

New Amendments for Proofs of Claim under the Federal Rules of Bankruptcy Procedure

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**New Amendments for Proofs of Claim under
the Federal Rules of Bankruptcy Procedure**

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the right of a party to obtain information by means of discovery or as ordered by the court under any authority outside the rule.

Other changes. Stylistic and organizational changes were made throughout the rule and Committee Note to reduce the length and clarify the meaning of the published proposal.

Rule 3001. Proof of Claim

1 * * * * *

2 (c) SUPPORTING INFORMATION.

3 (1) *Claim Based on a Writing.* When a claim,
4 or an interest in property of the debtor securing the claim, is
5 based on a writing, the original or a duplicate shall be filed
6 with the proof of claim. If the writing has been lost or
7 destroyed, a statement of the circumstances of the loss or
8 destruction shall be filed with the claim.

9 (2) *Additional Requirements in an Individual*
10 *Debtor Case; Sanctions for Failure to Comply.* In a case in
11 which the debtor is an individual:

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12 (A) If, in addition to its principal amount,
13 a claim includes interest, fees, expenses, or other charges
14 incurred before the petition was filed, an itemized statement
15 of the interest, fees, expenses, or charges shall be filed with
16 the proof of claim.

17 (B) If a security interest is claimed in the
18 debtor's property, a statement of the amount necessary to cure
19 any default as of the date of the petition shall be filed with the
20 proof of claim.

21 (C) If a security interest is claimed in
22 property that is the debtor's principal residence, the attachment
23 prescribed by the appropriate Official Form shall be filed with
24 the proof of claim. If an escrow account has been established in
25 connection with the claim, an escrow account statement prepared
26 as of the date the petition was filed and in a form consistent with
27 applicable nonbankruptcy law shall be filed with the attachment
28 to the proof of claim.

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29 (D) If the holder of a claim fails to provide
30 any information required by this subdivision (c), the court
31 may, after notice and hearing, take either or both of the
32 following actions:

33 (i) preclude the holder from
34 presenting the omitted information, in any form, as evidence
35 in any contested matter or adversary proceeding in the case,
36 unless the court determines that the failure was substantially
37 justified or is harmless; or

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

41 * * * * *

COMMITTEE NOTE

Subdivision (c). Subdivision (c) is amended to prescribe with greater specificity the supporting information required to accompany certain proofs of claim and, in cases in which the debtor is an individual, the consequences of failing to provide the required information.

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Existing subdivision (c) is redesignated as (c)(1).

Subdivision (c)(2) is added to require additional information to accompany proofs of claim filed in cases in which the debtor is an individual. When the holder of a claim seeks to recover – in addition to the principal amount of a debt – interest, fees, expenses, or other charges, the proof of claim must be accompanied by a statement itemizing these additional amounts with sufficient specificity to make clear the basis for the claimed amount.

If a claim is secured by a security interest in the property of the debtor and the debtor defaulted on the claim prior to the filing of the petition, the proof of claim must be accompanied by a statement of the amount required to cure the prepetition default.

If the claim is secured by a security interest in the debtor's principal residence, the proof of claim must be accompanied by the attachment prescribed by the appropriate Official Form. In that attachment, the holder of the claim must provide the information required by subparagraphs (A) and (B) of this paragraph (2). In addition, if an escrow account has been established in connection with the claim, an escrow account statement showing the account balance, and any amount owed, as of the date the petition was filed must be submitted in accordance with subparagraph (C). The statement must be prepared in a form consistent with the requirements of nonbankruptcy law. *See, e.g.*, 12 U.S.C. § 2601 *et seq.* (Real Estate Settlement Procedure Act). Thus the holder of the claim may provide the escrow account statement using the same form it uses outside of bankruptcy for this purpose.

Subparagraph (D) of subdivision (c)(2) sets forth sanctions that the court may impose on a creditor in an individual debtor case

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that fails to provide information required by subdivision (c). Failure to provide the required information does not itself constitute a ground for disallowance of a claim. *See* § 502(b) of the Code. But when an objection to the allowance of a claim is made or other litigation arises concerning the status or treatment of a claim, if the holder of that claim has not complied with the requirements of this subdivision, the court may preclude it from presenting as evidence any of the omitted information, unless the failure to comply with this subdivision was substantially justified or harmless. The court retains discretion to allow an amendment to a proof of claim under appropriate circumstances or to impose a sanction different from or in addition to the preclusion of the introduction of evidence.

Changes Made After Publication

Subdivision (c)(1). The requirement that the last account statement sent to the debtor be filed with the proof of claim was deleted.

Subdivision (c)(2). In subparagraph (C), a provision was added requiring the use of the appropriate Official Form for the attachment filed by a holder of a claim secured by a security interest in a debtor's principal residence.

In subdivision (c)(2)(D), the clause "the holder shall be precluded" was deleted, and the provision was revised to state that "the court may, after notice and hearing, take either or both" of the specified actions.

Committee Note. In the discussion of subdivision (c)(2), the term "security interest" was added to the sentence that discusses the

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required filing of a statement of the amount necessary to cure a prepetition default.

The discussion of subdivision (c)(2)(D) was expanded to clarify that failure to provide required documentation, by itself, is not a ground for disallowance of a claim and that the court has several options in responding to a creditor's failure to provide information required by subdivision (c).

Other changes. Stylistic changes were made to the rule and the Committee Note.

Rule 3002.1. Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence

1 (a) IN GENERAL. This rule applies in a chapter 13
2 case to claims that are (1) secured by a security interest in the
3 debtor's principal residence, and (2) provided for under
4 § 1322(b)(5) of the Code in the debtor's plan.

5 (b) NOTICE OF PAYMENT CHANGES. The
6 holder of the claim shall file and serve on the debtor, debtor's
7 counsel, and the trustee a notice of any change in the payment

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8 amount, including any change that results from an interest rate
9 or escrow account adjustment, no later than 21 days before a
10 payment in the new amount is due.

11 (c) NOTICE OF FEES, EXPENSES, AND
12 CHARGES. The holder of the claim shall file and serve on
13 the debtor, debtor's counsel, and the trustee a notice itemizing
14 all fees, expenses, or charges (i) that were incurred in
15 connection with the claim after the bankruptcy case was filed,
16 and (ii) that the holder asserts are recoverable against the
17 debtor or against the debtor's principal residence. The notice
18 shall be served within 180 days after the date on which the
19 fees, expenses, or charges are incurred.

20 (d) FORM AND CONTENT. A notice filed and
21 served under subdivision (b) or (c) of this rule shall be
22 prepared as prescribed by the appropriate Official Form, and

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23 filed as a supplement to the holder's proof of claim. The

24 notice is not subject to Rule 3001(f).

25 (e) DETERMINATION OF FEES, EXPENSES, OR

26 CHARGES. On motion of the debtor or trustee filed within

27 one year after service of a notice under subdivision (c) of this

28 rule, the court shall, after notice and hearing, determine

29 whether payment of any claimed fee, expense, or charge is

30 required by the underlying agreement and applicable

31 nonbankruptcy law to cure a default or maintain payments in

32 accordance with § 1322(b)(5) of the Code.

33 (f) NOTICE OF FINAL CURE PAYMENT. Within

34 30 days after the debtor completes all payments under the

35 plan, the trustee shall file and serve on the holder of the claim,

36 the debtor, and debtor's counsel a notice stating that the

37 debtor has paid in full the amount required to cure any default

38 on the claim. The notice shall also inform the holder of its

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39 obligation to file and serve a response under subdivision (g).

40 If the debtor contends that final cure payment has been made

41 and all plan payments have been completed, and the trustee

42 does not timely file and serve the notice required by this

43 subdivision, the debtor may file and serve the notice.

44 (g) RESPONSE TO NOTICE OF FINAL CURE

45 PAYMENT. Within 21 days after service of the notice under

46 subdivision (f) of this rule, the holder shall file and serve on

47 the debtor, debtor's counsel, and the trustee a statement

48 indicating (1) whether it agrees that the debtor has paid in full

49 the amount required to cure the default on the claim, and (2)

50 whether the debtor is otherwise current on all payments

51 consistent with § 1322(b)(5) of the Code. The statement shall

52 itemize the required cure or postpetition amounts, if any, that

53 the holder contends remain unpaid as of the date of the

54 statement. The statement shall be filed as a supplement to the

55 holder's proof of claim and is not subject to Rule 3001(f).

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56 (h) DETERMINATION OF FINAL CURE AND
57 PAYMENT. On motion of the debtor or trustee filed within
58 21 days after service of the statement under subdivision (g) of
59 this rule, the court shall, after notice and hearing, determine
60 whether the debtor has cured the default and paid all required
61 postpetition amounts.

62 (i) FAILURE TO NOTIFY. If the holder of a claim
63 fails to provide any information as required by subdivision
64 (b), (c), or (g) of this rule, the court may, after notice and
65 hearing, take either or both of the following actions:

66 (1) preclude the holder from presenting the
67 omitted information, in any form, as evidence in any
68 contested matter or adversary proceeding in the case, unless
69 the court determines that the failure was substantially justified
70 or is harmless; or

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

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COMMITTEE NOTE

This rule is new. It 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. It applies regardless of whether the trustee or the debtor is the disbursing agent for postpetition mortgage payments.

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 prepetition 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 postpetition mortgage payments to cover any undisputed claimed adjustment. Compliance with the notice provision of the rule should also eliminate any concern on the part of the holder of the claim that informing a debtor of a change in postpetition payment obligations might violate the automatic stay.

Subdivision (a). Subdivision (a) specifies that this rule applies only in a chapter 13 case to claims secured by a security interest in the debtor's principal residence.

Subdivision (b). Subdivision (b) requires the holder of a claim to notify the debtor, debtor's counsel, and the trustee of any postpetition change in the mortgage payment amount at least 21 days before the new payment amount is due.

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Subdivision (c). Subdivision (c) requires an itemized notice to be given, within 180 days of incurrence, of any postpetition fees, expenses, or charges that the holder of the claim asserts are recoverable from the debtor or against the debtor's principal residence. This might include, for example, inspection fees, late charges, or attorney's fees.

Subdivision (d). Subdivision (d) provides the method of giving the notice under subdivisions (b) and (c). In both instances, the holder of the claim must give notice of the change as prescribed by the appropriate Official Form. In addition to serving the debtor, debtor's counsel, and the trustee, the holder of the claim must also file the notice on the claims register in the case as a supplement to its proof of claim. Rule 3001(f) does not apply to any notice given under subdivision (b) or (c), and therefore the notice will not constitute prima facie evidence of the validity and amount of the payment change or of the fee, expense, or charge.

Subdivision (e). Subdivision (e) permits the debtor or trustee, within a year after service of a notice under subdivision (c), to seek a determination by the court as to whether the fees, expenses, or charges set forth in the notice are required by the underlying agreement or applicable nonbankruptcy law to cure a default or maintain payments.

Subdivision (f). Subdivision (f) requires the trustee to issue a notice to the holder of the claim, the debtor, and the debtor's attorney within 30 days after completion of payments under the plan. The notice must (1) indicate that all amounts required to cure a default on a claim secured by the debtor's principal residence have been paid, and (2) direct the holder to comply with subdivision (g). If the trustee fails to file this notice within the required time, this

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subdivision also permits the debtor to file and serve the notice on the trustee and the holder of the claim.

Subdivision (g). Subdivision (g) governs the response of the holder of the claim to the trustee's or debtor's notice under subdivision (f). Within 21 days after service of notice of the final cure payment, the holder of the claim must file and serve a statement indicating whether the prepetition default has been fully cured and also whether the debtor is current on all payments in accordance with § 1322(b)(5) of the Code. If the holder of the claim contends that all cure payments have not been made or that the debtor is not current on other payments required by § 1322(b)(5), the response must itemize all amounts, other than regular future installment payments, that the holder contends are due.

Subdivision (h). Subdivision (h) provides a procedure for the judicial resolution of any disputes that may arise about payment of a claim secured by the debtor's principal residence. Within 21 days after the service of the statement under (g), the trustee or debtor may move for a determination by the court of whether any default has been cured and whether any other non-current obligations remain outstanding.

Subdivision (i). Subdivision (i) specifies sanctions that may be imposed if the holder of a claim fails to provide any of the information as required by subdivisions (b), (c), or (g).

If, after the chapter 13 debtor has completed payments under the plan and the case has been closed, the holder of a claim secured by the debtor's principal residence seeks to recover amounts that should have been but were not disclosed under this rule, the debtor may move to have the case reopened in order to seek sanctions against the holder of the claim under subdivision (i).

Changes Made After Publication

Subdivision (a). As part of organizational changes intended to make the rule shorter and clearer, a new subdivision (a) was inserted that specifies the applicability of the rule. Other subdivision designations were changed accordingly.

Subdivision (b). The timing of the notice of payment change, addressed in subdivision (a) of the published rule, was changed from 30 to 21 days before payment must be made in the new amount.

Subdivision (d). The provisions of the published rule prescribing the procedure for providing notice of payment changes and of fees, expenses, and charges were moved to subdivision (d).

Subdivision (e). As part of the organizational revision of the rule, the provision governing the resolution of disputes over claimed fees, expenses, or charges was moved to this subdivision.

Subdivision (f). The triggering event for the filing of the notice of final cure payment was changed to the debtor's completion of all payments required under the plan. A sentence was added requiring the notice to inform the holder of the mortgage claim of its obligation to file and serve a response under subdivision (g).

Subdivision (h). The caption of this subdivision (which was subdivision (f) as published), was changed to describe its content more precisely.

Subdivision (i). The clause "the holder shall be precluded" was deleted, and the provision was revised to state that "the court

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may, after notice and hearing, take either or both” of the specified actions.

Committee Note. A sentence was added to the first paragraph to clarify that the rule applies regardless of whether ongoing mortgage payments are made directly by the debtor or disbursed through the chapter 13 trustee. Other changes were made to the Committee Note to reflect the changes made to the rule.

Other changes. Stylistic changes were made throughout the rule and Committee Note.

Rule 4004. Grant or Denial of Discharge

1

* * * * *

2

(b) EXTENSION OF TIME.

3

(1) On motion of any party in interest, after notice and

4

hearing ~~on notice~~, the court may for cause extend the time to

5

~~file a complaint objecting to discharge.~~ Except as provided in

6

subdivision (b)(2), ~~the~~ motion shall be filed before the time

7

has expired.

8

(2) A motion to extend the time to object to discharge

9

may be filed after the time for objection has expired and

Mortgage Proof of Claim Attachment

If you file a claim secured by a security interest in the debtor's principal residence, you must use this form as an attachment to your proof of claim. See Bankruptcy Rule 3001(c)(2).

Name of debtor: _____

Case number: _____

Name of creditor: _____

Last four digits of any number you use to identify the debtor's account: _____

Part 1: Statement of Principal and Interest Due as of the Petition Date

Itemize the principal and interest due on the claim as of the petition date (included in the Amount of Claim listed in Item 1 on your Proof of Claim form).

1. Principal due (1) \$ _____

2. Interest due	Interest rate	From mm/dd/yyyy	To mm/dd/yyyy	Amount
	_____ %	___/___/___	___/___/___	\$ _____
	_____ %	___/___/___	___/___/___	\$ _____
	_____ %	___/___/___	___/___/___	+ \$ _____

Total interest due as of the petition date \$ _____ Copy total here ► (2) + \$ _____

3. Total principal and interest due (3) \$ _____

Part 2: Statement of Prepetition Fees, Expenses, and Charges

Itemize the fees, expenses, and charges due on the claim as of the petition date (included in the Amount of Claim listed in Item 1 on the Proof of Claim form).

Description	Dates incurred	Amount
1. Late charges	_____	(1) \$ _____
2. Non-sufficient funds (NSF) fees	_____	(2) \$ _____
3. Attorney's fees	_____	(3) \$ _____
4. Filing fees and court costs	_____	(4) \$ _____
5. Advertisement costs	_____	(5) \$ _____
6. Sheriff/auctioneer fees	_____	(6) \$ _____
7. Title costs	_____	(7) \$ _____
8. Recording fees	_____	(8) \$ _____
9. Appraisal/broker's price opinion fees	_____	(9) \$ _____
10. Property inspection fees	_____	(10) \$ _____
11. Tax advances (non-escrow)	_____	(11) \$ _____
12. Insurance advances (non-escrow)	_____	(12) \$ _____
13. Escrow shortage or deficiency (Do not include amounts that are part of any installment payment listed in Part 3.)	_____	(13) \$ _____
14. Property preservation expenses. Specify: _____	_____	(14) \$ _____
15. Other. Specify: _____	_____	(15) \$ _____
16. Other. Specify: _____	_____	(16) \$ _____
17. Other. Specify: _____	_____	(17) + \$ _____
18. Total prepetition fees, expenses, and charges. Add all of the amounts listed above.		(18) \$ _____

Part 3. Statement of Amount Necessary to Cure Default as of the Petition Date

Does the installment payment amount include an escrow deposit?

- No
- Yes. Attach to the Proof of Claim form an escrow account statement prepared as of the petition date in a form consistent with applicable nonbankruptcy law.

1. Installment payments due	Date last payment received by creditor	_ / _ / _	
	Number of installment payments due	(1) _____	
2. Amount of installment payments due	_____installments @	\$ _____	
	_____installments @	\$ _____	
	_____installments @	+ \$ _____	
	Total installment payments due as of the petition date	\$ _____	Copy total here ▶ (2) \$ _____
3. Calculation of cure amount	<u>Add</u> total prepetition fees, expenses, and charges		Copy total from Part 2 here ▶ + \$ _____
	<u>Subtract</u> total of unapplied funds (funds received but not credited to account)		- \$ _____
	<u>Subtract</u> amounts for which debtor is entitled to a refund		- \$ _____
	Total amount necessary to cure default as of the petition date		(3) \$ _____

Copy total onto Item 4 of Proof of Claim form

UNITED STATES BANKRUPTCY COURT

_____ District of _____

In re _____,
Debtor

Case No. _____

Chapter 13

Notice of Mortgage Payment Change

If you file a claim secured by a security interest in the debtor's principal residence provided for under the debtor's plan pursuant to § 1322(b)(5), you must use this form to give notice of any changes in the installment payment amount. File this form as a supplement to your proof of claim at least 21 days before the new payment amount is due. See Bankruptcy Rule 3002.1.

Name of creditor: _____

Court claim no. (if known): _____

Last four digits of any number you use to identify the debtor's account: _____

Date of payment change: _____/_____/_____
Must be at least 21 days after date of this notice

New total payment: \$ _____
Principal, interest, and escrow, if any

Part 1: Escrow Account Payment Adjustment

Will there be a change in the debtor's escrow account payment?

- No
- Yes. Attach a copy of the escrow account statement prepared in a form consistent with applicable nonbankruptcy law. Describe the basis for the change. If a statement is not attached, explain why:

Current escrow payment: \$ _____ New escrow payment: \$ _____

Part 2: Mortgage Payment Adjustment

Will the debtor's principal and interest payment change based on an adjustment to the interest rate in the debtor's variable-rate note?

- No
- Yes. Attach a copy of the rate change notice prepared in a form consistent with applicable nonbankruptcy law. If a notice is not attached, explain why: _____

Current interest rate: _____% New interest rate: _____%

Current principal and interest payment: \$ _____ New principal and interest payment: \$ _____

Part 3: Other Payment Change

Will there be a change in the debtor's mortgage payment for a reason not listed above?

- No
- Yes. Attach a copy of any documents describing the basis for the change, such as a repayment plan or loan modification agreement. (Court approval may be required before the payment change can take effect.)

Reason for change: _____

Current mortgage payment: \$ _____ New mortgage payment: \$ _____

Part 4: Sign Here

The person completing this Notice must sign it. Sign and print your name and your title, if any, and state your address and telephone number if different from the notice address listed on the proof of claim to which this Supplement applies.

Check the appropriate box.

- I am the creditor.
- I am the creditor's authorized agent.
(Attach copy of power of attorney, if any.)

I declare under penalty of perjury that the information provided in this Notice is true and correct to the best of my knowledge, information, and reasonable belief.

X _____ Date ____/____/____
 Signature

Print: _____ Title _____
 First Name Middle Name Last Name

Company _____

Address _____
 Number Street

City State ZIP Code

Contact phone (____) ____-____ Email _____

UNITED STATES BANKRUPTCY COURT

_____ District of _____

In re _____,
Debtor

Case No. _____

Chapter 13

Notice of Postpetition Mortgage Fees, Expenses, and Charges

If you hold a claim secured by a security interest in the debtor's principal residence, you must use this form to give notice of any postpetition fees, expenses, and charges that you assert are recoverable against the debtor or against the debtor's principal residence. File this form as a supplement to your proof of claim. See Bankruptcy Rule 3002.1.

Name of creditor: _____

Court claim no. (if known): _____

Last four digits of any number you use to identify the debtor's account: _____

Does this notice supplement a prior notice of postpetition fees, expenses, and charges?

- No
- Yes. Date of the last notice: ____/____/____

Part 1: Itemize Postpetition Fees, Expenses, and Charges

Itemize the fees, expenses, and charges incurred on the debtor's mortgage account after the petition was filed. Do not include any escrow account disbursements or any amounts previously itemized in a notice filed in this case or ruled on by the bankruptcy court.

Description	Dates incurred	Amount
1. Late charges	_____	(1) \$ _____
2. Non-sufficient funds (NSF) fees	_____	(2) \$ _____
3. Attorney fees	_____	(3) \$ _____
4. Filing fees and court costs	_____	(4) \$ _____
5. Bankruptcy/Proof of claim fees	_____	(5) \$ _____
6. Appraisal/Broker's price opinion fees	_____	(6) \$ _____
7. Property inspection fees	_____	(7) \$ _____
8. Tax advances (non-escrow)	_____	(8) \$ _____
9. Insurance advances (non-escrow)	_____	(9) \$ _____
10. Property preservation expenses. Specify: _____	_____	(10) \$ _____
11. Other. Specify: _____	_____	(11) \$ _____
12. Other. Specify: _____	_____	(12) \$ _____
13. Other. Specify: _____	_____	(13) \$ _____
14. Other. Specify: _____	_____	(14) \$ _____

The debtor or trustee may challenge whether the fees, expenses, and charges you listed are required to be paid. See 11 U.S.C. § 1322(b)(5) and Bankruptcy Rule 3002.1.

Part 2: Sign Here

The person completing this Notice must sign it. Sign and print your name and your title, if any, and state your address and telephone number if different from the notice address listed on the proof of claim to which this Supplement applies.

Check the appropriate box.

- I am the creditor.
- I am the creditor's authorized agent. (Attach copy of power of attorney, if any.)

I declare under penalty of perjury that the information provided in this Notice is true and correct to the best of my knowledge, information, and reasonable belief.

X _____ Date ____/____/____
Signature

Print: _____ Title _____
First Name Middle Name Last Name

Company _____

Address _____
Number Street
City State ZIP Code

Contact phone (____) ____-____ Email _____