

Rule 3000 and Beyond: Filing and Objecting to Proofs of Claim in Compliance with the Rules

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**REMEDIES FOR VIOLATION OF BANKRUPTCY RULES 3001 AND 3002.1
DURING A CHAPTER 13 BANKRUPTCY**

Submitted by:
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INTRODUCTION

Since December 1, 2011, the effective date of these rules, creditors filing a proof of claim must include more information and documentation to support their claims. If the claim is not filed correctly or doesn't have the appropriate documentation, the issue of enforcement arises. This document will explore the options available to enforce these rules and practice tips for practitioners.

ENFORCEMENT PROVISIONS IN THE BANKRUPTCY RULES

Bankruptcy Rule 3001(c)(2)(D) states:

- (D) If the holder of a claim fails to provide any information required by this subdivision (c), the court may, after notice and hearing, take either or both of the following actions:
 - (i) preclude the holder 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; or
 - (ii) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

Bankruptcy Rule 3001(f) states:

Evidentiary effect. A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

Bankruptcy Rule 3002.1(i) states:

- (i) Failure to notify. If the holder of a claim fails to provide any information as required by subdivision (b), (c), or (g) of this rule, the court may, after notice and hearing, take either or both of the following actions:
 - (1) preclude the holder 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; or
 - (2) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

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ANALYSIS

A CLAIM CANNOT BE STRICKEN (WITHOUT FAILURE TO FILE AN AMENDED CLAIM) FOR FAILURE TO FOLLOW THE REQUIREMENTS OF BANKRUPTCY RULES 3001 AND 3002.1...AT LEAST MOST COURTS THINK SO.

There is a split in authority over how to enforce the provisions of these bankruptcy rules. The rules themselves indicate two possible enforcement mechanisms. First, a court may impose evidentiary restrictions on a creditor attempting to prove the debt. Second, a court may award "other appropriate relief." It is this second mechanism that is at issue. Some bankruptcy courts have disallowed claims in their entirety for failure to follow the bankruptcy rules. However, the majority of cases hold that 11 U.S.C. § 502(b) contains the exclusive bases for disallowing a proof of claim and that Bankruptcy Rules 3001 and 3002.1 do not supplement that list.

Two lines of cases have emerged in determining the allowance of claims that don't comply with Bankruptcy Rule 3001. The minority view is that failure to attach the documentation required by Rule 3001(c) is grounds for disallowance of the claim. See, e.g., *In re Henry*, 311 B.R. 813, 817-18 (Bankr. W.D. Wash. 2004) (failure to supply a sufficient amount of account statements and copy of the agreement authorizing the charges and fees included in the claim by at least the return date on a claim objection is grounds for disallowance.); *In re Blue*, 2004 U.S. Dist. LEXIS 14771, 2004 WL 1745786 (N.D. Ill.) (lack of documentation is basis for disallowance, but creditor should be given opportunity to amend the claim); *In re Armstrong*, 320 B.R. 97, 106-09 (Bankr. N.D. Tex. 2005) (lack of documentation requires claimant to establish the claim by a preponderance of the evidence, or objection is sustained). While there are some policy arguments favoring the minority view, such as prevention of creditor abuse of the claims process and easing the burden of confirming the propriety of claims on trustees and debtors, the majority view rests on stronger principles of statutory construction and requiring debtors to take responsibility for accurate schedules and knowledge of their own debts. In *In re Cluff*, 313 B.R. 323, 331-332 (Bankr. D. Utah 2004), the court examined the interplay between Bankruptcy Code § 502 and Bankruptcy Rule 3001, and concluded that failure to comply with Bankruptcy Rule 3001, on its own, is not sufficient for disallowance of the claim. Accord, *In re Guidry*, 321 B.R. 712 (Bankr. N.D. Ill. 2005). Cluff explains that the purpose of Rule 3001 is to provide certain minimum evidentiary standards for proofs of claim. *Cluff*, 313 B.R. at 332. Under Bankruptcy Rule 3001(f), a proof of claim "executed and filed in accordance with these rules" constitutes prima facie evidence of both the validity and amount of the claim.

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In re Habiballa, 337 B.R. 911, 914-915 (Bankr. E.D. Wis. 2006)(J. Kelley).

Judge Wedoff holds

The resolution of the debtors' claim objections is dictated by the plain language of the relevant provisions of the Bankruptcy Code and Rules. Section 501(a) of the Code provides that a creditor having a claim may file a proof of claim in a debtor's case. A proof of claim, according to Rule 3001(a) of the Federal Rules of Bankruptcy Procedure, is simply "a written statement setting forth a creditor's claim," conforming substantially to the appropriate Official Form, currently Form 10. Under § 502(a) of the Code, a proof of claim filed pursuant to § 501 is deemed allowed unless a party in interest objects. And under § 502(b), if a party objects, the court, after notice and a hearing, must allow the claim except to the extent that it is subject to one or more of nine grounds for disallowance enumerated in § 502(b). (Additional grounds for disallowance, set out in § 502(d) and (e), do not apply to claims of the sort involved here.) None of the grounds for disallowance set out in § 502(b) involves failure to attach documents to a proof of claim.

The basis for the debtors' claim objections is instead Fed. R. Bankr. P. Rule 3001(c). It provides: "When a claim ...is based on a writing, the original or a duplicate 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." Rule 3001(c), however, does not say that a failure to comply with its terms should result in disallowance of the claim for which the noncompliant proof was filed. Nor could it. The legislation allowing the Supreme Court to prescribe bankruptcy rules states that the rules shall not "abridge, enlarge, or modify any substantive right." 28 U.S.C. § 2075. Thus, a bankruptcy rule cannot create a ground for disallowance of claims not set out in the Code.

Courts have accordingly held that a claim cannot be disallowed solely on the basis that its proof was not accompanied by a Rule 3001(c) attachment. See *In re Cluff*, 313 B.R. 323, 331 (Bankr. D. Utah 2004) ("Bankruptcy Rule 3001 does not provide substantive grounds for disallowanceCourts have no discretion to disallow claims for reasons beyond those stated in the statute."); *In re Shank*, 315 B.R. 799, 812 (Bankr. N.D. Ga. 2004) ("An objection to a proof of claim based solely on the lack of attached documents provides no basis for disallowance of a claim."); *In re Mazzoni*, 318 B.R. 576, 578-79 (Bankr. D. Kan. 2004); cf. *In re Taylor*, 289 B.R. 379, 384 (Bankr. N.D. Ind. 2003) (holding in a different context that "a claim may not be denied for just any reason, but only for one of the reasons Congress has included in § 502(b)").

In re Guidry, 321 B.R. 712, 714 (Bankr. N.D. Ill. 2005)(J. Wedoff). Indeed the 7th Circuit Court of Appeals agrees with this analysis.

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Turning to the merits, we can dispose quickly of the trustee's contention that the bankruptcy judge was right to disallow [*1028] the proof of claim, without leave to amend, because compliance with Rule 3001 is "mandatory." 143 Bankr. at 130. All that the rule says, so far as bears on this case, is that the filing [**12] of a proof of claim with the required documentation is prima facie evidence that the claim is valid. Fed. R. Bankr. P. 3001(c), (d), (f). If the documentation is missing, the creditor cannot rest on the proof of claim. It does not follow that he is forever barred from establishing the claim. Nothing in the principles or practicalities of bankruptcy or in the language of any rule or statute justifies so disproportionate a sanction for a harmless error. Forfeitures of valuable claims, and other heavy sanctions, should be reserved for consequential or easily concealed wrongs. *Prussner v. United States*, 896 F.2d 218, 224 (7th Cir. 1990) (en banc); *Lorenzen v. Employees Retirement Plan*, 896 F.2d 228, 232 (7th Cir. 1990). A creditor should therefore be allowed to amend his incomplete proof of claim (what is often called an "informal proof of claim") to comply with the requirements of Rule 3001, provided that other creditors are not harmed by the belated completion of the filing. *In re Unioil*, 962 F.2d 988, 991-93 (10th Cir. 1992); *In re Unroe*, 937 F.2d 346 (7th Cir. 1991); [**13] *Wilkins v. Simon Bros., Inc.*, 731 F.2d 462, 464-65 (7th Cir. 1984) (per curiam); *In re South Atlantic Financial Corp.*, 767 F.2d 814, 819 (11th Cir. 1985).

In re Stoecker, 5 F.3d 1022, 1027-1028 (7th Cir. Ill. 1993).

The amendments to the rules effective December 1, 2011 do not overrule these opinions and instead strengthen them by including language that specifically states the consequences for failure to follow the rules. See Eugene R. Wedoff, *Proposed New Bankruptcy Rules on Creditor Disclosure and Court Enforcement of the Disclosures--Open for Comment*, 83 Am. Bankr. L.J. 579, 584 (2009) (stating "[t]hese sanctions are modeled after those for failure to make ordered discovery under Fed. R. Civ. P. 27") and see 9-3002.1 Collier on Bankruptcy P 3002.1.05 (2012) (stating "If the creditor fails to provide the information required to implement payment changes, supplement fees, expenses or charges, or to determine the final cure payment (if any), the court may, after notice and hearing, take action against the creditor. The court may preclude the creditor from presenting any omitted information as evidence in any contested matter or adversary proceeding in the case. The only defense a creditor has to this action by the court is to prove that the failure to provide the information was substantially justified or harmless. Without use of the omitted information, the creditor will be unable to prove the validity of

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the creditor's claim for additional amounts, or that the debtor has not cured a default, in many instances. The court may also award other relief including reasonable expenses and attorney's fees for damage caused by the creditor's failure to respond.”)

Finally, the only opinion (post December 1, 2011) to date addressing this issue has determined that disallowing a claim is not the correct remedy for failure to follow the bankruptcy rules. See *In re Reynolds*, 2012 Bankr. LEXIS 3517, 8-9 (Bankr. D. Colo. July 31, 2012)(“Not only is it inconsistent with the revisions to Rule 3001 to continue to treat failure to comply with Rule 3001(c)(1) as an independent ground for claim disallowance, the commentary that the Court discussed in its Claims Order flatly states that such failure is not an independent ground for claim disallowance.”)

PRACTICE TIPS FOR COURTS

Bankruptcy courts should be cautious and only occasionally disallow a proof of claim (with leave to refile) for failure to follow the informational and document requirements of Bankruptcy rules 3001 and 3002.1. There are several pitfalls that can occur if a claim is disallowed.

1) Bankruptcy courts do not have the authority to extend the deadline to file unsecured proofs of claim beyond the deadlines set forth in Bankruptcy Rule 3002. Disallowing a claim with leave to refile is tantamount to extending the deadline to file a claim at any time during the course of a chapter 13 bankruptcy. The Seventh Circuit states:

Our decision today deals with an issue which we have called attention to before but which has never been ruled upon until this date. In *In re Unroe*, for example, 937 F.2d 346 (7th Cir. 1991), we deferred the question of whether a court has equitable powers to allow a late-filed proof of claim outside the exceptions contained in Rule 3002(c): “We leave for another case the question whether a judge in equity could permit an entirely new claim filed out of time.” *Id.* at 349. We answer that question today: a bankruptcy judge is not vested with such equitable power. Today's decision is also in line with dicta from our 1993 decision, *In re Witkowski*, 16 F.3d 739 (7th Cir. 1994). In that case, we noted that a bankruptcy plan is considered to be an estimate of the amount that the debtor will eventually have to pay, but that it is not final: failure to file a timely proof of claim can alter the provisions of the bankruptcy plan. See *id.* at 740 (“[A] bankruptcy plan basically sets forth an estimate of the total amount of money that

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the debtor owes creditors and the amount he can afford to pay them At the time the bankruptcy plan is submitted the exact amount of allowable claims is unknown. For example, . . . a creditor may fail to file a timely proof of claim, as required by Rule 3002(a) to participate in a distribution under the bankruptcy plan." Today's decision makes explicit Witkowski's intimation that an unaccepted late filing is barred.

In re Greenig, 152 F.3d 631, 635-636 (7th Cir. Ill. 1998). Allowing an amendment to a disallowed claim is the same as allowing a new claim. Disallow is defined as "to refuse to allow, to deny the need or validity of, to disown or reject." *Black's Law Dictionary* (5th ed., West 1979). Alternatively a court could disallow the proof of claim with leave to refile within the deadlines of Bankruptcy Rule 3002.

Realistically however this may not give a creditor much time to file an amended claim.

2) Disallowing secured or priority claims creates delay and uncertainty and jeopardizes the debtor's fresh start. In jurisdictions that allow claims to be disallowed for failure to meet the requirements of BR 3001 and 3002.1, secured and priority claims are routinely disallowed. This creates a serious problem for debtors. If the secured claim is disallowed (without a determination of the validity of the lien) then the lien will survive post-discharge. The payments debtors make will instead be rerouted to increasing the dividend for unsecured creditors. Likewise the disallowance of priority debts, particularly domestic support obligations, could jeopardize the debtors ability to even receive a discharge under 11 U.S.C. §1328(a) which requires these obligations to be current before a discharge order is entered. Finally, if a disallowed unsecured claim is "allowed" upon amendment, this may create havoc depending on when the claim is filed. If the debtor is proposing a 100% repayment plan, a late filed claim could dramatically increase the plan payments to the point of infeasibility.

PRACTICE TIPS FOR TRUSTEES

Trustees have a duty to investigate claims and if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper. See 11 U.S.C. §§1302(b)(1) and 704(a)(5). While a trustee may bring objections to claims for failure to provide the documents, it raises the issue of whether such an objection would serve a purpose. Disallowing secured and priority debt will cause the debtor many problems as detailed above and will probably result in case dismissal.

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Disallowing unsecured debt will increase the percentage of return to other unsecured creditors, however, that in itself is not a goal for a trustee seeking to maximize the return for all creditors.

Finally, trustees and their attorneys may be subject to discipline for objecting to claims without an independent basis to contest the proof of claim (see the Debtor section below). Trustees could obtain this information by asking questions at the mandatory meeting of creditors pursuant to 11 U.S.C. § 341.

PRACTICE TIPS FOR DEBTORS

- 1) BEWARE FILING OBJECTIONS TO CLAIMS BASED ON FAILURE TO FOLLOW THE RULES WITHOUT AN INDEPENDENT BASIS FOR THE OBJECTION.

Objections to claims should be based on a dispute with the debt independent of the creditor's failure to follow the bankruptcy rules. For example, a debtor might object to the amount of an arrears claim, the fact that they owe an unknown debt buyer, or charges or costs on a claim that are unknown and disputed by the debtor. Judge Wedoff states:

The debtors' claim objections raised no factual dispute requiring a hearing. If eCAST's proofs of claim are analogized to complaints--as is commonly done --then the debtors' objections are like motions to dismiss for failure to state a claim on which relief can be granted. The debtors do not deny any of the factual allegations of the proofs of claim; rather, their objections assert that an evidentiary hearing is unnecessary because of eCAST's noncompliance with Rule 3001(c). Thus, the question is not the evidentiary impact of noncompliance with the rule, but whether noncompliance itself renders a claim subject to disallowance. As already noted, it does not. Of course, if the debtors had raised a valid ground for disallowance in their claim objections--such as a denial that they actually owed the debts asserted--an evidentiary hearing would have been required. In that situation, eCAST's noncompliance with Rule 3001(c) would have resulted in eCAST having the burden of going forward with evidence at the trial; it could not have relied on its proofs of claim as prima facie evidence that the debtors were liable for the claims asserted. See *In re Cluff*, supra, 313 B.R. at 337 ("If a claim's prima facie validity is lost, then the creditor has the initial burden of proving that the claim exists and the amount of that claim.") Indeed, if there were facts in dispute as to which the writings required by Rule 3001(c) would have been relevant, the debtors might properly have enforced the Rule's requirement through discovery. All of this, however,

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is merely speculative here, since the debtor's claim objections set forth no basis for disallowance of the claims that required any evidentiary hearing.

In re Guidry, 321 B.R. 712, 715 (Bankr. N.D. Ill. 2005).

Debtor's counsel should particularly take note that they may be sanctioned for bringing objections to claim based solely on a creditor's failure to follow the bankruptcy rules, particularly when the debt is listed and admitted on the debtor's schedules. Failure to investigate and bring a legitimate challenge to the claim may subject the attorney to sanctions.

The court has entered orders to show-cause in this case and others with a singular aim — to address what has become a pervasive problem within this district stemming from wholesale unjustified claim objections, and to stop that practice. Fed. R. Bankr. P. 9011 places an affirmative duty upon attorneys to make a reasonable investigation of the facts and the law before signing and submitting any petition, pleading, motion, or other paper. *B-Line, LLC v. Wingerter (In re Wingerter)*, 594 F.3d 931, 939 (6th Cir. 2010); *Briggs v. Labarge (In re Phillips)*, 433 F.3d 1068 (8th Cir. 2006). Attorneys are required to "think first and file later." *Stewart v. RCA Corp.*, 790 F.2d 624, 633 (7th Cir. 1986); [****21**] see also *Lieb v. Topstone Indus., Inc.*, 788 F.2d 151, 157 (3d Cir. 1986) (telling attorneys to "look before leaping"). The filing of claim objections with little investigation into the facts or law has become commonplace in this district. In an attempt to stop this practice, the court is entering this and other similar sanctions orders. Attorneys who have filed claim objections in violation of Fed. R. Bankr. P. 9011(b) are being sanctioned in accordance with Rule 9011: A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Fed. R. Bankr. P. 9011(c)(2). While a certain sanction may be sufficient to deter repetition by an attorney who got caught, that very same sanction may not be sufficient to deter comparable conduct by others similarly situated. The sanctions imposed by this order must be tailored to deter those who may choose to take a calculated risk when deciding whether to object to a creditor's claim.

Albert H. Hernandez filed and prosecuted five claim objections in this case without reasonable investigation into the facts or the law. He sought to strike and disallow the claims in their entirety when his clients had already admitted under penalty of perjury to owing the money. "The gig is up . . . on debtors taking advantage of the cost of responding to claims objections and obtaining orders striking claims which the debtor has acknowledged owing in whole or substantial part." *Moreno*, 341 B.R. at 819-820. Mr. Hernandez violated Fed. R. Bankr. P. 9011(b), and sanctions under Rule 9011(b)(2) must be tailored to deter repeat behavior and to deter similar conduct by others similarly situated.

It is accordingly ORDERED that: (1) Alberto H. Hernandez, Esq. is hereby suspended from practice in the United States Bankruptcy Court, Southern District of Florida for 31 days. The suspension period shall begin on a date to be set by separate order of court after

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the time for reconsideration and appeal of this order has run;

(2) the Debtors' objections to claims 2, 3, 5, 7, & 8, which Mr. Hernandez filed at ECF No. 44 in violation of [*922] Fed. R. Bankr. P. 9011(b), are hereby OVERRULED and claims 2, 3, 5, 7, & 8 are hereby ALLOWED as filed;

(3) a status conference is hereby scheduled for March 5, 2012 at 1:00 p.m. in Courtroom 301, 299 East Broward [**23] Blvd., Fort Lauderdale, FL 33301 to address the issue of when Mr. Hernandez' suspension should begin.

In re Velez, 465 B.R. 912, 921-922 (Bankr. S.D. Fla. 2012).

2) CONSIDER FILING MOTIONS FOR CONTEMPT FOR FAILURE TO FOLLOW THE BANKRUPTCY RULES

In jurisdictions that allow disallowance of claims based on failure to follow Bankruptcy Rules 3001 or 3002.1, it may become necessary to file an answer to the objection to claim (usually by the trustee) and then file a motion for contempt or to show cause against the creditor for failure to follow the bankruptcy rules. These motions are not seeking a private right of action on behalf of the debtor, but instead are attempting to enforce the bankruptcy rules.

Debtors who sue based on violations of court orders are not asking the court to create new rights of action, but simply to use the power granted by § 105 to enforce its own orders. *Id.* Section 105(a) provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." It is unclear why Congress would give the bankruptcy courts the power to "carry out the provisions of this title," but forbid exercise of that power merely because the request for enforcement was initiated by a debtor.

In re Pompa, 2012 Bankr. LEXIS 3051, 13-14 (Bankr. S.D. Tex. June 29, 2012)

The motions for contempt or sanctions are effective when coupled with a request for a creditor's CEO or CFO to appear to explain why a claim is filed improperly and holding up the administration of the bankruptcy.

3) FILING MOTION FOR SANCTIONS UNDER BANKRUPTCY RULE 9011

In limited circumstances it may be appropriate to file a motion for sanctions under Bankruptcy Rule 9011 against a creditor who has filed a proof of claim so full of errors that an argument of improper

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preparation could legitimately be raised. While this alternative is not a direct result of failure to comply with Bankruptcy Rules 3001 and 3002.1, that failure may be a factor in a 9011 sanction motion.

Admittedly, as the bankruptcy court stressed, B-Line's proof of claim was submitted on an incomplete Form 10. This deficiency violated Rule 3001(c) of the Federal Rules of Bankruptcy Procedure, which requires that a proof of claim based on a writing include a copy of that writing. The ramifications for this type of violation are well-established, however, and do not result in sanctions. See *Heath v. Am. Express Travel Related Servs. Co., Inc. (In re Heath)*, 331 B.R. 424, 433 (B.A.P. 9th Cir. 2005) (explaining that a failure to comply with Rule 3001 results in the creditor's proof of claim not being prima facie evidence of the claim's validity and amount). Not complying with Rule 3001 might be a factor in determining whether a Rule 9011(b) violation has occurred under different circumstances, but it is not a relevant factor in this case

In re Wingerter, 594 F.3d 931, 941 (6th Cir. 2010).

PRACTICE TIPS FOR CREDITORS

- 1) Get yourself a good attorney who knows the bankruptcy rules. This seemingly simple statement will save you thousands of dollars by avoiding litigation costs and potential penalties for failure to follow the bankruptcy rules.
- 2) Most debtor's attorneys are not out to get you. They want to give their clients a fresh start. If you work with them they will work with you. Good debtor's firms will call and write several times before involving the bankruptcy court. Take advantage of that and foster a good relationship.

Rules 3001(c) and 3002.1
A Year in Review

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The purpose of this article is to summarize the various decisions involving the 2011 changes to Rule 3001(c) and Rule 3002.1 of the Federal Rules of Bankruptcy Procedure. Although the rules have been in effect for less than a year, bankruptcy courts have managed to give practitioners valuable insight into their interpretations of the recently enacted rules.

***In re Reynolds*, 2012 WL 3133489 (Bankr. D. Colo.)- Failure to file supporting documents is not an independent basis for disallowing a claim.**

The debtors in *Reynolds* sought to have the proof of claim filed by FIA Card Services (FIA) claim disallowed due to the claimant's failure to attach supporting documentation to its proof of claim pursuant to Rule 3001(c). FIA was the assignee of a debt originally owned by Bank of America, and the debtor objected to the claim based on the insufficiency of the transfer documents. The debtor did not oppose the claim on substantive grounds; the only objection was to the form of the claim. The court allowed the claim, and the debtor moved for reconsideration. The *Reynolds* court denied the debtor's motion for reconsideration, and FIA's proof of claim remained allowed.

Prior to the amendment to Rule 3001(c), courts in the Tenth Circuit were bound by the opinion in *Caplan v. B-Line, LLC (In re Kirkland)*, 572 F.3d 838 (10th Cir.2009), which held that claims could be disallowed if supporting documents were not filed with the claim. However, the *Reynolds* court reasoned that FIA's claim should be allowed since the December 2011 amendments provided remedies for non-compliance. *Reynolds* at *4. Specifically, proofs of claim that are not properly documented are no longer presumed to be valid. R. 3001(f). In addition, creditors may be barred from presenting evidence of the claim's validity if the claim is

ever called into question. R. 3001(c)(2)(D)(i). Lastly, Rule 3001(c)(2)(D)(ii) give courts the authority to award attorney's fees, reasonable expenses, and any other appropriate relief. Since Rule 3001(c) contains enforcement provisions for non-compliance, disallowing the claim is no longer a necessary recourse. Reynolds at *3. As a result, the court declined to impose an additional penalty that is inconsistent with remedy provided for in the Rule.

***In re Carr*, 468 B.R. 806 (Bankr. E.D. Va. 2012)-Attorney's fees disallowed for filing and preparing a Rule 3002.1 response.**

In *Carr*, the creditor, American Home Mortgage Servicing (AHMS), charged the debtor a post-petition fee of \$150.00 for preparing the required response to the chapter 13 trustee's Notice of Final Cure Payment. In its Response, AMHS agreed that the debtor has cured her mortgage arrears and paid all of her post-petition mortgage payments but included a \$150.00 attorney's fee for preparing the response. The chapter 13 trustee objected to the fee, and the *Carr* court sustained the trustee's objection.

The court gave several convincing reasons for disallowing the fee. For example, an attorney's legal expertise is not needed to prepare the response. The response just indicates the status of a debtor's loan payments, which is a simple task. Moreover, the document is not a pleading, an attorney's signature is not required, and the response is not filed on the court's docket. Moreover, the information needed to verify the accuracy of the trustee's notice can be easily ascertained from the lender's records. *Id.* at 808. Lastly, Rule 3002.1 does not state that creditors can charge debtors for the attorney's fees they incur for filing the required response. Therefore, the trustee's objection to the post-petition fee was sustained. *Id.* at 809. Similarly, in *In re Adams*, 2012 WL 1570054 (Bankr. E.D.N.C.), a North Carolina bankruptcy court

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disallowed a \$50.00 attorney fee for preparing a notice of mortgage payment change on behalf of Everbank.

***In re Garduno*, 2012 WL 2402789 (Bankr. S.D. Fla.)-The requirements of Rule 3002.1 apply only if debtor's plan proposes to cure and maintain the mortgage payments.**

In re Garduno involved a mortgage company, Bank of America (BOA), that was not provided for in the debtors' plan. Specifically, the plan stated that BOA's secured claim would be paid nothing, so clearly BOA's loan was not being cured and maintained pursuant to §1322(b)(5) of the Code. As a result, Rule 3002.1 did not apply.

Nonetheless, BOA filed a Notice of Mortgage Payment Change, which caused the debtor to file an objection to the payment change notice. In the objection, the debtors asked that the notice be stricken and that the debtors be awarded their attorney's fees. The court declined to sustain the objection and did not award any attorney fees. *Id.* at *1-2. The court reasoned that since Rule 3002.1 did not apply, BOA was not required to file a notice of payment change. *Id.* at *1. Consequently, the debtors had no obligation to respond to the notice or file an objection. As a result, the debtors' objection was overruled. In addition, since the court found that BOA had acted in good faith when filing the notice, the court did not award fees to the debtors. *Id.* at *2.

***In re Kraska*, 2012 WL 1267993 (Bankr. N.D. Ohio)-Although the confirmed plan called for the surrender of the debtor's residence, the requirements of Rule 3002.1 still applied to the mortgage lender.**

In *Kraska*, the bankruptcy court declined to waive the requirements of Rule 3002.1. The debtor's confirmed plan stated that she would be surrendering her home to Aurora Bank

(Aurora), her mortgage lender. Aurora later filed a motion for relief of the automatic stay, and in the motion, Aurora asked for a waiver of the requirements of Rule 3002.1. The court did not grant Aurora's request and found that Rule 3002.1 still applied since Aurora's loan was secured by the debtor's home. *Id.* at *2. In court's opinion, that fact that the home was being surrendered was not an exception to the rule. *Id.* at *3. The court surmised that Aurora may seek payment on a deficiency claim, which will likely include post-petition fees and costs. *Id.* at *2. If Rule 3002.1 were found to be inapplicable, these charges could be included in the claim without being scrutinized for reasonableness. In addition, changes in the post-petition mortgage payments or escrow account may also have an effect on the amount of the lender's deficiency claim. Therefore, since Aurora has the opportunity to collect on its unsecured deficiency claim, the debtor and the trustee are entitled to receive notice of the charges that could affect the total amount of the debt. As a result, the court was not willing to grant a "blanket waiver" of the rule's requirements. *Id.* at *3.

***In re Sheppard*, 2012 WL 1344112 (Bankr. E.D.Va.)-A creditor's notice of post-petition fees, expenses or charges should not be filed if the court has ruled on the expenses previously.**

In *Sheppard*, SunTrust, the debtor's mortgage company, settled its motion for relief of the automatic stay with a consent order that required the debtors to cure their post-petition mortgage default by making periodic payments to the lender. In addition to the missed mortgage payments, the default included attorney's fees, costs, and late charges. SunTrust subsequently filed a notice of post-petition attorney fees and filing fees for the resolved motion for relief. As a result of the chapter 13 trustee's Motion to Determine Fees, Expenses or Charges, the bankruptcy court found that the lender's notice was not necessary since the fees and costs were

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approved in the consent order. The supplement to official form B10 states that post-petition charges must be itemized unless they were “ruled on by the bankruptcy court.” *Id.* at *3.

Although this language is not contained in Rule 3002.1, filing a notice that discloses costs that already have been allowed is confusing and repetitive. *Id.* The *Sheppard* court also clarified that the standing trustee is not authorized to pay the charges reported in the notice. Unless the plan is amended, or some other mechanism is employed, post-petition fees should not be paid by the trustee. The trustee should not construe the notice as proof of claim that should be paid. *Id.* at *4.

Rule 3001. Proof of Claim

* * * * *

(c) **SUPPORTING INFORMATION.**

(1) *Claim Based on a Writing.* When a claim, or an interest in property of the debtor securing the claim, is based on a writing, the original or a duplicate 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.

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

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

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

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

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

(i) preclude the holder 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; or

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

* * * * *

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

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

(b) **NOTICE OF PAYMENT CHANGES.** The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice of any change in the payment amount, including any change that results from an interest rate or escrow account adjustment, no later than 21 days before a payment in the new amount is due.

(c) **NOTICE OF FEES, EXPENSES, AND CHARGES.** The holder of the claim 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 against the debtor's principal residence. The notice shall be served within 180 days after the date on which the fees, expenses, or charges are incurred.

(d) **FORM AND CONTENT.** A notice filed and served under subdivision (b) or (c) of this rule shall be prepared as prescribed by the appropriate Official Form, and filed as a supplement to the holder's proof of claim. The notice is not subject to Rule 3001(f).

(e) **DETERMINATION OF FEES, EXPENSES, OR CHARGES.** On motion of the debtor or trustee filed within one year after service of a notice under subdivision (c) of this rule, the court shall, after notice and hearing, determine whether payment of any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments in accordance with § 1322(b)(5) of the Code.

(f) **NOTICE OF FINAL CURE PAYMENT.** Within 30 days after the debtor completes all payments under the plan, the trustee shall file and serve on the holder of the claim, the debtor, and debtor's counsel a notice stating that the debtor has paid in full the amount required to cure any default on the claim. The notice shall also inform the holder of its obligation to file and serve a response under subdivision (g). If the debtor contends that final cure payment has been made and all plan payments have been completed, and the trustee does not timely file and serve the notice required by this subdivision, the debtor may file and serve the notice.

(g) **RESPONSE TO NOTICE OF FINAL CURE PAYMENT.** Within 21 days after service of the notice under subdivision (f) of this rule, the holder shall file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to

cure the default on the claim, and (2) whether the debtor is otherwise current on all payments consistent with § 1322(b)(5) of the Code. The statement shall itemize the required cure or postpetition amounts, if any, that the holder contends remain unpaid as of the date of the statement. The statement shall be filed as a supplement to the holder's proof of claim and is not subject to Rule 3001(f).

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

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

(1) preclude the holder 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; or

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

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 of a home mortgage over the course of the debtor's plan.

In order to be able to fulfill the obligations of § 1322(b)(5), a debtor and the trustee must 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 necessary, and to adjust postpetition mortgage payments to cover any properly 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) requires the holder of a claim secured by the debtor's principal residence to notify the debtor, debtor's counsel, and the trustee of any postpetition change in the mortgage payment amount. Notice must be provided at least 30 days before the new payment amount is due.

UNITED STATES BANKRUPTCY COURT		PROOF OF CLAIM
Name of Debtor:	Case Number:	
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property):		
Name and address where notices should be sent:		COURT USE ONLY
Telephone number:	email:	<input type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____
Name and address where payment should be sent (if different from above):		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
Telephone number:	email:	
1. Amount of Claim as of Date Case Filed: \$ _____ If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
2. Basis for Claim: _____ (See instruction #2)		
3. Last four digits of any number by which creditor identifies debtor: _____	3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____
Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: _____		Basis for perfection: _____
Value of Property: \$ _____		Amount of Secured Claim: \$ _____
Annual Interest Rate _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		Amount Unsecured: \$ _____
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.		
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).
<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).
		Amount entitled to priority: \$ _____
<i>*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</i>		
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)		

7. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8. Signature: (See instruction #8)

Check the appropriate box.

- I am the creditor. I am the creditor's authorized agent. I am the trustee, or the debtor, or their authorized agent. I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)
 (Attach copy of power of attorney, if any.) (See Bankruptcy Rule 3004.)

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

Print Name: _____

Title: _____

Company: _____

Address and telephone number (if different from notice address above): _____

 (Signature) (Date)

Telephone number: _____ email: _____

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:
 Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:
 Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:
 State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:
 State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:
 State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:
 Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:
 If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:
 Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a):
 If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:
 An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:
 Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:
 The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, attach a complete copy of any power of attorney, and provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

INFORMATION

Debtor

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor

A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).

Claim

A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

Proof of Claim

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

Secured Claim Under 11 U.S.C. § 506 (a)

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien.

A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. § 507

(a) Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

Evidence of Perfection

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

Acknowledgment of Filing of Claim

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (www.pacer.psc.uscourts.gov) for a small fee to view your filed proof of claim.

Offers to Purchase a Claim

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

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 _____ <small>mm/dd/yyyy</small>		
	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 total prepetition fees, expenses, and charges</u>		Copy total from Part 2 here ▶ + \$ _____
	<u>Subtract total of unapplied funds</u> (funds received but not credited to account)		- \$ _____
	<u>Subtract amounts for which debtor is entitled to a refund</u>		- \$ _____
	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

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 mm/dd/yyyy

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 mm/dd/yyyy

Print: _____ Title _____
First Name Middle Name Last Name

Company _____

Address _____
Number Street

City State ZIP Code

Contact phone _____ Email _____

UNITED STATES BANKRUPTCY COURT

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: _____
mm/dd/yyyy

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 mm/dd/yyyy

Print: _____ Title _____
 First Name Middle Name Last Name

Company _____

Address _____
 Number Street
 City State ZIP Code

Contact phone _____ **Email** _____