



**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

Paul R. Warren
Clerk of Court

Lisa Beaser
Chief Deputy Clerk

**PROCEDURE for SEEKING CONVERSION UNDER 11 U.S.C. §§ 706(a) or 1112(a)
or DISMISSAL UNDER §§ 1208 (b) or 1307(b)**

Notice No. 11-01

Bankruptcy Rule 1017(f)(2) of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”) requires that a debtor’s election to convert a case under 11 U.S.C. §§ 706(a) or 1112(a), or dismiss under §§ 1208(b) or 1307(b) shall be on motion, filed and served as required by Bankruptcy Rule 9013. *Marrama v. Citizens Bank*, 549 U.S. 365 (2007) sets forth the purposes of the Rule and the basis for opposition to what is sometimes called an “absolute right to convert.”

It appears that counsel to debtors have attempted to exercise the election to convert under §§ 706(a) or 1112(a) of the Bankruptcy Code by the filing of a “notice of conversion,” contrary to the requirements of Bankruptcy Rule 1017(f)(2). In such instances, the Clerk’s Office routinely issues a deficiency notice, requiring the debtor to comply with Rule 1017(f)(2). (See, Notice No. 01-11, dated November 19, 2001, available at [www.nywb.uscourts.gov/procedures/notices to attorneys](http://www.nywb.uscourts.gov/procedures/notices%20to%20attorneys)).

PLEASE TAKE NOTICE, that debtors exercising their election to convert a case pursuant to §§ 706(a) or 1112(a) of the Bankruptcy Code must do so by the filing of a motion with proof of service, pursuant to Bankruptcy Rule 1017(f)(2), which motion must be served on the case trustee and the United States Trustee, pursuant to Bankruptcy Rule 9013. Papers in opposition to the motion, if any, must be served and filed within ten (10) days of the date of service of the motion. If timely opposition is served and filed, the Court will set a hearing date for the motion. If no timely opposition is served and filed in response to the motion, no hearing on the motion will be required and the Court will enter an Order converting the case, effective as of the date of entry of the conversion Order.

Dated: September 16, 2011 (rev)

PAUL R. WARREN
Clerk of Court