

**PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE¹**

- 1 **Rule 3002.1. ~~Notice Relating to Chapter 13—~~**
2 **~~Claims—~~Claim Secured by a**
3 **Security Interest in the Debtor’s**
4 **Principal Residence ~~in a Chapter~~**
5 **~~13 Case~~²**
- 6 **(a) In General.** This rule applies in a Chapter 13 case to
7 a claim that is secured by a security interest in the
8 debtor’s principal residence and for which the plan
9 provides for the trustee or debtor to make contractual
10 ~~installment~~ payments. Unless the court orders
11 otherwise, the ~~notice~~ requirements of this rule cease
12 when an order terminating or annulling the automatic
13 stay related to that residence becomes effective.

¹ New material is underlined in red; matter to be omitted is lined through.

² The changes indicated are to the restyled version of Rule 3002.1, not yet in effect.

14 **(b) Notice of a Payment Change; Home-Equity Line**
15 **of Credit; Effect of an Untimely Notice;**
16 **Objection.**

17 **(1) *Notice by the Claim Holder—In General.***

18 The claim holder must file a notice of any
19 change in the payment amount, ~~of an~~
20 ~~installment payment~~ including any change
21 one resulting from an interest-rate or escrow-
22 account adjustment. ~~At least 21 days before~~
23 ~~the new payment is due, the~~ The notice must
24 be ~~filed and~~ served on:

- 25 • the debtor;
- 26 • the debtor's attorney; and
- 27 • the trustee.

28 Except as provided in (b)(2), it must be
29 filed and served at least 21 days before the
30 new payment is due. ~~If the claim arises from~~
31 ~~a home-equity line of credit, the court may~~

32 ~~modify this requirement.~~

33 (2) Notice of a Change in a Home-Equity Line
34 of Credit.

35 (A) Deadline for the Initial Filing; Later
36 Annual Filing. If the claim arises
37 from a home-equity line of credit, the
38 notice of a payment change must be
39 filed and served either as provided in
40 (b)(1) or within one year after the
41 bankruptcy-petition filing, and then at
42 least annually.

43 (B) Content of the Annual Notice. The
44 annual notice must:

45 (i) state the payment amount due
46 for the month when the notice
47 is filed; and
48 (ii) include a reconciliation
49 amount to account for any

50 overpayment or
51 underpayment during the
52 prior year.

53 (C) *Amount of the Next Payment.* The
54 first payment due at least 21 days
55 after the annual notice is filed and
56 served must be increased or decreased
57 by the reconciliation amount.

58 (D) *Effective Date.* The new payment
59 amount stated in the annual notice
60 (disregarding the reconciliation
61 amount) is effective on the first
62 payment due date after the payment
63 under (C) has been made and remains
64 effective until a new notice becomes
65 effective.

66 (E) *Payment Changes Greater Than \$10.*
67 If the claim holder chooses to give

68 annual notices under (b)(2) and the
69 monthly payment increases or
70 decreases by more than \$10 in any
71 month, the holder must file and serve
72 (in addition to the annual notice) a
73 notice under (b)(1) for that month.

74 (3) *Effect of an Untimely Notice.* If the claim
75 holder does not timely file and serve the
76 notice required by (b)(1) or (b)(2), the
77 effective date of the new payment amount is
78 as follows:

79 (A) when the notice concerns a payment
80 increase, on the first payment due
81 date that is at least 21 days after the
82 untimely notice was filed and served;
83 or

84 (B) when the notice concerns a payment
85 decrease, on the first payment due
86 date after the date of the notice.

87 (4) ***Party in Interest's Objection.*** A party in
88 interest who objects to ~~the~~ a payment
89 change noticed under (b)(1) or (b)(2) may
90 file and serve a motion to determine
91 ~~whether the change is required to maintain~~
92 ~~payments under § 1322(b)(5)~~ the change's
93 validity. Unless the court orders otherwise,
94 if no motion is filed ~~by~~ before the day
95 ~~before~~ the new payment is due, the change
96 goes into effect on that date.

97 **(c) Fees, Expenses, and Charges Incurred After the**
98 **Case Was Filed; Notice by the Claim Holder.**
99 The claim holder must file a notice itemizing all
100 fees, expenses, and charges incurred after the case
101 was filed that the holder asserts are recoverable

102 against the debtor or the debtor's principal
 103 residence. Within 180 days after the fees,
 104 expenses, or charges ~~were~~are incurred, the notice
 105 must be filed and served on the individuals listed
 106 in (b)(1).÷

- 107 • ~~the debtor;~~
- 108 • ~~the debtor's attorney; and~~
- 109 • ~~the trustee.~~

110 **(d) Filing Notice as a Supplement to a Proof of Claim.**

111 A notice under (b) or (c) must be filed as a
 112 supplement to ~~the~~a proof of claim using Form 410S-
 113 1 or 410S-2, respectively. The notice is not subject
 114 to Rule 3001(f).

115 **(e) Determining Fees, Expenses, or Charges.** On a

116 party in interest's motion ~~filed within one year after~~
 117 ~~the notice in (c) was served~~, the court must, after
 118 notice and a hearing, determine whether paying any
 119 claimed fee, expense, or charge is required by the

120 underlying agreement and applicable nonbankruptcy
121 law. ~~to cure a default or maintain payments under~~
122 ~~§ 1322(b)(5).~~ The motion must be filed within one
123 year after the notice under (c) was served, unless a
124 party in interest requests and the court orders a
125 shorter period.

126 **(f) Motion to Determine Status; Response; Court**
127 **Determination.**

128 **(1) Timing; Content and Service.** At any time
129 after the date of the order for relief under
130 Chapter 13 and until the trustee files the
131 notice under (g)(1), the trustee or debtor may
132 file a motion to determine the status of any
133 claim described in (a). The motion must be
134 prepared using Form 410C13-M1 and be
135 served on:

- 136 • the debtor and the debtor's
- 137 attorney, if the trustee is the
- 138 movant;
- 139 • the trustee, if the debtor is the
- 140 movant; and
- 141 • the claim holder.

142 (2) **Response; Content and Service.** If the claim

143 holder disagrees with facts set forth in the

144 motion, it must file a response within 21 days

145 after the motion is served. The response must

146 be prepared using Form 410C13-M1R and be

147 served on the individuals listed in (b)(1).

148 (3) **Court Determination.** If the claim holder's

149 response asserts a disagreement with facts set

150 forth in the motion, the court must, after

151 notice and a hearing, determine the status of

152 the claim and enter an appropriate order. If

153 the claim holder does not respond to the

154 motion or files a response agreeing with the
 155 facts set forth in it, the court may grant the
 156 motion based on those facts.

157 **(fg) ~~Notice of the Final Cure Payment.~~ Trustee's End-**
 158 **of-Case Notice of Payments Made; Response; Court**
 159 **Determination.**

160 (1) ~~*Contents of a Notice*~~ *Timing and Content.*

161 Within ~~30~~45 days after the debtor completes
 162 all payments due to the trustee under a
 163 Chapter 13 plan, the trustee must file a notice:

164 (A) stating ~~that the debtor has paid in full~~
 165 ~~the what~~ amount required, if any, the
 166 trustee paid to the claim holder to cure
 167 any default on the claim and whether
 168 it has been cured; and

169 (B) ~~the~~ stating what amount, if any, the
 170 trustee paid to the claim holder for
 171 contractual payments that came due

172 during the pendency of the case and
 173 whether contractual payments are
 174 current as of the date of the notice;
 175 and the claim holder of its obligation to
 176 file and serve a response under (g).

177 (C) informing the claim holder of its
 178 obligation to file and serve a response
 179 respond under (g)(3).

180 (2) ~~***Serving the Notice***~~ ***Service.*** The notice must
 181 be prepared using Form 410C13-N and be
 182 served on:

- 183 • the claim holder;
- 184 • the debtor; and
- 185 • the debtor’s attorney.

186 (3) ***Response.*** The claim holder must file a
 187 response to the notice within 28 days after its
 188 service. The response, which is not subject
 189 to Rule 3001(f), must be filed as a

190 supplement to the claim holder's proof of
191 claim. The response must be prepared using
192 Form 410C13-NR and be served on the
193 individuals listed in (b)(1).

194 ~~(3) ***The Debtor's Right to File.*** The debtor may~~
195 ~~file and serve the notice if:~~

196 ~~(A) the trustee fails to do so; and the~~
197 ~~debtor contends that the final cure~~
198 ~~payment has been made and all plan~~
199 ~~payments have been completed.~~

200 (4) ***Court Determination of a Final Cure and***
201 ***Payment.***

202 (A) *Motion.* After service of the response
203 under (g)(3) or within 45 days after
204 service of the trustee's notice under
205 (g)(1) if no response is filed by the
206 claim holder, the debtor or trustee
207 may file a motion to determine

208 whether the debtor has cured all
 209 defaults and paid all required
 210 postpetition amounts on a claim
 211 described in (a). The motion must be
 212 prepared using Form 410C13-M2 and
 213 be served on the entities listed in
 214 (f)(1).

215 (B) *Response.* If the claim holder
 216 disagrees with the facts set forth in the
 217 motion, it must file a response within
 218 21 days after the motion is served.
 219 The response must be prepared using
 220 Form 410C13-M2R and be served on
 221 the individuals listed in (b)(1).

222 (C) *Court Determination.* After notice
 223 and a hearing, the court must
 224 determine whether the debtor has
 225 cured all defaults and paid all

226 required postpetition amounts. If the
227 claim holder does not respond to the
228 motion or files a response agreeing
229 with the facts set forth in it, the court
230 may enter an appropriate order based
231 on those facts.

232 ~~(g)~~ **Response to a Notice of the Final Cure Payment.**

233 ~~(1)~~ ***Required Statement.*** Within 21 days after the
234 notice under (f) is served, the claim holder
235 must file and serve a statement that:

236 (A) indicates whether:

237 (i) the claim holder agrees that
238 the debtor has paid in full the
239 amount required to cure any
240 default on the claim; and
241 (ii) the debtor is otherwise
242 current on all payments under
243 § 1322(b)(5); and

244 ~~(B) itemizes the required cure or~~
 245 ~~postpetition amounts, if any, that the~~
 246 ~~claim holder contends remain unpaid~~
 247 ~~as of the statement's date.~~

248 ~~(2) ***Persons to be Served.*** The holder must serve~~
 249 ~~the statement on:~~

- 250 ~~• the debtor;~~
- 251 ~~• the debtor's attorney; and~~
- 252 ~~• the trustee.~~

253 ~~(3) ***Statement to be a Supplement.*** The statement~~
 254 ~~must be filed as a supplement to the proof of~~
 255 ~~claim and is not subject to Rule 3001(f).~~

256 ~~(h) **Determining the Final Cure Payment.** On the~~
 257 ~~debtor's or trustee's motion filed within 21 days after~~
 258 ~~the statement under (g) is served, the court must, after~~
 259 ~~notice and a hearing, determine whether the debtor~~
 260 ~~has cured the default and made all required~~
 261 ~~postpetition payments.~~

- 262 **(ih) Claim Holder's Failure to Give Notice or**
 263 **Respond.** If the claim holder fails to provide any
 264 information as required by ~~(b), (c), or (g)~~ this rule, the
 265 court may, after notice and a hearing, ~~take one or both~~
 266 ~~of these actions~~ do one or more of the following:
- 267 (1) preclude the holder from presenting the
 268 omitted information in any form as evidence
 269 in a contested matter or adversary proceeding
 270 in the case—unless the court determines that
 271 the failure was substantially justified or is
 272 harmless; ~~and~~
 - 273 (2) award other appropriate relief, including
 274 reasonable expenses and attorney's fees
 275 caused by the failure; and
 - 276 (3) take any other action authorized by this rule.

277 **Committee Note**

278 The rule is amended to encourage a greater degree of
 279 compliance with its provisions and to allow assessments of
 280 a mortgage claim's status while a chapter 13 case is pending
 281 in order to give the debtor an opportunity to cure any

282 postpetition defaults that may have occurred. Stylistic
283 changes are made throughout the rule, and its title and
284 subdivision headings have been changed to reflect the
285 amended content.

286 Subdivision (a), which describes the rule's
287 applicability, is amended to delete the word "installment" in
288 the phrase "contractual installment payment" in order to
289 clarify the rule's applicability to reverse mortgages, which
290 are not paid in installments.

291 In addition to stylistic changes, subdivision (b) is
292 amended to provide more detailed provisions about notice of
293 payment changes for home-equity lines of credit
294 ("HELOCs") and to add provisions about the effective date
295 of late payment change notices. The treatment of HELOCs
296 presents a special issue under this rule because the amount
297 owed changes frequently, often in small amounts. Requiring
298 a notice for each change can be overly burdensome. Under
299 new subdivision (b)(2), a HELOC claimant may choose to
300 file only annual payment change notices—including a
301 reconciliation figure (net overpayment or underpayment for
302 the past year)—unless the payment change in a single month
303 is for more than \$10. This provision also ensures at least 21
304 days' notice before a payment change takes effect.

305 As a sanction for noncompliance, subdivision (b)(3)
306 now provides that late notices of a payment increase do not
307 go into effect until the first payment due date after the
308 required notice period (at least 21 days) expires. The claim
309 holder will not be permitted to collect the increase for the
310 interim period. There is no delay, however, in the effective
311 date of an untimely notice of a payment decrease.

312 The changes made to subdivisions (c) and (d) are
313 largely stylistic. Stylistic changes are also made to

314 subdivision (e). In addition, the court is given authority,
315 upon motion of a party in interest, to shorten the time for
316 seeking a determination of the fees, expenses, or charges
317 owed. Such a shortening, for example, might be appropriate
318 in the later stages of a chapter 13 case.

319 Subdivision (f) is new. It provides a procedure for
320 assessing the status of the mortgage at any point before the
321 trustee files the notice under (g)(1). This optional procedure,
322 which should be used only when necessary and appropriate
323 for carrying out the plan, allows the debtor and the trustee to
324 be informed of any deficiencies in payment and to reconcile
325 records with the claim holder in time to become current
326 before the case is closed. The procedure is initiated by
327 motion of the trustee or debtor. An Official Form has been
328 adopted for this purpose. The claim holder then must
329 respond if it disagrees with facts stated in the motion, again
330 using an Official Form to provide the required information.
331 If the claim holder's response asserts such a disagreement,
332 the court, after notice and a hearing, will determine the status
333 of the mortgage claim. If the claim holder fails to respond or
334 does not dispute the facts set forth in the motion, the court
335 may enter an order favorable to the moving party based on
336 those facts.

337 Under subdivision (g), within 45 days after the last
338 plan payment is made to the trustee, the trustee must file a
339 notice of final cure and payment. An Official Form has been
340 adopted for this purpose. The notice will state the amount
341 that the trustee has paid to cure any default on the claim and
342 whether the default has been cured. It will also state the
343 amount, if any, that the trustee has paid on contractual
344 obligations that came due during the case and whether those
345 payments are current as of the date of the notice. The claim
346 holder then must respond within 28 days after service of the

347 notice, again using an Official Form to provide the required
348 information.

349 Either the trustee or the debtor may file a motion for
350 a determination of final cure and payment. The motion,
351 using the appropriate Official Form, may be filed after the
352 claim holder responds to the trustee's notice under (g)(1), or,
353 if the claim holder fails to respond to the notice, within 45
354 days after the notice was served. If the claim holder
355 disagrees with any facts in the motion, it must respond
356 within 21 days after the motion is served, using the
357 appropriate Official Form. The court will then determine the
358 status of the mortgage. A Director's Form provides guidance
359 on the type of information that should be included in the
360 order.

361 Subdivision (h) was previously subdivision (i). It has
362 been amended to clarify that the listed sanctions are
363 authorized in addition to any other actions that the rule
364 authorizes the court to take if the claim holder fails to
365 provide notice or respond as required by the rule. Stylistic
366 changes have also been made to the subdivision.