

TITLE III
CHAPTER IX RULES

Rule 9-1. Scope of Chapter IX rules and forms; short title.

The rules and forms in this Title III govern the procedure in courts of bankruptcy in cases under Chapter IX of the Bankruptcy Act. These rules may be known and cited as the Chapter IX Rules. These forms may be known and cited as the Official Chapter IX Forms.

Rule 9-2. Commencement of Chapter IX case.

A Chapter IX case is commenced by the filing with the court of a petition seeking relief under Chapter IX of the Act.

Rule 9-3. Petition.

A petition under Chapter IX of the Act shall conform substantially to Official Form No. 9-F1. An original and 4 copies of the petition shall be filed, unless additional copies are required by local rule. The clerk of the district court shall transmit one copy to the Securities and Exchange Commission and one copy to the Secretary of State of the state in which the petitioner is located.

Rule 9-4. Stay of actions against petitioner and lien enforcement.

(a) *Automatic stay of actions and lien enforcement.*—A petition filed under Rule 9-3 shall operate as a stay of the commencement or the continuation of any court or other proceeding against the petitioner or any officer or inhabitant thereof, which seeks to enforce any claim against the petitioner, or of any act or the commencement or continuation of any court or other proceeding to enforce a lien on the property of the petitioner or a lien on or arising out of taxes or assessments due the

petitioner, and shall operate as a stay of the enforcement of any setoff or counterclaim relating to a contract, debt, or obligation of the petitioner.

(b) *Duration of automatic stay.*—Except as it may be terminated, annulled, modified, or conditioned by the court under subdivision (c) of this rule, the stay provided by subdivision (a) of this rule shall continue until the case is closed or dismissed or the property subject to the lien is, with the approval of the court, abandoned or transferred.

(c) *Relief from automatic stay.*—On the filing of a complaint seeking relief from a stay provided by subdivision (a) of this rule, the court shall set the trial for the earliest possible date. The court may, for cause shown, terminate, annul, modify or condition such stay. A party seeking continuation of the stay shall show that he is entitled thereto.

(d) *Other stays.*—The commencement or continuation of any other act or proceeding may be stayed, restrained, or enjoined pursuant to Rule 65 of the Federal Rules of Civil Procedure, except that a temporary restraining order or preliminary injunction may be issued without compliance with subdivision (c) of that rule.

Rule 9-5. Caption of petition.

The caption of every petition shall comply with Bankruptcy Rule 904 (b). In addition the title of the case as set forth in the caption shall include the name of the petitioner and such other names used by it as are necessary to assure adequate identification.

Rule 9-6. Filing fees.

Every petition shall be accompanied by the prescribed filing fees.

Rule 9-7. Lists of creditors and owners of real property.

(a) *List of creditors.*—The petitioner shall file with the court, within such time as the court may fix, a list of the petitioner's creditors of each class, showing the

amounts and character of their claims, whether secured or unsecured, the nature of any security, and, so far as known, the name and address or place of business of each creditor and whether the claim is disputed, contingent, or unliquidated as to amount. The petitioner shall supplement the list as creditors who were unknown or unidentified at the time the list was filed become known or identified to the petitioner.

(b) *List of owners of real property.*—If a plan proposed pursuant to Rule 9-24 (a) requires a revision of assessments so that the proportion of special assessments or special taxes to be assessed against some real property will be different from the proportion in effect at the date the petition pursuant to Rule 9-3 is filed, the petitioner shall also file with the court a list showing the names and addresses, so far as known, of the holders of record of title, legal or equitable, to such real property adversely affected.

(c) *Modification of requirements.*—The court, on application, may for cause shown modify the requirements of subdivisions (a) and (b) of this rule.

Rule 9-8. Verification of petitions and lists.

All petitions, lists, and amendments thereto shall be verified.

Rule 9-9. Amendments of petitions and lists.

(a) *Petitions.*—A petition may be amended as a matter of course at any time before a responsive pleading is served or the petition is approved pursuant to Rule 9-11. An amendment at any other time may be made only by leave of court. Subdivisions (b), (c), and (d) of Rule 15 of the Federal Rules of Civil Procedure apply to amendments of petitions.

(b) *Lists.*—A list of creditors or holders of record of title to real property filed pursuant to Rule 9-7 may be amended as a matter of course at any time before expiration of the time fixed for filing claims pursuant to

Rule 9-22. Thereafter such a list may be amended only with leave of court on such notice as the court may direct. The court may, on application of any party in interest, or on its own initiative, order any list to be amended.

(c) *Number of copies; notice.*—Every amendment under this rule shall be filed in the same number as required of the original paper, and the court shall give notice of the amendment to such persons as it may designate.

Rule 9-10. Responsive pleading.

(a) *Time for filing answer.*—Any party in interest may serve and file an answer to a petition not later than 15 days after the publication of notice required by Rule 9-14 (h)(1) is completed. A timely answer filed under this subdivision shall be deemed also to constitute a motion to vacate any prior order of approval of a petition.

(b) *Contents of answer.*—The answer to a petition shall contain all defenses and objections, including those which may be raised by separate motion under Rule 12 (b), (e), or (f) of the Federal Rules of Civil Procedure.

(c) *Other responsive pleading.*—No other responsive pleading shall be allowed, except that the court may order a reply to an answer and prescribe the time for it to be served and filed.

Rule 9-11. Preliminary approval; hearing; disposition of petition.

(a) *Preliminary approval or other disposition of petition.*—On the filing of a petition, the court, with or without a hearing, shall enter an order approving the petition if satisfied that it complies with the requirements of Chapter IX of the Act and has been filed in good faith. If not so satisfied, the court shall enter an order permitting the petition to be amended or dismissing the case.

(b) *Hearing and disposition of petition after answer.*—

If a timely answer is filed, the court shall hold a hearing at the meeting of creditors provided for in Rule 9-17 or at such earlier time as the court may fix on such notice as it may direct, and shall determine the issues and approve the petition, dismiss the case, or enter such other order as may be appropriate.

Rule 9-12. Venue and transfer.

(a) *Proper venue.*—A petition filed pursuant to Rule 9-3 may be filed in the district in which the petitioner is located.

(b) *Transfer or retention when venue improper.*—If a petition is filed in a wrong district, the court may, after hearing on notice to the petitioner and such other persons as it may direct, transfer the case to the proper district or in the interest of justice retain the case.

Rule 9-13. Reference to a referee.

The court may refer any special issue of fact to a referee in bankruptcy for consideration, the taking of testimony, and a report on such special issue of fact, if the court finds that the condition of its docket is such that it cannot take such testimony without unduly delaying the dispatch of other business pending in the court, and if it appears that such special issue is necessary to the determination of the case. A reference to a referee in bankruptcy shall be the exception and not the rule. The court shall not make a general reference of the case, but may only request findings of specific facts.

Rule 9-14. Notices.

(a) *Notice of meeting of creditors.*—The petitioner shall give all creditors included on the list of creditors and any supplemental list filed pursuant to Rule 9-7 (a) and such other persons as the court may designate at least 30 days' notice by mail of the meeting held

pursuant to Rule 9-17. Such notice shall be published as provided in subdivision (h) of this rule and shall conform substantially to Official Form No. 9-F2.

(b) *Twenty-day notice.*—Except as provided hereinafter, the petitioner shall give all creditors included on the list of creditors and any supplemental list filed pursuant to Rule 9-7 (a) and such other persons as the court may designate at least 20 days' notice by mail of (1) the hearing on the dismissal of a case when notice is required by Rule 9-28; and (2) the time fixed for filing objections to confirmation of a plan.

(c) *Other notices.*—Except as provided hereinafter, the petitioner shall give notice by mail to all creditors included on the list of creditors and any supplemental list filed pursuant to Rule 9-7 (a) and such other persons as the court may designate of (1) dismissal of the case pursuant to Rule 9-28; (2) the time fixed for filing proofs of claim pursuant to Rule 9-22 (b)(1); (3) the time fixed for accepting or rejecting a plan pursuant to Rule 9-25; (4) the time fixed to reject a modification of a plan pursuant to Rule 9-26; (5) the hearing on confirmation of a plan pursuant to Rule 9-27; (6) confirmation of a plan pursuant to Rule 9-27; and (7) the order approving the deposit pursuant to Rule 9-31.

(d) *Notice to record owners of real property.*—Except as provided hereinafter, when a list of record owners of title to real property has been filed pursuant to Rule 9-7 (b) all notices required by this rule shall be mailed to such owners.

(e) *Limitation on notices to creditors.*—The court may direct that all notices required by subdivisions (b) and (c) of this rule other than clause (2) of subdivision (c) be mailed only to creditors and listed record owners of real property who file with the court a request that all notices under this rule be mailed to them, or who may be otherwise designated by the court. The notice of the

meeting mailed and published pursuant to subdivisions (a) and (h) of this rule shall state that creditors and listed record owners of real property who do not file such a request may not receive subsequent notices of proceedings in the case.

(f) *Addresses of notices.*—All notices to which a creditor or owner of real property is entitled under these rules shall be addressed to such person as he or his authorized agent may direct in a request filed with the court; otherwise, to his address shown in the lists or, if a different address is stated in a proof of claim duly filed, then to the address so stated.

(g) *Notices to the United States and state.*—Notwithstanding subdivision (e) of this rule, copies of all notices required to be mailed to creditors under these rules shall be mailed to the Secretary of the Treasury of the United States, to the Securities and Exchange Commission and to the Secretary of State of the state in which the petitioner is located.

(h) *Notice by publication.*

(1) *Notice of meeting of creditors or dismissal of the case.*—The notice of the meeting required by subdivision (a) of this rule, or the notice of the dismissal of the case pursuant to Rule 9-28, shall also be published at least once a week for 3 successive weeks in at least one newspaper of general circulation published within the district in which the case is pending, and in such other paper or papers having a general circulation among bond dealers and bondholders as may be designated by the court, and in such other publication as the court may direct. The notice of the meeting shall be first published as soon as practicable after the filing of the petition and shall be completed at least 30 days before the date fixed for the meeting.

(2) *Other notices.*—The court may order publication of any notice, other than notice of the meeting of cred-

itors or dismissal of the case, in such form and manner as it may direct.

(i) *Caption.*—The caption of every notice given under this rule shall comply with Rule 9-5.

(j) *Cost of notice.*—The expense of giving a notice required by this rule shall be paid by the petitioner, unless the court, for cause shown, finds that such expense should be borne by another party.

Rule 9-15. Standing to be heard; intervention.

(a) *Standing to be heard.*

(1) The petitioner, any creditor, and any record owner of title to real property who is included on the lists filed pursuant to Rule 9-7 (b) shall have the right to be heard on all matters arising in a Chapter IX case.

(2) The court may permit, for cause shown, a labor union or employees' association, representative of employees of the petitioner, to be heard on the economic soundness of a plan affecting the interests of the employees.

(b) *Right of governmental bodies to intervene.*—The Secretary of the Treasury and the Securities and Exchange Commission may or, if requested by the court, shall intervene in a Chapter IX case. Representatives of the state in which the petitioner is located may intervene in a Chapter IX case. Any person intervening under this subdivision shall be deemed a party in interest with the right to be heard on all matters in the case except that the Securities and Exchange Commission may not appeal from any order of the court.

Rule 9-16. Representation of creditors.

(a) *Data required.*—Every person, organization, group, or committee representing more than one party in interest shall file a signed statement with the court setting forth (1) the names and addresses of such parties in interest; (2) the amount, class and character of their

securities, if any; and (3) a recital of the pertinent facts and circumstances in connection with the employment of such person or organization, and, in the case of a group or committee, the name or names of the person or persons at whose instance, directly or indirectly, such employment was arranged or the group or the committee was organized or agreed to act. The statement shall include a copy of the instrument or instruments signed by the holders of the securities showing the authority of such holders to enter into the agreement between such person, organization, group, committee, and creditors represented by it or them and a copy of such agreement. The agreement shall disclose all compensation to be received, directly or indirectly, by such person, organization, group, or committee, and such compensation shall be subject to modification and approval by the court. A supplemental statement shall be filed promptly, setting forth any material changes in the facts contained in the statement filed pursuant to this subdivision.

(b) *Failure to comply; effect.*—The court on its own initiative or on application or motion of any party in interest (1) may determine whether there has been a failure to comply with the provisions of this rule or with any other applicable law regulating the activities and personnel of any person, group, organization, or committee or any other impropriety in connection with any solicitation and, if it so determines, the court may refuse to permit any such person, group, organization, or committee to be heard further or to intervene in the case or make such other orders as may be appropriate; (2) may examine any representation provisions of a deposit agreement, proxy, committee, or other authorization, and any claim acquired by such person, group, organization, or committee in contemplation or in the course of a case under the Act and make such other orders as may be appropriate; and (3) may hold invalid any authority or acceptance given, procured, or received by a person,

group, organization, or committee who has not complied with subdivision (a) of this rule.

Rule 9-17. Meeting of creditors.

(a) *Date and place.*—A meeting of creditors shall be held not less than 30 nor more than 90 days after the approval of a petition commencing a Chapter IX case. The meeting may be held at a regular place for holding court or at any other place within the district more convenient for the parties in interest.

(b) *Agenda.*—At the meeting of creditors, (1) the petitioner shall report on the status of the case, and (2) the judge may classify claims, may determine which claims are entitled to vote and which have voted for acceptance of a plan and shall preside over the transaction of such other business as is proper under Chapter IX of the Act.

Rule 9-18. Qualification by disbursing agent; bonds.

(a) *Qualifying bond or security.*—Every person specially appointed as disbursing agent shall, before entering on the performance of his official duties, qualify by filing a bond in favor of the United States conditioned on the faithful performance of his official duties or by giving such other security as may be approved by the court.

(b) *Amount of bond and sufficiency of surety.*—The court shall determine the amount of the bond and the sufficiency of the surety for each bond filed under this rule.

(c) *Filing of bond; proceeding on bond.*—Unless otherwise provided by local rule, a bond given under this rule shall be filed with the court. A proceeding on the bond may be brought by any party in interest in the name of the United States for the use of the person injured by the breach of the condition. No proceeding shall be brought on a bond of a disbursing agent more than 2 years after his discharge.

Rule 9-19. Compensation for services and reimbursement of expenses.

(a) *Application for compensation and reimbursement.*—A person seeking compensation for services or reimbursement of necessary expenses shall file with the court an application setting forth a detailed statement of (1) the services rendered and expenses incurred; (2) the amounts requested; and (3) the claims against the petitioner, if any, in which a beneficial interest, direct or indirect, has been acquired or transferred by him or for his account, after the filing of a petition commencing a case under Chapter IX of the Act. The application shall include a statement by the applicant as to what payments have theretofore been made or promised to him for services rendered or to be rendered in any capacity whatsoever in connection with the case, the source of the compensation so paid or promised, whether any compensation he has previously received has been shared and whether an agreement or understanding exists between the applicant and any other person for the sharing of compensation received or to be received for services rendered or in connection with the case, and the particulars of any such sharing of compensation or agreement or understanding therefor, except that the details of any agreement by the applicant for the sharing of his compensation as a member or regular associate of a firm of lawyers or accountants shall not be required. The requirements of this subdivision shall apply to an application for compensation for services rendered by an attorney or accountant even though the application is filed by a creditor or other person.

(b) *Disclosure of compensation paid or promised to attorney for petitioner.*—Every attorney retained by the petitioner in connection with the Chapter IX case, whether or not he applies for compensation, shall file with the court on or before the first date set for the meeting held pursuant to Rule 9-17, or at such other

time as the court may direct, a statement setting forth the compensation paid or promised him for the services rendered or to be rendered in connection with the case, the source of the compensation so paid or promised, and whether the attorney has shared or agreed to share such compensation with any other person. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of his compensation with a member or regular associate of his law firm shall not be required.

(c) *Factors in allowing compensation and reimbursement of expenses.*

(1) *General.*—Reasonable compensation and reimbursement of expenses may be allowed by the court to committees or other representatives of creditors, the attorneys or agents for any of them, and to the attorney for the petitioner, for services rendered and expenses incurred in connection with the case, including services and expenses in obtaining the deposit of securities or preparation of the plan. No compensation for services or reimbursement of expenses shall be assessed against the petitioner or its revenues, property, or funds except as provided in the plan.

(2) *Denial of allowances.*—No compensation or reimbursement shall be allowed to any committee or attorney, or other person acting in the case in a representative or fiduciary capacity, who at any time after assuming to act in such capacity has, without the approval of the court, purchased or sold claims against the petitioner, or beneficial interests direct or indirect in such claims, or by whom or for whose account such claims or beneficial interests therein have been otherwise acquired or transferred.

(d) *Restriction on sharing of compensation.*—Except as herein provided, a person rendering services in a Chapter IX case or in connection with such a case shall

not in any form or guise share or agree to share the compensation paid or to be paid for such services with any other person, nor shall he share or agree to share in the compensation of any other person rendering services in connection with such a case. This rule does not prohibit an attorney or accountant from sharing his compensation with a member or regular associate of his firm, or from sharing in the compensation received by his firm or by any other member or regular associate thereof, and does not prohibit an attorney from sharing his compensation for services rendered with any other attorney contributing thereto. If a person violates this subdivision, the court may deny him compensation, may hold invalid any transaction subject to examination under Rule 9-21 to which he is a party, or may enter such other order as may be appropriate.

Rule 9-20. Hearing on applications for compensation and reimbursement.

The court shall fix a time of hearing applications for allowances for services rendered or reimbursement of expenses. Notice of such hearing shall be given to the applicants, the petitioner and such other persons and in such manner as the court may direct.

Rule 9-21. Examination of petitioner's transactions with its attorney.

(a) *Payment to attorney in contemplation of Chapter IX case.*—On motion by any party in interest or on the court's own initiative, the court may examine any payment by the petitioner, made directly or indirectly and in contemplation of the filing of a petition under Chapter IX of the Act, to an attorney for services rendered or to be rendered.

(b) *Invalidation of unreasonable payment.*—Any payment examined under this rule shall be valid only to the extent of a reasonable amount as determined by the court. The court may enter an order in favor of the pe-

titioner in the amount of any excess found to have been paid.

Rule 9-22. Proof of claim.

(a) *List of claims.*—The list of claims prepared and filed with the court pursuant to Rule 9-7 shall constitute prima facie evidence of the validity and amount of claims which are not listed as disputed, contingent, or unliquidated as to amount and, except as provided in subdivision (b)(3) of this rule, it shall not be necessary to file a proof of such claim.

(b) *Filing proof of claim.*

(1) *Time for filing.*—A proof of claim may be filed at any time prior to the confirmation of a plan except that the court may fix a different bar date for the filing of claims on notice as provided in Rule 9-14.

(2) *Who may file.*—Any creditor or indenture trustee may file a proof of claim within the time prescribed by subdivision (b)(1) of this rule.

(3) *Who must file.*

(A) Any creditor, including the United States, a state, or any subdivision thereof, whose claim is listed as disputed, contingent, or unliquidated as to amount, shall file a proof of claim within the time prescribed by subdivision (b)(1) of this rule; any such creditor who fails to do so shall not, with respect to such claim, be treated as a creditor for the purposes of voting and distribution. Within 30 days after the filing of the list pursuant to Rule 9-7, the court shall give notice by mail to all creditors required under this paragraph to file a proof of claim. The notice shall conform substantially to Official Form No. 9-F2A.

(B) Notwithstanding the foregoing, the court may, at any time, require the filing of a proof of claim within such time as it may fix. Any person required under this paragraph to file a proof of claim who fails to do so shall not, with respect to such claim, be treated as a creditor for the purposes of voting and distribution.

(4) *Evidentiary effect.*—A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of such claim. Such a proof of claim shall supersede any listing of that claim made pursuant to Rule 9-7.

(5) *Form and place of filing.*—A proof of claim shall consist of a statement in writing setting forth a creditor's claim and shall be executed by the creditor or by his authorized agent. Unless otherwise directed, a proof of claim shall be filed with the court.

(6) *Filing by indenture trustee.*—An indenture trustee may file claims of all holders, known or unknown, of securities issued pursuant to the instrument under which he is trustee.

(c) *Transfer of claim.*—If a claim other than one founded on a bond or debenture has been assigned, a statement setting forth the terms of the assignment shall be filed with the court and a copy thereof delivered to the petitioner.

(d) *Duty to examine and object to claims.*—The petitioner shall examine listed claims and proofs of claims and, unless no purpose would be served thereby, object to the allowance of improper claims.

(e) *Allowance when no objection made.*—Subject to the provisions of subdivision (b)(3) of this rule, a claim filed or listed in accordance with this rule or Rule 9-7, shall be deemed allowed unless objection is made by a party in interest.

(f) *Objection to allowance.*—An objection to the allowance of a claim shall be in writing. A copy of the objection and at least 10 days' notice of a hearing thereon shall be mailed or delivered to the claimant and the petitioner.

(g) *Classification of claims.*—For the purposes of the plan and its acceptance, the court, after hearing on such notice as it may direct, may designate classes of creditors whose claims are of substantially similar character and

the members of which enjoy substantially similar rights, except that, for reasons of administrative convenience, the court may create a separate class of creditors having unsecured claims of less than \$250.

(h) *Reconsideration of claims.*—A party in interest may move for reconsideration of an order allowing or disallowing a claim. If the motion is granted, the court, after hearing on notice, may make such further order as may be appropriate.

(i) *Proof of right to record status.*—For the purposes of Rules 9-25 and 9-29 and for the purpose of receiving notices, a person who is not the record holder of a security may show that he is nevertheless entitled to be treated as such holder of record by filing with the court proof thereof. An objection to such proof may be filed by any party in interest.

Rule 9-23. Withdrawal of claim.

A creditor may withdraw a claim as of right by filing a notice of withdrawal, except as provided in this rule. If, after a creditor has filed a proof of claim, an objection is filed thereto, or the creditor has accepted the plan or otherwise has participated significantly in the case, he may not withdraw the claim save on application or motion with notice to the petitioner, and on order of the court containing such terms and conditions as the court deems proper.

Rule 9-24. Filing of plan; transmission to creditors.

(a) *Filing of plan.*—The petitioner shall file a plan with its petition or thereafter, but not later than a time fixed by the court.

(b) *Transmittal of plan to creditors; adjourned meetings.*—If a plan is filed prior to mailing notice of the meeting of creditors, a copy of the plan or a summary thereof approved by the court and any analysis of such plan shall accompany the notice mailed to each creditor whose claim is affected by the plan, to each of the special

taxpayers affected by the plan, and to such other parties in interest as the court may designate. If the petitioner has not filed a plan prior to the first date set for the meeting of creditors, the court, at the meeting or thereafter, shall fix a time for filing a plan. If a plan is not filed prior to the mailing of notice of the meeting of creditors, the court, at the meeting, shall adjourn the meeting to a date certain. When a plan is filed, a copy or summary thereof approved by the court and any analysis of such plan and notice of a subsequent adjourned meeting date shall be mailed to the persons specified in this subdivision at least 10 days prior to such date. The court may adjourn a meeting of creditors from time to time to dates certain. In the event only a summary of the plan is transmitted, notice of the right to receive a copy of the plan on request without charge shall also be transmitted. For the purposes of this subdivision, creditors shall include holders of bonds, debentures, notes, and other securities of record as of the date of the transmittal of information pursuant to this subdivision.

Rule 9-25. Acceptance or rejection of plans.

(a) *Persons entitled to accept or reject plan; time for acceptance or rejection.*—At any time prior to the conclusion of the meeting of creditors, any creditor whose claim is deemed allowed pursuant to Rule 9-22 (e) or has been allowed by the court, and any creditor who is a security holder of record as of the date of the transmittal of information under Rule 9-24 (b) whose claim has not been disallowed, may accept or reject a plan. Acceptances may be obtained before or after the filing of the petition and may be filed with the court on behalf of the accepting or rejecting creditor. For cause shown and within the time fixed by this subdivision, the court may permit a creditor to change or withdraw his acceptance or rejection. Notwithstanding objection to a claim, the court may temporarily allow it to such extent

as to the court seems proper for the purpose of accepting or rejecting a plan.

(b) *Form of acceptance or rejection.*—An acceptance or rejection of a plan shall be in writing, shall identify the plan accepted or rejected and shall be signed by the creditor or his authorized agent.

(c) *Computing requisite majorities.*—The requisite majorities necessary for the acceptance of a plan shall be computed on the basis of the claims of creditors affected by the plan who file an acceptance or rejection of the plan within the time prescribed.

Rule 9-26. Modification of plan before confirmation.

At any time prior to the acceptance of a plan by the requisite majority of creditors, the petitioner may file a modification thereof. After a plan has been so accepted and before its confirmation the petitioner may file a modification of the plan only with leave of court. The petitioner may also submit with the proposed modification written acceptances thereof by creditors. Subject to the provisions of this rule and with the written consent of the petitioner, any creditor may file a modification of a plan. If the court finds that a proposed modification does not materially and adversely affect the interest of any creditor who has not in writing accepted it, the modification shall be deemed accepted by all creditors who have previously accepted the plan. Otherwise, the court shall enter an order that the plan as modified shall be deemed to have been accepted by any creditor who accepted the plan and who fails to file with the court within such reasonable time as shall be fixed in the order a written rejection of the modification. Notice of such order, accompanied by a copy of the proposed modification, shall be given to creditors and other parties in interest at least 10 days before the time fixed in such order for filing rejections of the modification.

Rule 9-27. Confirmation of plan; deposit.

(a) *Objection to and hearing on confirmation.*

(1) *Objections.*—Objections to confirmation shall be filed at least 10 days before the hearing held under this subdivision, unless the court fixes a different time. A copy of any objection shall be mailed or delivered promptly to the petitioner, and to such other persons as may be designated by the court.

(2) *Hearing.*—The court shall hold a hearing to rule on confirmation of a plan on at least 20 days' notice to the petitioner, creditors, and other parties in interest as provided in Rule 9-14, whether or not any objections are filed.

(b) *Order of confirmation.*—The order of confirmation shall conform substantially to Official Form No. 9-F4 and notice of entry of the order of confirmation shall be mailed promptly to all parties in interest as provided in Rule 9-14.

(c) *Deposit.*—At the hearing on confirmation, the court shall (1) designate as disbursing agent the petitioner or a person specially appointed to distribute, subject to the control of the court, the consideration, if any, to be deposited by the petitioner; and (2) fix a time before final decree within which the petitioner shall deposit with the court or the disbursing agent, or in such place as shall be designated by and subject to the order of the court, the money or other consideration which under the plan is to be distributed to creditors after entry of the final decree.

Rule 9-28. Dismissal of case after approval of petition.

(a) *Permissive dismissal.*—The court may enter an order, after hearing on notice as provided in Rule 9-14, dismissing the case—

(1) for want of prosecution; or

(2) if no plan is proposed within the time fixed or extended by the court; or

(3) if no proposed plan is accepted within the time fixed or extended by the court; or

(4) when the court has retained jurisdiction after confirmation of a plan—

(A) if the petitioner defaults in any of the terms of the plan; or

(B) if a plan terminates by reason of the happening of a condition specified therein.

(b) *Mandatory dismissal.*—The court shall dismiss the case if confirmation is refused.

(c) *Notice to creditors.*—Promptly after entry of an order of dismissal under this rule notice thereof shall be given to creditors in the manner provided in Rule 9-14 (c).

Rule 9-29. Participation and distribution under plan.

(a) *Distribution.*—Subject to the provisions of subdivision (b) of this rule, and after entry of the order approving the deposit pursuant to Rule 9-31, distribution shall be made, in accordance with the provisions of the plan, to holders of bonds, debentures, notes, and other securities of record at the date the order confirming the plan becomes final whose claims have not been disallowed, to other creditors whose claims have been allowed, and to indenture trustees who have filed claims pursuant to Rule 9-22 (b)(6) which have been allowed.

(b) *Bar date for participation in distribution.*—When a plan requires presentment or surrender of securities or the performance of any other act as a condition to participation in distribution under the plan, such action shall be taken not later than 5 years after the entry of the order of confirmation. Persons who have not within such time presented or surrendered their securities or who have not taken such other action required by the plan shall not participate in distribution thereunder.

Rule 9-30. Distributions; unclaimed money and securities.

(a) *Distributions.*—Except as otherwise provided in the plan, Bankruptcy Rule 308 applies in Chapter IX cases to cash distributions made under a plan. Except as otherwise provided in the plan or ordered by the court, consideration other than cash distributed under the plan shall be issued in the name of the creditor entitled thereto and if a power of attorney authorizing another person to receive dividends has been executed and filed in accordance with Bankruptcy Rule 910, such consideration shall be transmitted to such other person.

(b) *Unclaimed money and securities.*—Unless otherwise provided in the plan, the securities or cash remaining unclaimed at the expiration of the bar date fixed pursuant to Rule 9-29 (b), or any extension thereof, shall be delivered to the petitioner.

Rule 9-31. Order approving deposit; final decree; title.

(a) *Order approving deposit.*—After confirmation of the plan, and after the making of the deposit of the money, securities, or other consideration pursuant to Rule 9-27 to be distributed to creditors, and after the court finds that deposited securities, if any, are lawfully authorized, constitute valid obligations of petitioner and the provisions therein to pay and secure payment are valid, the court shall enter an order substantially conforming to Official Form No. 9-F9 approving the deposit, which order shall be mailed promptly to all parties in interest as provided in Rule 9-14.

(b) *Final decree.*—On execution of the plan, the court shall enter a final decree which shall contain provisions by way of injunction or otherwise as may be equitable and closing the case.

(c) *Evidence of title.*—A certified copy of an order providing for the transfer of title to any property dealt

with by the plan shall constitute conclusive evidence of such transfer of title.

Rule 9-32. Issuance of certificates of indebtedness.

When a motion is made for the issuance of a certificate of indebtedness, the court shall set a hearing on notice to such parties in interest as the court may direct.

Rule 9-33. Rejection of executory contracts.

When a motion is made for the rejection of an executory contract, including an unexpired lease, other than as part of the plan, the court shall set a hearing on notice to the parties to the contract and to such other parties in interest as the court may direct.

Rule 9-34. Preservation of voidable transfer.

Whenever any transfer is voidable by the petitioner, the court may determine, in an adversary proceeding in which are joined persons claiming interests or rights in the property subject to the transfer, whether the transfer shall be avoided only or shall be preserved for the benefit of the estate.

Rule 9-35. Proceeding to avoid indemnifying lien or transfer to surety.

If a lien voidable under § 67a of the Act has been dissolved by the furnishing of a bond or other obligation and the surety thereon has been indemnified by the transfer of, or the creation of a lien upon, property of the petitioner, the surety shall be joined as a defendant in any proceeding to avoid the indemnifying transfer or lien. Such proceeding is governed by Rule 9-37. If an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, the court, on motion by any party in interest, shall ascertain the value of such property or lien; if such value is less than the amount for which such property or lien is indemnity, the surety may elect to retain the property or lien on payment of the value so ascertained to the petitioner within such time as the court may fix.

Rule 9-36. Adversary proceedings.

Rule 9-37 governs any proceeding instituted by a party in a Chapter IX case to (1) recover money or property other than a proceeding under Rule 9-21; (2) determine the validity, priority, or extent of a lien or other interest in property; (3) obtain an injunction; or (4) obtain relief from a stay as provided in Rule 9-4. Such a proceeding shall be known as an adversary proceeding.

Rule 9-37. Applicability of Federal Rules of Civil Procedure and Bankruptcy Rules to adversary proceedings.

(a) *Federal Rules of Civil Procedure.*—Rules 3, 5, 7 (a), 8-10, 12-21, 22 (1), 23-26, 28-37, 41, 42, 52, 54-56, 64-65, and 67-71 of the Federal Rules of Civil Procedure apply to adversary proceedings in Chapter IX cases, except that:

(1) The reference in Rule 5 to Rule 4 shall be read as a reference to Bankruptcy Rule 704.

(2) The reference in Rule 8 to Rule 11 shall be read as a reference to Bankruptcy Rule 911.

(3) The reference in Rule 10 to "caption" shall be read as "caption conforming substantially to the caption of Official Form 9-F1."

(4) The following words shall be added at the beginning of Rule 12 (h)(3): "Subject to Bankruptcy Rule 915."

(5) The following clause shall be added at the end of the last sentence of Rule 13 (a): "(3) a party sued by the petitioner need not state as a counterclaim any claim which he has against the petitioner"; and the following words shall be added at the end of the last sentence of Rule 13 (f): "or by commencing a new adversary proceeding or separate action."

(6) The reference in Rule 30 (a) to Rule 4 (e) shall be read as a reference to Bankruptcy Rule 704 (d)(1).

(7) The following is added at the end of paragraph one of Rule 65 (c): "The court may excuse compli-

ance with this subdivision when the applicant is the petitioner.”

(b) *Bankruptcy Rules.*—Bankruptcy Rules 704, 719 (b), 727, and 782 apply to adversary proceedings in a Chapter IX case, except that:

(1) The reference in Bankruptcy Rule 704 (a) to “and shall forthwith issue a summons” shall be read as “and the district judge or clerk shall forthwith issue a summons.” The reference in Bankruptcy Rule 704 (f)(2) to Rule 220 shall be read as a reference to Rule 9-21.

(2) The reference in Bankruptcy Rule 719 (b) to “subdivision (a)” shall be read as a reference to “Rule 19 (a) of the Federal Rules of Civil Procedure.”

(3) The references in Bankruptcy Rule 727 to Bankruptcy Rules 734 and 735 shall be read as references to Rules 34 and 35 of the Federal Rules of Civil Procedure.

(4) The second sentence of Bankruptcy Rule 782 is deleted.

Rule 9-38. General definitions.

The definitions of words and phrases in § 81 of the Act govern their use in the Chapter IX Rules to the extent they are not inconsistent therewith. In addition, the following words used in these rules have the meanings herein indicated unless they are inconsistent with the context:

(1) “Accountant” includes an accounting partnership or corporation.

(2) “Act” means the Bankruptcy Act.

(3) “Application” includes any request to the court for relief that is not a pleading or proof of claim. An application not made in open court shall be in writing unless a writing is excused by the court. An application for an order against another party may be required to be made by motion.

(4) “Attorney” includes a law partnership or corporation.

(5) "Claims" includes all claims of whatever character against the petitioner or the property of the petitioner, whether or not such claims are provable under § 63 of the Act and whether secured or unsecured, liquidated or unliquidated, fixed or contingent.

(6) "Court" means the United States district court or a judge thereof.

(7) "Creditor" means the holder of any claim.

(8) "Judge" means the United States district court or a judge thereof.

(9) "Motion" means an application to the court for an order in an adversary proceeding or in a proceeding on a contested petition or to determine any other contested matter. Unless made during a hearing or trial, a motion shall be made in writing, shall conform substantially to a pleading in form, shall state with particularity the grounds therefor, and shall set forth the relief or order sought.

(10) "Person" includes an individual, corporation, partnership, association, joint-stock company, unincorporated organization, or a government or unit thereof.

(11) "Special tax payer" means record owner or holder of title, legal or equitable, to real estate against which has been levied a special assessment or special tax the proceeds of which are the sole source of payment for obligations issued by the petitioner to defray the costs of local improvements.

Rule 9-39. Meanings of words in the Federal Rules of Civil Procedure and Bankruptcy Rules when applicable in Chapter IX Cases.

The following words and phrases used in the Federal Rules of Civil Procedure or Bankruptcy Rules made applicable in Chapter IX cases by these rules have the meanings herein indicated unless they are inconsistent with the context:

(1) *Federal Rules of Civil Procedure.*

"Action" or "civil action" means an adversary proceed-

ing or, when appropriate, a Chapter IX case, or a proceeding on a contested petition or to determine any other litigated matter.

(2) *Bankruptcy Rules.*

(A) "Bankrupt" means "petitioner."

(B) "Bankruptcy" or "bankruptcy case" means "Chapter IX case."

(C) "Court," "referee," or "bankruptcy judge" means the United States district court or a judge thereof.

(D) "Receiver," "trustee," "receiver in bankruptcy," or "trustee in bankruptcy" means "petitioner."

Rule 9-40. Applicability of Federal Rules of Civil Procedure and Bankruptcy Rules.

(a) *Federal Rules of Civil Procedure.*—Rules 6, 43-46, 58-63, 65.1, 77, 79, and 80 of the Federal Rules of Civil Procedure apply in Chapter IX cases, except that:

(1) The references in Rule 6 (b) to various rules shall also include a reference to Rule 9-17 (a).

(2) The following shall be added to Rule 6: "(f) Reduction. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may in its discretion with or without application or notice order the period shortened; but it may not reduce the time for taking any action under Rules 9-14 (a) and 9-17 (a)."

(3) The reference in Rule 43 (e) to "Evidence on Motions" shall be read as "Evidence on Motions or Applications," and the reference to "When a motion is based on facts not appearing in the record" shall be read as "When a motion or application is based on facts not appearing in the record."

(4) The following clause shall be added at the end of the second sentence of Rule 60 (b): "except that a motion to reopen a case or for reconsideration of an order allowing or disallowing a claim against the petitioner

entered without a contest is not subject to the one-year limitation."

(5) The following shall be added to Rule 62: "(i) Effect of Appeal on Unstayed Order. Unless an order approving the issuance of a certificate of indebtedness is stayed pending appeal, the issuance of a certificate to a good faith holder shall not be affected by the reversal or modification of such order on appeal, whether or not the holder knows of the pendency of the appeal."

(6) The sentence in Rule 65.1 "His liability may be enforced on motion without the necessity of independent action" shall be read as "His liability may be enforced in an adversary proceeding governed by Rule 9-37."

(7) The reference in Rule 79 to "civil docket" shall be read as "bankruptcy docket."

(b) *Bankruptcy Rules.*—Bankruptcy Rules 508, 903, 904, 906 (e), 907-909, 911, 912, 915, 918, 927, and 928 apply in Chapter IX cases, except that the reference in Rule 915 to Rule 112 shall be read as a reference to Rule 9-10.

Rule 9-41. Service and filing of applications, motions, and other papers.

(a) *Service on petitioner: When required.*—Except as otherwise provided in these rules or by order of the court, every order required by its terms to be served, every appearance, objection, application, motion, or paper relating to discovery, other than an application or motion which may be heard ex parte, shall be served on the petitioner.

(b) *Service: How made.*—Whenever under these rules service is required or permitted to be made on a person represented by an attorney the service shall be made upon the attorney unless service on the person himself is ordered by the court. Service on the attorney or on the person shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of the

court. Delivery of a copy within this rule means: handing it to the attorney or to the person to be served; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete on mailing.

(c) *Filing*.—All papers after the petition required to be served shall be filed with the court either before service or within a reasonable time thereafter. The court may prescribe the number of copies to be filed.

(d) *Filing with the court*.—The filing of papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

Rule 9-42. Procedure in contested matters not otherwise provided for.

In a contested matter in a Chapter IX case not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought. No responsive pleading is required under this rule, but the court may order an answer to a motion. In all such matters, unless the court otherwise directs, the following Federal Rules of Civil Procedure shall apply: 21, 25, 26, 28, 29, 30 as modified by Rule 9-37, 31-37, 41, 42, 52, 54-56, 62, 64, 69, and 71. The court may at any stage in a particular matter direct that one or more of the Federal Rules of Civil Procedure, as incorporated and modified by Rule 9-37, shall apply. A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable and relevant in a contested matter in a

pending Chapter IX case may proceed in the same manner as provided in Bankruptcy Rule 727 for the taking of a deposition before an adversary proceeding. Notice of an order or direction under this rule shall be given when necessary or appropriate to assure to the parties affected a reasonable opportunity to comply with the procedures made applicable by the order.

Rule 9-43. Representation and appearances; power of attorney.

(a) *Authority to act personally or by attorney.*—Subject to the provisions of Rule 9-16, the petitioner, a creditor, indenture trustee, committee or group, or other person may in a Chapter IX case (1) appear and act in his own behalf or by an attorney authorized to practice in the court, and (2) perform any act not constituting the practice of law, by an authorized agent, attorney in fact, or proxy.

(b) *Notice of appearance.*—An attorney appearing in a Chapter IX case shall file a notice of appearance with his name, business address, and telephone number unless his appearance is otherwise noted in the record.

(c) *Power of attorney.*—The authority of any agent, attorney in fact, or proxy for any purpose other than the execution and filing of a proof of claim or any acceptance or rejection of a plan shall be evidenced by a written power of attorney acknowledged before an officer authorized to administer oaths in proceedings before courts of the United States or under laws of the state where the oath is to be taken, or a diplomatic or consular officer of the United States in any foreign country.

