

regulating the activities and personnel of an entity, group, or committee.

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### **Changes Made After Publication**

Subdivision (a). A definition of “represent” or “represents” was added, and the subdivision was divided into paragraphs (1) and (2).

Subdivision (b). The provision authorizing the court to require disclosure by an entity that seeks or opposes the granting of relief was deleted.

In the paragraph now designated as (1), language was added providing that groups, committees, and entities are covered by the rule only if they consist of or represent multiple creditors or equity security holders “that are (A) acting in concert to advance their common interests, and (B) not composed entirely of affiliates or insiders of one another.” The phrase “and, unless the court directs otherwise, every indenture trustee,” was deleted.

Subdivision (b)(2) was added to specify entities that are not required to file a verified statement merely because they act in one of the designated capacities.

Subdivision (c). The authorization in subdivision (c)(2)(B) and (c)(3)(B) for the court to require the disclosure of the amount paid for a disclosable economic interest was deleted.

The requirement in subdivision (c)(2)(C) and (c)(3)(C) for disclosure of the acquisition date of each disclosable economic interest was modified. The requirement was made applicable only to members of an unofficial group or committee that claims to represent

any entity in addition to the members of the group or committee, and the date that must be disclosed was limited to the quarter and year of acquisition.

Subdivision (d). The requirement of monthly supplementation of a verified statement was modified to require supplementation whenever a covered group, committee, or entity takes a position before the court or solicits votes on the confirmation of a plan and there has been a material change in any fact disclosed in its most recently filed statement.

Subdivision (e). The provisions published as subdivision (e)(1)(B) and (C), which authorized the court to determine failures to comply with legal requirements other than those imposed by Rule 2019, were deleted.

Subdivision (e)(2), which enumerated the materials the court could examine in making a determination of noncompliance, was deleted.

Committee Note. In the discussion of the definition of “disclosable economic interest,” the specific examples of “short positions, credit default swaps, and total return swaps” were added to illustrate the breadth of the definition. A sentence was added to the discussion of subdivision (c)(2) that states that the rule does not affect the right of a party to obtain information by means of discovery or as ordered by the court under any authority outside the rule.

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

**Rule 3001. Proof of Claim**

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(c) SUPPORTING INFORMATION.

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(1) Claim Based on a Writing. When a claim, or

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an interest in property of the debtor securing the claim, is

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based on a writing, the original or a duplicate shall be filed

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with the proof of claim. If the writing has been lost or

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destroyed, a statement of the circumstances of the loss or

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destruction shall be filed with the claim.

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(2) Additional Requirements in an Individual

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Debtor Case; Sanctions for Failure to Comply. In a case in

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which the debtor is an individual:

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(A) If, in addition to its principal amount, a

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claim includes interest, fees, expenses, or other charges

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incurred before the petition was filed, an itemized statement

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of the interest, fees, expenses, or charges shall be filed with

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the proof of claim.

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

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

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

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- 33 (i) preclude the holder from presenting  
34 the omitted information, in any form, as evidence in any  
35 contested matter or adversary proceeding in the case, unless  
36 the court determines that the failure was substantially justified  
37 or is harmless; or  
38 (ii) award other appropriate relief,  
39 including reasonable expenses and attorney's fees caused by  
40 the failure.

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**COMMITTEE NOTE**

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

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

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

itemizing these additional amounts with sufficient specificity to make clear the basis for the claimed amount.

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

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

Subparagraph (D) of subdivision (c)(2) sets forth sanctions that the court may impose on a creditor in an individual debtor case that fails to provide information required by subdivision (c). Failure to provide the required information does not itself constitute a ground for disallowance of a claim. *See* § 502(b) of the Code. But when an objection to the allowance of a claim is made or other litigation arises concerning the status or treatment of a claim, if the holder of that claim has not complied with the requirements of this subdivision, the court may preclude it from presenting as evidence any of the omitted information, unless the failure to comply with this subdivision was substantially justified or harmless. The court retains discretion to

allow an amendment to a proof of claim under appropriate circumstances or to impose a sanction different from or in addition to the preclusion of the introduction of evidence.

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### **Changes Made After Publication**

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

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

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

Committee Note. In the discussion of subdivision (c)(2), the term "security interest" was added to the sentence that discusses the required filing of a statement of the amount necessary to cure a prepetition default.

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

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

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

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

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

11          (c)     NOTICE OF FEES, EXPENSES, AND  
12          CHARGES. The holder of the claim shall file and serve on  
13          the debtor, debtor's counsel, and the trustee a notice itemizing  
14          all fees, expenses, or charges (1) that were incurred in  
15          connection with the claim after the bankruptcy case was filed,



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16 and (2) that the holder asserts are recoverable against the  
17 debtor or against the debtor's principal residence. The notice  
18 shall be served within 180 days after the date on which the  
19 fees, expenses, or charges are incurred.

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

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

33 (f) NOTICE OF FINAL CURE PAYMENT.

34 Within 30 days after the debtor completes all payments under  
35 the plan, the trustee shall file and serve on the holder of the  
36 claim, the debtor, and debtor's counsel a notice stating that  
37 the debtor has paid in full the amount required to cure any  
38 default on the claim. The notice shall also inform the holder  
39 of its obligation to file and serve a response under subdivision  
40 (g). If the debtor contends that final cure payment has been  
41 made and all plan payments have been completed, and the  
42 trustee does not timely file and serve the notice required by  
43 this subdivision, the debtor may file and serve the notice.

44 (g) RESPONSE TO NOTICE OF FINAL CURE  
45 PAYMENT. Within 21 days after service of the notice under  
46 subdivision (f) of this rule, the holder shall file and serve on  
47 the debtor, debtor's counsel, and the trustee a statement  
48 indicating (1) whether it agrees that the debtor has paid in full  
49 the amount required to cure the default on the claim, and (2)

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

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

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

- 66                   (1) preclude the holder from presenting the  
67                   omitted information, in any form, as evidence in any  
68                   contested matter or adversary proceeding in the case, unless  
69                   the court determines that the failure was substantially justified  
70                   or is harmless; or
- 71                   (2) award other appropriate relief, including  
72                   reasonable expenses and attorney's fees caused by the failure.

#### COMMITTEE NOTE

This rule is new. It is added to aid in the implementation of § 1322(b)(5), which permits a chapter 13 debtor to cure a default and maintain payments on a home mortgage over the course of the debtor's plan. It applies regardless of whether the trustee or the debtor is the disbursing agent for postpetition mortgage payments.

In order to be able to fulfill the obligations of § 1322(b)(5), a debtor and the trustee have to be informed of the exact amount needed to cure any prepetition arrearage, *see* Rule 3001(c)(2), and the amount of the postpetition payment obligations. If the latter amount changes over time, due to the adjustment of the interest rate, escrow account adjustments, or the assessment of fees, expenses, or other charges, notice of any change in payment amount needs to be conveyed to the debtor and trustee. Timely notice of these changes will permit the debtor or trustee to challenge the validity of any such charges, if appropriate, and to adjust postpetition mortgage payments to cover any undisputed claimed adjustment. Compliance with the notice provision of the rule should also eliminate any concern on the

part of the holder of the claim that informing a debtor of a change in postpetition payment obligations might violate the automatic stay.

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

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

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

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

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

agreement or applicable nonbankruptcy law to cure a default or maintain payments.

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

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

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

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

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

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### Changes Made After Publication

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

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

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

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

Subdivision (f). The triggering event for the filing of the notice of final cure payment was changed to the debtor's completion of all payments required under the plan. A sentence was added





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6 provided in subdivision (b)(2). The motion shall be filed  
7 before the time has expired.

8 (2) A motion to extend the time to object to  
9 discharge may be filed after the time for objection has expired  
10 and before discharge is granted if (A) the objection is based  
11 on facts that, if learned after the discharge, would provide a  
12 basis for revocation under § 727(d) of the Code, and (B) the  
13 movant did not have knowledge of those facts in time to  
14 permit an objection. The motion shall be filed promptly after  
15 the movant discovers the facts on which the objection is  
16 based.

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#### COMMITTEE NOTE

**Subdivision (b).** Subdivision (b) is amended to allow a party, under certain specified circumstances, to seek an extension of time to object to discharge after the time for filing has expired. This amendment addresses the situation in which there is a gap between the expiration of the time for objecting to discharge and the entry of the discharge order. If, during that period, a party discovers facts that would provide grounds for revocation of discharge, it may not be able to seek revocation under § 727(d) of the Code because the facts

would have been known prior to the granting of the discharge. Furthermore, during that period the debtor may commit an act that provides a basis for both denial and revocation of the discharge. In those situations, subdivision (b)(2) allows a party to file a motion for an extension of time to object to discharge based on those facts so long as they were not known to the party before expiration of the deadline for objecting. The motion must be filed promptly after discovery of those facts.

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### Changes Made After Publication

Following publication minor stylistic changes were made to the language of the rule, and a sentence was added to the Committee Note to clarify that the rule applies whenever the debtor commits an act during the gap period that provides a basis for both denial and revocation of the discharge.

#### **Rule 6003. Interim and Final Relief Immediately Following the Commencement of the Case – Applications for Employment; Motions for Use, Sale, or Lease of Property; and Motions for Assumption or Assignment of Executory Contracts**

1           Except to the extent that relief is necessary to avoid  
2           immediate and irreparable harm, the court shall not, within 21  
3           days after the filing of the petition, ~~grant relief~~ issue an order  
4           granting regarding the following:

5                   (a) an application under Rule 2014;

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- 6 (b) a motion to use, sell, lease, or otherwise incur  
7 an obligation regarding property of the estate, including a  
8 motion to pay all or part of a claim that arose before the filing  
9 of the petition, but not a motion under Rule 4001; ~~and~~ or
- 10 (c) a motion to assume or assign an executory  
11 contract or unexpired lease in accordance with § 365.

**COMMITTEE NOTE**

The rule is amended to clarify that it limits the timing of the entry of certain orders, but does not prevent the court from providing an effective date for such an order that may relate back to the time of the filing of the application or motion, or to some other date. For example, while the rule prohibits, absent immediate and irreparable harm, the court from authorizing the employment of counsel during the first 21 days of a case, it does not prevent the court from providing in an order entered after expiration of the 21-day period that the relief requested in the motion or application is effective as of a date earlier than the issuance of the order. Nor does it prohibit the filing of an application or motion for relief prior to expiration of the 21-day period. Nothing in the rule prevents a professional from representing the trustee or a debtor in possession pending the approval of an application for the approval of the employment under Rule 2014.

The amendment also clarifies that the scope of the rule is limited to granting the specifically identified relief set out in the subdivisions of the rule. Deleting “regarding” from the rule clarifies that the rule does not prohibit the court from entering orders in the first 21 days of the case that may relate to the motions and

applications set out in (a), (b), and (c); it is only prohibited from granting the relief requested by those motions or applications. For example, in the first 21 days of the case, the court could grant the relief requested in a motion to establish bidding procedures for the sale of property of the estate, but it could not, absent immediate and irreparable harm, grant a motion to approve the sale of property.

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### **Changes Made After Publication**

Minor stylistic changes were made to the Committee Note following publication.