

**PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF BANKRUPTCY PROCEDURE**

**Rule 3002.1. Chapter 13—Claim Secured by a
Security Interest in the Debtor’s
Principal Residence¹**

- (a) **In General.** This rule applies in a Chapter 13 case to a claim that is secured by a security interest in the debtor’s principal residence and for which the plan provides for the trustee or debtor to make payments on the debt. Unless the court orders otherwise, the requirements of this rule cease when an order terminating or annulling the automatic stay related to that residence becomes effective.
- (b) **Notice of a Payment Change; Home-Equity Line of Credit; Effect of an Untimely Notice; Objection.**

¹ The changes indicated are to the restyled version of Rule 3002.1, not yet in effect.

(1) ***Notice by the Claim Holder—In General.***

The claim holder must file a notice of any change in the payment amount, including one resulting from an interest-rate or escrow-account adjustment. The notice must be served on:

- the debtor;
- the debtor’s attorney; and
- the trustee.

Except as provided in (b)(2), it must be filed and served at least 21 days before the new payment is due.

(2) ***Notice of a Change in a Home-Equity Line of Credit.***

(A) *Deadline for the Initial Filing; Later Annual Filing.* If the claim arises from a home-equity line of credit, the notice of a payment change must be

filed and served either as provided in (b)(1) or within one year after the bankruptcy-petition filing, and then at least annually.

(B) *Content of the Annual Notice.* The annual notice must:

(i) state the payment amount due for the month when the notice is filed; and

(ii) include a reconciliation amount to account for any overpayment or underpayment during the prior year.

(C) *Amount of the Next Payment.* The first payment due at least 21 days after the annual notice is filed and served must

be increased or decreased by the reconciliation amount.

(D) *Effective Date.* The new payment amount stated in the annual notice (disregarding the reconciliation amount) is effective on the first payment due date after the payment under (C) has been made and remains effective until a new notice becomes effective.

(E) *Payment Changes Greater Than \$10.* If the claim holder chooses to give annual notices under (b)(2) and the monthly payment increases or decreases by more than \$10 in any month, the holder must file and serve (in addition to the annual notice) a notice under (b)(1) for that month.

- (3) ***Effect of an Untimely Notice.*** If the claim holder does not timely file and serve the notice required by (b)(1) or (b)(2), the effective date of the new payment amount is as follows:
- (A) when the notice concerns a payment increase, on the first payment due date that is at least 21 days after the untimely notice was filed and served;
- or
- (B) when the notice concerns a payment decrease, on the actual payment due date, even if it is prior to the notice.
- (4) ***Party in Interest's Objection.*** A party in interest who objects to a payment change noticed under (b)(1) or (b)(2) may file and serve a motion to determine the change's validity. Unless the court orders otherwise,

if no motion is filed before the day the new payment is due, the change goes into effect on that date.

(c) Fees, Expenses, and Charges Incurred After the Case Was Filed; Notice by the Claim Holder.

The claim holder must file a notice itemizing all fees, expenses, and charges incurred after the case was filed that the holder asserts are recoverable against the debtor or the debtor's principal residence. Within 180 days after the fees, expenses, or charges are incurred, the notice must be filed and served on the individuals listed in (b)(1).

(d) Filing Notice as a Supplement to a Proof of Claim.

A notice under (b) or (c) must be filed as a supplement to a proof of claim using Form 410S-1 or 410S-2, respectively. The notice is not subject to Rule 3001(f).

(e) **Determining Fees, Expenses, or Charges.** On a party in interest's motion, the court must, after notice and a hearing, determine whether paying any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law. The motion must be filed within one year after the notice under (c) was served, unless a party in interest requests and the court orders a shorter period.

(f) **Motion to Determine Status; Response; Court Determination.**

(1) ***Timing; Content and Service.*** At any time after the date of the order for relief under Chapter 13 and until the trustee files the notice under (g)(1), the trustee or debtor may file a motion to determine the status of any claim described in (a). The motion must be prepared using Form 410C13-M1 and be served on:

- the debtor and the debtor's attorney, if the trustee is the movant;
- the trustee, if the debtor is the movant; and
- the claim holder.

(2) ***Response; Content and Service.*** If the claim holder disagrees with facts set forth in the motion, it must file a response within 28 days after the motion is served. The response must be prepared using Form 410C13-M1R and be served on the individuals listed in (b)(1).

(3) ***Court Determination.*** If the claim holder's response asserts a disagreement with facts set forth in the motion, the court must, after notice and a hearing, determine the status of the claim and enter an appropriate order. If the claim holder does not respond to the

motion or files a response agreeing with the facts set forth in it, the court may grant the motion based on those facts and enter an appropriate order.

(g) Trustee’s End-of-Case Notice of Disbursements Made; Response; Court Determination.

(1) ***Timing and Content.*** Within 45 days after the debtor completes all payments due to the trustee under a Chapter 13 plan, the trustee must file a notice:

(A) stating what amount the trustee disbursed to the claim holder to cure any default and whether it has been cured;

(B) stating what amount the trustee disbursed to the claim holder for payments that came due during the pendency of the case and whether

such payments are current as of the date of the notice; and

(C) informing the claim holder of its obligation to respond under (g)(3).

(2) **Service.** The notice must be prepared using Form 410C13-N and be served on:

- the claim holder;
- the debtor; and
- the debtor's attorney.

(3) **Response.** The claim holder must file a response to the notice within 28 days after its service. The response, which is not subject to Rule 3001(f), must be filed as a supplement to the claim holder's proof of claim. The response must be prepared using Form 410C13-NR and be served on the individuals listed in (b)(1).

(4) **Court Determination of a Final Cure and**

Payment.

- (A) *Motion.* Within 45 days after service of the response under (g)(3) or after service of the trustee's notice under (g)(1) if no response is filed by the claim holder, the debtor or trustee may file a motion to determine whether the debtor has cured all defaults and paid all required postpetition amounts on a claim described in (a). The motion must be prepared using Form 410C13-M2 and be served on the entities listed in (f)(1).
- (B) *Response.* If the claim holder disagrees with the facts set forth in the motion, it must file a response within 28 days after the motion is served.

The response must be prepared using Form 410C13-M2R and be served on the individuals listed in (b)(1).

(C) *Court Determination.* After notice and a hearing, the court must determine whether the debtor has cured all defaults and paid all required postpetition amounts. If the claim holder does not respond to the motion or files a response agreeing with the facts set forth in it, the court may enter an appropriate order based on those facts.

(h) Claim Holder's Failure to Give Notice or Respond. If the claim holder fails to provide any information as required by this rule, the court may, after notice and a hearing, do one or more of the following:

- (1) preclude the holder from presenting the omitted information in any form as evidence in a contested matter or adversary proceeding in the case—unless the court determines that the failure was substantially justified or is harmless;
- (2) award other appropriate relief, including reasonable expenses and attorney’s fees caused by the failure; and
- (3) take any other action authorized by this rule.

Committee Note

The rule is amended to encourage a greater degree of compliance with its provisions and to allow assessments of a mortgage claim’s status while a chapter 13 case is pending in order to give the debtor an opportunity to cure any postpetition defaults that may have occurred. Stylistic changes are made throughout the rule, and its title and subdivision headings have been changed to reflect the amended content.

Subdivision (a), which describes the rule’s applicability, is amended to delete the words “contractual” and “installment” in the phrase “contractual installment payments” in order to clarify and broaden the rule’s applicability. The deletion of “contractual” is intended to

make the rule applicable to home mortgages that may be modified and are being paid according to the terms of the plan rather than strictly according to the contract, including mortgages being paid in full during the term of the plan. The word “installment” is deleted to clarify the rule’s applicability to reverse mortgages. They are not paid in installments, but a debtor may be curing a default on a reverse mortgage under the plan. If so, the rule applies.

In addition to stylistic changes, subdivision (b) is amended to provide more detailed provisions about notice of payment changes for home-equity lines of credit (“HELOCs”) and to add provisions about the effective date of late payment change notices. The treatment of HELOCs presents a special issue under this rule because the amount owed changes frequently, often in small amounts. Requiring a notice for each change can be overly burdensome. Under new subdivision (b)(2), a HELOC claimant may choose to file only annual payment change notices—including a reconciliation figure (net overpayment or underpayment for the past year)—unless the payment change in a single month is for more than \$10. This provision also ensures at least 21 days’ notice before a payment increase takes effect.

As a sanction for noncompliance, subdivision (b)(3) now provides that late notices of a payment increase do not go into effect until the first payment due date after the required notice period (at least 21 days) expires. The claim holder will not be permitted to collect the increase for the interim period. There is no delay, however, in the effective date of an untimely notice of a payment decrease. It may even take effect retroactively, if the actual due date of the decreased payment occurred before the claim holder gave notice of the change.

The changes made to subdivisions (c) and (d) are largely stylistic. Stylistic changes are also made to subdivision (e). In addition, the court is given authority, upon motion of a party in interest, to shorten the time for seeking a determination of the fees, expenses, or charges owed. Such a shortening, for example, might be appropriate in the later stages of a chapter 13 case.

Subdivision (f) is new. It provides a procedure for assessing the status of the mortgage at any point before the trustee files the notice under (g)(1). This optional procedure, which should be used only when necessary and appropriate for carrying out the plan, allows the debtor and the trustee to be informed of any deficiencies in payment and to reconcile records with the claim holder in time to become current before the case is closed. The procedure is initiated by motion of the trustee or debtor. An Official Form has been adopted for this purpose. The claim holder then must respond if it disagrees with facts stated in the motion, again using an Official Form to provide the required information. If the claim holder's response asserts such a disagreement, the court, after notice and a hearing, will determine the status of the mortgage claim. If the claim holder fails to respond or does not dispute the facts set forth in the motion, the court may enter an order favorable to the moving party based on those facts.

Under subdivision (g), within 45 days after the last plan payment is made to the trustee, the trustee must file an End-of-Case Notice of Disbursements Made. An Official Form has been adopted for this purpose. The notice will state the amount that the trustee has paid to cure any default on the claim and whether the default has been cured. It will also state the amount that the trustee has disbursed on obligations that came due during the case and whether those payments are current as of the date of the notice. If the trustee has

disbursed no amounts to the claim holder under either or both categories, the notice should be filed stating \$0 for the amount disbursed. The claim holder then must respond within 28 days after service of the notice, again using an Official Form to provide the required information.

Either the trustee or the debtor may file a motion for a determination of final cure and payment. The motion, using the appropriate Official Form, may be filed within 45 days after the claim holder responds to the trustee's notice under (g)(1), or, if the claim holder fails to respond to the notice, within 45 days after the notice was served. If the claim holder disagrees with any facts in the motion, it must respond within 28 days after the motion is served, using the appropriate Official Form. The court will then determine the status of the mortgage. A Director's Form provides guidance on the type of information that should be included in the order.

Subdivision (h) was previously subdivision (i). It has been amended to clarify that the listed sanctions are authorized in addition to any other actions that the rule authorizes the court to take if the claim holder fails to provide notice or respond as required by the rule. Stylistic changes have also been made to the subdivision.