claim or (ii) to the counsel who has appeared in the case.
 - fully cooperate in permitting the Secured Lender to retrieve the vehicle.
 - meet the Secured Lender at a specific date and time to allow the retrieval of the vehicle.
 - not drive a vehicle that is uninsured.

When to Surrender Collateral?



Pre-confirmation –

7 days following entry of the order approving the plan.



Post confirmation –

no earlier than 21 days nor later than 28 days after a Surrender Notice is filed.

What about
the STAY!?!?

Under
Paragraph
7 –

Upon the confirmation of the Plan, the automatic stay under 11 U.S.C § 362(a) is terminated as to actions against the surrendered collateral.

Under
Paragraph
20 –

On the Effective Date, the automatic stay under 11 U.S.C § 362(a) and the co-debtor stay under 11 U.S.C § 1301(a) are terminated as to actions against the surrendered collateral.

Local Rule
6007-1(f)
(Houston)
What if the
Secured
Lender Does
Nothing?

Debtor may:

- Seek to compel compliance by the Secured Lender; and
- Impose a monthly storage fee, secured by a first priority lien on the Secured Lender's collateral, equal to 0.5% of the fair market value of the collateral for each day that the collateral is held by the Debtor after the expiration of 28 days following the:
 - confirmation of a plan that provides for the surrender or collateral under paragraph 7 of a confirmed plan; or
 - filing of a Surrender Notice under paragraph 20 of a confirmed plan. *If the holder retrieves the collateral after the 28 day period, the Secured Lender must pay cash to the Debtor 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.