

**10-BK-004**

From: Erin Shank <erinbakershank@aol.com>  
To: Rules\_Comments@ao.uscourts.gov  
Date: 12/03/2010 02:05 AM  
Subject: Proposed Changes to Bankruptcy Rules

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Dear Rules Committee: My name is Erin Shank. I am a bankruptcy attorney in Central Texas. I am writing to you in strong support of the proposed Bankruptcy Amendments that would require mortgage companies to inform debtors in bankruptcy of any charges to the mortgage during the bankruptcy. I have multiple, multiple examples of why that needs to be a requirement as proposed by the proposed amendments to the bankruptcy rules. I have a case in Texas in which the clients filed a chapter 13 in order to pay two years of property taxes on their home. The husband had a heart attack which had caused the family financial problems and the local taxing authorities were threatening to foreclose on their home. We filed a Chapter 13 plan, mailed a copy of the plan to the lender and the Debtors stayed in bankruptcy paying their past due taxes for five years. However, during that five year period, the Debtors' mortgage company paid the taxes that were being paid under the Chapter 13 plan directly to the local taxing authority. The mortgage company never notified me or the Debtors that they had paid the debt that was the reason the case was filed. Two months before the 60 month plan was over, we learned what the mortgage company had done because they filed a motion in the bankruptcy court seeking to foreclose on the mortgage due to their payment of the property taxes. Since those taxes had actually been paid twice, it took my office one year of complete pro bono time and at least six hearings before the bankruptcy court to convince the taxing authorities to refund the overpayment and the mortgage company to then reverse months of bogus late charges added to the mortgage over the five year life of the plan. All of this could have been avoided if the mortgage company had simply told us that they paid the debt that the Debtors were paying in the Chapter 13 bankruptcy case.

In order to avoid a catastrophe like this, I began attaching a provision to my chapter 13 plans that was written by John Rao, counsel for the National Consumer Law League, which simply requires mortgage companies to tell debtors when they charge to the mortgage during the bankruptcy case. This language was opposed by the Chapter 13 Trustee and the Debtors' mortgage company (Bank of America). I filed a 45 page brief with the bankruptcy court (which I prepared completely on a pro bono basis) stating why requiring mortgage companies to tell the borrowers when they incur fees or expenses charged to the loan was a wise and legal idea. The mortgage company (Bank of America) filed a two page response. The Bankruptcy Court ruled in favor of the mortgage company and struck the notice requirement. The Court ruled that making the mortgage company tell borrowers when they are adding expenses to a mortgage is an impermissible modification of a home loan under 11 U.S.C. 1322. Clearly incorrect ruling.....we need your help!

Please, please help us make mortgage companies tell their borrowers in Chapter 13 when they are adding fees and expenses to home loans. Think of it this way. If your mortgage company, on your home loan, decided to add hundreds or thousands or dollars of expenses to your loan, wouldn't you want to know that they were doing that? This is a reasonable request that should be implemented by the proposed amendments to the Bankruptcy Rules.

Thank you for your time and consideration.

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