

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

IN RE:)
)
ESTABLISHING PROVISIONS FOR)
TURNOVER MOTIONS IN CHAPTER 13)
)

GENERAL ORDER 21-2

In the case of *City of Chicago v. Fulton*, 141 S. Ct. 585 (2021), the Supreme Court of the United States held that a creditor’s continued retention of estate property that it acquired prior to bankruptcy does not violate the automatic stay under § 362(a)(3). In a concurring opinion, Justice Sotomayor noted that under current bankruptcy procedures turnover proceedings “can be quite slow” because they must be pursued by an adversary proceeding. *Id.* at 594. She also stated, however, that “[i]t is up to the Advisory Committee on Rules of Bankruptcy Procedure to consider amendments to the Rules that ensure prompt resolution of debtors’ requests for turnover under § 542(a), especially where debtors’ vehicles are concerned.” *Id.* at 595. Pending action by the Advisory Committee on Rules of Bankruptcy Practice and Procedure, the Court hereby establishes the following procedures in Chapter 13 cases for a debtor to request turnover of tangible personal property under 11 U.S.C. § 542 by motion practice.

(a) Motion for Turnover of Tangible Personal Property in Chapter 13 Cases

(1) Motion, Service.

(A) Motion. A motion for turnover shall be made in accordance with Rule 9014 and shall be accompanied by a proposed order.

(B) Contents. The motion shall consist of:

- (i) The name of each entity with an interest in the property;
- (ii) The purpose for which the Chapter 13 debtor desires to use the property;
- (iii) A statement regarding the existence of insurance on the property;
- (iv) A showing that the rights of the possessing entity are adequately protected by, for example, a feasible Chapter 13 plan.

(C) Service. The motion shall be served on any entity with an interest in the property and the Chapter 13 trustee.

(2) Notice. The moving party shall serve the notice of the motion along with the motion. The notice must provide that an objection, if any, to the motion for turnover is due within

7 days of service.

(3) Waiver. A failure to timely object to the form of the proceeding within the objection period constitutes waiver as to the form of the proceeding and consent to proceed with the turnover action by motion.

(4) Objection. An objection must state the possessing entity's efforts to reach a consensual resolution of the motion for turnover and why the adequate protection offered by the moving party is insufficient to resolve the turnover motion.

(5) Hearing. The Court may commence a final hearing on the motion for turnover as soon as practicable. At the hearing, the court may order turnover of the property, the provision of adequate protection, or order further proceedings, including discovery and an evidentiary hearing. In the absence of a timely filed written objection, the Court, in its discretion, may consider and grant the relief requested in the motion without a hearing.

(6) Stay. An order authorizing turnover is not stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.

(7) Forms. The Clerk may post form motions, notices, proposed orders and objections on the Court's website for use by the parties. Use of the Court's forms is recommended but is not mandatory.


Hon. David L. Bissett
United States Bankruptcy Court, N.D.W. Va.

11/8/2021
(Date)