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Proposed Bankruptcy Rule 3001- Mortgage Claim Documentation

Charles Roedersheimer to Rules_Comments 02/10/2010 01:02 PM

Cc: "Lester Thompson", "Andrew Zeigler", "William House"

Mr. Peter G. McCabe
Secretary of the Committee on Rules of Practice and Procedures
Administrative Office of the United States Courts
Washington, D.C. 20544

I write in favor of the proposed revisions to Bankruptcy Rule 3001. As a firm of 4 attorneys representing Debtors in Chapter 7 and 13 cases in Southwest Ohio, my firm Thompson & DeVeny Co. LPA has represented thousands of Chapter 13 Debtors over the past 25 years. Our experience with Debtors having securitized mortgage claims over the years has always required our having to file numerous objections and sometimes adversary cases as to these claims because inevitably they contained accounting errors and fees and costs unallowable under loan contract provisions or applicable bankruptcy laws. Of course these objections and adversaries increased the cost to the court, creditors and debtors. A requirement for full disclosure of all cost elements of the mortgage claims will benefit all parties because some thought will be given to applicable bankruptcy law and contract provisions BEFORE the claim is filed. Time and effort applied at the initiation of the claim will dramatically reduce objection claims and allow the court to expedite the docket and Chapter 13 case confirmation.

In the past two years local 3001 rules in the S.D. Ohio, Dayton have required documentation of claims as proposed by Rule 3001 and the number of objections that have had to be filed to these claims has been reduced substantially. For example, we no longer have to seek discovery from creditors to have them breakout the arrearage costs in their claims in order to object to improper attorney fees (not allowed under Ohio law in bankruptcy claims), un-allowed sheriff sale costs on foreclosure that are refunded because of stay by bankruptcy filing, and other administrative fees that would be regarded as unreasonable or excessive (i.e. monthly inspection fees, multiple pricing opinions for the property, etc.). Most servicers now know to delete these costs and fees.

I believe by now everyone in the United States is well aware that the mortgage financing industry is not only in major disarray but the mortgage servicing industry is under extreme stress in servicing the millions of mortgage loans that are delinquent. The proposed rule changes may initially add to the servicing industry stress but these rules will, at least for those in bankruptcy and those practicing in bankruptcy court, finally shed light on mortgage loan accounting practices and provide home owners with actual knowledge the entity or individual to whom they are indebted on their mortgage loan. For all of the foregoing reasons the committee needs to adopt the rule and can also improve it as to disclosure requirements involving securitized loans.

The improvement I recommend relates to relate to the phenomenon encountered with mortgage loans over the past 10 years and that is securitization of these loan products. Because of lack of oversight of the mortgage securitization products, I an aware that servicers filing mortgage security claims are representing to bankruptcy courts legal entitlement to payment on secured loans that are not in compliance with SEC, IRS and securitized trust requirements. Specifically, I have observed cases where our clients have claims filed on behalf of a securitized trust where the representations to the court concerning assignment of a mortgage lien or endorsement of the note failed to meet trust provisions or the inclusion of the loan and mortgage in the trust was in violation of the securitized trust requirements for the loan qualification standards of the trust. Such improprieties could have legal ramifications as to actual ownership of the note; compliance with trust terms related to SEC requirements or REMIC provisions of the Trust; or actual fraud on the court if representations to the court as to lien assignments or note endorsements were not in accordance with the Trust terms. Such misrepresentations directly affect the

ability of the creditor to pursue standing before the bankruptcy court on the claim. Unfortunately issues regarding the securitization requirements is a complex area that many bankruptcy attorneys will not recognize. Adoption of the proposed rule will avoid the deceptive representations now being filed if the proposed rule is modified slightly. To avoid a court's unwittingly approving payments to a creditor who is not entitled to payment and to ensure timely and full disclosure of note and lien ownership requirements of these securitized trusts I recommend adding the following provision to 3001 (2).

"If the claim (or any part thereof) has been transferred from the original creditor to another entity prior to the date the debtor filed a petition in bankruptcy, the proof of claim shall provide proof that the entity filing the proofof claim is the owner of the claim at the time it is filed. Proof by affidavit is insufficient."

The above provision is consistent with recent changes to 15 U.S.C. § 1641(g)(2) which requires servicers to disclose to borrowers the identity of the note holder.

Thank you for your time and effort in drafting the rule provisions. The changes proposed in 3001 will greatly assist the streamlining of the claims process for mortgage loans and is an important step towards promoting full disclosure of accounting practices and loan costs by servicers and lenders to the numerous home owners caught in our current national mortgage loan financial crises. If I can provide any additional information or assistance by way of case examples or testimony to the committee, I offer my services for that purpose.

Sincerely,

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