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November 29, 2018

Rebecca A. Womeldorf, Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Washington, D.C. 20544

Re: Proposals for Amendments to Federal Rule of Bankruptcy Procedure 3002.1

On behalf of the American Bankruptcy Institute's Commission on Consumer Bankruptcy, we are submitting the attached comments and proposed changes to Federal Rule of Bankruptcy Procedure 3002.1.

The American Bankruptcy Institute (ABI) is the world's largest association of insolvency professionals, made up of over 11,000 members in multi-disciplinary roles, including attorneys, bankers, judges, lenders, professors, turnaround specialists, accountants and others. These members represent debtor, creditor and other stakeholder interests. Founded in 1982, ABI is non-profit and non-partisan and organized under Internal Revenue Code section 501(c)(3). ABI also plays a leading role in providing congressional leaders and the general public with unbiased reporting and analysis of bankruptcy regulations, laws and trends. ABI is often called on to testify before Congress, analyze proposed bills, and conduct periodic briefings for congressional committees, legislative staff, other government regulators and the media.

In December 2016, the ABI's board of directors passed a resolution creating the Commission on Consumer Bankruptcy and charging the Commission with "researching and recommending improvements to the consumer bankruptcy system that can be implemented within its existing structure." The Commission and its three advisory committees are composed of fifty-two bankruptcy professionals. The commissioners and committee members represent all stakeholders in the bankruptcy system, including attorneys who primarily represent debtors and those who primarily represent creditors, as well as chapter 7 trustees, chapter 13 trustees, retired bankruptcy judges, government officials, and academics. As of the date of this letter, the Commission and its committees have conducted seven public meetings, in which we have heard from seventy-eight witnesses. We have received 131 written comments. The Commission and its committees have

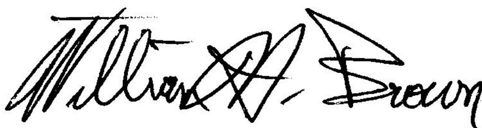
heard from seventy-eight witnesses. We have received 131 written comments. The Commission and its committees have held seventy private meetings to discuss possible reforms. More information, including the membership of the Commission and its committees, is available at our web site: https://consumercommission.abi.org/.

We will release the Commission's final report in 2019. The final report will set out comprehensive recommendations on a range of issues in consumer bankruptcy, affecting both chapter 7 and chapter 13 cases. We had not intended to release any of the Commission's recommendations until the final report. However, we are aware that the National Association of Chapter 13 Trustees (NACTT) is transmitting to the Rules Committee recommendations on changes to Federal Rule of Bankruptcy Procedure 3002.1, and the Commission has authorized the release of our recommendations regarding that rule so that the Rules Committee may consider them in conjunction with NACTT's recommended changes. In many respects, the Commission's recommendations are similar to those of NACTT, but the recommendations are not identical.

The Commission has debated and approved the attached recommendations, which state the conclusions of the Commission as a deliberative law reform group. As such, they do not necessarily reflect the views of any individual associated with the Commission. The Commission also has two non-voting, ex officio members as representatives of the U.S. Trustee Program and Internal Revenue Service. These two ex officio members provided technical assistance and institutional perspectives but took no position on proposals made by the Commission.

We hope that the Rules Committee will find these comments helpful as it considers changes to the Federal Rules of Bankruptcy Procedure. If the Commission can provide other helpful information or be of further assistance, please do not hesitate to reach out to us.

Sincerely,



William H. Brown
U.S. Bankruptcy Judge (retired), Western District of Tennessee
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American Bankruptcy Institute's Commission on Consumer Bankruptcy

Recommendations to the Advisory Committee on Rules of Bankruptcy Procedure: Amendments to Federal Rule of Bankruptcy Procedure 3002.1

Changes to Federal Rule of Bankruptcy Procedure 3002.1

(a) Payment Change Notices. **Federal Rule of Bankruptcy Procedure 3002.1(b) should be amended to:**

(1) specify the effective date of any payment change when the creditor fails to timely file the required notice of payment change, and

(2) require that payment change notices for home equity lines of credit (HELOCs) be filed and served annually rather than monthly, provided that the monthly payment amount does not increase or decrease by more than $10 in any single month.

(b) Reverse Mortgages. **FRBP 3002.1 should be amended to clarify that reverse mortgage are subject to the requirements of FRBP 3002.1 except for the payment change notice requirements in FRBP 3002.1(b).**

(c) Notices of Final Cure.

(1) The requirement of a notice of final cure payment under Federal Rule of Bankruptcy Procedure 3002.1(f) should be amended to:

(A) change the current notice process to a motion practice under Federal Rules of Bankruptcy Procedure 9013 and 9014,

(B) require the motions to include a warning that a creditor may be sanctioned for failing to respond, and

(C) add a midcase status review.

(2) Federal Rule of Bankruptcy Procedure 3002.1(g) should be amended to:

(A) indicate clearly that the creditor's statement is mandatory and must include (i) the principal balance owed; (ii) the date when the next installment payment is due; (iii) the amount of the next installment payment, separately identifying the amount due for principal, interest,

mortgage insurance and escrow, as applicable; and (iv) the amount, if any, held in a suspense account, unapplied funds account or any similar amount;

(B) add a means for the debtor or trustee to object to the creditor's statement and request a hearing; and

(C) provide that an objection would commence a contested matter.

(3) Federal Rule of Bankruptcy Procedure 3002.1(h) should be amended to allow the court to enter an order determining the status of the mortgage claim that includes all of the same information as in the proposed amendment to subsection (g).

(4) Federal Rule of Bankruptcy Procedure 3001.1(i) should be amended to allow the debtor or trustee to file a motion to compel a creditor's statement and for appropriate sanctions. If the motion is granted, the court should be required to order the mortgage creditor to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees, unless the circumstances make such an award unjust. The failure of the mortgage creditor to obey a motion to compel a statement should be treated as contempt of court.

Comments

Background on Rule 3002.1(b) and Payment Change Notices. Federal Rule of Bankruptcy Procedure 3002.1(b) requires that mortgage creditors file and serve "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 twenty-one days before a payment in the new amount is due." Notice must be given on Official Form 410S1, the Notice of Mortgage Payment Change.

Form 410S1 requires the creditor to state the basis for the changed payment amount, the current and new payment amounts, and the date when the change will take effect. The two most common payment changes on mortgage accounts result from interest rate and escrow account adjustments. These changes are subject to disclosure requirements under the Truth in Lending Act (TILA) for adjustable rate mortgages and Real Estate Settlement Procedures Act (RESPA) for escrow accounts, and Form 410S1 instructs the creditor to attach to the form a rate change notice or escrow account statement that is prepared under nonbankruptcy law (TILA and RESPA) with respect to the payment change.

The Advisory Committee Note indicates that Rule 3002.1(b) is intended to assist the debtor and trustee in complying with the requirement under 11 U.S.C. § 1322(b)(5) to maintain current mortgage payments:

> [The Rule] is added to aid in the implementation of § 1322(b)(5), which permits a chapter 13 debtor to cure a default and maintain payments on a

> home mortgage over the course of the debtor's plan. . . . In order to be able to fulfill the obligations of § 1322(b)(5), a debtor and the trustee have to be informed of the exact amount needed to cure any pre-petition arrearage, see Rule 3001(c)(2), and the amount of the postpetition payment obligations. If the latter amount changes over time, due to the adjustment of the interest rate, escrow account adjustments, or the assessment of fees, expenses, or other charges, notice of any change in payment amount needs to be conveyed to the debtor and trustee. Timely notice of these changes will permit the debtor or trustee to challenge the validity of any such charges, if appropriate, and to adjust post-petition mortgage payments to cover any undisputed claimed adjustment.

Over time, three distinct problems have arisen that the Commission believes can be resolved by amendments to Rule 3002.1(b): (1) payment change notices that fail to give at least 21 days' notice; (2) frequent payment changes of small amounts in home equity lines of credit (HELOCs); and (3) the extent to which the rule applies to reverse mortgages.

Untimely Notices of Payment Changes. At times, creditors file payment change notices that give less than 21 days' notice of the date the new payment amount will be due. If the payment increases, it is unfair to debtors and trustees to make the payment change effective when the parties have not been given the required notice. Conversely, if the payment decreases but the creditor gave less than 21 days' notice, it is unfair to make the debtor or trustee wait at least 21 days before the change becomes effective.

Therefore, Rule 3002.1(b) should be amended to provide a special effective date for payment changes when the creditor fails to timely file the notice. If the payment is scheduled to increase and the creditor fails to give at least 21 days' notice of the new payment amount, the payment change will be effective on the first payment due date that is at least 21 days from the filing date of the notice. For example, if the due date for mortgage payments falls on the first day of the month and the creditor files a Notice of Payment Change on January 29th purporting to be effective on February 1, the payment increase would not be effective until March 1, which is the first due date that is at least 21 days after January 29.

If the Notice of Payment Change reflects a payment decrease and is filed and served without providing the required 21 days' notice, the effective date of the changed payment would be the date of the filing of the Notice. This gives the debtor the benefit of the reduced payment as soon as possible.

The proposed amendment that establishes the effective date of a late-filed payment change notice in no way limits the power of the court to take any of the actions permitted under subdivision (i) of Rule 3002.1 for the creditor's failure to timely file the payment change notice.

Establishing an effective date of late payment change notices offers certainty and uniformity for all parties, while preserving the power to sanction the creditor's failure to file the notice when appropriate.

HELOC Payment Changes. Mortgage servicers have suggested that compliance with the payment change notice requirements is burdensome with respect to a home equity line of credit (HELOC), because the payments on such mortgages may change monthly and in small amounts. Servicers have in some cases requested that courts exempt such loans from Rule 3002.1. One court refused to grant such a request, finding that compliance with the rule is mandatory, and that the court lacks discretion to extend the time deadlines or excuse performance.[1] Another court modified the payment change notice requirement for a HELOC loan, requiring that notices be filed every six months, except quarterly during the last year of the debtor's plan.[2]

On September 19, 2012, the Advisory Committee on Bankruptcy Rules conducted a roundtable discussion with representatives of the mortgage servicing industry, consumer debtors, chapter 13 trustees and others to discuss ways to improve Federal Rule of Bankruptcy Procedure 3002.1. One of the discussion topics was the treatment of HELOCs, and various proposals for amending Rule 3002.1(b) were considered. Following the roundtable and further consideration by the Rules Committee, an amendment to Rule 3002.1(b) was published for comment. This amendment was finalized and will become effective on December 1, 2018. It adds the following sentence at the end of amended Rule 3002.1(b)(1): "If the claim arises from a home-equity line of credit, this requirement may be modified by court order."

The Advisory Committee Note related to this change states:

> Subdivision (b) is subdivided and amended in two respects. First, it is amended in what is now subdivision (b)(1) to authorize courts to modify its requirements for claims arising from home equity lines of credit (HELOCs). Because payments on HELOCs may adjust frequently and in small amounts, the rule provides flexibility for courts to specify alternative procedures for keeping the person who is maintaining payments on the loan apprised of the current payment amount. Courts may specify alternative requirements for providing notice of changes in HELOC payment amounts by local rules or orders in individual cases.

A uniform procedure for addressing HELOC payment change notices should be adopted. Bankruptcy rules that establish uniform procedures for the treatment of claims secured by home mortgages generally further the objective of economical and efficient administration of bankruptcy cases. The approach permitted under the 2018 amendment will detract from this objective by making it difficult for mortgage servicers to comply with a myriad of local rules or orders in individual cases.

We believe that an annual notice should suffice with respect to HELOCs provided that the monthly changes are less than $10 and the annual notice explains the monthly changes and includes a reconciliation amount to account for any overpayment or underpayment received during the prior year. The monthly payment specified in the annual notice would be adjusted upward or downward to account for the reconciliation amount.

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[1] *In re* Adkins, 477 B.R. 71 (Bankr. N.D. Ohio 2012).

[2] *In re* Pillow, 2013 WL 10252924 (Bankr. W.D. Mich. 2013).

Reverse Mortgages. Reverse mortgage loans are a form of credit secured by first mortgages on single family residences and are available to borrowers 62 years of age and older. Two types of reverse mortgage products are generally available: reverse mortgages offered under the home equity conversion mortgage (HECM) program insured by the Federal Housing Administration (FHA) and proprietary reverse mortgage products offered by lenders. Instead of borrowing a lump sum and repaying it over time, borrowers may receive loan proceeds not only in the form of a lump sum, but also as a line of credit, or regular monthly advances. The loan proceeds are not required to be repaid until the borrower (or survivor if joint loan) dies or moves, or there is a default on other obligations. Lenders are repaid the loan proceeds and interest out of the proceeds from the sale of the home.

While there are no monthly loan payments required of the borrower, reverse mortgages are not "payment-free." Rather, the loan documents require reverse mortgage borrowers, like traditional mortgage borrowers, to pay for "property charges." These charges include real estate taxes and hazard insurance premiums and, if applicable, condominium association fees, ground rents, or other special assessments. If sufficient funds are not set aside or the funds run out, then the borrower is responsible for making these payments directly.

Default occurs when the borrower is responsible for, but fails to pay, the property charges. After giving the borrower notice and an opportunity to cure the default, and after obtaining approval from HUD, the creditor may accelerate the debt, making all sums due under the loan immediately payable. The homeowner's failure to pay the property charges is an event of default and can trigger a foreclosure. Alternatively, and more commonly, the creditor will pay the outstanding property charges by withholding amounts from monthly payments or by charging amounts to a line of credit. In this situation, the payment is considered a distribution of available loan proceeds and the borrower is not considered delinquent. This solution works so long as loan funds remain available to draw. When the available credit on the reverse mortgage is insufficient to cover the outstanding property charges (i.e., the principal limit has already been reached), HUD generally requires lenders to advance their own funds, known as "loan advances" or "corporate advances," to pay the property charges. Once there are no longer sufficient funds in the available credit, the loan is then in default and servicers will submit a due-and-payable request to HUD, which will lead to acceleration of the debt and foreclosure.

When Rule 3002.1 first went into effect on December 1, 2011, it applied to principal residence loans that were "provided for under Code section 1322(b)(5) in the debtor's plan." Based on this language, the debtor's curing of a default on a reverse mortgage under section 1322(b)(5) was clearly covered by Rule 3002.1. Thus, the holder of the mortgage claim was required to provide notice of postpetition fees under Rule 3002.1(c).

The reference to section 1322(b)(5) led some courts to conclude that Rule 3002.1 applied only if the debtor's plan clearly "provided for" the claim under that section, and only if the debtor had a prepetition arrearage that was being cured under the plan. Responding in part to these decisions, the Rules Committee in 2016 deleted the reference to section 1322(b)(5) from Rule 3002.1(a) and replaced it with: "for which the plan provides that either the trustee or the debtor

will make contractual installment payments." The Advisory Committee Note issued with the rule amendment states that the "reference to § 1322(b)(5) of the Code is deleted to make clear that the rule applies even if there is no prepetition arrearage to be cured."

The 2016 amendment arguably makes reverse mortgages no longer subject to Rule 3002.1 because the debtor does not make "contractual installment payments." While payment of property charges is a contractual payment, the requirement that it be an "installment" payment could lead courts to conclude that a chapter 13 plan providing for the curing of past payment charges and the maintenance of future payments charges is not subject to Rule 3002.1. We believe the Committee could assure that the 2016 amendment does not work an unintended change simply by deleting the word "installment" so that the rule would provide: "This rule applies in a chapter 13 case to claims (1) that are secured by a security interest in the debtor's principal residence, and (2) for which the plan provides that either the trustee or the debtor will make contractual payments." A Committee Note should explain the change is intended to make clear that reverse mortgages are covered by the rule and that there is an obligation to send notices of postpetition fees and notices as well as motions and responses related to the status of the mortgage.

Because reverse mortgages do not require the debtor to make installment payments, the payment change notice requirements under Rule 3002.1(b) are generally not applicable, but the rule should apply to attorney fees and other charges under defaulted reverse mortgages being cured though the plan. It would be helpful for the Committee to make reference to this in a Committee Note.

Notices of Final Cure and the Need for Amendments to Rule 3002.1(f), (g), (h), and (i). Subsections (f), (g), (h) and (i) of Federal Rule of Bankruptcy Procedure 3002.1 provide the procedure for determining the status of a mortgage claim at the end of the case. This procedure, known as a Notice of Final Cure, includes detailing the requirements for the creditor responding to the notice filed by the trustee or the debtor. The provisions permit the debtor or trustee to file a motion for the court to determine whether the default has been cured and all required postpetition amounts have been paid. The consequences for failing to timely provide information are also established by these provisions.

The Notice of Final Cure process needs expansion and improvement. The process should be familiar and streamlined, and it should produce the precise information needed by the parties. This process should occur midcase to give the debtor, trustee and creditor an opportunity to address any issues while time remains in the case. The process would also occur at the end of the case to provide the information needed just prior to case closing so that the loan could be properly serviced and so that debtors would know exactly what obligations remain. The process would need to be effective in both conduit and non-conduit jurisdictions and also for both large and smaller servicers. Finally, any new rule needs to provide more robust consequences for failing either to respond or to provide the required data.

Under 1322(b)(5), a debtor is permitted to cure any default and maintain home mortgage payments over the life of the bankruptcy plan. To be successful, the debtor and trustee must know

the amount needed to cure the pre-petition default and must be informed about postpetition payment changes and postpetition fees, expenses and charges incurred during the plan. Federal Rule of Bankruptcy Procedure 3002.1 was enacted to require this information.

Although the intent was both for the trustee to file a Notice of Final Cure in every case containing a mortgage on the debtor's principal residence and for the debtor to have the opportunity to file a Notice of Final Cure if the trustee failed to do so, there are many cases in which neither the trustee nor the debtor files a Notice of Final Cure. Although a response is mandated by the rule, there are also many cases in which a Notice of Final Cure is filed but no response or an incomplete response is filed by the creditor. As a result, there are many cases in which the creditor does not report the status of the loan at the end of the case. In such cases, debtors with home mortgages complete their Chapter 13 cases without certainty as to the status of their mortgages. Even when the notice and response procedure in Rule 3002.1 works as intended, the end-of-case timing is often too late for plan modification to address postpetition payment changes, fees, expenses, charges and defaults. Conversely, there are some trustees and debtors who not only file a Notice of Final Cure, but file additional motions or requests for information not provided in Rule 3002.1. These include Qualified Written Requests under RESPA, requests for full payment histories, and motions to deem the account current. These additional requests fill some of the voids in Rule 3002.1 practice but cause uncertainty and expense for creditors needing to prepare multiple responses and to gather information in addition to that required by Rule 3002.1. The absence of procedural uniformity has impaired efforts by creditors to reliably automate the management of Rule 3002.1 notices in Chapter 13 cases. The Commission determined that a single, mandatory, motion-driven process would be more efficient and effective for all parties.

Midcase Status Process and Motion Practice. The Commission recommends amending Rule 3002.1 to create a midcase status process to complement the existing final cure process. The current notice process would be replaced with the motion and order practice familiar under Rule 9014. The style of the motion should be standardized to improve automation and to increase the efficiency of PACER/ECF searches. Both procedures would include data points required to be included in the creditor's response and in the resulting court orders. The proposed amendments also provide more robust consequences for failing to provide required information.

Our proposal is to change the current notice process to motion practice under Federal Rules of Bankruptcy Procedure 9013 and 9014. A midcase status review was added. The motions would include an additional warning that a creditor may be sanctioned under subdivision (i) for failing to respond.

Creditor's Response and Amendment to FRBP 3002.1(g). The Commission recommends amending FRBP 3002.1(g) to emphasize and clarify that the creditor's response to a Notice of Final Cure is mandatory. The response must include the principal balance owed; the date when the next installment payment is due; the amount of the next installment payment, separately identifying the amount due for principal, interest, mortgage insurance and escrow, as applicable; and the amount, if any, held in a suspense account, unapplied funds account or any similar

account. The rule as amended would add a means for the debtor or trustee to object and request a hearing and provide that an objection would commence a contested matter.

Court Action and Amendment to FRBP 3002.1(h). We also propose amending FRBP 3002.1(h) to provide for the court to enter an order determining the status of the mortgage claim. The order would include the same data points listed in the response in the proposed amendment to Rule 3002.1(g).

Motion to Compel and Amendment to FRBP 3002.1(i). Finally, we propose adding a provision for the debtor or trustee to file a motion to compel a response and for appropriate sanctions. If the motion is granted, the court must require the mortgage creditor to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees, unless the circumstances make such an award unjust. A new provision is proposed that would allow the failure of the mortgage creditor to file a response to be treated as contempt of court. These changes are modeled after similar provisions in Rule 37 of the Federal Rules of Civil Procedure dealing with discovery sanctions, including amendments to Rule 37 that were made after the Rules Committee first adopted Rule 3002.1(i).

Exhibit – Rule 3002.1 Proposed Revisions[3]

(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 later of the Date of the Notice or the date specified in 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 any 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

[3] The formal Commission vote was to approve the recommendations in the box that appears on the first pages of this document. At the time of the vote, the Commission had before it the text in this Exhibit showing how the proposed recommendations might be implemented. The Commission is providing the proposed rules language for whatever assistance it might provide in the Rules Committee's consideration of the Commission's proposal.

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 upward or downward 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.

(4) *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.

* * * *

(f) MOTION TO DETERMINE STATUS OF MORTGAGE CLAIM.

(1) MANDATORY MOTION TO DETERMINE STATUS OF MORTGAGE CLAIM. Both during the period between 18 and 22 months after the petition date and no later than 45 days after the trustee receives all payments due the trustee under the plan, the trustee shall 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 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) PERMISSIVE MOTION TO DETERMINE STATUS OF MORTGAGE CLAIM. The debtor may file the motion required 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 (i) that the debtor has paid all amounts required by the plan to be paid to the holder on account of its claim; or (ii) that the debtor is in default of an amount required by the plan to be paid to the holder on account of its claim. The response shall include the following information, current as of 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, interest, mortgage insurance, and taxes, as applicable; and the amount, if any, held in a suspense

account, unapplied funds account or any similar account. If the response states the debtor is in default under the plan, the response shall itemize the amount(s) that the holder contends is unpaid as of the date of the response.

(2) The debtor or the trustee shall have 14 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, interest, mortgage insurance, and taxes, as applicable; and the amount, if any, held in a suspense account, unapplied funds account or any similar account.

(B) An order entered under subdivision (h)(1) may include any of the information described in paragraph (A) as may be appropriate.

(i) FAILURE TO NOTICE 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 obey, 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.