

***Consumer Track***  
**From Infants to Toddlers:  
Bankruptcy Rules 3001  
and 3002.1 Experience  
First-Year Growing Pains**

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**NEW RULES 3001(c) AND 3002.1**

**Hot Off The Press: First Opinions Analyzing  
The New Mortgage Proof-of-Claim  
And Disclosure Rules**

**Prepared for ABI's 20th Annual Southwest Bankruptcy Conference  
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**Addendum With More Recent Cases**

**Hon. Laura S. Taylor  
United States Bankruptcy Court, Southern District of California**

**Kirk Carson, Extern**

**20<sup>th</sup> ANNUAL SOUTHWEST BANKRUPTCY CONFERENCE**

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Las Vegas, NV**

**Hot Off the Press: First Opinions Analyzing the New  
Mortgage Proof-of-Claim and Disclosure Rules**

**by:  
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On December 1, 2011, new provisions of Bankruptcy Rule 3001, and new Bankruptcy Rule 3002.1 became effective. New Official Forms have been promulgated as well.<sup>1</sup> This paper summarizes the new rules pertaining to mortgage lenders and the opinions that have been issued which analyze those new rules.

**A. Summary of New Rule 3001(c) and Rule 3002.1**

**1. Original Proof of Claim**

**a. Requirements for Original Proof of Claim**

When a claim or security interest is based on a writing, the original or duplicate **shall** be filed with the claim. Fed. R. Bankr. P. 3001(c)(1).

- Use new Official Form B10.

Actual writing must be attached - a "summary" of the documents is insufficient without copies of the actual documents being attached as well. Official Form 10 2011 Committee Note.

A proof of claim in an individual debtor case must attach an itemized statement of interest, fees, expenses or other charges. Fed. R. Bankr. P. 3001(c)(2)(A).

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\* This presentation summarizes certain cases and developments, and is for educational purposes only. This author's analysis and opinions are not, and should not be, attributed as the views of any of the other panel members, their firms or clients.

<sup>1</sup> The new rules and forms are discussed at length in an article by John Rao, "New Bankruptcy Rules & Forms Respond to Mortgage Claim Documentation Problems," 30 NCLC Reports 9 (Nov./Dec. 2011), a copy of which is attached hereto.

If a security interest is claimed in the individual debtor's property, the creditor must file a statement of the cure amount. Fed. R. Bankr. P. 3001(c)(2)(B).

If a security interest is claimed in the individual debtor's principal residence, the creditor must provide this information using new Official Form B 10A (Attachment A). Fed. R. Bankr. R. 3001(c)(2)(C).

If a security interest is claimed in the individual debtor's principal residence, and an escrow account has been established, the creditor must attach to the proof of claim an escrow account statement "prepared as of the petition date in a form consistent with applicable nonbankruptcy law." Fed. R. Bank. P. 3001(c)(2)(C).

No separate Official Form for this statement.

**b. Penalties for Failure to Comply**

If the creditor fails to provide any information required by Rule 3001(c), after notice and hearing, the court may take "either or both of the following actions":

- "preclude the claimant 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 is harmless"
- "award other appropriate relief, including reasonable expenses and attorneys' fees for the failure"

*See* Fed. R. Civ. P. 3001(c)(2)(D).

**2. New Rule 3002.1**

Applies only in chapter 13 case to claims secured by the debtor's principal residence and provided for under § 1322(b)(5) of the debtor's plan. Fed. R. Bankr. P. 3002.1(a).

**a. Notice of Payment Changes**

Creditor **shall** give 21 day advance notice to the debtor, debtor's counsel and the trustee of any payment change, including changes that result from an interest rate or escrow account adjustment. Fed. R. Bankr. P. 3002.1(b).

- Use new Official Form B 10S1 (Supplement 1). *See* Fed. R. Bankr. P. 3002.1(d).

## WINTER LEADERSHIP CONFERENCE

- The notice does not have Rule 3001(f) *prima facie* validity. See Fed. R. Bankr. P. 3002.1(d).

### b. Notice of Postpetition Fees, Expenses and Charges

Creditors **shall** file and serve on the debtor, debtor's counsel and the trustee a notice itemizing all fees, expenses or charges (1) that were incurred in connection with the claim after the bankruptcy case was filed, and (2) that the holder asserts are recoverable against the debtor or the debtor's principal residence. Fed. R. Bankr. P. 3002.1(c).

- The notice **shall** be served within 180 days after fee was "incurred." Fed. R. Bankr. P. 3002.1(c).
- Use new Official Form B 10S2 (Supplement 2). See Fed. R. Bankr. P. 3002.1(d).
- The notice does not have Rule 3001(f) *prima facie* validity. See Fed. R. Bankr. P. 3002.1(d).

Debtor or trustee has one year after service of the notice to challenge the fee by filing a "**motion**." Fed. R. Bankr. P. 3002.1(e).

If the debtor or trustee files such a motion, after notice and hearing, the court then determines whether payment of the fee is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments in accordance with § 1322(b)(5). Fed. R. Bankr. P. 3002.1(e)

### c. Notice of Final Cure Payment

#### (1) Trustee's Obligations

Within 30 days "after the debtor completes all payments under the plan," the trustee **shall**:

- file and serve a "**notice**" stating that the debtor has paid in full the amount "required to cure any default on the claim." Fed. R. Bankr. P. 3001(f).
- the notice must tell the creditor that it has an obligation to file and serve a response pursuant to Rule 3002.1(g). Fed. R. Bankr. P. 3002.1(f).

If the trustee does not file the notice of final cure required by Rule 3002.1(f), the debtor may file and serve the notice. Fed. R. Bankr. P. 3002.1(f).

(2) **Creditor's Obligations**

Within 21 days of the trustee serving its notice of final cure, the creditor **shall** file and serve a **statement**:

- indicating whether the creditor agrees that the debtor has paid in full the amount required to cure the default on the claim, **and**
- indicating whether the debtor "is otherwise current on all payments consistent with § 1322(b)(5)," **and**
- itemizing "the required cure or postpetition amounts, if any, the holder contends remain unpaid as of the date of the statement."

Fed. R. Bankr. P. 3002.1(g).

The "**statement**" is filed as a "**supplement**" to the creditor's proof of claim. Fed. R. Bankr. P. 3002.1(g).

Such statement/POC supplement is not given Rule 3001(f) *prima facie* validity. Fed. R. Bankr. P. 3002.1(g).

No Official Form for this statement/POC supplement.

(3) **Response to the Creditor's Statement/POC Supplement**

Within 21 days of creditor filing the statement/POC supplement required by Rule 3002.1(g), the debtor or the trustee may file a "**motion**" challenging the creditor's statement/POC supplement. Fed. R. Bankr. P. 3002.1(h).

If the debtor or trustee files such a motion, after notice and hearing, the court shall "determine whether the debtor has cured the default and paid all required post-petition amounts." Fed. R. Bankr. P. 3002.1(h)

As set forth in the Committee Notes:

Subdivision (h) [Rule 3002.1(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 [creditor's] statement under [Rule 3002.1(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.

**d. Penalties for Failure to Comply**

If the creditor fails to provide any information required by Rule 3002.1(b), 3002.1(c) or 3002.1(g), the court may, after notice and hearing, take "**either or both** of the following actions:"

- "preclude the claimant 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 is harmless"
- "award other appropriate relief, including reasonable expenses and attorneys' fees caused by the failure"

*See* Fed. R. Bankr. P. 3002.1(i).

After the case is closed, if the creditor seeks to recover amounts that should have been, but were not, disclosed under Rule 3002.1, the debtor may move to reopen the case "in order to seek sanctions against the holder of the claim under subdivision (i) [Rule 3002.1(i)]." *See* Committee Note to Rule 3002.1(i).

**B. Summary of Home Mortgage Cases Interpreting New Rule 3001(c) and New Rule 3002.1**

**1. In re Carr, 468 B.R. 806 (Bankr. E.D. Va. 2012)(Judge Robert G. Mayer)**

**Held:** Creditor cannot charge fee for filing the required response under Rule 3002.1(g) to trustee's Rule 3002.1(f) notice of final cure payment.

Creditor only required to fill out Official Form 10 (Supplement 2) as a supplement to its proof of claim, which "is not the practice of law." Creditor should not have filed an additional pleading on the docket, as only Form 10 (Supplement 2) is required.

Court noted that no fee would be allowed whether or not the creditor agreed or did not agree with the trustee's notice, or whether or not all post-petition payments had been made. If, however, the debtor or trustee contested the creditor's response by filing a motion under Rule 3002.1(h), the matter would become a "contested matter," and the creditor might be entitled to fees for that if such fees were allowed by underlying loan documents and were not otherwise prohibited by nonbankruptcy law or the Bankruptcy Code.

2. **In re Adams, 2012 WL 1570054 (Bank. E.D.N.C. May 3, 2012)(Judge Randy D. Doubm)**

**Held:** Creditor cannot charge a fee for attorney's fees for preparation of the notice of mortgage payment change form.

Court noted that mortgage companies have routinely served notices of mortgage payment changes on debtors without the assistance of an attorney. Because creditor failed to show that the services provided required the assistance of an attorney, the trustee's objection to the \$50.00 fee was sustained.

3. **In re Kraska, 2012 WL 1267993 (Bankr. N.D. Ohio April 13, 2012) (slip opinion)(Judge Russ Kendig).**

**Held:** Rule 3002.1 is applicable even to situations in which the debtor will surrender the house.

Creditor presented an order lifting stay to the Court that contained a provision waiving compliance with Rule 3002.1.

The court held that Rule 3002.1 is not inapplicable just because the debtor indicated his intent to surrender. First, § 1322(b)(5) applies to both secured and unsecured claims, and, at present, the claim is a secured claim secured by the debtor's residence, making § 1322(b)(5) applicable. Second, the creditor would be filing a deficiency claim, and the point of Rule 3002.1 is to ensure the mortgage creditor files an accurate claim. Parties need to be able to see and challenge, if necessary, changes in escrow, added fees, etc. that comprises the creditor's claim. Third, the rule does not contain "a pass" for situations outside the norm.

Case is good because it discusses purposes of new rules and attaches an excerpt from the Report of the Judicial Conference, Committee on Rules of Practice and Procedures.<sup>2</sup>

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<sup>2</sup> The Report of the Judicial Conference, Committee on Rules of Practice and Procedure can be found on the link to "Report" on the webpage at:  
<http://www.uscourts.gov/RulesAndPolicies/FederalRulemaking/PublishedRules/JudConReportSept10.aspx>.

The Report of the Advisory Committee on Bankruptcy Rules, May 27, 2010 (Revised June 14, 2010) can be found on the link to "Appendix B" on that same webpage. Excerpts of both are attached to this paper.

**4. In re Sheppard, 2012 WL 1344112 (Bankr. E.D. Va. April 18, 2012)(Judge Kevin R. Huennekens).**

**Held:** Creditor should not file a notice under Rule 3002.1(c) for fees already approved pursuant to a relief-from-stay order and cannot, by using a Rule 3002.1 notice, obtain additional fees not approved in that order.

**Held:** The trustee had no obligation or authority to pay any fees, expenses or charges identified in a notice filed in accordance with Bankruptcy Rule 3002.1. Creditor that wants to be paid for post-petition fees or charges through the chapter 13 plan must file a formal amended proof of claim.

Creditor filed a motion for relief from stay and consent order was entered requiring debtor to resume regular payments and cure the post-petition arrearage due to the creditor in the amount of \$6,164.63, which included attorney's fees.

Later, the creditor filed a notice under Rule 3002.1(c) asserting \$800 in attorney's fees and \$150 in filing fees with respect to the motion for relief from stay. The trustee timely objected by filing a Rule 3002.1(e) motion.

The court held that the creditor could not now demand an extra \$150 that was not previously approved in the consent order. The court rejected the creditor's argument that it was compelled to file a 3002.1(c) notice. Official Form B10 (Supplement 2) states that a creditor asserting post-petition fees must include on the form "any amounts [not] previously itemized in a notice filed in this case *or ruled on by the bankruptcy court.*" (emphasis added). Because the court had already "ruled on" the fees and charges related to the motion for relief, the creditor should not have included them in a separate notice filed under 3002.1(c).

**5. In re Staffieri, 2012 WL 1945697 (Bankr. E.D.N.Y. May 30, 2012)(Judge Alan S. Trust)**

Debtor filed a motion to compel creditor to turn over \$6,123.91 in escrow surplus funds indicated on an escrow analysis creditor sent to debtor post-petition. Creditor did not object and court entered order compelling turnover of the funds.

Creditor moved for reconsideration under Fed. R. Civ. P. 60(b), arguing that the debtor actually had a \$16,619.00 pre-petition escrow *deficiency*, which was shown on creditor's amended proof of claim. However, even though the amended proof of claim indicated that an escrow analysis was attached, as required by new Rule 3002.1, no such analysis was attached.

Court denied motion for reconsideration. Creditor had service of the motion to compel and otherwise participated in the bankruptcy. Creditor failed to explain the

escrow discrepancy, failed to provide a reconciliation of the escrow discrepancy on its amended claim, as required, and failed to show any excusable neglect or mistake in failing to bring any evidence forward when the motion to compel was filed.

6. **Pompa v. Wells Fargo Home Mortgage, Inc. (In re Pompa), 2012 WL 2571156 (Bankruptcy S.D. Tex. June 29, 2012)(Judge Marvin Isgur)**

The debtors' plan provided for arrears on creditor's secured claim to be paid and cured through the plan. Court issued an order deeming the debtors' mortgage to be current, and later the debtors brought suit, alleging that the bank misapplied payments and improperly charged undisclosed fees during the pendency of their chapter 13 plan.

Creditor filed motion to dismiss. It argued, among other things, that inclusion of new Rule 3002.1(i)(2), which allows a court to "Award other appropriate relief" for a mortgage creditor's failure to give notice of fees under that rule, is evidence of a lack of intent to allow sanctions for the same conduct under § 105. The court refused to draw such inference, and noted that the text of the new provisions does not exclude sanctions under § 105. The court noted, "It is equally possible that Rule 3002.1 was amended to clarify that [§ 105] relief already existed." The Court ruled that because the Court had the power to enforce its own orders, the debtors are permitted to sue pursuant to § 105 for violating the Court's orders and the § 524(i) discharge provision.

With respect to § 524(i), the creditor argued that the fees in question "were not discharged."<sup>3</sup> The Court held that under § 524(i), willful failure to credit payments received under a plan constitutes a violation of the discharge injunction, regarding of whether the debt at issue was discharged. If § 524(i) applied only to discharged debts, the provision would be superfluous. § 524(i) was intended to provide a remedy for failure to credit payments on debts not discharged under the plan. Deeming willful misapplication of plan payments a violation of the discharge injunction under § 524(i) does not impermissibly modify home mortgage lenders' rights in violation § 1322(b)(2); rather, it simply enforces the plan provisions and ensures that the completion of the plan will actually result in a fresh start for the debtor.

7. **In re Garduno, 2012 WL 2402789 (Bankr. S.D. Fla. June 26, 2012)(Judge Erik P. Kimball)**

In case where debtors' plan listed the creditor as secured creditor but stated that the bank would receive "\$0.0," the debtor had left the bank out of the plan entirely, and thus § 1322(b)(5) was not applicable. Rule 3002.1 only applies where the claim in question is provided for under § 1322(b)(5). Thus, the creditor gained nothing by filing the notice, and failure to file the notice would not have resulted in the creditor's waiving any right it may have had with regard to the debtors or their property. The debtor's objection to the notice and request for attorneys' fees were denied.

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<sup>3</sup> Judge Isgur has held that unapproved and undisclosed fees and charges added to a debtor's mortgage loan during the bankruptcy "were not discharged," but that the Court could otherwise provide relief to debtors harmed by such actions. Other courts have held that such fees and charges are discharged.

8. **In re Merino, 2012 WL 2891112 (Bankr. M.D. Fla. July 16, 2012)(Judge Caryl E. Delano)**

**Held:** Rule 3002.1 does not apply to mortgage claims where the debtor pays the post-petition monthly mortgage payment directly to the creditor, or "outside the plan."

In a five-paragraph opinion, the court states:

Rule 3002.1 does not specifically state that it applies only to payments being made "inside the plan" (i.e., through the Chapter 13 trustee's office); likewise, Rule 3002.1 does not clearly state that the rule does not apply to claims being paid "outside the plan" (i.e., paid directly by the debtor) ...

*Id.* The court inferred that Rule 3002.1 does not apply to claims being paid outside the plan. The court relied on *Garduno* and held that Rule 3002.1 does not apply to payments where the debtor is paying the mortgage creditor directly "outside the plan."

**Author's Comment** - In this author's humble opinion, *Merino* and *Garduno* are wrongly decided and ignore the new Bankruptcy Rules' clear intent to assist debtors in allowing them to emerge from bankruptcy with a current mortgage. Saving a debtor's home from foreclosure is one of the primary rights given to a debtor by chapter 13.<sup>4</sup> 11 U.S.C. §1322(b)(5) is the Bankruptcy Code section that implements that right.

11 U.S.C. § 1321 states: "The debtor shall file a plan."<sup>5</sup>

11 U.S.C. § 1322 sets forth what the debtor's plan **shall** provide, and what it **may** provide.

11 U.S.C. § 1322(b)(5) provides that the debtor's plan may:

notwithstanding paragraph (2) of this subsection, provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due.

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<sup>4</sup> See, e.g., *Rodriguez v. Countrywide Home Loans (In re Rodriguez)*, 421 B.R. 356, 380 (Bankr. S.D. Tex. 2009); *In re Carr*, 468 B.R. 806 (Bankr. E.D. Va. 2012)(discussing how new Rule 3002.1 was promulgated to redress the practices of mortgage lenders who fail to provide notice of payment changes or of hidden fees and charges being assessed to the debtors' mortgage accounts. Such practices led mortgage lenders to declare debtors in default upon emerging from faithfully completed three-to-five year plans. Such practices thwarted key goal of chapter 13, which is to allow debtors to cure mortgage arrears.)

<sup>5</sup> There is no such thing as "standard" plan language.

Thus, in any plan that provides that the debtor will cure his mortgage deficiency, if any, and continue to maintain his mortgage payments during his chapter 13 case, the mortgage holder's claim is being "provided for under § 1322(b)(5) of the Code in the debtor's plan" and is thus subject to new Rule 3002.1.

Historically, the debtor's payments to "cure" the deficiency to the mortgage lender pursuant to § 1325(b)(5) flowed through the chapter 13 trustee, while the debtor would exercise his rights to "maintain" his mortgage payments while the case was pending by paying the mortgage lender or servicer directly. This is often referred to as a "direct pay" plan, or described as a plan where the debtor is "paying outside the plan." The phrase "paying outside the plan" is a misnomer. Neither the Bankruptcy Code nor the Rules contain these phrases or terms. Rather, such phrases were coined by practitioners and simply mean that payments for the "maintenance" of the loan post-petition under § 1322(b)(5) will be paid by the debtor directly to the mortgage holder, while payments for the "cure" of any deficiency under § 1322(b)(5) will flow from the debtor through the chapter 13 trustee's hands on their way to the mortgage holder.

In more recent years, several jurisdictions have established procedures whereby the debtor's payments for *both* the "maintenance" of the monthly mortgage payments and the payments to "cure" any deficiency flow from the debtor through the chapter 13 trustee's hands on their way to the mortgage lender. Plans which provide for the chapter 13 trustee to pay both the cure payments and the monthly mortgage payments are often referred to as "conduit" plans.

It is irrelevant whether the debtor sends funds to cure the deficiency or funds to make the post-petition monthly mortgage payments directly to the mortgage holder, or whether such funds pass through the hands of the chapter 13 trustee on their way to the mortgage holder. Even if the debtor is making his ongoing monthly mortgage payments "outside the plan," i.e., sending the funds for such monthly mortgage payments directly to the mortgage holder, the debtor still is exercising his right save his home from foreclosure by invoking the plan maintenance provisions of §1322(b)(5). Courts and chapter 13 trustees may not impinge on the debtor's fundamental right to save his home from foreclosure through chapter 13 by imposing local fund-transfer procedures inconsistent with that right.

The *Garduno* and *Merino* courts ignore the above analysis, and the analysis of the Advisory opinions of the Rules Committee.

As noted, the new Bankruptcy Rules are meant to remedy the practices of mortgage lenders which, in the past, have thwarted and often destroyed debtors' rights to cure their mortgage deficiency and be current on their mortgage upon emergence from bankruptcy.

As noted in the Judicial Conference Report of the Rules Committee:

## WINTER LEADERSHIP CONFERENCE

Proposed new Rule 3002.1 implements § 1322(b)(5) of the Bankruptcy Code, which permits a chapter 13 debtor to cure a default and maintain payments of a home mortgage over the course of the debtor's plan. The rule is intended to provide the mortgagor-debtor information necessary to determine the exact amount needed to cure any pre-petition arrearage and the amount of the postpetition payments. If the latter amount changes over time because of changing interest rates, escrow account adjustments, or the assessment of fees, expenses, or other charges, notice of any change in payment must be conveyed to the debtor and trustee. Numerous consumer bankruptcy lawyers, trustees, and judges have reported that debtors often do not learn until after completing a chapter 13 plan that the mortgage payments have changed. In particular, debtors do not learn that fees, expenses, or other charges have been imposed during the life of the plan. As a result, debtors may face renewed foreclosure proceedings immediately after emerging from bankruptcy. Timely notice of such changes will permit the debtor and trustee to adjust post-petition mortgage payments and, if appropriate, challenge the validity of fees, expenses, or other charges assessed during the bankruptcy.

Report of the Judicial Conference, Committee on Rules of Practice and Procedures, p. 13.<sup>6</sup>

Indeed, the Committee Note to new Rule 3002.1 provides:

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.*

Advisory Committee Note to Bankruptcy Rule 3002.1 (emphasis added). This sentence was specifically added to the Committee Note after several commentators stated that the Rule 3002.1 appeared to be appropriate for "conduit" districts only. The committee added the sentence specifically to clarify that Rule 3002.1 "applies in all districts, regardless of whether ongoing mortgage payments are made directly by the debtor or by the chapter 13 trustee." *See* Report of the Advisory Committee on Bankruptcy Rules, May 27, 2010 (revised June 14, 2010), p. 14 and Rules Appendix B-45 and B-48.

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<sup>6</sup> See footnote 2, *infra*.

**Additional Summaries of Cases Interpreting New Rule 3001(c) and New Rule 3002.1**

**Even Hotter Off The Presses**

**Kirk Carson, Extern to Hon. Laura S. Taylor**

**1. In re Wallett**, 2012 WL 4062657 (Bankr. D. Vt. Sept. 14, 2012) (Judge Colleen A. Brown).

**Facts:** Debtors owed Creditor \$18,000, on a note secured by a lien on the debtors' parents' house. The debtors were current on this obligation when they filed their bankruptcy and remained current thereafter. Creditor filed a proof of claim and Rule 3002.1 notice ultimately seeking \$350 for attorney fees incurred for preparing the proof of claim, reviewing the plan, and filing the Rule 3002.1 notice. Debtors objected claiming that the fees were not reasonable, because they were current on this obligation.

**Held:** A mortgage creditor may not collect post-petition attorney fees incurred to review the plan, prepare and file a proof of claim, and prepare and file a Rule 3002.1 notice if the debtors were current on the mortgage on the date they filed the bankruptcy case, the mortgage is secured by property other than the debtors' primary residence, and the mortgage was being paid outside the plan and was not provided for by section 1325(a)(5).

**2. In re Adkins**, 2012 WL 3860593 (Bankr. N.D. Ohio Aug. 10, 2012) (Judge Kay Woods).

**Facts:** The creditor advanced a HELOC secured by a second priority lien on debtor's primary residence. Although the creditor conceded that the Rule 3002.1 notice requirements applied to its secured claim, it asked to be excused from compliance with the rule, because the revolving nature of the HELOC and the variability of monthly payments make compliance "virtually impossible."

**Held:** A bankruptcy court does not have the authority to excuse the creditor from compliance with Rule 3002.1. Application of the Federal Rules of Bankruptcy is mandatory, unless the court is expressly granted discretion by virtue of a phrase such as, "Unless the court orders otherwise." No such phrase exists in Rule 3002.1. The Court observed that HELOC creditors should have participated in the public comment period prior to adoption of Rule 3002.1. Now the only appropriate method for relief is to have the rule amended.

**3. In re Reynolds**, 470 B.R. 138 (Bankr. D. Colo. April 9, 2012) (Howard R. Tallman).

**Facts:** Five creditors filed proofs of claim without supporting documentation. The debtors objected on this basis, notwithstanding that they previously scheduled undisputed debts owed to these creditors in approximately the amounts set forth in the proofs of claim.

## WINTER LEADERSHIP CONFERENCE

**Held:** Revised Rule 3001 makes clear that a creditor who fails to fully comply with the documentation requirements of Rule 3001(c) primarily faces the evidentiary sanction of being precluded from introducing its documents at a subsequent hearing on a substantive objection to its proof of claim under section 502(b). As amended, Rule 3001(c) does not provide authority for the court to deny a creditor's claim based solely on its failure to attach documentation to its proof of claim under Rule 3001(c).

**4. In re Richter**, 2012 WL 3763657 (Bankr. D. Colo. Aug. 29, 2012) (Michael E. Romero).

**Facts:** Claimants failed to attach appropriate supporting documentation to their proofs of claim. The debtor objected on this basis and based on standing, notwithstanding that the debtor previously scheduled undisputed claims that approximated the claims at issue. The chapter 13 trustee, not the claimants, responded to the objection, but one claimant did modify its proof of claim. The court made several rulings, including the following.

**Held:** The implication of *Reynolds* is that bankruptcy courts will not automatically grant motions to disallow claims based solely on lack of supporting documentation. However, if a party objects to a proof of claim for lack of supporting documentation in conjunction with at least one other substantive objection, at an evidentiary hearing on the substantive section 502(b) objection, the creditor filing the claim would still need to satisfy its evidentiary burden of proving the claim. An objection to standing is a substantive objection.

### 5. New Changes to Rule 3001 – Effective December 1, 2012.

#### **3001(c)(1) Claim Based on a Writing:**

Except for a claim governed by paragraph (3) of this subdivision, when a claim, or an interest in property of the debtor securing the claim, is based on a writing, ~~the original or a duplicate~~ ~~the original or a duplicate~~ a copy of the writing shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.

**NOTE:** The committee wanted to preclude the possibility that a creditor would attach the original, in order to prevent the possibility that the court might damage original copies of important documents. Also, the committee wanted to create an exception for claims governed by new section (3).

#### **3001(c)(3) Claim Based on an Open-End or Revolving Consumer Credit Agreement.**

**(A)** When a claim is based on an open-end or revolving consumer credit agreement--except one for which a security interest is claimed in the debtor's real property--a statement shall be filed with the proof of claim, including all of the following information that applies to the account:

(i) the name of the entity from whom the creditor purchased the account;

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- (ii) the name of the entity to whom the debt was owed at the time of an account holder's last transaction on the account;
  - (iii) the date of an account holder's last transaction;
  - (iv) the date of the last payment on the account; and
  - (v) the date on which the account was charged to profit and loss.
- (B) On written request by a party in interest, the holder of a claim based on an open-end or revolving consumer credit agreement shall, within 30 days after the request is sent, provide the requesting party a copy of the writing specified in paragraph (1) of this subdivision.

**NOTE:** The committee added section 3001(c)(3) because credit card claims are frequently sold and the claim filer may be an entity unknown to the debtor. Thus, the debtor will likely need the above information to link the claim to a known account and to know whether the claim is timely.

**Rule 3002 Language For Stay Relief Order**

The notice requirement of subsections (b) and (c) of Rule 3002.1 of the Federal Rules of Bankruptcy Procedure are waived as they relate to Movant's secured claim on the Real Property as of the date on which: (1) Movant, its agents, or its successor in interest completes a foreclosure that results in deemed satisfaction of Movant's claim against Debtors (the "Claim"); (2) The Claim is otherwise satisfied in full; or (3) Debtors' plan, either as it currently exists or as it is hereafter modified, no longer provides for the Claim under section 1322(b)(5) of the Bankruptcy Code.