

**Proposed Amendments to Federal Bankruptcy Rules**

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I want to specifically comment on changes to Rule 3001 and the new Rule 3002.1. I consistently have problems in evaluating claims in Chapter 13 cases because the creditors routinely fail to file documentation with their Proofs of Claim or file documentation that does not adequately show ownership of the claim or that it is within the appropriate statute of limitations. Why should debtors' counsel have to constantly police creditors who have no consequences for their actions? Requiring more information other than a conclusory statement drafted by their own system would greatly assist us in advising our clients. Giving them the consequence of an outright denial of their claims would put the cost back on them where it should be.

New Rule 3002.1 is a blessing. I have tried to add requirements in the plan for the mortgage company to notify me and my clients whenever they assess fees and costs during the term of the bankruptcy so that I can evaluate them before these fees and costs get hidden in the overall claim (which they usually do). Many of my clients finish paying off the arrearage for their mortgages only to find that the mortgage company added fees and costs without any ability for contesting them.

I would suggest four additions:

1. Creditors who hold a security interest in property that the debtor has stated an intention to retain (whether in a Statement of Intention or paying directly in a Chapter 13 plan) must send regular monthly statements to the debtor so that the debtor can track payments and ensure the right to retain the property. Without these statements, debtors have no information like the amount of the payment, the location of the payment, the due date of the payment or the amount remaining/payoff. These statements should not be considered violations of the Automatic Stay.
2. Creditors should be required to file all assignments along with their claims to prove that they are the current owner of the claim. Forcing the debtors' counsel to continually file objections based on lack of standing (and having to face disparate treatment in the courts) places a financial burden on the party least able to handle it. The claim owner should already have these documents and should be forced to prove their claims.
3. Mortgage companies should be required to account for post petition payments separately than pre-petition arrearage payments. The trustee payments should be applied to all amounts owed pre-petition based on the proof of claim filed and allowed. The debtor payments made directly should be applied to post-petition obligations only (and not to added fees unless they comply with the new rule).

4. The rules need a clear statement that these rules are in addition to any other remedy allowed by other laws and are not meant to override those remedies. Several courts have taken the position that bankruptcy laws pre-empt other federal laws like the Fair Debt Collection Practices Act. Each law exists for specific and different reasons. Both should be respected.

When a debtor files a petition and any supporting documentation, he is constantly reminded that these documents are filed under oath. Why should the claims that creditors file be any different? They must contain all required information or be denied outright. Costs and fees for failure to comply should be placed on the creditor or debt collector that has caused the issue and not on the debtor who has done everything to comply thereby increasing the cost of the bankruptcy or forcing debtors' counsel to work for free.

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