

Proposed New Local Bankr. Rule 3001.1

RULE 3001.1 PROOF OF CLAIM ATTACHMENT REQUIRED FOR CLAIMS SECURED BY SECURITY INTEREST IN THE DEBTOR'S PRINCIPAL RESIDENCE

(a) IN GENERAL. This rule applies in all cases and with regard to claims that are secured by a security interest in the individual debtor's principal residence. For chapter 13 cases, this rule applies in addition to the requirements of Rules 3002.1 and 3002.2.

(b) MORTGAGE PROOF OF CLAIM ATTACHMENT. The holder of a claim secured by a security interest in the debtor's principal residence shall attach to its proof of claim an exhibit reflecting at least the following details regarding the prepetition claim being asserted: (a) all prepetition interest amounts due and owing, itemized such that the applicable interest rate is shown, as well as the start and end dates for accrual of interest at such interest rate; (b) all prepetition fees, expenses, and charges due and owing, itemized to show specific categories (*e.g.*, appraisals, foreclosure expenses, *etc.*) and the dates incurred; (c) any escrow amount included in the monthly payment and, if there is an escrow account, a supplemental attachment of an escrow statement prepared as of the petition date; and (d) a statement reflecting the total amount necessary to cure any default as of the petition date (which statement must show (i) the number of missed payments, (ii) plus the aggregate amount of any fees, expenses, and charges due and owing, (iii) less any funds the creditor has received but not yet applied).

(c) FORM AND CONTENT. The proof of claim attachment described in this rule shall be prepared as prescribed by the Official Form B10, Attachment A.

Proposed Revised Local Bankr. Rule 3002-1

~~L.B.R. 3002-1 FILING PROOFS OF CLAIM OR INTEREST. NOTICE RELATING TO CLAIMS SECURED BY SECURITY INTEREST IN THE DEBTOR'S PRINCIPAL RESIDENCE~~

~~An original proof of claim shall be filed with the Bankruptcy Clerk, or with a claims agent, if one has been retained by order of the court.~~

(a) IN GENERAL. This rule applies in a chapter 13 case to claims that are (1) secured by a security interest in the debtor's principal residence, and (2) provided for under § 1322(b)(5) of the Code in the debtor's plan.

(b) NOTICE OF PAYMENT CHANGES. The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice of any change in the payment amount, including any change that results from an interest rate or escrow account adjustment, no later than 21 days before a payment in the new amount is due.

(c) NOTICE OF FEES, EXPENSES, AND CHARGES. The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice itemizing all fees, expenses, or charges (i) that were incurred in connection with the claim after the bankruptcy case was filed, and (ii) that the holder asserts are recoverable against the debtor or against the debtor's principal residence. The notice shall be served within 180 days after the date on which the fees, expenses, or charges are incurred.

(d) FORM AND CONTENT. A notice filed and served under subdivision (b) or (c) of this rule shall be prepared as prescribed by the appropriate Official Form (Form B10, Supplement 1 and Supplement 2, respectively), and filed as a supplement to the holder's proof of claim. The notice is not subject to Rule 3001(f).

(e) DETERMINATION OF FEES, EXPENSES, OR CHARGES. On motion of the debtor or trustee filed within one year after service of a notice under subdivision (c) of this rule, the court shall, after notice and hearing, determine whether payment of any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments in accordance with § 1322(b)(5) of the Code.

(f) NOTICE OF FINAL CURE PAYMENT. Within 30 days after the debtor completes all payments under the plan or within 30 days of the last disbursement to the holder of the claim, whichever occurs later, the trustee shall file and serve on the holder of the claim, the debtor, and debtor's counsel a notice stating that the debtor has paid in full the amount required to cure any default on the claim. The notice shall also inform the holder of its obligation to file and serve a response under subdivision (g). If the debtor contends that final cure payment has been made and all plan payments have been completed, and the trustee does not timely file and serve the notice required by this subdivision, the debtor may file and serve the notice.

(g) RESPONSE TO NOTICE OF FINAL CURE PAYMENT. Within 21 days after service of the notice under subdivision (f) of this rule, the holder shall file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor is otherwise current on all payments consistent with § 1322(b)(5) of the Code. The statement shall itemize the required cure or postpetition amounts, if any, that the holder contends remain unpaid as of the date of the statement. The statement shall be filed as a supplement to the holder's proof of claim and is not subject to Rule 3001(f).

(h) DETERMINATION OF FINAL CURE AND PAYMENT. On motion of the debtor or trustee filed within 21 days after service of the statement under subdivision (g) of this rule, the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts.

(i) FAILURE TO NOTIFY. If the holder of a claim fails to provide any information as required by subdivision (b), (c), or (g) of this rule, the court may, after notice and hearing, take either or both of the following actions:

(1) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or

(2) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

Proposed New Local Bankr. Rule 3002.2

RULE 3002.2 MID-CASE AUDIT PROCEDURES WITH REGARD TO CLAIMS SECURED BY SECURITY INTEREST IN THE DEBTOR'S PRINCIPAL RESIDENCE

(a) IN GENERAL. This rule applies in a chapter 13 case to claims that are (1) secured by a security interest in the debtor's principal residence, and (2) provided for under § 1322(b)(5) of the Code in the debtor's plan. This rule is in addition to the requirements of Rule 3002.1.

(b) MID-CASE NOTICE BY CHAPTER 13 TRUSTEE. For cases filed on or after December 1, 2011, the Chapter 13 Trustee shall (during the periods month 18 to month 22, and month 42 to month 46 of the case) file and serve on the holder of the claim and its counsel and the debtor and debtor's counsel a "Notice to Deem Mortgage Current" or, alternatively, a "Notice of Amount Deemed Necessary to Cure," stating whether or not, to the trustee's knowledge, the debtor is current on his plan and mortgage, and, if not, the amount believed necessary to cure any default on the plan and mortgage claim. The notice shall also contain negative notice language, informing the holder of its obligation to file and serve a response within 60 days, or else the information contained in the notice will be deemed unopposed and/or undisputed. If the trustee does not timely file and serve the notice required by this subdivision, the debtor may file and serve the notice.

(c) RESPONSE TO MID-CASE NOTICE. Within 60 days after service of a "Notice to Deem Mortgage Current" or, alternatively, a "Notice of Amount Deemed Necessary to Cure," the holder shall file and serve on the debtor, debtor's counsel, and the trustee a response indicating whether it disputes the information in such Notice. The response shall itemize any cure amounts or postpetition arrearages that the holder contends exist as of the date of the response.

(d) DETERMINATION OF MID-CASE NOTICE/RESPONSE BY COURT. Whenever there is a response to a mid-case "Notice to Deem Mortgage Current" or, alternatively, a "Notice of Amount Deemed Necessary to Cure," on request by the debtor, trustee, or claim holder, the court shall, after notice and hearing, determine whether the debtor is current on all required postpetition amounts. An order shall be issued reflecting any determination by the court.

(e) FAILURE TO RESPOND TO A MID-CASE NOTICE. If the holder of a claim fails to respond as set forth in subdivisions (b) and (c) above, the court shall issue an Order by default, finding the mortgage to be current as of the date of the "Notice to Deem Mortgage Current," or alternatively, deeming the mortgage to be delinquent in the amount set forth in the Trustee's "Notice of Amount Deemed Necessary to Cure,"

(f) EFFECT OF ORDER ON MID-CASE NOTICE. Any Order issued on a “Notice to Deem Mortgage Current” or, alternatively, on a “Notice of Amount Deemed Necessary to Cure,” (whether by default or after a response) shall preclude the holder from asserting cure amounts or postpetition arrearages that allegedly accrued before the date of “Notice to Deem Mortgage Current” or the “Notice of Amount Deemed Necessary to Cure,” in any contested matter or adversary proceeding in the case, or in any other manner or forum after a discharge in the case, unless the court determines, after notice and a hearing, that the failure was substantially justified or is harmless.

(g) RECONCILIATION OF THIS RULE WITH NATIONAL AND LOCAL

BANKRUPTCY RULE 3002.1 Nothing in this Local Bankruptcy Rule 3002.2 shall be interpreted to conflict with National Bankruptcy Rule 3002.1 and Local Bankruptcy Rule 3002.1. For example, the requirement that the holder of a claim secured by a security interest in the debtor’s principal residence file a Notice of Postpetition Mortgage Fees, Expenses and Charges (Official Form B10, Supplement 2), to reflect postpetition charges, pursuant to National and Local Bankruptcy Rules 3002.1(c) and (d), is not superseded by this rule, nor is the procedure and timing for a debtor or trustee to file a motion pursuant to subsection (e) of that rule, to challenge the propriety of amounts set forth in such Notice, superseded. This Rule 3002.2 is intended to provide an additional mechanism for parties to identify and resolve disputes regarding postpetition mortgage arrearages (including alleged missed payments of postpetition principal and interest, as well as asserted postpetition fees and charges) at different checkpoints during a Chapter 13 case.

Proposed Revised Local Bankr. Rule 4001-1(e)

RULE 4001-1 AUTOMATIC STAY - RELIEF FROM

(e) Preliminary Hearings; ~~Dallas and Fort Worth Divisions.~~ and Affidavits

(1) Preliminary Hearings and Affidavits, Generally. Absent compelling circumstances warranting an alternative procedure, evidence presented at preliminary hearings in the Dallas and Fort Worth Divisions on motions for relief from the automatic stay will be by affidavit only. Except as set forth below (with regard to a motion filed by the holder of claim secured by a security interest in the debtor’s principal residence, and with regard to requests for expedited settings), ~~the party requesting the hearing shall serve evidentiary affidavits at least 7 days in advance of such hearing; the responding party shall serve evidentiary affidavits at least 2 days in advance of such hearing; the party requesting the hearing is responsible for determining that all other hearing participants known to such party are aware of this rule. In a chapter 13 case, if the movant is a creditor claiming a lien on real property, then its affidavit shall include a detail of any alleged payment delinquency and provide a current chronological payment history beginning with the first payment alleged to be delinquent. Failure to file an evidentiary affidavit, or the failure of an attorney to attend a scheduled and noticed preliminary hearing may be grounds for granting the relief, regardless of the filing of a response to the motion. Must give notice to all other affected parties of the requirement of this rule.~~ **must give notice to all other affected parties**

of the requirement of this rule. The failure of a respondent to file an evidentiary affidavit, or the failure of an attorney to attend a scheduled and noticed preliminary hearing, shall be grounds for granting relief, regardless of the filing of a response to the motion.

(2) Special Affidavits and Proof Requirements for Holders of Mortgages on a Debtor's Principal Residence (Applicable in all Chapter Cases). Whenever a motion for relief from automatic stay or whenever a motion for approval of an agreement regarding automatic stay is filed regarding a security interest in the debtor's principal residence, an affidavit in support of the motion shall be filed and served on the debtor, debtor's counsel, trustee, United States Trustee, and any other affected party within 7 calendar days of the filing of the motion—regardless of the hearing date and regardless of whether any opposition is expected. The affidavit must be signed and sworn before a notary public by a person with knowledge of the facts, and must include: (a) a copy of the note or other debt instrument and any and all assignments thereof to substantiate proof of holder status; (b) a copy of the deed of trust showing the date, volume, page and county of recordation; and (c) in the event of alleged delinquent payments as a “cause” for relief from stay, a chronological payment history for the debtor showing, on a month-by-month basis, beginning with the first payment alleged to be delinquent, the date payment was due, the amount due, the date payment was received (if applicable), the amount received (if applicable), how any received payments were applied (*e.g.*, applied to balance, put in suspense, put in escrow, *etc.*), and also indicating any other types of defaults alleged including escrow shortages, such as for payments for insurance premiums or ad valorem tax payments made by the creditor. The affidavit shall clearly reflect all amounts received by the movant since the debtor allegedly first became delinquent, and whether such amounts were applied to indebtedness, put in suspense, or otherwise dealt with. The response deadline for motions for relief from automatic stay or for a motion for approval of an agreement regarding automatic stay regarding security interests in the debtor's principal residence, as well as the affidavit deadline for any responders, is the same as set forth in subdivisions (b) and (e)(1) of this L.B.R. 4001-1. No Order will be entered on a motion for relief from automatic stay or on a motion for approval of an agreement regarding a security interest in the debtor's principal residence unless an affidavit complying with this subdivision is filed and properly served (regardless of whether there is any pending opposition to the motion by any party).

(3) Time for Filing Affidavit in the Event of a Request for an Expedited Hearing. Notwithstanding the foregoing, whenever a party seeks an expedited setting on a motion for relief from automatic stay, an affidavit in support of such motion shall be filed at the time of the filing of the motion.

(4) Motions to Extend Time to File Affidavits/Dismissal of Stay Motions. In the event that an Affidavit is not timely filed by a holder of a security interest in the debtor's principal residence, as set forth in subsection (e)(2) above, the underlying motion may be *sua sponte* dismissed by the court. A holder of a security interest in the debtor's principal residence may move for an extension of time to file the required affidavit, but (a) extensions shall be granted only in exceptional circumstances; and (b) in the event of an extension, the preliminary hearing will be continued out to a date that is at least as many days long as the extended time to file the affidavit. By seeking such an extension, the holder of a security interest in the debtor's principal residence waives the time periods provided by Section 362(e).

Proposed Deletion Local Bankr. Rule 9014-1(g)

~~LBR 9014-1 Contested Matters.~~

~~(g) Bankruptcy Rule 7026.~~

~~Bankruptcy Rule 7026 shall not apply to any contested matters before the United States Bankruptcy Court for the Northern District of Texas.~~