

Client Alert

February 2012

New Bankruptcy Rules Require Additional Documentation and Notification from Mortgage Holders and Servicers in Individual Debtor and Chapter 13 Cases

Bankruptcy Rule changes, effective December 1, 2011, require mortgage holders and servicers to include additional documentation supporting proofs of claim filed in individual debtor cases. Mortgage holders and servicers must follow these rules or face sanctions and potential loss of the right to present the omitted documentation as evidence in subsequent proceedings. Amendments to Bankruptcy Rule 3001(c) now require the following attachments to be filed with proofs of claim: (i) an itemized statement of outstanding pre-petition interest, fees and charges; (ii) a statement of the amount necessary to cure any pre-petition default; and (iii) a new Official Form B10A if the claim is secured by the debtor's principal residence, with an escrow statement, if applicable. New Bankruptcy Rule 3002.1 now requires filing the following during the pendency of the bankruptcy case for claims secured by a Chapter 13 debtor's principal residence: (i) a notification to the debtor and Chapter 13 trustee of any post-petition payment change; (ii) a statement itemizing all fees, expenses or charges incurred post-petition that are recoverable against the debtor or the debtor's principal residence; and (iii) in response to a notice filed by the debtor or Chapter 13 trustee stating that the debtor has paid in full all cure amounts, a statement indicating whether the claimant agrees that the debtor has paid in full all cure amounts and whether the debtor is otherwise current on all payments. The text of the new rules is available [here](#).

The New Bankruptcy Rules

Bankruptcy Rule 3001(c) still provides that any claim based on a writing, such as a mortgage or note, must be accompanied by a copy of that writing. Under the new rules, however, a proof of claim filed in an individual debtor case must now include the following:

- An itemized statement of applicable pre-petition interest, fees, expenses and other charges.¹
- If a security interest is asserted against the debtor's property, a statement of the amount necessary to cure any pre-petition default.²
- If a security interest is asserted against the debtor's principal residence, a completed new Official Form B10A,³ referred to as the Mortgage Proof of Claim Attachment, along with an escrow account statement, if applicable, prepared as of the petition date.⁴

New Bankruptcy Rule 3002.1 applies in Chapter 13 cases to secured claims against a debtor's principal residence that are provided for in the debtor's Chapter 13 plan.⁵ Under this new rule, claimants must provide the following additional information:

- If there is a change in the scheduled payment amount, including in the interest rate or escrow amount, claimants must file and serve new Official Form B10S1⁶ on the debtor,

¹ Fed. R. Bankr. P. 3001(c)(2)(A).

² Fed. R. Bankr. P. 3001(c)(2)(B).

³ Official Form B10A is available at the following web address:
http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/BK_Forms_Current/B_010.pdf.

⁴ Fed. R. Bankr. P. 3001(c)(2)(A), (B), and (C).

⁵ Fed. R. Bankr. P. 3002.1(a).

debtor's counsel and the Chapter 13 trustee no later than 21 days before such payment change.⁷

- If claimants assert any post-petition fees, expenses or other charges, they must file and serve on the debtor, debtor's counsel and the trustee new Official Form B10S2,⁸ itemizing all such fees, expenses or other charges within 180 days of incurrence.⁹

New Bankruptcy Rule 3002.1 also permits a Chapter 13 debtor or trustee to request a court determination as to whether payment of a claimed fee, expense or charge is required to cure a default or maintain payments.¹⁰ Further, a Chapter 13 debtor or trustee may file and serve on the claimholder a notice stating that the debtor has paid in full the amount required to cure any default on the claim.¹¹ Within 21 days of receiving service of such notice, the claimant must file a response indicating whether (i) it agrees that the Chapter 13 debtor has paid in full the amount required to cure the default and (ii) the Chapter 13 debtor is otherwise current on all payments.¹² The Chapter 13 debtor or trustee may then request a court determination as to whether the debtor has cured the default and/or paid all required post-petition amounts.¹³

Penalties for Noncompliance

A failure to provide the information required by the new Bankruptcy Rules could result in the bankruptcy court precluding the claimant from presenting the omitted information as evidence in any contested matter or adversary proceeding in the bankruptcy case,¹⁴ or the imposition of other sanctions, such as awarding reasonable expenses and attorney's fees.¹⁵ Accordingly, all mortgage holders and servicers should ensure that appropriate internal policy changes are made to comply with the new Bankruptcy Rules.

Additional Information

The Hunton & Williams Structured Finance and Securitization practice group and the Bankruptcy, Restructuring and Creditors' Rights practice group regularly represent banks and servicing companies in connection with bankruptcy- and insolvency-related transactions and litigation matters. We regularly monitor proposed and effected changes to the Bankruptcy Rules that impact mortgage holders and servicers.

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⁶ Official Form B10S1 (Supplement 1) is available at the following web address:
http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/BK_Forms_Current/B_010S1.pdf.

⁷ Fed. R. Bankr. P. 3002.1(b).

⁸ Official Form B10S2 (Supplement 2) is available at the following web address:
http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/BK_Forms_Current/B_010S2.pdf

⁹ Fed. R. Bankr. P. 3002.1(c).

¹⁰ Fed. R. Bankr. P. 3002.1(e).

¹¹ Fed. R. Bankr. P. 3002.1(f).

¹² Fed. R. Bankr. P. 3002.1(g).

¹³ Fed. R. Bankr. P. 3002.1(h).

¹⁴ Fed. R. Bankr. P. 3001(c)(2)(D)(i); Fed. R. Bankr. P. 3002.1(i)(1).

¹⁵ Fed. R. Bankr. P. 3001(c)(2)(D)(ii); Fed. R. Bankr. P. 3002.1(i)(2).