

**We have to do what?
*Really?***

**Coping with the New Rules
Rule 3001(c) and Rule 3002.1**


The Staff Attorney Perspective


We have to do what? *Really?*


**Use the Questions Feature in
Your Control Panel And
Tell us if you are a Conduit or
Non-conduit jurisdiction**

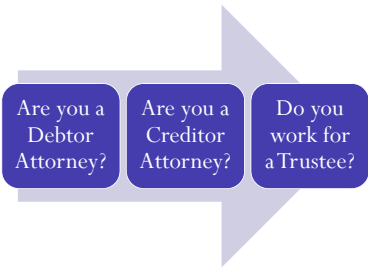
**If you contend with both
Conduit and Non-Conduit,
answer Both**

Presenters:

 **Bonnie S. Baker**
Staff Attorney
Office of Andrea E. Celli, Chapter 13 Standing Trustee
Albany, New York

 **Tony Coy**
Staff Attorney
Office of Camille Hope, Chapter 13 Standing Trustee
Macon, Georgia

 **Leo Spanos**
Staff Attorney
Office of Martha G. Bronitsky, Chapter 13 Standing Trustee
Oakland, California




Answer in the Questions Feature
(If other, tell us your position)

Proof of Claims – Rule 3001(c)

Rule 3001(c)(2)(A) requires that if 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.

Note: This applies to both secured and unsecured creditors.



Proofs of Claim – Rule 3001(c)(2)(C)

- (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.



Proof of Claims – Rule 3001(c)

- (D) If the holder of a claim fails to provide any information required by this subdivision (c), the court may, after notice and a 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.



44 (Rev. 05/2010)

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 11 U.S.C. § 541(c)(2) and 11 CFR 201.206.

Name of debtor: _____ Date: _____
 Name of creditor: _____ Last four digits of debtor's pin: _____
 (See instructions for details on required information.)

Part I: Statement of Principal and Secured Balance of the Mortgage Note

1. Principal due: _____

2. Interest due: _____

3. Total principal and interest due: _____

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

Description	Debit Amount	Credit
1. Late charges	_____	_____
2. Non-sufficient funds (NSF) fees	_____	_____
3. Attorney's fees	_____	_____
4. Charging order and court costs	_____	_____
5. Court-appointed costs	_____	_____
6. Court-appointed fees	_____	_____
7. City taxes	_____	_____
8. Recording fees	_____	_____
9. Repurchase cost (plus optional fee)	_____	_____
10. Property inspection fees	_____	_____
11. Real estate agent commission	_____	_____
12. Reasonable attorney fees incurred	_____	_____
13. State or municipal or other public utility charges, provided that you have provided an affidavit of non-payment of such charges	_____	_____
14. Property preservation (cleanup, repairs, etc.)	_____	_____
15. Other benefits	_____	_____
16. Other benefits	_____	_____
17. Total prepetition fees, expenses, and charges (list all of the amounts listed above)	_____	_____

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Part 1. Declaration of Asset Recipients for Case Debtor or of the Debtor's Estate

Check the appropriate box(es) based on the requests below:

No
 Yes: Asset is the Principal Residence of Debtor, Debtor's Estate, or of the Debtor's Trust as a trust beneficiary and applicable to a claim for which the Debtor is the principal obligor.

1. Debtor's Payment: Date and amount received by holder: _____
 Number of scheduled payments due: _____

2. Amount of Scheduled Payments Due: _____
 Amount of payments due: _____
 Total scheduled payments due as of the payment due date: _____
 How late are you? _____

3. Description of Case: Full Chapter 11, 12, 13, or Chapter 7 case
 Case involving a reorganization of a business or other entity
 Case involving the liquidation of an individual or other entity
 Other: _____
 Total amount remaining to be paid as of the payment due date: _____

New Rule – 3002.1(b)



- Applies to chapter 13 claims secured by an interest in the debtor's principal residence

- During the bankruptcy case, the holder of the claim is required to file a supplement to the proof of claim using Official Form B10 Supp. 1 and Supp.2



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UNITED STATES BANKRUPTCY COURT

Case No. _____
 Chapter 13

Notice of Postpetition Mortgage Fees, Expenses, and Charges

Part 1. Postpetition Mortgage Fees, Expenses, and Charges

Name of creditor: _____ Court claim no. (if known): _____

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

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

No
 Yes. Date of the last notice: _____

Part 2. Postpetition Mortgage Fees, Expenses, and Charges

Before the fees, expenses, and charges entered on the debtor's mortgage account after the petition was filed, do not include any income earned or payments in any amount previously reported in a notice filed in this case or made by the bankruptcy court.

Description	Dollar Amount	Interest
1. Late charges	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>
2. Postpetition mortgage fees	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>
3. Prepayment penalties	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>
4. Mortgage insurance	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>
5. Property taxes	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>
6. Recording and other taxes	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>
7. Bankruptcy/foreclosure costs	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>
8. Appraisal/valuation fees	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>
9. Mortgage recording fees	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>
10. Title insurance (post petition)	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>
11. Mortgage recording fees	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>
12. Property protection expenses. Identify: _____	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>
13. Other: Specify: _____	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>
14. Other: Specify: _____	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>
15. Other: Specify: _____	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>
16. Other: Specify: _____	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>

The notice complies with the requirements of the fees, expenses, and charges you listed on the notice. See 11 U.S.C. § 542(c)(1) and the applicable local rules.

B 1002 (Supplement 2) (12/11) Page 2

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


NAME: First Name Middle Name Last Name Title _____

Company: _____


Address: Number Street _____
City State ZIP Code _____

Contact phone: _____ Email: _____

What is actually happening with these rules?




- Which issues are being litigated?




- Are creditors complying with the rules?

What is actually happening with these rules?



- Are the Mortgage Proof of Claim Attachments being completed in uniform fashion?



- What is actually happening *during* the case and when the case is *complete*?

Issues related to the original mortgage proof of claim

- Is the original mortgage proof of claim timely?
- Is it complete?
- Is it accurate?



Requirements for a proof of claim effective December 1, 2011

- Original or duplicate of the writing evidencing the claim attached
- Statement outlining circumstances of loss or destruction if the writing is no longer available
- Individual debtor –
 - attach itemized statement of the interest, fees, expenses or charges
 - Amount necessary to cure any default as of the petition date (security interest is in debtor's personal property)

Requirements for a proof of claim effective December 1, 2011

- If security interest is in debtor's principal residence, use Official Form Attachment A
- Where there is an escrow account established:
Attach an escrow account statement as of the petition date in accordance with non-bankruptcy law – RESPA statement



Issues related to the original mortgage proof of claim Attachment A

- The United States Trustee has issued guidelines for Chapter 13 Trustees for the review of proofs of claim



Issues related to the original mortgage proof of claim Attachment A

Examples of items being reviewed:

- Inclusion of post-petition attorney fees and costs
- Failure to include information
 - Dates for escrow advances
 - Current monthly payment missing from proof of claim
 - Dates for attorney fees incurred pre-petition
 - Amounts of attorney fees and costs incurred pre-petition
 - Reasonableness/permitted under terms of note and mortgage?

What if there is an issue with the claim?

- Timeliness

- Do you pay the untimely claim?
- Do you require a plan modification?
- If the claim is not paid, is it discharged?
 - What about the lien?



What if there is an issue with the claim?

- Process/procedures if claim is incomplete or inaccurate:
 - Letter to creditor for amendment
 - Objection to claim
 - Who is taking action?
 - Trustee?
 - Debtor's counsel?



What if no claim is filed?


- Does the Trustee pay if no claim is filed?
- What if a “phantom” or “placeholder” claim is filed?



- Issues related to Official Form B10, Supplement 1 - Notice of Mortgage Payment Change – New Rule 3002.1(b) and 3002.1(c)

The case is now confirmed and complete

- Within 30 days' of case completion, Trustee issues Notice of Final Cure Payment
 - Who is served with this notice?
 - Debtor
 - Counsel
 - Mortgagee – at what address(es)?



UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE: _____ CASE NO. _____
DEBTOR(S); _____ CHAPTER 13
JUDGE _____

NOTICE OF FINAL CURE PAYMENT

Pursuant to Federal Rules of Bankruptcy Procedure 2002.1(f), the Chapter 13 Trustee ANDREA E. CELLE has this Notice of Final Cure Payment. The amount required to cure the default in the claim listed below has been paid in full.

Name of Creditor: _____

Final Cure Amount

Case#	Account #	Claim Assessed	Claim Allowed	Amount Paid

Total Amount Paid by Trustee _____

Ongoing Monthly Mortgage Payments

In this case, the ongoing monthly mortgage payment was paid _____ Through the Chapter 13 Committee Directly by the Debtor(s) _____

PLEASE TAKE NOTICE:

Within 21 days of the service of this Notice of Final Cure Payment, Creditor MUST file and serve, on the Debtor(s), Debtor(s)' counsel and the Chapter 13 Trustee, a Statement pursuant to Federal Rule Bankruptcy Procedure 2002.2(g), indicating: (1) if Creditor agrees or disagrees that the Debtor(s) have paid in full the amount required to cure the default on the claim, and (2) if Creditor agrees or disagrees that the Debtor(s) are otherwise current on all payments consistent with 11 U.S.C. §1325(b)(5) (the "Statement").


If Creditor contends that any amount(s) required remain unpaid as of the date of the Statement, the Statement filed by the Creditor shall constitute the unpaid cure or post-petition amounts. The Statement shall be filed as a response to the Creditor's Proof of Claim. Failure to timely file may result in sanctions.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Final Cure Payment was served on the parties listed below by electronic U.S. mail and on the Debtor(s) through the Court's ECF System at the email address registered with the Court on 05/16/2012 at 09:28:00 AM.

A response is due from the creditor within 21 days after the Notice is issued by the Trustee

- Creditor sends a response agreeing with information contained in Trustee's notice
 - No further action is needed OR Do you take some action?
- Creditor sends a response disagreeing with information contained in Trustee's notice
 - Is the disagreement related to pre-petition arrearages or post-petition payments?
 - If pre-petition and Trustee has paid same, file motion with supporting records
 - If post-petition, send letter to counsel and debtor



What if the creditor does not respond?

Non-conduit Jurisdiction



No action is necessary, but best practice would be to obtain an order

Conduit Jurisdiction



Make a motion to deem the mortgage current and obtain an order?

HOW do you obtain the order at the end of the case? What is the goal?

Goal: Have the debtor emerge from bankruptcy with a determination that they are current on the mortgage as of a date certain.




➔ How is goal being accomplished?



➔ How is goal being accomplished?

➔ Is goal being accomplished?




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➔ How is goal being accomplished?

➔ Is goal being accomplished?


➔ Who is taking action?

➔ Counsel or the Trustee?



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➔ Do you need a motion or an adversary proceeding?



➔ If you are able to obtain an order, is there a determination that the debtor is current as of a date certain or is there a determination of the specific mortgage balance (a dollar amount) as of a date certain?

➔ What do you do with the order?

- Retain it in your file?
- Is order recorded by Trustee ?
- Is order recorded by debtor's counsel?



Recent Cases

In re Sheppard, 2012 WL 1344112 (Bank. E.D. Virginia), No. 10-33959 (April 18, 2012)

In re Kraska, 2012 WL 1267993 (Bankr. N.D. Ohio), No. 11-63013 (April 13, 2012)

In re Carr, 2012 WL 930337 (Bankr. E.D. Virginia), No. 06-11472 (March 19, 2012)

In re Lee, (Bankr. N.D. Ohio), No. 07-34173 (April 5, 2012)

In re Sheppard, 2012 WL 1344112 (Bank. E.D. Virginia), No. 10-33959 (April 18, 2012)

- Creditor not entitled to payment through plan for fees and costs associated with notices filed under Rule 3002.1(b) or (c)
- Per 3002.1(d) these notices are supplements to the proof of claim filed for informational purposes and do not constitute an amended proof of claim

In re Sheppard, 2012 WL 1344112 (Bank. E.D. Virginia), No. 10-33959 (April 18, 2012)

- Creditors cannot seek payment based on the fees and costs listed in the notices under (b) and (c) if these expenses were already included in the proof of claim, the confirmed plan, or previously allowed by the Court



In re Kraska, 2012 WL 1267993 (Bankr. N.D. Ohio), No. 11-63013 (April 13, 2012)

- Creditor obtaining relief from stay not permitted blanket waiver from compliance with Rule 3002.1
- In order allowing r/s, creditor inserted language waiving any requirements under the rule for itself and the Trustee
- Court held there is not a waiver allowed under 3002.1, even where property is being surrendered
- "The absence of an arrearage claim does not obviate the need for the protections the rule provides."

In re Kraska, 2012 WL 1267993 (Bankr. N.D. Ohio), No. 11-63013 (April 13, 2012)

- 1322(b)(5) (for which Rule 3002.1 is applicable) applies to maintenance and cure of any unsecured or secured claim
- Even if claim is ultimately unsecured deficiency, the claim amount may significantly affect the plan depending on the percentage being paid to unsecured creditors
- No waiver is explicitly provided for in the rule

In re Carr, 2012 WL 930337 (Bankr. E.D. Virginia), No. 06-11472 (March 19, 2012)

- Under 3002.1(g) creditor cannot charge fee for filing required response to Trustee’s notice of final cure.
- Response is not a pleading
 - it is a statement as to the status of loan at conclusion of the case
 - filed as a supplement to the proof of claim

In re Carr, 2012 WL 930337 (Bankr. E.D. Virginia), No. 06-11472 (March 19, 2012)

- This is a normal business function
- No legal analysis is required



In re Lee, (Bankr. N.D. Ohio), No. 07-34173
(April 5, 2012)

- On the same date the Trustee filed the Notice of Final Cure Payment, Trustee filed a Motion of Intent to Declare Debtor Current and Reinstated
- Motion filed with 14 days' notice for response by the creditor as required by Local Rule



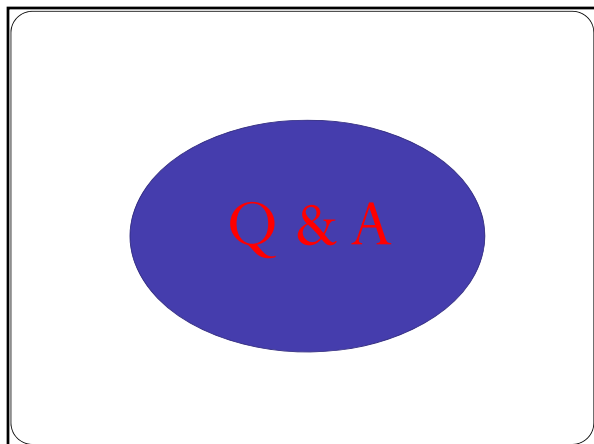
John Gustafson,
Trustee in the Lee case



In re Lee, (Bankr. N.D. Ohio), No. 07-34173
(April 5, 2012)

- Creditor objected as Rule 3002.1(g) provides the creditor with 21 days to respond to the Notice of Final Cure Payment
- Court agreed with the creditor and denied the Trustee's motion without prejudice





We also recommend the following webinars :

www.ConsiderChapter13.org

Ask the Trustees (password: alfn)

This webinar provides a thorough overview of the Rules and Forms related to proofs of claim and the challenges as a result of these changes.

Coping With New Rules

This webinar provides a further overview of the Rules and Forms and focuses on many of the questions raised in implementation of the new rules.