



AMERICAN  
BANKRUPTCY  
INSTITUTE

## Consumer Practice Extravaganza

# Saving a Family Home, and the Ins and Outs of 3002.1

### **Pam Bassel**

Standing Chapter 13 Trustee | Fort Worth, Texas

### **Hon. Rebecca B. Connelly**

U.S. Bankruptcy Court (W.D. Va.) | Harrisonburg

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Hoover Penrod PLC | Harrisburg, Va.



## APPLICATION OF THE RULE

### CURRENT:

This rule applies in Chapter 13 to claims (1) that are secured by a security interest in the debtor's principal place of residence, and (2) for which the plan provides that either the trustee or the debtor will make contractual installment payments.

### PROPOSED:

The word "installment" is deleted, meaning the rule applies to claims secured by the principal place of residence when the trustee or debtor will make contractual payments

### ISSUE:

The Committee Note states that the revised Rule 3002.1 will apply to reverse mortgages, but some lender's representatives have already voiced the opinion that although there are financial obligations in a reverse mortgage, like payment of taxes and insurance, those payments are not made to the lienholder and, therefore, the revised Rule 3002.1 would not apply to reverse mortgages.



## NOTICES OF PAYMENT CHANGES/HELOCS

### CURRENT:

The provisions regarding Notices of Payment Changes applied to any change, no matter how small the amount. This was a problem with HELOCS because the amount owed changes frequently and the change can be a very small amount.

### PROPOSED:

3002.1(b)(2), as proposed, contains specific provisions regarding HELOCS. The claimant can elect to file only an annual payment change notice. The Notice includes a reconciliation figure of the net overpayment or underpayment for the past year. If the payment change is more than \$10.00 in a single month, the claimant must file a regular (b)(1) Notice of Payment Change.



## NOTICES OF PAYMENT CHANGES/HELOCS

### CURRENT:

The Notice of Payment Change must be filed no later than 21 days before a payment in the new amount is due.

### PROPOSED:

The 21 day notice period still applies. However, the proposed Rule provides that if the Notice of Payment Change is not filed timely:

On a payment increase, the effective date is the first payment that comes due that is at least 21 days after the untimely Notice was filed and served. The claimant may not collect the increase in the interim period.

On a payment decrease, the effective date is the first payment due after the date of the Notice, so the debtor gets the immediate advantage of a payment decrease.



## NOTICES OF FEES, EXPENSES, AND CHARGES

### **CURRENT:**

When the claimant files a Notice of Fees, Expenses, and Charges, a party in interest has one year to file a Motion to Determine those fees, expenses, and charges.

### **PROPOSED:**

The same one year deadline applies unless a party in interest requests and the court orders a shorter period.



## THE NEW MOTION TO DETERMINE STATUS

### **PROPOSED:**

3002.1(f) of the proposed Rule adds a new procedure for review of the status of the mortgage during the pendency of the case. It is an optional procedure that is initiated by the filing of a Motion to Determine Status. This Motion can be filed by the Chapter 13 Trustee or the debtor. There is an official form for the Motion (Official Form 410C13-M1).

The Motion can be filed any time after the date of the order of relief until the Trustee files the End of Case Notice of Payments Made which is the replacement for the Notice of Final Cure.



## THE NEW MOTION TO DETERMINE STATUS

### PROPOSED:

If the claimant disagrees with the facts stated in the Motion, the claimant can file a response, also an official form (Official Form 410C13-M1R). The Court, after notice and hearing, must determine the status of the mortgage claim.

If the claimholder does not respond or does not dispute the facts recited in the Motion, the Court may grant the Motion.

There is no limit in the proposed Rule regarding the number of times the Motion to Determine Status can be filed. Lender representatives are already referring to this new procedure as the “Anytime Motion”.



## END OF CASE PROCEDURE

### CURRENT:

The provisions regarding the Notice of Final Cure are set out in Rule 3002.1 (f) and (g). The Trustee serves the Notice within 30 days after the debtor makes the final payment under the plan. The Notice states that the debtor has paid, in full, the amount to cure any default on the claim. If the Trustee does not timely file the Notice, the debtor can.

### PROPOSED:

Instead of a Notice of Final Cure, within 45 days from the date the debtor makes the final plan payment, the Trustee will now file a Notice of Payments Made using Official Form 410C13-N. The new Notice will state what amount, if any, the Trustee has paid to the claimholder to cure a default and whether the default has been cured and also stating what amount, if any, the Trustee had paid on post-petition contractual payments and whether those contractual payments are current as of the date of the Notice.





END OF CASE PROCEDURE

**CURRENT:**

The claimant has 21 days to respond to the Notice of Final Cure. A response is mandatory. An itemization of unpaid amounts is required.

**PROPOSED:**

Within 28 days after service of the Notice of Payments Made, the claimant **MUST** file a response using Official Form 410C13-NR.



END OF CASE PROCEDURE

**CURRENT:**

The Trustee or debtor has 21 days from the service of the response to the Notice of Final Cure to file a motion to determine the final cure and payment. The Court, after notice and hearing, determines whether the debtor has cured any defaults and whether the debtor has paid all post-petition amounts.

**PROPOSED:**

After service of the Response to the Notice of Payments Made (and there is no deadline for this) or within 45 days after service of the Trustee's Notice of Payments Made, if no response is filed, either the debtor or the Trustee may file a Motion to Determine Final Cure and Payment of the Mortgage Claim using Official Form 410C13-M2. The point of the Motion is to determine if the debtor has cured all arrears and made all post-petition payments.

If the claimant disagrees with the facts recited in the Motion, within 21 days, it must file a Response to Motion to Determine Final Cure and Payment of the Mortgage Claim using Official Form 410C13-M2R.

After notice and hearing, the Court determines whether the debtor has cured all defaults and paid all required post-petition amounts.

If the claimant does not file a Response or agrees with facts set out in the Motion filed by the debtor or Trustee, the Court may enter an order.



## CONSEQUENCES FOR VIOLATION OF THE RULE

### CURRENT:

3002.1(i) is the current sanctions provision.

### PROPOSED:

The sanctions provisions are now in 3002.1(h). Per the Committee Note accompanying the latest draft, this provision of the Rule has been amended to clarify that the listed sanctions are authorized in addition to other actions the Rule authorizes the Court to take in the event the claimant fails to provide required notices or respond as required by the Rule.



## SPEAKING OF CONSEQUENCES

One issue concerning violation of Rule 3002.1 is whether the Bankruptcy Court may award non-compensatory or punitive damages for violation of the rule. In *Gravel v. Sensenich (In re Gravel)*, 6 F.4th 502 (2<sup>nd</sup> Cir. 2021), the Second Circuit, on a direct appeal from the bankruptcy court, overruled the bankruptcy court's award of punitive damages for violation of Rule 3002.1.

The Court stated that the phrase "other appropriate relief" is a general phrase tucked among specific examples (like evidence preclusion and an award of attorney fees and cost) and should be construed in a way that limits the general language to the same types of remedies as the more specific language. The Court stated that this would mean that the phrase "other appropriate relief" does not allow the award of punitive sanctions.

The Court also stated that there are other provisions in the Bankruptcy Code which specifically authorize the award of punitive damages whereas Rule 3002.1 does not. The court concluded that appropriate relief does not include punitive sanctions.



## RESPECTFULLY DISAGREEING

In *Blanco v. Bayview Loan Servicing LLC (In re Blanco)*, 633 B. R. 714 (Bankr. S. D. Tex. 2021), the bankruptcy court decided that punitive sanctions are and should be authorized by Rule 3002.1.

Bankruptcy Judge Rodriguez refers to the dissent in *Gravel* noting that the award of only costs and attorney fees might create a weak deterrent for violations of Rule 3002.1. The improperly charged fees and charges might either be unnoticed by the debtor or in such a small amount that it is easier for the debtor to pay the fees and charges than litigate them. So, violators might escape sanctions. “It is precisely because many of the fees that violate Rule 3002.1 are small that punitive damages should be levied in the appropriate case.” *Id.* at 38.

There was some thought that the *Blanco* case would go up on direct appeal to the Fifth Circuit. However, the parties to the underlying adversary apparently settled.

Stay tuned for further developments on this issue . . .



## NEW OFFICIAL FORMS

### CURRENT:

There are some Official Forms that are still required, like Official Forms 410S-1 and 410S-2 (filed by the claimant).

### PROPOSED:

#### There are 6 new forms under consideration:

Motion to Determine the Status of the Mortgage Claim (the “anytime” motion), Official Form 410C13-M1;

Response to Motion to Determine the Status of the Mortgage Claim, Official Form 410C13-M1R;

Trustee’s Notice of Payments Made, Official Form 41013-N

Response to Trustee’s Notice of Payments Made, Official Form 410C13-NR;

Motion to Determine Final Cure and Payment of Mortgage Claim, Official Form 410C13-M2; and

Response to Motion to Determine Final Cure and Payment of the Mortgage Claim, Official Form 410C13-M2R.





## PROPOSED FORMS

The proposed forms are included in the materials. Everyone, especially debtor counsel, should look these over and take the opportunity to comment on these forms. They call for quite a bit of information that the debtor may or may not be able to provide to his/her attorney.

Submitting comments to the Committee is EASY. Go to:

<https://www.uscourts.gov/rules-policies/proposed-amendments-published-public-comment>

THE DEADLINE FOR SUBMITTING COMMENTS IS FEBRUARY 16, 2024

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Official Form 410C13-M1 (12/25)

United States Bankruptcy Court

\_\_\_\_\_ District of \_\_\_\_\_

In re \_\_\_\_\_, Debtor

Case No. \_\_\_\_\_  
Chapter 13

**Motion Under Rule 3002.1(f)(1) to Determine the Status of the Mortgage Claim**

The [trustee/debtor] states as follows:

1. The following information relates to the mortgage claim at issue:

**Name of Claim Holder:** \_\_\_\_\_ **Court claim no. (if known):** \_\_\_\_\_

**Last 4 digits** of any number used to identify the debtor's account: \_\_\_\_\_

**Property address:** \_\_\_\_\_

\_\_\_\_\_  
City State ZIP Code

2. As of the date of this motion, [I have/the trustee has] disbursed payments to cure arrearages as follows:

- a. Allowed amount of the prepetition arrearage, if any: \$ \_\_\_\_\_
- b. Total amount of the prepetition arrearage paid, if known: \$ \_\_\_\_\_
- c. Allowed amount of postpetition arrearage, if any: \$ \_\_\_\_\_
- d. Total amount of postpetition arrearage paid, if known: \$ \_\_\_\_\_
- e. Total amount of arrearages paid: \$ \_\_\_\_\_

3. As of the date of this motion, [I have/the trustee has] disbursed payments for postpetition fees, expenses, and charges as follows:

- a. Amount of postpetition fees, expenses, and charges noticed and allowed under Rule 3002.1(c): \$ \_\_\_\_\_
- b. Amount of postpetition fees, expenses, and charges paid: \$ \_\_\_\_\_

4. As of the date of this motion, [I have/the trustee has] made the following payments on the postpetition contractual obligations: \$ \_\_\_\_\_

5. I ask the court for an order under Rule 3002.1(f)(3) determining the status of the mortgage claim addressed by this motion and whether the payments required by the plan to be made as of the date of this motion have been made.

Signed: \_\_\_\_\_  
(Trustee/Debtor)

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

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Official Form 410C13-M1R (12/25)

United States Bankruptcy Court

District of \_\_\_\_\_

In re \_\_\_\_\_, Debtor

Case No. \_\_\_\_\_  
Chapter 13

**Response to [Trustee's/Debtor's] Motion Under Rule 3002.1(f)(1) to Determine the Status of the Mortgage Claim**

\_\_\_\_\_ (claim holder) states as follows:

1. The following information relates to the mortgage claim at issue:

**Name of Claim Holder:** \_\_\_\_\_ **Court claim no. (if known):** \_\_\_\_\_

**Last 4 digits of any number used to identify the debtor's account:** \_\_\_\_\_

**Property address:** \_\_\_\_\_

\_\_\_\_\_  
City State ZIP Code

2. Arrearages

Check one:

- ☐ As of the date of this response, the debtor has paid in full the amount required to cure any arrearage on this mortgage claim.
- ☐ As of the date of this response, the debtor has not paid in full the amount required to cure any arrearage on this mortgage claim. The total arrearage amount remaining unpaid as of the date of this response is:

\$ \_\_\_\_\_.

3. Postpetition Contractual Payments

Check all that apply:

- ☐ The debtor is current on all postpetition contractual payments, including all fees, charges, expenses, escrow, and costs. The claim holder attaches a payoff statement and provides the following information as of the date of this response:

Date last payment was received on the mortgage: \_\_\_\_/\_\_\_\_/\_\_\_\_

Date next postpetition payment from the debtor is due: \_\_\_\_/\_\_\_\_/\_\_\_\_

Amount of the next postpetition payment that is due: \$ \_\_\_\_\_

Unpaid principal balance of the loan: \$ \_\_\_\_\_

Additional amounts due for any deferred or accrued interest: \$ \_\_\_\_\_

Balance of the escrow account: \$ \_\_\_\_\_

Balance of unapplied funds or funds held in a suspense account: \$ \_\_\_\_\_

- ☐ The debtor is not current on all postpetition payments. The debtor is obligated for the postpetition payment(s) that first became due on: \_\_\_\_/\_\_\_\_/\_\_\_\_
- ☐ The debtor has fees, charges, expenses, negative escrow amounts, or costs due and owing. The total amount remaining unpaid as of the date of this response is \$ \_\_\_\_\_.

#### 4. Itemized Payment History

Include if applicable:

Because the claim holder asserts that the arrearages have not been paid in full or states that the debtor is not current on all postpetition payments or that fees, charges, expenses, escrow, and costs are due and owing, the claim holder attaches an itemized payment history—using the format of Official Form 410A, Part 5—disclosing the following amounts from the date of the bankruptcy filing through the date of this response:

- all prepetition and postpetition payments received;
- the application of all payments received;
- all fees, costs, escrow, and expenses assessed to the mortgage; and
- all amounts the creditor contends remain unpaid.

\_\_\_\_\_  
Signature Date \_\_\_\_/\_\_\_\_/\_\_\_\_

Print \_\_\_\_\_ Title \_\_\_\_\_  
Name

Company \_\_\_\_\_



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If different from the notice address listed on the proof of claim to which this response applies:

Address

Number

Street

City

State

ZIP Code

Contact phone ( ) - Email

The person completing this response must sign it. Check the appropriate box:

- ☐ I am the claim holder.
- ☐ I am the claim holder's authorized agent.

## Fill in this information to identify the case:

Debtor 1 \_\_\_\_\_

Debtor 2 \_\_\_\_\_  
(Spouse, if filing)

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_  
(State)

Case number \_\_\_\_\_

Official Form 410C13-N

**Trustee's Notice of Payments Made**

12/25

The trustee must file this notice in a chapter 13 case within 45 days after the debtor completes all payments due to the trustee. Rule 3002.1(g)(1).

**Part 1: Mortgage Information**

Name of claim holder: \_\_\_\_\_ Court claim no. (if known): \_\_\_\_\_

Last 4 digits of any number you use to identify the debtor's account: \_\_\_\_\_

Property address: \_\_\_\_\_  
Number Street  
\_\_\_\_\_  
City State ZIP Code

**Part 2: Statement of Completion**

On \_\_\_\_\_, debtor completed all payments due the trustee under the chapter 13 plan. A copy of the trustee's disbursement ledger for all payments to the claim holder is attached or may be accessed here: \_\_\_\_\_ (web address).

**Part 3: Amount Needed to Cure Default**

	Amount
a. Allowed amount of prepetition arrearage, if any:	\$ _____
b. Total amount prepetition arrearage paid by the trustee as of date of notice:	\$ _____
c. Allowed amount of postpetition arrearage, if any:	\$ _____
d. Total postpetition arrearage paid by the trustee as of date of notice:	\$ _____
e. Total amount of arrearages paid as of date of notice	\$ _____
Has the debtor cured all arrearages?	
<input type="checkbox"/> Yes	
<input type="checkbox"/> No	

Official Form 410C13-N

Trustee's Notice of Payments Made

page 1

**Part 4: Postpetition Contractual Payment**

Check one:

- ☐ Postpetition contractual payments are made by the debtor.
- ☐ Postpetition contractual payments are paid through the trustee.

If the trustee has made postpetition contractual payments, complete a-c below; otherwise leave blank.

- a. Total amount of postpetition contractual payments made by the trustee as of date of notice: \$ \_\_\_\_\_
- b. Is the debtor current on postpetition contractual payments as of date of notice?
- ☐ Yes
- ☐ No
- c. Next mortgage payment due: \_\_\_\_\_  
MM / YYYY

**Part 5: Postpetition Fees, Expenses, and Charges**

Amount of allowed postpetition fees, expenses, and charges: \$ \_\_\_\_\_

Amount of postpetition fees, expenses, and charges paid by the trustee as of date of notice: \$ \_\_\_\_\_

**Part 6: A Response Is Required by Bankruptcy Rule 3002.1(g)(3)**

Within 28 days after service of this notice, the holder of the claim must file a response using Official Form 410C13-NR.

X

Signature \_\_\_\_\_

Date \_\_\_\_/\_\_\_\_/\_\_\_\_

Trustee

First Name Middle Name Last Name

Address

Number Street

City State ZIP Code

Contact phone (\_\_\_\_) \_\_\_\_-\_\_\_\_

Email \_\_\_\_\_

Fill in this information to identify the case:

Debtor 1 \_\_\_\_\_

Debtor 2 \_\_\_\_\_  
(Spouse, if filing)

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_  
(State)

Case number \_\_\_\_\_

## Official Form 410C13-NR

**Response to Trustee's Notice of Payments Made**

12/25

The claim holder must respond to the Trustee's Notice of Payments Made within 28 days after it was served. Rule 3002.1(g)(2).

**Part 1: Mortgage Information**

Name of claim holder: \_\_\_\_\_ Court claim no. (if known): \_\_\_\_\_

Last 4 digits of any number you use to identify the debtor's account: \_\_\_\_\_

**Property address:**

Number Street \_\_\_\_\_

\_\_\_\_\_

City State ZIP Code \_\_\_\_\_

**Part 2: Amount Needed to Cure Default**

Check all that are applicable:

- ☐ The amount required to cure any prepetition arrearage has been paid in full.
- ☐ The amount required to cure the prepetition arrearage has not been paid in full. Amount of prepetition arrearage remaining unpaid as of the date of this notice: \$ \_\_\_\_\_.
- ☐ The amount required to cure any postpetition arrearage has been paid in full.
- ☐ The amount required to cure the postpetition arrearage has not been paid in full. Amount of postpetition arrearage remaining unpaid as of the date of this notice: \$ \_\_\_\_\_.

**Part 3: Postpetition Contractual Payment**

- ☐ Debtor is current on all postpetition contractual payments, including all fees, charges, expenses, escrow, and costs. The claim holder attaches a payoff statement and provides the following information as of the date of this response:

Date last payment was received on the mortgage: \_\_\_\_/\_\_\_\_/\_\_\_\_

Date next postpetition payment from the debtor is due: \_\_\_\_/\_\_\_\_/\_\_\_\_

Amount of the next postpetition payment that is due: \$ \_\_\_\_\_

Unpaid principal balance of the loan: \$ \_\_\_\_\_

Additional amounts due for any deferred or accrued interest: \$ \_\_\_\_\_

Balance of the escrow account: \$ \_\_\_\_\_

Balance of unapplied funds or funds held in a suspense account: \$ \_\_\_\_\_

☐ Debtor is not current on all postpetition contractual payments. The claim holder asserts that the debtor is obligated for the postpetition payment(s) that first became due on: \_\_\_\_/\_\_\_\_/\_\_\_\_.

☐ Debtor has fees, charges, expenses, negative escrow amounts, or costs due and owing. The claim holder asserts that the total amount remaining unpaid as of the date of this response is \$ \_\_\_\_\_.

#### Part 4 Itemized Payment History

If the claim holder disagrees that the prepetition arrearage has been paid in full, states that the debtor is not current on all postpetition payments, or states that fees, charges, expenses, escrow, and costs are due and owing, it must attach an itemized payment history—using the format of Official Form 410A, Part 5—disclosing the following amounts from the date of the bankruptcy filing through the date of this response:

- all prepetition and postpetition payments received;
- the application of all payments received;
- all fees, costs, escrow, and expenses assessed to the mortgage; and
- all amounts the claim holder contends remain unpaid.

#### Part 5: Sign Here

The person completing this response must sign it. Check the appropriate box:

- ☐ I am the claim holder.
- ☐ I am the claim holder's authorized agent.



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

X

Signature

Date

First Name

Middle Name

Last Name

Number

Street

City

State

ZIP Code

Contact phone

Email

AMERICAN BANKRUPTCY INSTITUTE

Official Form 410C13-M2 (12/25)

United States Bankruptcy Court

\_\_\_\_\_ District of \_\_\_\_\_

In re \_\_\_\_\_, Debtor

Case No. \_\_\_\_\_  
Chapter 13

**Motion Under Rule 3002.1(g)(4) to Determine Final Cure and Payment of Mortgage Claim**

The [trustee/debtor] states as follows:

1. The following information relates to the mortgage claim at issue:

**Name of Claim Holder:** \_\_\_\_\_ **Court claim no. (if known):** \_\_\_\_\_

**Last 4 digits** of any number used to identify the debtor's account: \_\_\_\_\_

**Property address:** \_\_\_\_\_

\_\_\_\_\_  
City State ZIP Code

2. As of the date of this motion, [I have/the trustee has] disbursed payments to cure arrearages as follows:

- a. Allowed amount of the prepetition arrearage, if any: \$ \_\_\_\_\_
- b. Total amount of the prepetition arrearage paid, if known: \$ \_\_\_\_\_
- c. Allowed amount of postpetition arrearage, if any: \$ \_\_\_\_\_
- d. Total amount of postpetition arrearage paid, if known: \$ \_\_\_\_\_
- e. Total amount of arrearages paid: \$ \_\_\_\_\_

3. As of the date of this motion, [I have/the trustee has] disbursed payments for postpetition fees, expenses, and charges as follows:

- a. Amount of postpetition fees, expenses, and charges noticed and allowed under Rule 3002.1(c): \$ \_\_\_\_\_
- b. Amount of postpetition fees, expenses, and charges paid: \$ \_\_\_\_\_

4. As of the date of this motion, [I have/the trustee has] made the following payments on the postpetition contractual obligations: \$ \_\_\_\_\_

5. I ask the court for an order under Rule 3002.1(g)(4) determining whether the debtor has cured all arrearages, if any, and paid all postpetition amounts required by the plan to be made as of the date of this motion.

Signed: \_\_\_\_\_  
(Trustee/Debtor)

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

AMERICAN BANKRUPTCY INSTITUTE

Official Form 410C13-M2R (12/25)

United States Bankruptcy Court  
District of \_\_\_\_\_

In re \_\_\_\_\_, Debtor Case No. \_\_\_\_\_  
Chapter 13

**Response to [Trustee's/Debtor's] Motion to Determine Final Cure and Payment of  
the Mortgage Claim**

\_\_\_\_\_ (claim holder) states as follows:

1. The following information relates to the mortgage claim at issue:

**Name of Claim Holder:** \_\_\_\_\_ **Court claim no. (if known):** \_\_\_\_\_

**Last 4 digits of any number used to identify the debtor's account:** \_\_\_\_\_

**Property address:** \_\_\_\_\_

City State ZIP Code

2. Arrearage Provided for by the Plan

Check one:

- ☐ As of the date of this response, Debtor has paid in full the amount required to cure any arrearage on this mortgage claim.
- ☐ As of the date of this response, Debtor has not paid in full the amount required to cure any arrearage on this mortgage claim. The total arrearage amount remaining unpaid as of the date of this response is:

\$ \_\_\_\_\_.

3. Postpetition Contractual Payments

Check all that apply:

- ☐ Debtor is current on all postpetition contractual payments, including all fees, charges, expenses, escrow, and costs. The claim holder attaches a payoff statement and provides the following information as of the date of this response:

Date last payment was received on the mortgage: \_\_\_\_/\_\_\_\_/\_\_\_\_

Date next postpetition payment from the debtor is due: \_\_\_\_/\_\_\_\_/\_\_\_\_

Amount of the next postpetition payment that is due: \$ \_\_\_\_\_

Unpaid principal balance of the loan: \$ \_\_\_\_\_

Additional amounts due for any deferred or accrued interest: \$ \_\_\_\_\_

Balance of the escrow account: \$ \_\_\_\_\_

Balance of unapplied funds or funds held in a suspense account: \$ \_\_\_\_\_

☐ Debtor is not current on all postpetition payments. The debtor is obligated for the postpetition payment(s) that first became due on: \_\_\_\_/\_\_\_\_/\_\_\_\_.

☐ Debtor has fees, charges, expenses, negative escrow amounts, or costs due and owing. The total amount remaining unpaid as of the date of this response is \$ \_\_\_\_\_.

#### 4. Itemized Payment History

Include if applicable:

Because the claim holder disagrees that the arrearages have been paid in full or states that the debtor is not current on all postpetition payments or that fees, charges, expenses, escrow, and costs are due and owing, the claim holder attaches an itemized payment history—using the format of Official Form 410A, Part 5—disclosing the following amounts from the date of the bankruptcy filing through the date of this response:

- all prepetition and postpetition payments received;
- the application of all payments received;
- all fees, costs, escrow, and expenses assessed to the mortgage; and
- all amounts the creditor contends remain unpaid.

\_\_\_\_\_  
Signature Date \_\_\_\_/\_\_\_\_/\_\_\_\_

Print \_\_\_\_\_ Title \_\_\_\_\_  
Name

Company \_\_\_\_\_



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If different from the notice address listed on the proof of claim to which this response applies:

Address

Number Street

City State ZIP Code

Contact phone ( ) - Email

The person completing this response must sign it. Check the appropriate box:

- ☐ I am the claim holder.
- ☐ I am the claim holder's authorized agent.

**The Ins and Outs of Rule 3002.1**  
***The Current Version and Proposed Amendments***

The Honorable Rebecca B. Connelly  
United States Bankruptcy Court  
Western District of Virginia

Pam Bassel  
Chapter 13 Trustee  
Hurst, TX

Hannah White Hutman  
Hoover Penrod, PLC  
Harrisonburg, VA

- I. In General.** Rule 3002.1 sets forth the requirements for providing notices relating to Claims secured by a security interest in a debtor’s principal residence. A debtor and trustee must be informed of the exact amount needed to cure any prepetition arrearage, as well as, the amount of the postpetition payment, the assessment of fees, expenses, or other charges, and notice of any payment change needs to be conveyed to the debtor and trustee.
- a. Purpose of the rule “was to provide a prompt, efficient, and cost-effective means to determine whether there is a question as to the status of a debtor’s home loan at the conclusion of the chapter 13 case.” *In re Carr*, 468 B.R. 806 (Bankr. E.D. Va.2012).
- II. Background.** Bankruptcy Rule 3002.1 went into effect December 1, 2011 and was later amended effective December 1, 2016.
- a. The 2016 amendment made it clear that the mortgagees’ responsibilities under this provision terminated upon the entry of an order annulling or terminating the automatic stay regarding the principal residence.
- b. The notes of the Advisory Committee state that the rule was 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 chapter 13 plan.

- c. The rule applies whether the debtor makes postpetition payments directly to the mortgage holder or whether the debtor makes conduit postpetition payments through the chapter 13 plan and trustee.
- d. The Advisory Committee noted that the rule is necessary for the obligations contained in §1322(b)(5) to be fulfilled.
  - i. Compliance with this rule should also eliminate mortgagees' concerns of violating the stay upon informing the debtor of the postpetition payment obligations.
  - ii. Prior to the implementation of this rule, it was not uncommon for a debtor to emerge from bankruptcy with his or her discharge and immediately be in default of the mortgage obligation due to the non-payment of fees and charges incurred by the mortgage during the case that were recoverable from the debtor, but not recouped through an order of the Court. *See In re Sheppard*, No. 10-33959-KRH, 2012 WL1344112 (Bankr. E.D. Va. Apr. 18, 2012).

**III. Proposed Amendments.** The Advisory Committee on Bankruptcy Rules has issued proposed amendments to Rule 3002.1, which are included with these materials, including 6 new mandatory forms.

**IV. Fed. R. Bankr. P. 3002.1(a)**

(a) **IN GENERAL.** This rule applies in a chapter 13 case to claims (1) that are secured by a security interest in the debtor's principal residence, and (2) for which the plan provides that either the trustee or the debtor will make contractual installment payments. Unless the court orders otherwise, the notice requirements of this rule cease to apply when an order terminating or annulling the automatic stay becomes effective with respect to the residence that secures the claim.

- a. For the rule to apply, there are two conditions.
  - i. The first is that the claim must be secured by a lien on the debtor's principal residence. All claimants secured by a lien on real property are not bound by this rule.
  - ii. The second condition is that the debtor or trustee will continue the contractual installment payments.

- b. *Proposed Amendment*—Deletes the word “installment.” meaning the rule applies to claims secured by the principal place of residence when the trustee or debtor will make contractual payments

**V. 3002.1(b): Notice of Payment Change**

(b) NOTICE OF PAYMENT CHANGES;OBJECTION. 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.

- a. The rule requires that the holder of a claim secured by the Chapter 13 debtor’s principal residence notify the debtor, debtor’s counsel and the trustee of any postpetition change in the mortgage payment amount, regardless of the amount.
  - i. 3002.1(b)(1) set forth the requirement that the notice must be provided at least 21 days before the new payment amount is due and authorizes courts to modify its requirements for claims arising from home equity lines of credit (HELOCs).
    - 1. Because payments on HELOCs may adjust frequently and in small amounts, the rule provides flexibility for courts to specify alternative procedures for keeping the person who is maintaining payments on the loan apprised of the current payment amount. Courts may specify alternative requirements for providing notice of changes in HELOC payment amounts by local rules or orders in individual cases.
  - ii. In addition to serving the debtor, debtor’s counsel, and the trustee, as required by the subsection, the mortgagee must also file the notice of payment change on the claims register in the case as a supplement to its proof of claim.
  - iii. Subdivision (b)(2) acknowledges the right of the trustee, debtor, or other party in interest, such as the United States trustee, to object to a change in a home-mortgage payment amount after receiving notice of the change under subdivision (b)(1). The rule does not set a deadline for filing a motion for a

determination of the validity of the payment change, but it provides as a general matter—subject to a contrary court order—that if no motion has been filed on or before the day before the change is to take effect, the announced change goes into effect. If there is a later motion and a determination that the payment change was not required to maintain payments under § 1322(b)(5), appropriate adjustments will have to be made to reflect any overpayments. If, however, a motion is made during the time specified in subdivision (b)(2), leading to a suspension of the payment change, a determination that the payment change was valid will require the debtor to cure the resulting default in order to be current on the mortgage at the end of the bankruptcy case.

- iv. Multiple courts have held that a lender or servicer cannot charge a debtor for attorney fees in connection with filing a Notice of Payment Change because a creditor has a duty under non-bankruptcy law to inform a debtor of such payment changes. *See In re Roife*, No. 10–34070, 2013 WL 6185025, at \*3 (Bankr. S.D. Tex. Nov. 26, 2013); *In re Vega*, No. 16-08722 (Bankr. D. P.R. Feb. 21, 2019); *In Re Carr*, 468 B.R. 806 (Bankr. E.D.Va. 2012) (Denying fees charged by creditor for its response pursuant to Rule 3002.1(g)); *In Re Adams*, 2012 Bankr. LEXIS 1943, 2012 WL 1570054, (Bank. E.D. NC 2012) (Determining that mortgage companies have routinely serve notices of mortgage payment change and that the creditor had failed to show that the services provided required the assistance of an attorney).
- b. *Proposed Amendments*-- 3002.1(b)(2), as proposed, contains specific provisions regarding HELOCS. The claimant can elect to file only an annual payment change notice. The Notice includes a reconciliation figure of the net overpayment or underpayment for the past year. If the payment change is more than \$10.00 in a single month, the claimant must file a regular (b)(1) Notice of Payment Change.

## VI. 3002.1(c) and (e): Notice and Determination of Fees, Expenses, and Charges



(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.

- a. Rule 3002.1(c) requires an itemized notice of fees, expense or charges that were incurred in connection with the claim after the bankruptcy case was filed, and that the creditor asserts are recoverable against the debtor or against the debtor's principal residence.
  - i. The claimant is to give the notice within **180 days** after the fees are **incurred** which may be different from the date upon which the expenses was actually paid.
  - ii. The notice is to be filed and served the same as the notice required under subdivision (b).
  - iii. As with the notice of payment change, the postpetition fee notices do not serve as prima facie evidence of the validity of the charges.
    1. Mortgage creditors must give adequate descriptions of the charges.  
*In re Pittman*, **2015 Bankr. LEXIS 828**, 2015 WL 1262837 (Bankr. SC 2015)
  - iv. If the fees have already been ruled upon by the Court and payment dealt with in an order, the fees may not be included in a postpetition fee notice.  
*In re Sheppard*, No. 10-33959-KRH, 2012 WL1344112 (Bankr. E.D. Va. Apr. 18, 2012).
  - v. The postpetition fee notice is not a claim or a demand for payment from the trustee. The trustee is obligated to pay allowed claims in accordance with the confirmed plan. Fed. R. Bankr. P. 3020.
    1. The trustee is not obligated and has no authority to pay the postpetition fees, expenses or charges noticed in accordance with Rule 3002.1(c).
    2. The notice is not a claim or an amendment to the claim, but rather a supplement to the claim, and must be filed using the official

Supplement 2 form. A creditor that wants to be paid post-petition fees or charges through the chapter 13 plan must file a formal amended proof of claim. *In re Sheppard*, No. 10-33959-KRH, 2012 WL1344112 (Bankr. E.D. Va. Apr. 18, 2012).

(e) DETERMINATION OF FEES, EXPENSES, OR CHARGES. On motion of a party in interest 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.

- b. Rule 3002.1(e) is clear that the request for a determination of fees, expenses, and charges must be made by motion within one year after the filing of the notice. Fed. R. Bankr. P. 3002.1(e).
  - i. Further, the Rule explicitly limits the determination to “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.”
  - ii. The motion is to be made pursuant to Rule 9014. Accordingly, the motion must be served pursuant to Rule 7004. Fed. R. Bankr. P. 9014(b).
    - 1. The timing of service of the motion and any response is governed by Rule 9006(d).
  - iii. The request for determination may also be brought as an adversary proceeding. *See Trevino v. HSBC Mortg. Servs. (In re Trevino)*, 533 B.R. 176 (Bankr. S.D. Tex. 2015).
- c. *Proposed Amendment*--A one year deadline applies for filing a Motion to Determine fees, expenses, and charges *unless* a party in interest requests and the court orders a shorter period.

**VII. 3002.1(f), (g), and (h): Notice, Response, and Determination of Final Cure Payment**

(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.

- a. Rule 3002.1(f) requires the trustee, within 30 days after making the last payment to cure a prepetition default on a claim secured by the debtor's principal residence, to issue a notice.
  - i. Chapter 13 trustee's Notice of Final Cure is certification only that the trustee has made all cure payments to mortgage or deed of trust lender; it is not certification that debtor has made all postpetition maintenance payments directly to lender because trustee lacks personal knowledge of whether such payments have been made. *Evans v. Stackhouse*, 564 B.R. 513 (E.D. Va. 2017).
  - ii. The debtor may file the notice if the trustee fails to do so within the required time. There is no deadline stated for this notice by the debtor. The claimant must then 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.
- b. *Proposed Amendment--*3002.1(f) of the proposed Rule adds a new procedure for review of the status of the mortgage during the pendency of the case. It is an optional procedure that is initiated by the filing of a Motion to Determine Status. This Motion can be filed by the Chapter 13 Trustee or the debtor. There is an official form for the Motion (Official Form 410C13-M1). The Motion can be filed any time after the date of the order of relief until the Trustee files the End of Case Notice of Payments Made which is the replacement for the Notice of Final Cure.
  - i. If the claimant disagrees with the facts stated in the Motion, the claimant can file a response, also an official form (Official Form 410C13-M1R). The Court, after notice and hearing, must determine the status of the mortgage claim. If the claimholder does not respond or does not dispute the facts

recited in the Motion, the Court may grant the Motion. There is no limit in the proposed Rule regarding the number of times the Motion to Determine Status can be filed. Lender representatives are already referring to this new procedure as the “Anytime Motion.”

(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).

- c. This response of the holder of the claim to this notice must be filed and served within 21 days after service of the notice and, if the holder of the claim contends that the final cure payment has not been made or that the debtor is not current on other payments required by § 1322(b)(5), it must itemize all missed amounts that the claimant contends are still due.
  - i. When the mortgagee disagrees with the notice of final cure, it is required to file a response using the official form or a substantially similar form.
  - ii. A statement that fails to itemize and date unpaid charges and that is not signed under penalty of perjury is insufficient to comply with Rule 3002.1(g). *In re Nieves*, 499 B.R. 222 (Bankr. D.P.R. 2013).

(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.

- d. Rule 3002.1(h) is clear that the request for a determination of final cure and payment must be made by motion within 21 days after the statement of the creditor is filed pursuant to Rule 3002.1(g).
  - i. Either the debtor or the trustee may file the motion.
  - ii. The motion is to be made pursuant to Rule 9014.

1. Accordingly, the motion must be served pursuant to Rule 7004. Fed. R. Bankr. P. 9014(b).
  2. The timing of service of the motion and any response is governed by Rule 9006(d).
- iii. Some courts, however, have held that failure to file a motion for determination within the 21-day window is not a waiver of the debtor's ability to challenge the alleged arrearages. *See Bodrick v. Chase Home Fin., Inc. (In re Bodrick)*, 498 B.R. 793 (Bankr. N.D. Ohio 2013) (concluding that the failure to file a motion was not a determination by the bankruptcy court and thus a challenge was not barred by res judicata or issue preclusion).
- e. *Proposed Amendments*—The proposed Amendments contain significant changes to the end of case procedure.
- i. Instead of a Notice of Final Cure, within 45 days from the date the debtor makes the final plan payment, the Trustee will now file a Notice of Payments Made using Official Form 410C13-N. The new Notice will state what amount, if any, the Trustee has paid to the claimholder to cure a default and whether the default has been cured and also stating what amount, if any, the Trustee had paid on post-petition contractual payments and whether those contractual payments are current as of the date of the Notice.
  - ii. Within 28 days after service of the Notice of Payments Made, the claimant **MUST** file a response using Official Form 410C13-NR.
  - iii. After service of the Response to the Notice of Payments Made (and there is no deadline for this) or within 45 days after service of the Trustee's Notice of Payments Made, if no response is filed, either the debtor or the Trustee may file a Motion to Determine Final Cure and Payment of the Mortgage Claim using Official Form 410C13-M2.
  - iv. The point of the Motion is to determine if the debtor has cured all arrears and made all post-petition payments.

- v. If the claimant disagrees with the facts recited in the Motion, within 21 days, it must file a Response to Motion to Determine Final Cure and Payment of the Mortgage Claim using Official Form 410C13-M2R.
- vi. After notice and hearing, the Court determines whether the debtor has cured all defaults and paid all required post-petition amounts.
- vii. If the claimant does not file a Response or agrees with facts set out in the Motion filed by the debtor or Trustee, the Court may enter an order.

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

(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.

- a. Rule 3002.1(i) specifies sanctions that may be imposed if the holder of a claim secured by the debtor's principal residence fails to provide any of the information required by Rule 3002.1(b), (c) or (g).
  - i. The penalties are identical to those prescribed by Rule 3001(c)(2)(D).
  - ii. The importance of the obligations mandated by Rule 3002.1 is underscored by the inclusion of a penalty for violations. When a mortgagee fails to comply with Rule 3002.1 (c), Rule 3002.1(i) explicitly authorizes bankruptcy courts, after notice and a hearing, to impose sanctions.
    - 1. Such sanctions include precluding the mortgage creditor from presenting information that it failed to disclose in any contested matter or adversary proceeding in the case, and an award of other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.
- b. *Proposed Amendment*--The sanctions provisions are now in 3002.1(h). Per the Committee Note accompanying the latest draft, this provision of the Rule has been

amended to clarify that the listed sanctions are authorized in addition to other actions the Rule authorizes the Court to take in the event the claimant fails to provide required notices or respond as required by the Rule.

- c. Recent Developments regarding the availability of sanctions. Courts are split on the extent of sanctions available and the behavior that will warrant such sanctions.

1. *PHH Mortgage Corp. v. Sensenich (In re Gravel)*, 6 F.4th 503 (2d Cir. Aug. 2, 2021).

(1) **Basic Facts:**

- i. The servicer had history of Rule 3002.1 violations, including one resulting in sanctions previously agreed to by the servicer for sending erroneous mortgage statements for three years.
- ii. The case involved three different chapter 13 debtors. In two debtors' cases, the Bankruptcy Court had previously entered an order declaring that the debtors were current on all pre- and post-filing payments, fees and charges.
- iii. Notwithstanding the Debtor Current Orders, the servicer began billing the debtors for about \$250 in fees allegedly incurred during the periods covered by the Debtor Current Orders and the servicer failed to file the notices required by Rule 3002.1(c).
- iv. For the third debtor's case, the servicer billed for expenses without filing the Rule 3002.1(c) notice.
- v. The Bankruptcy Court imposed a total of \$75,000 in sanctions under Rule 3002.1(i), representing \$1,000 for each of the 25 months in which the servicer billed the three debtors without filing a notice.
- vi. Based on the violation of the Debtor Current Order, the Bankruptcy Court also imposed sanctions under Section 105.

- vii. After a first appeal, reversal by District Court and remand to the Bankruptcy Court, the Bankruptcy Court's order on remand was similar (but reduced the sanctions under Section 105).
- viii. The servicer appealed again, and the matter went to the Second Circuit on direct appeal

(2) **Holding:**

- i. The 2nd Circuit initially reviewed the Section 105 contempt and determined there was a “fair ground of doubt as to whether the listed fees can form the basis for contempt.” Thus the Court found no basis for sanctions.
- ii. With respect to the Rule 3002.1 sanctions the 2<sup>nd</sup> Circuit held that “other appropriate relief is limited to “nonpunitive sanctions.”
- iii. Compare to other provisions in the Bankruptcy Code, such as Section 362(k)(1), which explicitly authorize punitive sanctions.
- iv. The 2<sup>nd</sup> Circuit reversed and vacated the Bankruptcy Court's order.

(3) Certiorari Denied June 13, 2022, in the case of *PHH Mortgage Corp. v. Sensenich*. On March 31, 2022, chapter 13 trustee Jan Sensenich petitioned the Supreme Court for a writ of certiorari to review the Second Circuit's decision. A number of amici were filed, including briefs from group of law professors and retired bankruptcy judges (such as Markell, Wedoff, Rapoport, and Williams), along with the National Association of Chapter 13 Trustees (Hildebrand), all urging the Court to grant certiorari and reverse the Second



Circuit. In an unsigned order, the Supreme Court denied the debtors' certiorari petition.

2. *Blanco v. Bayview Loan Servicing LLC (In re Blanco)*, 633 B.R. 714 (Bankr. S.D. Tex. Sept. 14, 2021).

(1) **Basic Facts:**

- i. Chapter 13 debtors completed their conduit plan with the trustee making all mortgage payments. They received their discharge, and the case was closed.
- ii. Although the lender had never filed notices of payment changes required by Rule 3002.1(b) and (c) with the Court, during the case the payment amount had, in fact, changed three times.
- iii. After discharge, the lender alleged default and threatened foreclosure.
- iv. The debtors filed a second chapter 13 petition and a complaint against the lender that sought, among other relief, monetary sanctions and punitive damages under Rule 3002.1(i)(2) for failure to give the notices required by subparts (b) and (c).
- v. The lender filed a motion to dismiss, claiming that the rule is procedural and does not provide a remedy for punitive damages.

(2) **Holding:**

- i. The Court disagreed with the lender, denied the motion to dismiss, and concluded that the "plain language" in subsection (i)(2) permits the court to award "other appropriate relief."
- ii. The Court relied on the dissent in the Sensenich case.
- iii. The plain language of Rule 3002.1(i) places few restrictions on the types of remedies bankruptcy courts can issue." The rule's only limit, he said, is the

word "appropriate" while the word "including" is not limiting.

- iv. Without a possibility of punitive damages, lenders have little incentive to make the systemic changes required to service loans properly in chapter 13.

**Federal Rulemaking Process**

- A. The Rules Enabling Act, 28 U.S.C. § 2071–2077, authorizes the Supreme Court to prescribe general rules of practice and procedure and rules of evidence for the federal courts.
- B. Pursuant to Section 2073 of the Rules Enabling Act, the Judicial Conference has established procedures to govern the work of the Standing Committee and its advisory rules committees.
  - a. The Advisory Committees on Appellate, Bankruptcy, Civil, Criminal, and Evidence Rules evaluate suggestions for rules amendments. They determine whether to take action on the suggestion or take no action on the suggestion.
  - b. If an advisory committee finds it appropriate to take action on a suggestion, it will seek permission from the Standing Committee to publish a draft of the proposed amendment (or new rule). The publication is for the purpose of public comment. The public comment period is from mid-August through mid- February.
  - c. Public hearings are scheduled during the comment period. Members of the public who wish to present testimony may appear at scheduled hearings on the proposed amendments. Requests must be received at least 30 days prior to the hearing dates. Hearings are subject to cancellation due to lack of requests to testify. Hearing dates and a link to request to present testimony are posted on the U.S. Courts website.
  - d. The advisory committees review all the comments received during the public comment period. Based on the comments, the advisory committees decide if the proposed amendment should be adopted, rejected, or further revised, and submits that recommendation to the Standing Committee.
  - e. The Standing Committee reviews the recommendation of the advisory committees and, if satisfied, it recommends those amendments to the Judicial Conference, which in turn recommends those amendments to the Supreme Court.
  - f. The Supreme Court then reviews and decides whether to officially promulgate the amendments before May 1 each year.
  - g. If the Supreme Court officially promulgates the revisions, the amendments will take effect no earlier than December 1, unless Congress enacts legislation to reject, modify, or defer the pending amendments.

C. How to Suggest a Change to the Federal Rules

- a. Suggestions and recommendations on the rules must be submitted to the Secretary of the Committee on Rules of Practice and Procedure (the Standing Committee) in Washington D.C. Submission may be made to the Secretary by email at RulesCommittee\_Secretary@ao.uscourts.gov or by snail email to H. Thomas Byron III, Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, One Columbus Circle, NE, Room 7-300, Washington, DC 20544.
- b. Suggestions will be assigned an agenda number, acknowledged, and forwarded to the appropriate advisory committee for consideration.

D. How to Comment on Pending Proposals

- a. Submitting a comment on the pending proposals help the various committees and participants determine the need for, or the effects of, the proposed amendments to the rules.
- b. Anyone may submit a comment! But all comments will be made part of the official record and are available to the public.
  - i. The Rules Committee Staff will docket appropriate comments and forward to the relevant advisory committee.
- c. Comments and supporting files must be submitted electronically using the regulations.gov portal.
  - i. The links to each portal open for comment is available at: <https://www.uscourts.gov/rules-policies/proposed-amendments-published-public-comment>.

PROPOSED AMENDMENTS TO THE FEDERAL  
RULES OF BANKRUPTCY PROCEDURE<sup>1</sup>

- 1 **Rule 3002.1. ~~Notice Relating to Chapter 13—~~**  
2 **~~Claims—Claim~~ Secured by a**  
3 **Security Interest in the Debtor’s**  
4 **Principal Residence ~~in a Chapter~~**  
5 **~~13 Case~~<sup>2</sup>**
- 6 (a) **In General.** This rule applies in a Chapter 13 case to  
7 a claim that is secured by a security interest in the  
8 debtor’s principal residence and for which the plan  
9 provides for the trustee or debtor to make contractual  
10 ~~installment~~ payments. Unless the court orders  
11 otherwise, the ~~notice~~ requirements of this rule cease  
12 when an order terminating or annulling the automatic  
13 stay related to that residence becomes effective.

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<sup>1</sup> New material is underlined in red; matter to be omitted is lined through.

<sup>2</sup> The changes indicated are to the restyled version of Rule 3002.1, not yet in effect.

14 (b) **Notice of a Payment Change; Home-Equity Line**  
 15 **of Credit; Effect of an Untimely Notice;**  
 16 **Objection.**

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

18 The claim holder must file a notice of any  
 19 change in the payment amount, ~~of an~~  
 20 ~~installment payment~~ including ~~any change~~  
 21 one resulting from an interest-rate or escrow-  
 22 account adjustment. ~~At least 21 days before~~  
 23 ~~the new payment is due, the~~ The notice must  
 24 be ~~filed and~~ served on:

- 25 • the debtor;
- 26 • the debtor's attorney; and
- 27 • the trustee.

28 Except as provided in (b)(2), it must be  
 29 filed and served at least 21 days before the  
 30 new payment is due. ~~If the claim arises from~~  
 31 ~~a home-equity line of credit, the court may~~

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32 ~~modify this requirement.~~

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

35 (A) Deadline for the Initial Filing; Later  
 36 Annual Filing. If the claim arises  
 37 from a home-equity line of credit, the  
 38 notice of a payment change must be  
 39 filed and served either as provided in  
 40 (b)(1) or within one year after the  
 41 bankruptcy-petition filing, and then at  
 42 least annually.

43 (B) Content of the Annual Notice. The  
 44 annual notice must:  
 45 (i) state the payment amount due  
 46 for the month when the notice  
 47 is filed; and  
 48 (ii) include a reconciliation  
 49 amount to account for any

50 overpayment or  
51 underpayment during the  
52 prior year.

53 (C) Amount of the Next Payment. The  
54 first payment due at least 21 days  
55 after the annual notice is filed and  
56 served must be increased or decreased  
57 by the reconciliation amount.

58 (D) Effective Date. The new payment  
59 amount stated in the annual notice  
60 (disregarding the reconciliation  
61 amount) is effective on the first  
62 payment due date after the payment  
63 under (C) has been made and remains  
64 effective until a new notice becomes  
65 effective.

66 (E) Payment Changes Greater Than \$10.  
67 If the claim holder chooses to give



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68 annual notices under (b)(2) and the  
69 monthly payment increases or  
70 decreases by more than \$10 in any  
71 month, the holder must file and serve  
72 (in addition to the annual notice) a  
73 notice under (b)(1) for that month.

74 (3) *Effect of an Untimely Notice.* If the claim  
75 holder does not timely file and serve the  
76 notice required by (b)(1) or (b)(2), the  
77 effective date of the new payment amount is  
78 as follows:

79 (A) when the notice concerns a payment  
80 increase, on the first payment due  
81 date that is at least 21 days after the  
82 untimely notice was filed and served;  
83 or

84 (B) when the notice concerns a payment  
85 decrease, on the first payment due  
86 date after the date of the notice.

87 (4) ***Party in Interest's Objection.*** A party in  
88 interest who objects to ~~the~~a payment  
89 change noticed under (b)(1) or (b)(2) may  
90 file and serve a motion to determine  
91 ~~whether the change is required to maintain~~  
92 ~~payments under § 1322(b)(5)~~the change's  
93 validity. Unless the court orders otherwise,  
94 if no motion is filed ~~by~~before the day  
95 ~~before~~ the new payment is due, the change  
96 goes into effect on that date.

97 (c) **Fees, Expenses, and Charges Incurred After the**  
98 **Case Was Filed; Notice by the Claim Holder.**  
99 The claim holder must file a notice itemizing all  
100 fees, expenses, and charges incurred after the case  
101 was filed that the holder asserts are recoverable

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102 against the debtor or the debtor's principal  
 103 residence. Within 180 days after the fees,  
 104 expenses, or charges ~~were~~are incurred, the notice  
 105 must be filed and served on the individuals listed  
 106 in (b)(1):

107 • ~~the debtor;~~

108 • ~~the debtor's attorney; and~~

109 • ~~the trustee.~~

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

111 A notice under (b) or (c) must be filed as a  
 112 supplement to ~~the a~~ proof of claim using Form 410S-  
 113 1 or 410S-2, respectively. The notice is not subject  
 114 to Rule 3001(f).

115 **(e) Determining Fees, Expenses, or Charges.** On a

116 party in interest's motion ~~filed within one year after~~  
 117 ~~the notice in (c) was served~~, the court must, after  
 118 notice and a hearing, determine whether paying any  
 119 claimed fee, expense, or charge is required by the

120 underlying agreement and applicable nonbankruptcy  
121 law, ~~to cure a default or maintain payments under~~  
122 ~~§ 1322(b)(5).~~ The motion must be filed within one  
123 year after the notice under (c) was served, unless a  
124 party in interest requests and the court orders a  
125 shorter period.

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

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

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- 136 • the debtor and the debtor's
  - 137 attorney, if the trustee is the
  - 138 movant;
  - 139 • the trustee, if the debtor is the
  - 140 movant; and
  - 141 • the claim holder.
- 142 (2) **Response; Content and Service.** If the claim
- 143 holder disagrees with facts set forth in the
- 144 motion, it must file a response within 21 days
- 145 after the motion is served. The response must
- 146 be prepared using Form 410C13-M1R and be
- 147 served on the individuals listed in (b)(1).
- 148 (3) **Court Determination.** If the claim holder's
- 149 response asserts a disagreement with facts set
- 150 forth in the motion, the court must, after
- 151 notice and a hearing, determine the status of
- 152 the claim and enter an appropriate order. If
- 153 the claim holder does not respond to the

154 motion or files a response agreeing with the  
 155 facts set forth in it, the court may grant the  
 156 motion based on those facts.

157 **~~(fg)~~ ~~Notice of the Final Cure Payment. Trustee's End-~~**  
 158 **~~of-Case Notice of Payments Made; Response; Court~~**  
 159 **~~Determination.~~**

160 (1) ~~*Contents of a Notice*~~ *Timing and Content.*

161 Within ~~30-45~~ days after the debtor completes  
 162 all payments due to the trustee under a  
 163 Chapter 13 plan, the trustee must file a notice:

164 (A) stating ~~that the debtor has paid in full~~  
 165 ~~the what amount required, if any, the~~  
 166 trustee paid to the claim holder to cure  
 167 any default on the claim and whether  
 168 it has been cured; and

169 (B) ~~the~~ stating what amount, if any, the  
 170 trustee paid to the claim holder for  
 171 contractual payments that came due

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172 during the pendency of the case and  
 173 whether contractual payments are  
 174 current as of the date of the notice;  
 175 and the claim holder of its obligation to  
 176 file and serve a response under (g).  
 177 (C) informing the claim holder of its  
 178 obligation to ~~file and serve a response~~  
 179 respond under (g)(3).  
 180 (2) ~~***Serving the Notice Service.***~~ The notice must  
 181 be prepared using Form 410C13-N and be  
 182 served on:  
 183 • the claim holder;  
 184 • the debtor; and  
 185 • the debtor's attorney.  
 186 (3) ***Response.*** The claim holder must file a  
 187 response to the notice within 28 days after its  
 188 service. The response, which is not subject  
 189 to Rule 3001(f), must be filed as a

190 supplement to the claim holder's proof of  
191 claim. The response must be prepared using  
192 Form 410C13-NR and be served on the  
193 individuals listed in (b)(1).

194 ~~(3) ***The Debtor's Right to File.*** The debtor may~~  
195 ~~file and serve the notice if:~~

196 ~~(A) the trustee fails to do so; and the~~  
197 ~~debtor contends that the final cure~~  
198 ~~payment has been made and all plan~~  
199 ~~payments have been completed.~~

200 (4) ***Court Determination of a Final Cure and***  
201 ***Payment.***

202 (A) *Motion.* After service of the response  
203 under (g)(3) or within 45 days after  
204 service of the trustee's notice under  
205 (g)(1) if no response is filed by the  
206 claim holder, the debtor or trustee  
207 may file a motion to determine



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208 whether the debtor has cured all  
 209 defaults and paid all required  
 210 postpetition amounts on a claim  
 211 described in (a). The motion must be  
 212 prepared using Form 410C13-M2 and  
 213 be served on the entities listed in  
 214 (f)(1).

215 (B) Response. If the claim holder  
 216 disagrees with the facts set forth in the  
 217 motion, it must file a response within  
 218 21 days after the motion is served.  
 219 The response must be prepared using  
 220 Form 410C13-M2R and be served on  
 221 the individuals listed in (b)(1).

222 (C) Court Determination. After notice  
 223 and a hearing, the court must  
 224 determine whether the debtor has  
 225 cured all defaults and paid all

226 required postpetition amounts. If the  
227 claim holder does not respond to the  
228 motion or files a response agreeing  
229 with the facts set forth in it, the court  
230 may enter an appropriate order based  
231 on those facts.

232 ~~(g)~~ **Response to a Notice of the Final Cure Payment.**

233 ~~(1)~~ ***Required Statement.*** Within 21 days after the  
234 ~~notice under (f) is served, the claim holder~~  
235 ~~must file and serve a statement that:~~

236 ~~(A)~~ ~~indicates whether:~~

237 ~~(i)~~ ~~the claim holder agrees that~~  
238 ~~the debtor has paid in full the~~  
239 ~~amount required to cure any~~  
240 ~~default on the claim; and~~

241 ~~(ii)~~ ~~the debtor is otherwise~~  
242 ~~current on all payments under~~  
243 ~~§ 1322(b)(5); and~~

244 ~~(B) itemizes the required cure or~~  
 245 ~~postpetition amounts, if any, that the~~  
 246 ~~claim holder contends remain unpaid~~  
 247 ~~as of the statement's date.~~

248 ~~(2) *Persons to be Served.*~~ The holder must serve  
 249 the statement on:

- 250 ~~• the debtor;~~
- 251 ~~• the debtor's attorney; and~~
- 252 ~~• the trustee.~~

253 ~~(3) *Statement to be a Supplement.*~~ The statement  
 254 ~~must be filed as a supplement to the proof of~~  
 255 ~~claim and is not subject to Rule 3001(f).~~

256 ~~(h) *Determining the Final Cure Payment.*~~ On the  
 257 ~~debtor's or trustee's motion filed within 21 days after~~  
 258 ~~the statement under (g) is served, the court must, after~~  
 259 ~~notice and a hearing, determine whether the debtor~~  
 260 ~~has cured the default and made all required~~  
 261 ~~postpetition payments.~~

- 262 ~~(h)~~ Claim Holder's Failure to Give Notice or  
 263 Respond. If the claim holder fails to provide any  
 264 information as required by ~~(b), (c), or (g)~~ this rule, the  
 265 court may, after notice and a hearing, ~~take one or both~~  
 266 ~~of these actions~~ do one or more of the following:
- 267 (1) preclude the holder from presenting the  
 268 omitted information in any form as evidence  
 269 in a contested matter or adversary proceeding  
 270 in the case—unless the court determines that  
 271 the failure was substantially justified or is  
 272 harmless; ~~and~~
  - 273 (2) award other appropriate relief, including  
 274 reasonable expenses and attorney's fees  
 275 caused by the failure; and
  - 276 (3) take any other action authorized by this rule.

277 **Committee Note**

278 The rule is amended to encourage a greater degree of  
 279 compliance with its provisions and to allow assessments of  
 280 a mortgage claim's status while a chapter 13 case is pending  
 281 in order to give the debtor an opportunity to cure any

282 postpetition defaults that may have occurred. Stylistic  
283 changes are made throughout the rule, and its title and  
284 subdivision headings have been changed to reflect the  
285 amended content.

286 Subdivision (a), which describes the rule's  
287 applicability, is amended to delete the word "installment" in  
288 the phrase "contractual installment payment" in order to  
289 clarify the rule's applicability to reverse mortgages, which  
290 are not paid in installments.

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

305 As a sanction for noncompliance, subdivision (b)(3)  
306 now provides that late notices of a payment increase do not  
307 go into effect until the first payment due date after the  
308 required notice period (at least 21 days) expires. The claim  
309 holder will not be permitted to collect the increase for the  
310 interim period. There is no delay, however, in the effective  
311 date of an untimely notice of a payment decrease.

312 The changes made to subdivisions (c) and (d) are  
313 largely stylistic. Stylistic changes are also made to

314 subdivision (e). In addition, the court is given authority,  
315 upon motion of a party in interest, to shorten the time for  
316 seeking a determination of the fees, expenses, or charges  
317 owed. Such a shortening, for example, might be appropriate  
318 in the later stages of a chapter 13 case.

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

337 Under subdivision (g), within 45 days after the last  
338 plan payment is made to the trustee, the trustee must file a  
339 notice of final cure and payment. An Official Form has been  
340 adopted for this purpose. The notice will state the amount  
341 that the trustee has paid to cure any default on the claim and  
342 whether the default has been cured. It will also state the  
343 amount, if any, that the trustee has paid on contractual  
344 obligations that came due during the case and whether those  
345 payments are current as of the date of the notice. The claim  
346 holder then must respond within 28 days after service of the

347 notice, again using an Official Form to provide the required  
348 information.

349         Either the trustee or the debtor may file a motion for  
350 a determination of final cure and payment. The motion,  
351 using the appropriate Official Form, may be filed after the  
352 claim holder responds to the trustee's notice under (g)(1), or,  
353 if the claim holder fails to respond to the notice, within 45  
354 days after the notice was served. If the claim holder  
355 disagrees with any facts in the motion, it must respond  
356 within 21 days after the motion is served, using the  
357 appropriate Official Form. The court will then determine the  
358 status of the mortgage. A Director's Form provides guidance  
359 on the type of information that should be included in the  
360 order.

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

# Faculty

**Pam Bassel** is the standing chapter 13 trustee in Fort Worth, Texas. She began her career in bankruptcy in 1981 as a law clerk to Hon. John Flowers of the U.S. Bankruptcy Court for the Northern District of Texas, Fort Worth Division, from 1981-82, then joined Law, Snakard & Gambill, P.C. in Fort Worth and was the senior partner of its bankruptcy section from 1987-2005, after which she was the senior partner of Bassel & Wilcox, P.L.L.C. from 2005-13. She was appointed as a standing chapter 13 trustee for the Northern District of Texas on Oct. 1, 2013. Ms. Bassel is a frequent speaker on bankruptcy topics, including recent presentations at the NACCTT 2023 Mortgage Seminar, the DFW Regional Seminar in 2022, the 17th Annual Conference on Consumer Bankruptcy Practice (UT Law, 2022), the 2022 Northern District of Texas Bankruptcy Bench Bar, the NACCTT Mid-winter conference in 2021, the 40th Annual Jay L. Westbrook Bankruptcy Conference, and the University of Texas School of Law Consumer Bankruptcy Webcast in 2020. She received her B.S.F.A. *summa cum laude* from Texas Christian University in 1976 and her J.D. with top honors from the University of Texas School of Law in 1981.

**Hon. Rebecca B. Connelly** is a U.S. Bankruptcy Judge for the Western District of Virginia in Harrisonburg, appointed in July 2012. Before joining the bench, she was the Standing Chapter 13 Trustee and Chapter 12 Trustee for the Western District of Virginia, and prior to that was in private practice in Virginia and in Washington, D.C. Judge Connelly is chair of the Judicial Conference Advisory Committee on the Federal Rules of Bankruptcy Procedure. As a member of the National Conference of Bankruptcy Judges, she formerly chaired the NCBJ Federal Rules Advisory Committee. Judge Connelly is an adjunct professor of law at Washington and Lee University School of Law (teaching bankruptcy). She also is a conferee in the National Bankruptcy Conference and a frequent speaker for Virginia CLE, an author of two chapters of Bankruptcy Practice in Virginia (2004, reprinted 2008, and revised and reprinted 2016), and an active member of ABI since 1994. Judge Connelly has served as a contributing editor and a features author for the *ABI Journal*, and she has been a member of ABI's Consumer Bankruptcy Committee, as well as a speaker at its Annual Spring Meeting, Winter Leadership Conference, and regional conferences, including Views from the Bench. She also serves on the advisory board and volunteers for Credit Abuse Resistance Education. Judge Connelly formerly served on the board and as a volunteer for Rockbridge Area Hospice. She received her B.A. in 1985 from the University of Maryland and her J.D. in 1988 from Washington & Lee University School of Law.

**Hannah W. Hutman** is a partner at Hoover Penrod, PLC in Harrisonburg, Va., where she represents businesses and individuals in bankruptcy proceedings and creditor negotiations. Her practice areas include bankruptcy, debtor and creditor rights, and general corporate work. In addition to representing businesses and individuals in bankruptcy proceedings, Ms. Hutman has represented national and regional banks in all aspects of commercial collections, including restructuring obligations, asset liquidations and dispositions, and foreclosure. She also is a member of the panel of chapter 7 trustees for the Western District of Virginia, a frequent presenter on a wide variety of insolvency-related topics, and co-author of a chapter in *Bankruptcy Practice in Virginia*. She has been active in the Virginia network of the International Women's Insolvency & Restructuring Confederation and is a past chair of the Board of Governors for the Bankruptcy Law Section of the Virginia State Bar. Ms. Hutman is



AV-rated by Martindale-Hubbell, has routinely been listed in *Super Lawyers* as a “Rising Star” and selected as a member of Virginia’s “Legal Elite,” and was honored as one of ABI’s “40 Under 40” in 2018. Ms. Hutman received her B.A. *summa cum laude* from Columbia Union College in Takoma Park, Md., and her J.D. from the Marshall Wythe School of Law at the College of William and Mary in Williamsburg, Va.