

Service Pursuant to Federal Rule
of Bankruptcy Procedure 7004

What are we going to cover today?

- ❖ When is Rule 7004 Service Required?
- ❖ What do you have to do to properly serve a party under Rule 7004?
 - Debtors
 - Individuals who are not the debtor
 - Business entities that are insured depository institutions
 - Business entities that are not insured depository institutions
 - Federal agencies
 - Other governmental entities
- ❖ Proof of Service under Rule 7004

What are we going to cover today?

- ❖ Service of Objections to Claims
- ❖ Service of Chapter 13 Plans

When is Rule 7004 Service Required?

- Adversary Proceedings
 - Summons and Complaint must be served pursuant to Rule 7004
- Contested Matters
 - Rule 9014 governs contested matters. Subsection (a) states in part that "[i]n a contested matter not otherwise governed by these rules, relief shall be requested by motion..." Subsection (b) then states that "[t]he motion shall be served in the manner provided for service of a summons and complaint by Rule 7004."
 - "Contested Matter" not specifically defined in the rules and the rules don't clarify what which contested matters are "otherwise governed by these rules."
 - Advisory Committee notes to Rule 9014 state that "[w]hen there is an actual dispute, other than an adversary proceeding, before the bankruptcy court, the litigation to resolve that dispute is a contested matter."

Common Contested Matters

- Motions to Avoid Judicial Liens- Rule 7004 service required on the party whose lien the motion is trying to avoid.
- Motion to Sell Property Free and Clear of Liens- 7004 service is required on parties who have liens or other interests in the property to be sold
- Motions to Reduce Secured Claims by the Amount of Attorney's Fees Awarded to Debtor's Attorney for Filing Proof of Claim in Chapter 13 Case- Rule 7004 service required on creditor whose claim is affected

Common Contested Matters

New matters specifically requiring service under 7004 following the December 1, 2017 rules changes:

- Certain objections to claims set out in 3007(a)(2)(A):
 - Objections to claims of the United States or any of its officers or agencies
 - Objections to claims of a creditor who is an insured depository institution
- If a Chapter 13 plan includes a determination of the amount of a secured claim of a non-governmental unit secured creditor (i.e. Box 1.1 of the form plan is checked yes) –then the plan needs to be served on the secured creditor pursuant to Rule 7004.
- Motion pursuant to Rule 5009 seeking an order declaring that a secured claim has been satisfied and the lien has been released under the terms of the plan- must be served on the creditor pursuant to Rule 7004.

How do you properly serve a party pursuant to Rule 7004?

Step One: You need to identify what type of party it is because different service is required for different types of parties.

Categories of parties:

- Debtor
- Individual who is not the debtor
 1. Not an infant or incompetent
 2. Infant or incompetent
- Corporation/partnership/LLC/other unincorporated association
 1. Insured depository institution
 2. Not an insured depository institution
- United States of America
- Officer or Agency of the United States of America
- State or Municipal Corporation or other governmental organization.

Serving a Debtor under Rule 7004(b)(9) and (g)

- Must be served by first class mail to the address in the petition or other address designated by the debtor in writing.
- If the debtor is represented, both the debtor and debtor's attorney must be served.

Serving a Debtor under Rule 7004(b)(9) and (g)

Debtor's attorney must be served by methods set forth in F.R. Civ. P. 5(b)

- The email sent out from CM/ECF when the document is filed is sufficient service on any Debtor's attorney that files through CM/ECF
- Note: If you are serving a debtor in an AP, unless their attorney has appeared in the AP they will not get notice through CM/ECF even if they are receiving notices in the main case.

Serving an Individual (not the debtor) under 7004(b)(1) and (2)

- Must be served by first class mail to the individual's "dwelling house or usual place of abode" or place where individual "regularly conducts a business or profession".
- Mailing to an individual at a P.O. Box is not sufficient because it is not the debtor's home or business.
- If you have knowledge or belief that the individual you are serving is an infant or incompetent, Rule 7004(b)(2) covers how to properly serve them.

Service on a Corporation, Partnership, LLC or other Unincorporated Association

There are two classifications of business entities for service



Insured depository institution

Not insured depository institution

Service on a Corporation, Partnership, LLC or other Unincorporated Association

What is an insured depository institution for purposes of Rule 7004?

- FDIC insured banks are insured depository institutions.
- For purposes of serving Objections to Claims only- NCUA insured credit unions are also insured depository institutions.

To find out if a party is an FDIC insured bank, you can search on the FDIC's website at the following address:

<https://research.fdic.gov/bankfind/>

**Service Under 7004(b)(3) On A Corporation/Partnership/LLC/Other
Unincorporated Association
Which Is An Insured Depository Institution**

Service on Insured Depository Institutions Under Rule 7004(h)

- Must be made by certified mail.
 - Note: Although certified mail is required, it is not required to be sent return receipt requested.
- Must be sent to the attention of an officer.
 - In our district you can generically state "Attn: Officer." You do not need to determine the name of the officer.
- Must be addressed to the headquarters address shown on the FDIC website.
- If the insured depository institution has filed a proof of claim in the case, you must ALSO send them notice by first class mail sent to the notice party and notice address designated on the proof of claim if that address is different from the address used for 7004 service.

Service on Insured Depository Institutions Under Rule 7004(h)

Example:

Big National Bank is a FDIC insured bank. It has filed a proof of claim in the case. For proper notice and service the document should be sent to BOTH of the following addresses in the method specified:

HEADQUARTERS ADDRESS FROM FDIC WEBSITE:

Via Certified Mail

Big National Bank
Attn: Officer
1234 East 5th Avenue
New York, NY 10001

PROOF OF CLAIM NOTICE ADDRESS:

Via First Class Mail

Big National Bank
c/o Claims Processing Agency
4321 Main St.
Tulsa, OK 74008

Service on Insured Depository Institutions Under Rule 7004(h)

Tips from the Court:

- It is not good service under 7004 if you just serve a registered agent for an insured depository institution. It must be served on an officer of the entity.
- If you only put "Managing Agent" it will not be sufficient for good service. However, the clerk's office will not mark it deficient if it says "Attn: Officer or Managing Agent."

**Service Under 7004(b)(3) On A Corporation/Partnership/LLC/Other
Unincorporated Association
Which Is Not An Insured Depository Institution**

Service Under 7004(b)(3) On A Corporation/Partnership/LLC/Other Unincorporated Association Which Is Not An Insured Depository Institution

- Should be made by first class mail.
- Potential options for service:
 1. You can serve the entity to the attention of an officer or managing agent
 - In our district you can generically state “Attn: Officer or Managing Agent.”
 2. You can serve the entity c/o an agent authorized by law to receive service of process.
 - If the entity is an active entity registered to do business in NC you can serve the registered agent for the entity.

Finding the Correct Address for Service on an Entity Which Is Not An Insured Depository Institution

Your first step should always be to search the NC Secretary of State's website to find out if the entity is registered to do business in North Carolina:

<https://www.sosnc.gov/search/index/corp>

Finding the Correct Address for Service on an Entity Which Is Not An Insured Depository Institution

If the entity is listed on the website as an “Active” entity registered to do business in NC you can **EITHER**:
Send it to the “Mailing” address listed on the NCSOS website to “Attn: Officer or Managing Agent” .

Example: Via First Class Mail
Big Finance Company, LLC
Attn: Officer or Managing Agent
1234 East 5th Avenue
New York, NY 10001

OR

Send it care of the Registered Agent to the “Reg Mailing” address on the NC SOS website.

Example: Via First Class Mail
Big Finance Company, LLC
c/o Corporation Service Company, Registered Agent
2626 Glenwood Avenue, Suite 550
Raleigh, NC 27608

Finding the Correct Address for Service on an Entity Which Is Not An Insured Depository Institution

If the entity is listed on the website as “Administratively Dissolved” you can:

Send it care of the Registered Agent to the “Reg Mailing” address on the NC SOS website.

Example:

Via First Class Mail

Big Finance Company, LLC

c/o Corporation Service Company, Registered Agent

2626 Glenwood Avenue, Suite 550

Raleigh, NC 27608

Finding the Correct Address for Service on an Entity Which Is Not An Insured Depository Institution

If the entity is listed on the NC SOS website as “Withdrawn”:

DO NOT:

- Use the mailing address or registered agent address on the NC SOS website. They may no longer be good addresses.

DO:

- look on the entity’s page on the NCSOS to see which state they were formed in.
- Go to the website for the Secretary of State (or the equivalent office) for that state and search for that business entity.
- If the entity is active in that state- Send it to “Attn: Officer or Managing Agent” and use the mailing or service address listed for the entity.

Finding the Correct Address for Service on an Entity Which Is Not An Insured Depository Institution

If the entity is listed on the NC SOS website as “Merged” or “Withdrawn by Merger”:

DO NOT:

- Use the mailing address or registered agent address on the NC SOS website. They may no longer be good addresses.

DO:

- Look in the filings on the NCSOS website to determine the name of the entity that survived the merger.
- Serve the entity that survived the merger.
- Check to see if the surviving entity is FDIC insured on the FDIC Bankfind website.
 - If it is, you need to serve the surviving entity by certified mail to “Attn: Officer” at the headquarters address listed on the FDIC website.
 - Example: Wells Fargo Dealer Finance, LLC is “Withdrawn by Merger”

Finding the Correct Address for Service on an Entity Which Is Not An Insured Depository Institution

Example: Wells Fargo Dealer Finance, LLC is “Withdrawn by Merger”

Serve surviving entity at the headquarters address on the FDIC website as follows:

Via Certified Mail

Wells Fargo Bank, National Association

Attn: Officer

101 N. Phillips Avenue

Sioux Falls, SD 57104

Finding the Correct Address for Service on an Entity Which Is Not An Insured Depository Institution

If the entity is listed on the NC SOS website as “Merged” or “Withdrawn by Merger” and the surviving entity is not FDIC insured:

Check the NC SOS website to see if the surviving entity is registered to do business in NC:

- If “Active” on NCSOS website: Address to “Attn: Officer or Managing Agent” to the “Mailing” address for surviving entity on the NCSOS website OR send to the surviving entity c/o its Registered Agent at the “Reg Mailing” address for the surviving entity on the NCSOS website
- If “Administratively Dissolved”: send to the surviving entity c/o its Registered Agent at the “Reg Mailing” address for the surviving entity on the NCSOS website
- If “Withdrawn”, or not listed: Send via first class mail addressed to “Attn: Officer or Managing Agent” to the proper address for service of process to the surviving entity in the state of its principal place of business or state of corporate registration.

Finding the Correct Address for Service on an Entity Which Is Not An Insured Depository Institution

What if it is not listed on the NCSOS website:

You are going to need to do some research.

Tips:

- Check the creditor's website- they often mention the states where it is registered to do business or states where they have physical locations. Check the secretary of state websites for those states,
- Search for a press release which mentions the state where the headquarters is located. It will usually registered to do business in that state. Check the secretary of state websites for those states.
- **SAVE YOUR RESEARCH**

Finding the Correct Address for Service on an Entity Which Is Not An Insured Depository Institution

DON'T FORGET:

Even though you are serving the entity pursuant to 7004, if the creditor has filed a proof of claim in the case and the notice address listed is different from the address you used, you must ALSO send them notice by first class mail to the notice party and notice address designated on the proof of claim.

Service Under 7004(b)(3) On A Corporation/Partnership/LLC/Other Unincorporated Association Which Is Not An Insured Depository Institution

Tips from the Court:

- Make sure you are serving the correct entity.
- Not everyone needs to be served via certified mail. Save time and money by only sending certified when required.

Service on the United States of America
pursuant to Rule 7004(b)(4)

Service on the United States of America pursuant to Rule
7004(b)(4)

Serve by First Class Mail to BOTH of the Following Addresses:

Via First Class Mail

The U.S. Attorney's Office-MDNC
Attn: Civil Process Clerk
101 S. Edgeworth St., 4th Floor
Greensboro, NC 27401

Via First Class Mail

Jeff Sessions- U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Ave, NW
Washington D.C. 20530-0001

Service on the United States of America pursuant to Rule 7004(b)(4)

- If the contested matter or AP involves attacking the validity of an order of an officer or agency of the United States not made a party to the matter/AP, that officer or agency should also be mailed a copy by first class mail.
- If the United States has filed a proof of claim in the case and the notice address in the proof of claim is different from the addresses on the previous slide, you must ALSO serve them by first class mail sent to the notice party and notice address designated on the proof of claim.

Service on an Officer or Agency of the United
States Pursuant to Rule 7004(b)(5)

Service on an Officer or Agency of the United States of America pursuant to Rule 7004(b)(5)

Serve by First Class Mail to ALL of the Following Addresses:

- Via First Class Mail to the address of the officer or the agency.
- Via First Class Mail
The U.S. Attorney's Office-MDNC
Attn: Civil Process Clerk
101 S. Edgeworth St., 4th Floor
Greensboro, NC 27401
- Via First Class Mail
Jeff Sessions- U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Ave, NW
Washington D.C. 20530-0001
- If the officer or agency of the United States has filed a proof of claim in the case and the notice address in the proof of claim is different from the addresses above, you must ALSO serve them by first class mail sent to the notice party and notice address designated on the proof of claim.

Service on a State or Municipal Corporation
or other Governmental Unit
Pursuant to Rule 7004(b)(6)

Service on a State or Municipal Corporation or other Governmental Unit Pursuant to Rule 7004(b)(6)

- Serve a copy by first class mail to the “person or office upon whom process is prescribed to be served by the law of the state in which service is made” if this was a proceeding in that state’s courts.
 - If there is no state law indicating the person or office who should receive service, service should be made on the chief executive officer.
- If the state or municipal corporation or other governmental unit has filed a proof of claim in the case and the notice address in the proof of claim is different from the address above, you must ALSO serve them by first class mail sent to the notice party and notice address designated on the proof of claim.

Service on a State or Municipal Corporation or other Governmental Unit Pursuant to Rule 7004(b)(6)

If you are trying to serve a North Carolina state department, agency, board or commission, the NC Attorney General's website has a directory of process agents:

<https://www.ncdoj.gov/About-DOJ/Legal-Services/Legal-Resources/Process-Agent-Directory.aspx>

Proof of Service

Must be made to the Court by affidavit as required by Rule 4(l) of the Rules of Civil Procedure, made applicable by Bankruptcy Rule 7004(a)(1).

Proof of Service Under Rule 7004

- Must be either notarized or include a statement regarding service “under penalty of perjury”
- Must indicate specifically how each party was served. If you are listing multiple parties on the same affidavit stating that “the below parties were served via first-class or certified mail” you need to indicate the method of service for each one.
- If the affidavit is being filed separately from the document being served, you should use the CM/ECF event code: Bankruptcy>Other>Affidavit and link it back to the document which was served.
- If your affidavit indicates that a party was served by certified mail, you must file proof of delivery with the court.

Proof of Service Under Rule 7004

Proof of delivery of certified mail service:

- If the document has been delivered at the time you file your affidavit you can attach proof of delivery (printout from U.S.P.S. website or green card) as an exhibit to your affidavit.
- If the document has not yet been delivered at the time you are filing the affidavit, once it has been delivered you will need to file a supplemental affidavit which includes proof of delivery of the certified mail.
- The CM/ECF event code which you should use when filing these in the main case is: Bankruptcy>Other> Supplement to Affidavit of Service

Proof of Service Under Rule 7004

DON'T:

- Just file a one page printout from the USPS website or a photocopy of a green card to prove delivery with nothing else. You need to file an actual supplemental affidavit along with the proof of service and it should refer to the document being served and the original affidavit of service.
- Serve something certified unless you are required to. If you serve by certified mail, you **MUST** file proof of delivery.

Objections to Claims

Objections to Claims

- Always send the objection by first class mail to the notice party and notice address designated on the proof of claim; AND
- If you are objecting to the claim of one of the following types of creditors set out in Rule 3007(a)(2)(A) you ALSO need to serve the creditor under Rule 7004.

Objections to Claims

Which types of creditors set out in Rule 3007(a)(2)(A) need heightened service under Rule 7004?

- United States- must be sent via first class mail to the addresses we discussed earlier if they are different from the notice address in the proof of claim.
- Officer or Agency of the United States- must be sent via first class mail to the addresses we discussed earlier if they are different from the notice address in the proof of claim
- Insured depository Institutions- must be served by certified mail sent to “Attn: Officer” at their headquarters address.
 - Includes both FDIC insured banks AND NCUA insured credit unions.

Objections to Claims

- In order to determine if a credit union is insured by the NCUA- you can search their website at:

<https://mapping.ncua.gov/ResearchCreditUnion.aspx>

- NCUA insured credit unions should be served via certified mail to “Attn: Officer” at the address listed on the NCUA website.

Service of Chapter 13 Plans

Service of Chapter 13 Plans

- What changed?
 - Separate APs are no longer required to determine the amount of a secured claim of a creditor following the new form plan and December rule changes. You can now incorporate these determinations into the plan confirmation process.
 - However, you still need to serve affected secured creditors as if it were an AP.

Service of Chapter 13 Plans

- All creditors need to receive a copy of the plan, but not every creditor needs to be served under 7004.
 - Make sure that if the creditor has filed a proof of claim that you are mailing a copy to the notice address on the proof of claim.
- Only needs to be served under Rule 7004 if box 1.1 is checked in the affirmative and only those affected secured creditors listed in Section 4.1(d), 4.2(d) and 4.3(d) actually need to be served under Rule 7004.
- Governmental creditors do not need to be served pursuant to Rule 7004 even if they are listed in Section 4.1(d), 4.2(d) or 4.3(d) because Rule 3012 specifically excludes the ability to determine the value of a secured claim of a governmental unit creditor in the proposed plan. You still need to file a motion or claim objection after the governmental unit files a proof of claim or after the governmental proof of claim deadline.

Service of Chapter 13 Plans

If a creditor needs to be served a copy of the plan pursuant to Rule 7004 you must do **ALL** of the following:

- Serve the affected secured creditor under Rule 7004 using the guidelines we have gone through today; AND
- Mail notice of the plan via first class mail to the notice party/address listed on the proof of claim for the affected creditor if the affected creditor has filed a proof of claim and the address for service of process is different from the address used for 7004 service; AND
- File an affidavit stating under penalty of perjury that the affected secured creditor was served by the correct method to the correct address(es); AND
- If the affected secured creditor was served via certified mail and proof of delivery was not included in the original affidavit you must file a supplemental affidavit with proof that the plan was delivered.

Service of Chapter 13 Plans

What about Amended Plans?

- If you properly noticed/served the original plan on a creditor, you only need to re-notice/re-serve them if their treatment changes (good or bad) in the amended plan.
- If you add a creditor to section 4.1(d), 4.2(d) or 4.3(d) in the amended plan, you **MUST** serve the amended plan on that creditor pursuant to Rule 7004.
- If you have to serve the amended plan on a creditor pursuant to Rule 7004, you need to file a new affidavit of service (and supplemental affidavit if required).

Request from the Clerk's Office:

When filing a plan in CM/ECF there will be a screen which says the following:

Select any of the following requests that are included with the Chapter 13 Plan (Click Next if none of these requests are included.):

- ☐ A limit on the amount of a secured claim, set out in Section 4, which may result in a partial payment or no payment at all to the secured creditor. [Box is checked in Part 1.1]
- ☐ Request to surrender collateral [Section 5(b) is checked]
- ☐ Request for assumption of executory contracts and/or unexpired leases [Section 7(c) is checked]
- ☐ None of the Above

Questions?