

LOU JONES PROGRAM  
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DOOMSDAY ORDERS IN CHAPTER 13 CASES:  
PROCEDURES FOR THEIR ENFORCEMENT

Current State of Things:

- Orders adjudicating motions to dismiss and motions to modify the automatic stay include provisions that the moving party is entitled to relief (dismissal or stay modification) upon presentment of a sworn statement or an unsworn declaration or lawyer certification (the “affidavit”) attesting that the nonmoving party (debtor) failed to comply with a payment duty or some other duty imposed by the order—so called, “doomsday orders.”
- Most doomsday orders result from the parties’ consensual resolution of the motion. This is the typical resolution of motions to dismiss and motions for stay relief.
- If the debtor does not comply with the doomsday order, the party seeking relief under the doomsday order files a proposed order at the same time as the affidavit of default.
- The judges typically do not act on the affidavit and proposed order for seven days, though the amount of time has depended on the judge and the nature of the asserted default.
- During this seven-day period, debtors frequently file objections of the affidavit of default, sometimes contesting whether the debtor defaulted but most often describing the circumstances that led to a default and promising future compliance.

- Historically, most of the judges held hearings on the objections. Often the result was that the moving party was not afforded the full relief provided in the original order.
- Negotiated resolution of defaults seemingly did not often occur.

#### Conceptual and practical problems

- The affidavit's filing triggers the relief requested in the original motion and provided for in the doomsday order. "Objecting" to an affidavit is conceptually misplaced, especially if the objection is based on anything other than the accuracy of the affidavit's assertions. One objects to a request for relief. The objection thus conceives of the affidavit of default as a request for relief but it is not. If the affidavit accurately reports a default, there is nothing new to adjudicate and no new relief to request, as the relief has already been previously ordered.
- Because the objections are in the form of responsive documents rather than moving documents, they are not subject to "negative notice" adjudication (that is, being granted if there is no opposition to them) and parties infrequently resolve them consensually before the court holds a hearing. Perhaps in some instances this is because the parties do not believe they have the ability to resolve the matter consensually, unlike the motions that led to doomsday order, and thus do not engage in discussions about how either to resolve a likely future default or one that has occurred without litigating an objection to an affidavit of default.

## Judges' current doomsday practices

- **Chief Judge Halfenger:**

- The court will generally hold orders granting relief pursuant to an affidavit of default for seven days before acting on them to afford an opportunity for adversely affected parties either to contest the affidavit's veracity or move for expansion of the defaulted deadline. Persons considering those courses should review Federal Rules of Bankruptcy Procedure 9011 and 9006(b).
- If a debtor objects to the affidavit of default, the court will review the objection and typically take one of the following actions:
  - The court may overrule the objection without further notice or a hearing.
  - The court may enter a docket entry allowing the movant 14 days to withdraw or otherwise resolve the affidavit of default; otherwise, the court may grant the relief requested by the movant.
  - The court may enter a docket entry construing the objection as a motion to expand the time to comply and requiring the party that filed the affidavit of default to object within 14 days or the debtor's request will be granted upon submission of a proposed order.
  - The court may schedule a hearing. The court notices any hearing it chooses to convene, but hearings are rare.

- **Judge Hanan:**

- When an affidavit of default is based on a failure to make timely **plan payments** or provide **tax returns** or pay one-half of the **tax refunds** (or file a modified plan to account for the tax refunds), the court will hold the order granting relief pursuant to the affidavit of default for seven days.

- When an affidavit of default is based on a failure to file a notice of **conversion** or a **modified plan or other amendments** on the docket by a certain deadline, the court will not hold the order of dismissal.
- If a party objects to an affidavit of default, the court will consider sustaining the objection **only if the movant can prove either that (1) there was no default, or (2) excusable neglect exists warranting an extension of the defaulted deadline.**
- Proving a right to relief will typically require evidence, and the debtor’s counsel should be prepared to present such evidence at the hearing on the objection. **Objections to an affidavit of default must be supported by an affidavit from the debtor; otherwise, the debtor will be expected to appear and testify at the scheduled hearing.**
- If at all possible, seek relief from a deadline in a “doomsday order” before the affidavit of default is filed. (**Note:** Motions for relief from a deadline imposed by a “doomsday order” must be filed and noticed in accordance with Local Rule 9014(a). **The court WILL NOT grant *ex parte* motions for relief from, or extensions of time under, a prior doomsday order.**)
- **Judge Ludwig**
  - Counsel for the debtor is responsible for scheduling a hearing when filing an objection to a chapter 13 trustee’s affidavit of default. This procedure only applies to objections to the chapter 13 trustee’s affidavits of default. If a creditor files an affidavit of default, the court will set a hearing on the debtor’s objection.
  - Policies for doomsday orders in chapter 13 cases
    - Doomsday orders allow the trustee to file an affidavit of default to obtain dismissal of a case in the event the debtor defaults on a requirement specified in the order.

- Judge Ludwig may hold the order dismissing the case for a brief period for objections.
- Judge Ludwig will not sign proposed orders that state that the case will be dismissed “without further notice or hearing” on the filing of an affidavit of default.
- Objecting to an affidavit of default should be rare; a party should seek relief from a doomsday order before an affidavit of default is filed.
- The court will consider sustaining an objection to an affidavit of default only if the objecting party can prove (1) there was no default or (2) extraordinary circumstances warrant an extension of the defaulted deadline.
  - If the debtor cannot establish one of these two criteria, the debtor’s recourse is to negotiate with the party that filed the affidavit of default to obtain that party’s agreement (perhaps subject to further conditions) to excuse the non-compliance and to withdraw the affidavit of default.
- **Judge Perhach**
  - The best practice is for debtor’s counsel to file a motion for relief from a doomsday order before a default occurs. If the default has already occurred, counsel should still file a motion for relief from the order rather than waiting for an affidavit of default to be filed.
  - The court follows the following procedure when the chapter 13 trustee files an affidavit of default in support of dismissal of the case.
    - Unless the affidavit of default states that the debtor has failed to file an amended or modified plan or convert the case by a certain deadline, the court will hold the proposed order for seven days to

afford the debtor an opportunity to object that there was no default or that extraordinary circumstances warrant an extension of the deadline.

- If the affidavit of default states that the debtor has failed to file an amended or modified plan or convert the case by a certain deadline and the court confirms that the debtor did not take the required action, the court will enter the proposed order the day the affidavit of default is filed.
- Counsel for the debtor is responsible for scheduling a hearing when filing an objection to a chapter 13 trustee's affidavit of default.
- The court follows the following procedure when a creditor files an affidavit of default requesting relief from the automatic stay.
  - The court will hold the proposed order for seven days to afford the debtor an opportunity to object that there was no default or that extraordinary circumstances warrant an extension of the deadline.
  - The court will schedule a hearing if an objection is filed.
- Judge Perhach will not sign orders resolving motions to dismiss or motions for relief from the automatic stay stating that the case will be dismissed or the stay lifted "without further notice or hearing" on the filing of an affidavit of default.

Court rulings (available on court's website: <https://www.wieb.uscourts.gov/opinions/>)

- *In re Velicia Buchanan*, Case No. 16-30201-gmh, ECF No. 108 (August 2019):  
A mortgage creditor filed an affidavit of default and debtor's counsel filed an "objection" that explained that counsel had not been able to contact the debtor but that counsel believed that there may have been extenuating circumstances for the debtor's failure to make mortgage payments. The court overruled the debtor's objection as baseless and granted the mortgage creditor relief from the automatic stay. The debtor filed a letter requesting

that the court “rescind” the order granting the creditor relief from the automatic stay. The court refused to act on the debtor’s request to rescind the order, noting that the request was not properly made because it was made by letter, rather than by motion on notice as required by Federal Rules of Bankruptcy Procedure 9013 and 9014. The court also noted that the letter did not state with particularity the grounds for the relief the debtor sought, nor did it state the authority on which it was based, as required by Federal Rule of Bankruptcy Procedure 9013 and Local Rule 9013, respectively.

- *In re Valent*, Case No. 17-21634-gmh, ECF No. 80 (January 2019):

The mortgage creditor filed an affidavit of default, asserting that the debtor failed to make monthly mortgage payments as required by the court's April 13, 2018 order. The debtor filed a response and asserted that she made the required mortgage payments. The court set an evidentiary hearing to determine whether the debtor defaulted under the terms of the April 13, 2018 order. The order setting the evidentiary hearing further stated that if the court determined that the creditor's affidavit was accurate, the court would consider whether the debtor had made a false representation to the court and whether sanctions should be issued. Conversely, the order stated that if the court determined that the creditor's affidavit was not accurate, then the court would consider whether the creditor had made false representations to the court and whether sanctions should be issued against it. Several days before the evidentiary hearing the mortgage creditor and debtor filed a letter informing the court that they had reached a verbal agreement to settle the matter and asked the court to cancel the evidentiary hearing. The court denied the request because the parties could not agree to resolve the issue of whether a false representation had been made to the court by one of the parties. The court emphasized that the court's practice of resolving motions with so-called "doomsday" orders "depends mightily on parties making accurate representations about compliance" with those orders. Accordingly, the court denied the parties' request to cancel the evidentiary hearing.

- *In re Gouthro*, Case No. 12-35699, ECF No. 47 (June 2016):

The court overruled the debtors' meritless objection to the trustee's affidavit of default. The objection neither (1) disputed the veracity of the trustee's affidavit of default nor (2) argued that the debtors could establish excusable neglect to justify an expansion of the time to perform under Federal Rule of Bankruptcy Procedure 9006(b)(1). The order provides notice that similar meritless objections to affidavits of default risk sanctions under 11 U.S.C. §105(a) and Federal Rule of Bankruptcy Procedure 9011(c).

#### Proposed uniform practices

- Objections to affidavits of default abolished.
- The parties may modify the terms of a doomsday order by filing a stipulated motion to modify that order.
- Objections to affidavits of default are replaced with motions:
  - Motion to modify the doomsday order, e.g., to extend the time to comply with the doomsday order's timing requirements or to change other obligations imposed by the order.
  - Motion to strike the affidavit of default.
  - Request for extension of the holding period to allow the parties to reach an accommodation.
- Court encourages debtors to first attempt to resolve any expected or actual default and whenever possible to pursue the filing of a joint motion to modify the doomsday order, or to work with the trustee or creditor to withdraw the affidavit of default, after which the court presumptively will take no action on the matters raised.
- Notice of seven-day objection period to a motion to modify the doomsday order; court may grant relief without a hearing if no objection; party seeking relief must immediately upload an order if the objection period passes and no objection is filed.



- If a party objects to a motion, the court may schedule a hearing.