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Committee on Rules of Practice
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RE: Proposed Revisions to FRBP 3002.1

Dear Committee Members,

On behalf of the National Association of Chapter Thirteen Trustees ("NACTT"), I am submitting the attached proposed revisions to Federal Rule of Bankruptcy Procedure 3002.1 for your consideration.

The NACTT's Mortgage Committee has worked diligently over this last year to review and recommend suggested revisions to various parts of Rule 3002.1. We believe the suggested language would improve the functionality of the Rule and more specifically reflect the intention of the Rule as explained in the Advisory Committee Note. The revisions would require essential information to be provided to the parties during the case as well as at its completion to ensure that Creditor's records match those of the Trustee and the Debtor.

A brief summary of the proposed changes are as follows:

1. FRBP 3002.1 (b) Notice of Payment Change -the revised Rule would:
 - clarify the consequences for Notices of Payment Change (PCN) that do not comply with the 21-day notice requirement; and
 - provide a new process for filing and serving PCNs for Home Equity Lines of Credit loans (HELOC). HELOCs determine the monthly payment based upon the current monthly balance due on the loan. As that balance adjusts monthly (decreasing when a payment is made, or increasing if the debtor either takes a further advancement of funds or fails to make a payment), compliance with Rule 3002.1 (b) is virtually impossible. The proposed language would permit the filing of annual payment changes for HELOCs thereby allowing either the Trustee or the Debtor to rely upon an amount certain rather than having to wait for a PCN to be filed in order to determine the appropriate disbursement amount.

The Mortgage Committee also recommends adding a Committee Note to FRBP 3002.1 (b) that clarifies that a PCN is not required to be filed in connection with a loan modification until the modification becomes permanent and has been approved by a Court.


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2. FRBP 3002.1 (f) Notice of Final Cure Payment & (g) Response to Notice of Final Cure Payment:

- These sections were enhanced to afford the parties an opportunity to review the posture of a mortgage mid-way through the case as opposed to only reconciling mortgage payments after plan payments are complete. This mid- case review is important in that it will allow the parties to resolve any discrepancy in payment amounts, posting of payments, or fees, charges and expenses while the case is still open so that any necessary adjustment may be made while the plan is still being funded.
 - As the Rule stands today, the Trustee and/or the Debtor will only be made aware of any outstanding amounts due to the Creditor after the Debtor has made the final plan payment. This can lead to the Debtor owing money to the Creditor after the case is closed, therefore not affording the Debtor the fresh start intended by the Bankruptcy Code.
- It further requires the creditor to provide to the Trustee and the Debtor information such as, principal balance, date of next installment payment, a breakdown of the monthly payment, as well as the amount of any monies held in a suspense account.
- Finally, it ensures the Debtor will receive an order determining that the mortgage arrearage has been cured.

Thank you for your review and consideration of the suggested revisions. Should you have any questions, please do not hesitate to contact me.

Sincerely,



David G. Peake
Chapter 13 Trustee

RULE 3002.1(b) – Proposed Revisions

(b) NOTICE OF PAYMENT CHANGES; OBJECTION.

(1) *Notice.* Except as provided in paragraph (3), 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.

(2) If the holder of the claim fails to timely file and serve the notice required by paragraph (1), the following shall apply:

A. *Payment Increase:* In the event that the holder of a claim files and serves a Notice of Payment Change that reflects an increase in the total new payment amount without providing the required 21 days' notice, then the payment change shall be effective on the first payment due date that is at least 21 days from the filing date of the Notice of Payment Change.

B. *Payment Decrease:* In the event that the holder of a claim files and serves a Notice of Payment Change that reflects a decrease in the total new payment amount without providing the required 21 days' notice, then the payment change shall be effective as of the Date of Payment Change stated on the Notice.

C. Nothing in subparagraph (A) or (B) shall limit the power of the court to take any of the actions permitted under subdivision (i) for the failure to timely file and serve the notice of payment change.

(3) If the claim arises from a home equity line of credit, the notice of any payment change shall be filed and served on the debtor, debtor's counsel, and the trustee no later than one year after the entry of the order for relief, and not less frequently than annually thereafter.

A. The annual notice shall state the monthly payment amount due for the month in which the notice is filed. The payment amount shall be effective on the first payment due date that is at least 21 days from the filing date of the annual notice and shall remain effective until a new notice is filed with the court. The holder shall also include in the annual notice a reconciliation amount to account for any over or under payment received during the prior year. This amount shall be accounted for in the first payment due to the holder after the effective date of the notice, and shall be adjusted upwards or downwards to account for the reconciliation amount.

B. Notwithstanding subparagraph (A) above, should the monthly payment increase or decrease by more than \$10 in any single month, the holder shall file a notice consistent with subdivision (b)(1), and this notice shall be filed and served in addition to the annual notice requirement.

(2) *Objection.* A party in interest who objects to the payment change may file a motion to determine whether the change is required to maintain payments in accordance with § 1322(b)(5) of the Code.

Proposed FRBP 3002.1 Committee Note

Subdivision (b). If the debtor and holder enter into a post-petition loan modification, then the holder shall be required to file a Notice of Payment Change when the modification becomes permanent and has been approved by the court.

RULE 3002.1 – NOFC / RNOFC Revisions

(f) MOTION TO DETERMINE STATUS OF MORTGAGE CLAIM.

(1) TRUSTEE MOTION TO DETERMINE STATUS OF MORTGAGE CLAIM.

During the period of month 18 to month 22 after the petition and no later than 45 days after the trustee receives all payments due the trustee under the plan, the trustee may file and serve on the holder of the claim, the debtor, and debtor's counsel a motion to determine status of mortgage claim. The motion shall be styled as prescribed by the appropriate Official Form. The motion shall state whether or not, to the trustee's knowledge, the debtor is current on payments due under the terms of the plan and the mortgage and, if not, the amount believed necessary to cure any default on the plan and the mortgage claim. The motion shall also inform the holder of its obligation to timely file and serve a response under subdivision (g) and warn that failure to timely respond may be sanctioned under subdivision (i).

(2) DEBTOR MOTION TO DETERMINE STATUS OF MORTGAGE CLAIM. The debtor may file the motion under subdivision (f)(1) of this Rule.

(g) MANDATORY RESPONSE TO MOTION TO DETERMINE STATUS OF MORTGAGE CLAIM; OBJECTION.

(1) Within 28 days after service of the motion under subdivision (f) of this rule, the holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a response indicating whether it disputes the information in such motion. The response shall itemize any cure amounts or post-petition arrearages that the holder contends are due and owing as of the date of the response. The response shall also include the following information, current as of the day prior to the date of the response: the principal balance owed; the date when the next installment payment from the debtor is due; the amount of the next installment payment that is due from the debtor, separately identifying the components of that payment, including the amount due for principal and interest, mortgage insurance, and taxes, as applicable; the amount, if any, held in a suspense account, unapplied funds account or any similar account; and the amount of any fees, expenses or charges properly noticed under subdivision (c) of this rule that remain unpaid.

(2) The debtor or the trustee shall have 28 days from the date of service of a timely response filed under subdivision (g)(1) within which to file an objection and request a hearing. The filing of an objection commences a contested matter for purposes of Fed. R. Bankr. P. 9014.

(h) ORDER DETERMINING STATUS OF MORTGAGE CLAIM.

(1) If the holder of the claim fails to timely respond under subdivision (g)(1), the trustee shall submit and without further hearing the court may enter an order declaring as of the date of the motion that the debtor is current on all payments required by the plan with respect to the debtor's obligations to the holder, including all escrow amounts, and that all postpetition legal fees, expenses and charges imposed by the holder are satisfied in full.

(2) If the holder timely responds under subdivision (g)(1) and no objection is filed under subdivision (g)(2), the trustee shall submit and without further hearing the court may enter an order determining that the amounts stated in the holder's response filed under subdivision (g)(1) reflect the status of the claim as of the date of the filing of the holder's response.

(3) If an objection is filed under subdivision (g)(2), the court shall, after notice and hearing, determine the status of the mortgage claim and enter an appropriate order.

(4) (A) An order entered under subdivision (h)(2) or (h)(3) shall include the following information, current as of the date of the holder's response under subdivision (h)(2) or such other date as the court may determine: the principal balance owed; the date when the next installment payment from the debtor is due; the amount of the next installment payment that is due from the debtor, separately identifying the components of that payment, including the amount due for principal and interest, mortgage insurance, and taxes, as applicable; the amount, if any, held in a suspense account, unapplied funds account or any similar account; and the amount of any fees, expenses or charges properly noticed under subdivision (c) of this rule that remain unpaid.

(B) An order entered under subdivision (h)(1) may include any of the information described in paragraph (A) as may be appropriate and address the treatment of any installment payments that may become delinquent between the date of the order and the date the court enters an order under 11 U.S.C. § 1328 granting the debtor a discharge.

(i) FAILURE TO NOTIFY OR RESPOND.

(1) 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:

(a) 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 harmless; or

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

(2) If the holder of the claim fails to timely respond under subdivision (g)(1), in addition to any action the court may take under subdivisions (h)(1) and (i)(1), the debtor or the trustee may move to compel a response and for appropriate sanctions.

(a) If the motion is granted—or if the response is provided after the motion was filed—the court must, after giving an opportunity to be heard, require the holder to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(b) If the court orders the holder to file a response under subdivision (g)(1) and the holder fails to do so, then the failure may be treated as contempt of court. In addition to any order the court enters as a sanction for contempt, the court must order the holder to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.