

Proposed Uniform Procedure for “Doomsday” Orders

Background

- A “Doomsday” Order is an order that entitles one party to relief upon presentation of evidence that the other party has failed to comply with conditions imposed by the order. Doomsday Orders can be imposed as a part of the court’s resolution of a pending motion or as part of a consensual resolution among the parties.
 - For example, the parties to a motion for relief from stay may agree to a Doomsday Order by which the debtor is required to make all contractually required payments to the creditor for a set period, with any default during that period entitling the creditor to file evidence of a default, informing the court of the violation, after which the court will enter an order granting relief from stay.
 - Similarly, the chapter 13 trustee may agree to resolve a motion to dismiss subject to the debtor taking certain actions (making plan payments, filing an amended plan or budget, or filing tax returns) prior to specific deadlines and subject to a “doomsday,” with any default resulting in the dismissal of the debtor’s case without the need for a further motion, notice or hearing.
- Once the Doomsday Order is entered, the party is under a court order to comply with its terms. A default on those terms entitles the other party to relief.

Modification of Doomsday Orders (Pre-Default)

- A party that cannot comply with its obligations under a Doomsday Order should seek to amend the order *before* any default occurs, either by agreement or motion.
 - The parties to a Doomsday Order may stipulate to amendments to the terms of a Doomsday Order. A party’s first recourse should be to ask other affected parties to agree to an amendment. The court will ordinarily approve entry of an amended Doomsday Order based on the parties’ stipulation.
 - If the opposing party will not agree to the amendment, a party may ask the court to amend the terms of the Doomsday Order. Under Bankruptcy Rule 9006(b), a party asking the court to extend a deadline set in a Doomsday Order need only show “cause” for the extension.

Filing and Service of Evidence of Default under Doomsday Order

- A party seeking to enforce its right to relief under a Doomsday Order must file “Evidence of Default,” often labeled as an “Affidavit of Default” or “Certificate of Non-Compliance” and a proposed order. The party must serve its Evidence of Default on all parties against whom the party seeks relief before or at the same time the evidence is filed with the court.

The court will hold orders granting relief under a Doomsday Order for a “Holding Period” of seven days to allow the opposing party the chance to show that relief should not be granted.

Avoiding Relief After the Filing of Evidence of Default

- The court will enter an order granting relief under a Doomsday Order without further notice or hearing, unless the party requesting relief withdraws that request or the party against whom relief is sought timely moves to (1) dispute the alleged default or (2) amend the terms of the Doomsday Order. The court will no longer consider “Objections” to an opposing party’s Evidence of Default and may either summarily overrule or treat them as being without effect.

Disputing a Default

- If a party believes there has been no default, the party’s first recourse should be to contact the party that filed the Evidence of Default. If the Evidence of Default is withdrawn before the expiration of the Holding Period, the court will take no further action. If the parties need more time to confirm whether a default has occurred, they may file a joint request to extend the Holding Period for a specific period of time. The court will ordinarily extend the Holding Period for a brief period if jointly requested.
- If the opposing party will not agree to withdraw its Evidence of Default, a party may file a Motion to Strike. A Motion to Strike must state specific facts establishing that the opposing party’s Evidence of Default is materially false. The motion must be served on the party that filed the Evidence of Default with notice that objections are due within 7 days and that the failure to object will grounds to grant the motion.

Curing or Excusing a Default by Consent or Motion

- If a party believes its default on the terms of Doomsday Order should not result in the granting of relief, the party’s first recourse should be to contact the opposing party to request the withdrawal of the Evidence of Default. If the Evidence of Default is withdrawn before the expiration of the Holding

Period, the court will take no further action. The parties may also stipulate to revised terms for the Doomsday Order.

- If the opposing party will not agree to withdraw its Evidence of Default, the party may file a Motion to Amend the terms of the underlying Doomsday Order. Under Bankruptcy Rule 9006(b), a party asking the court to extend a deadline set in a Doomsday Order after the deadline has passed must establish “excusable neglect.”
- A Motion to Amend the terms of a Doomsday Order must state specific facts establishing excusable neglect or otherwise justifying relief or the court may deny the motion without a hearing. The motion must be served on the party that filed the Evidence of Default with notice that objections are due within 7 days and that the failure to object will be grounds to grant the motion.

Resolution of Challenges to Doomsday Orders

- The court may hold a hearing on a Motion to Strike or a Motion to Amend, whether or not there is a timely objection. Unless otherwise directed by the court, the hearing will be conducted as an in-person evidentiary hearing.
- A party filing a Motion to Strike or Motion to Amend must promptly submit a proposed order if no objection is filed or the court resolves the motion in the movant’s favor.