

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
OFFICE OF THE CLERK**



October 18, 2017

CLERK'S NOTICE 17-06

**REQUEST FOR PUBLIC COMMENT ON PROPOSED REVISIONS TO
LOCAL BANKRUPTCY RULES 2002-1, 3002.1-1, AND 3007-1**

The United States Bankruptcy Court for the Northern District of Texas has drafted proposed amendments to Local Bankruptcy Rules 2002-1, 3002.1-1, and 3007-1.

A 30-day public comment period will commence today, October 18, 2017, and will end on November 17, 2017. In order to be considered, all comments must be in writing and received by the Court no later than November 17, 2017 at 4:30 p.m. You may email your comments to comments@txnb.uscourts.gov or you may hand-deliver or mail your comments to the Clerk of Court at 1100 Commerce Street, Room 1254, Dallas, TX 75242. Please include your name, address, telephone number, and email address so that you may be contacted if there are questions about your comments.

A draft of the proposed revisions is attached.

FOR THE COURT
Jed G. Weintraub
Clerk of Court

L.B.R. 2002-1 Notice to Creditors & Other Interested Parties.

(a) Twenty-One Day Notices to Parties in Interest.

- (1) Notice of the meeting of creditors pursuant to 11 U.S.C. § 341 shall be prepared by the Bankruptcy Clerk. The notice shall be served by the Bankruptcy Clerk in all cases under chapter 7, by the debtor in possession or the trustee in all cases under chapter 11, and by the standing trustee in all cases under chapter 12 or 13.
- (2) Notice of a proposed use, sale, or lease of property of the estate, other than in the ordinary course of business, shall be prepared and served by the proponent of such use, sale, or lease.
- (3) Notice of the hearing on approval of a compromise or settlement of a controversy shall be served by one of the parties proposing the compromise.
- (4) In a chapter 7 liquidation, notice of the hearing on the dismissal or conversion of a case to another chapter shall be served by the Bankruptcy Clerk. In a chapter 11 reorganization, notice of the hearing on the dismissal or conversion of a case to another chapter shall be served by the movant. When the United States Trustee is the movant, notice of the hearing on the dismissal or conversion of a chapter 11 case shall be served by the Bankruptcy Clerk. In a chapter 12 or 13 debt adjustment, notice of the hearing on the dismissal or conversion of a case to another chapter shall be served by the standing trustee.
- (5) Notice of the time fixed to accept or reject a proposed modification of a plan shall be prepared and served by the proponent of the modification.
- (6) Notice of hearings on all applications for compensation or reimbursement of expenses totaling in excess of \$1,000.00, except those to be heard in connection with a chapter 7 Trustee's Final Report, shall be prepared and served by the applicant.
- (7) Unless otherwise ordered by the court, notice of the time fixed or "bar date" for filing proofs of claim or interest in chapter 11 cases pursuant to Bankruptcy Rule 3003(c)(3), either specifically set by the court, or as set by Local Bankruptcy Rule 3003-1, shall be served by the trustee or debtor in possession.
- (8) Notice of the time fixed for filing objections and the hearing to consider confirmation of a chapter 12 plan shall be generated by the standing trustee and served by the debtor.
- (9) Notice of the time fixed for filing proofs of claim in a chapter 7, 12 or 13 case pursuant to Bankruptcy Rule 3002(c), shall be served by the Bankruptcy Clerk in chapter 7 cases, and by the standing trustee in chapter 12 and 13 cases, and shall

be combined with the notice of commencement of case, meeting of creditors, and fixing dates; and

(10) Notice of the time fixed for filing objections to and the hearing to consider confirmation of a chapter 13 plan shall be served by the standing trustee.

Note

The local rule has been amended to conform to an amendment to Bankruptcy Rule 2002, which adds a twenty-one-day notice requirement for the time fixed for filing objections to the confirmation of a chapter 13 plan and a twenty-eight-day notice of the hearing to consider confirmation of a chapter 13 plan. The local rule clarifies that these notices are required to be served by the standing trustee.

L.B.R. 3002.1-1 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 ~~(1)~~ that are (1) secured by a security interest in the debtor's principal residence, and (2) provided for ~~which~~ under § 1322(b)(5) of the Code in the debtor's plan ~~provides that either the trustee or the debtor will make contractual installment payments. Unless the court orders otherwise, the notice requirements of this rule cease to apply when an order terminating or annulling the automatic stay becomes effective with respect to the residence that secures the claim.~~ This rule is in addition to the requirements of Rule 3002.1.

(b) Mid-Case Notice by Chapter 13 Trustee.

~~For~~ The Mid-Case Notice described in this paragraph will not be required in any conduit case, but may be filed in the Trustee's sole discretion. For all other 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. The Debtor will have an additional 30 days after this 60-day period to file a reply.

(d) Determination of Mid-Case Notice/~~Response~~ by Court.

Whenever there is a response and/or reply 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~~ as set forth in subdivisions (b) and (c) above, the court shall, after notice and hearing, determine whether or not the debtor is current on all required postpetition amounts. If the holder of a claim fails to respond and/or the debtor fails to reply, the court may make this determination by default. An order shall be issued reflecting any determination by the court.

~~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)~~(e) Effect of Order on Mid-Case Notice.

Any ~~Order~~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, and/or reply) shall preclude the holder and the debtor from ~~asserting cure contesting the 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,”~~set forth in the order in any contested matter or adversary proceeding in ~~the~~this case, or in any other matter, manner, or forum after a discharge in ~~the~~this case, unless the court determines, after notice and a hearing, that the failure to respond and/or reply was substantially justified or is harmless.

~~(g)~~(f) Reconciliation of this Rule with National Bankruptcy Rule 3002.1.

Nothing in this Local Bankruptcy Rule shall be interpreted to conflict with National 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 Bankruptcy Form 410S-2), to reflect postpetition charges, pursuant to National 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 local rule 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.

Note

The local rule has been amended to conform to prior amendments made to the Chapter 13 General Order making this procedure discretionary in conduit cases, and to conform to the procedure in the Mid-Case Audit Scheduling Order. The local rule has also been amended to make the response and determination procedure in subdivisions (c) and (d) applicable to both lenders and debtors, and to clarify that a default order may be entered if a reply is not received, unless the court determines, after notice and a hearing, that the failure to respond was substantially justified or is harmless.

L.B.R. 3007-1 Claim Objections.

(a) Contents of the Objection.

Every objection to claim shall identify the claim by claim number, claimant and date filed. If the amount or classification of the claim is being disputed, the objection to claim shall state the amount of the claim, if any, that is not in dispute and the classification considered proper by the objecting party. The objection shall state with particularity the basis for the objection.

(b) Service.

At a minimum, the objecting party shall serve any claim objection and the notice of hearing thereon, if applicable, on the claimant ~~at the address~~as provided ~~on the proof of claim,~~in [Rule 3007\(a\)\(2\)](#), and if applicable, on the claimant's attorney. Pursuant to Bankruptcy Rule 7005, the objecting party shall file with the Bankruptcy Clerk a certificate of service, attached to the objection, evidencing the date and mode of service and the names and addresses of the parties served.

Note

The local rule has been amended to conform to an amendment to Bankruptcy Rule 3007. The local rule clarifies that any claim objection and the notice thereon shall be served in compliance with Bankruptcy Rule 3007(a)(2).