

ENTERED

TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET



The following constitutes the ruling of the court and has the force and effect therein described.

Barbara J. Houser

United States Bankruptcy Judge

Signed March 27, 2012

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS

IN THE MATTER OF

ADOPTING AMENDED LOCAL RULES

§
§
§
§
§

GENERAL ORDER 2012-02

ORDER ADOPTING AMENDED LOCAL RULES

The Judges of this Court, having given notice and the opportunity for public comment pursuant to 28 U.S.C. § 2071(b), Bankruptcy Rule 9029, and Federal Rule of Civil Procedure 83, and under the authority of the United States District Court for the Northern District of Texas, hereby adopt the amended local rules and **ORDERS** as follows:

1. The local rules of this Court shall be amended **effective April 1, 2012**, as set forth in the attached Exhibit A (the "Amended Local Rules"). These Amended Local Rules shall apply to all cases filed on or after this date, and all cases pending in this Court as of this date.
2. The Clerk of Court shall give appropriate public notice of the adoption of the Amended Local Rules and make the Amended Local Rules available to the public on the Court's website.

SO ORDERED.

###END OF ORDER###

Exhibit A

Amended Local Rules

New Local Bankruptcy Rule 3001-1
Deleted New Proposed Local Bankr. Rule 3002.1
New Local Bankruptcy Rule 3002-2
Revised Local Bankruptcy Rule 4001-1(e)
Deleted Local Bankruptcy Rule 9014-1(g)

Effective April 1, 2012

United States Bankruptcy Court
For the Northern District of Texas

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 and 3002.1.

(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.

Deleted New Proposed Local Bankr. Rule 3002.1

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 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 Form B10, Supplement 2), to reflect postpetition charges, pursuant to National Rule 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.

Revised Local Bankr. Rule 4001-1(e)

Rule 4001-1 Automatic Stay - Relief From

* * * *

(e) PRELIMINARY HEARINGS 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 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 the 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 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 certified under penalty of perjury 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).

(5) Application of Rule of Divisions. Subsections (2) through (4) of this Rule 4001-1(e), describing the specific affidavit requirements in connection with stay motions involving a debtor's principal residence, apply in all Divisions of the Northern District of Texas. Subsection (1) of this Rule 4001-1(e), which more generally refers to there being preliminary hearings on motions to lift stay, applies only in the Dallas and Fort Worth Divisions.

Deleted Local Bankr. Rule 9014-1(g)