

Can We Talk?
Back to the
Basics of
Chapter 13

**Home Mortgage and
Foreclosure Issues**

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Standing Committee August 2022 Bankruptcy Rules and Form Published for Comment

- In August 2022, the Standing Committee published for comment proposed amendments related to restyling of Parts VII – IX, Rules 1007, 4004, 5009, 7001 and 9006, proposed new Rule 8023.1 and Official Form 410A.
 - Comments are due by February 16, 2023.
- Proposed changes to Rules 1007, 4004, 5009 and 9006 all relate the filing requirements as to the debtor's completion of a post-petition financial management course
- Official Form 410A (Mortgage Proof of Claim Attachment)
 - Proposed changes to Part 3 (Arrearage as of Date of the Petition) separating Principal from Interest

Proposed Change to 410A – Proof of Claim Attachment

Mortgage Proof of Claim Attachment

(12/23)

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 separate instructions.

Part 1: Mortgage and Case Information	Part 2: Total Debt Calculation	Part 3: Arrearage as of Date of the Petition	Part 4: Monthly Mortgage Payment
Case number: _____	Principal balance: _____	Principal due: _____	Principal & interest: _____
Debtor 1: _____	Interest due: _____	Interest due: _____	Monthly escrow: _____
Debtor 2: _____	Fees, costs due: _____	Prepetition fees due: _____	Private mortgage insurance: _____
Last 4 digits to identify: _____	Escrow deficiency for funds advanced: _____	Escrow deficiency for funds advanced: _____	Total monthly payment:
Creditor: _____	Less total funds on hand: - _____	Projected escrow shortage: _____	
Servicer: _____	Total debt: 	Less funds on hand: - _____	
Fixed accrual/daily simple interest/other: _____		Total prepetition arrearage: 	

Update from Subcommittee on Consumer Issues

Comments on Rule 3002.1 Amendments (3002.1 2.0)

- In August 2021, the Standing Committee published for comment proposed amendments to Rule 3002.1 (Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence) (1.0)
 - Twenty-seven (27) comments were submitted on the proposed Rule 3002.1 Amendments
- In September 2022, the Advisory Committee on Bankruptcy Rules discussed the comments received and additional proposed changes. The additional proposed changes are expected to be published for comment in August 2023 (2.0) and if approved would take effect December 1, 2024.
 - Areas of interest we will discuss today
 - Primary areas of interest\concern:
 - Annual HELOC PCN option
 - Mid-case process now Motion to Determine Status – timing is more fluid
 - Untimely – missed PCNs – impact on effective dates
 - End of case process not a motion and order – remains notice and response
 - Increased authority for BK Court to impose sanctions or other damages (*In re Gravel* fallout)

HELOC PCN – 3002.1(b)(2)

September 2022 Proposed Version

August 2021 Proposed Version

11 (b) NOTICE OF A PAYMENT CHANGE;
12 ~~EFFECT OF AN UNTIMELY NOTICE; HOME-EQUITY~~
13 LINE OF CREDIT; EFFECT OF AN UNTIMELY
14 NOTICE; OBJECTION.

36 (3) — *Notice of a Change in a Home-Equity*
37 *Line of Credit.*

38 (A) *Deadline.* If the claim arises
39 from a home-equity line of credit, the notice
40 of a payment change shall must be filed and
41 served either as provided in (b)(1) or within
42 one year after the bankruptcy petition was
43 filed and then at least annually.

41 (3) *Notice of a Change in a Home-Equity*
42 *Line of Credit.*

43 (A) *Deadline.* If the claim arises
44 from a home-equity line of credit, the notice
45 of a payment change shall be filed and served
46 within one year after the bankruptcy petition
47 was filed and then at least annually.

Timeliness of Filing – new (b)(3) Reconciliation and Credits

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

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

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

August 2021 Proposed Version

30 (2) Effect of an Untimely Notice. If the
31 claim holder does not timely file and serve the notice
32 required by (b)(1), the effective date of the new
33 payment is as follows:

34 (A) when the notice concerns a
35 payment increase, on the first payment due
36 date that is at least 21 days after the untimely
37 notice was filed and served, or

38 (B) when the notice concerns a
39 payment decrease, on the date stated in the
40 untimely notice.

Objections to PCNs – Timing – (b)(4)

September 2022 Proposed Version

August 2021 Proposed Version

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

75 (24) *Party in Interest's Objection.* A party
76 in interest who objects to ~~the a~~ payment change may
77 file a motion to determine whether the change is
78 required to maintain payments ~~in accordance with~~
79 under § 1322(b)(5) of the Code. ~~If~~ Unless the court
80 orders otherwise, if no motion is filed ~~by~~ before the
81 day the new ~~amount~~ payment is due, the change goes
82 into effect; immediately ~~unless the court orders~~
83 otherwise.

PPFNs – 3002.1(c) - no significant changes

September 2022 Proposed Version

96 (c) FEES, EXPENSES, AND CHARGES
97 INCURRED AFTER THE CASE WAS FILED; NOTICE
98 BY THE CLAIM HOLDER. The claim holder ~~shall~~**must**
99 file a notice itemizing all fees, expenses, and charges that the
100 claim holder has incurred ~~or imposed~~ after the case was filed
101 that the claim holder asserts are recoverable against the
102 debtor or the debtor's principal residence. Within 180 days
103 after the fees, expenses, or charges are incurred ~~or imposed~~,
104 the notice shall **must** be **filed and** served on: ~~the debtor; the~~

August 2021 Proposed Version

84 (c) ~~NOTICE OF FEES, EXPENSES, AND~~
85 ~~CHARGES~~ **INCURRED AFTER THE CASE WAS FILED;**
86 **NOTICE BY THE CLAIM HOLDER.** The **claim** holder ~~of~~
87 ~~the claim shall file and serve on the debtor, debtor's counsel,~~
88 ~~and the trustee a notice itemizing all fees, expenses, or~~ **and**
89 ~~charges (1) that were~~ **the claim holder has** incurred ~~in~~
90 ~~connection with the claim~~ **or imposed** after the bankruptcy
91 case was filed, ~~and (2) that the~~ **claim** holder asserts are
92 recoverable against the debtor or ~~against the debtor's~~
93 principal residence. ~~The notice shall be served within~~
94 **Within** 180 days after ~~the date on which the fees, expenses,~~
95 or charges are incurred **or imposed, the notice shall be served**
96 **on:**

Motion to Determine Status – new (f)

September 2022 Proposed Version

121 (f) ~~TRUSTEE'S MIDCASE NOTICE OF THE~~
122 ~~STATUS OF A MORTGAGE CLAIM~~ MOTION TO
123 DETERMINE STATUS; RESPONSE; COURT
124 DETERMINATION.

125 (1) *Timing; Content and Service.*
126 ~~Between 18 and 24 months~~ At any time after the
127 ~~bankruptcy petition was filed~~ date of the order for
128 relief under Chapter 13 and until the case is closed,
129 the trustee ~~or debtor~~ shall ~~may~~ file a notice about
130 motion to determine the status of any any mortgage
131 claim described in (a). The ~~notice shall~~ motion must
132 be prepared using the appropriate Official Form []
133 and be served on:

August 2021 Proposed Version

130 (f) TRUSTEE'S MIDCASE NOTICE OF THE
131 STATUS OF A MORTGAGE CLAIM.
132 (1) Timing; Content and Service.
133 Between 18 and 24 months after the bankruptcy
134 petition was filed, the trustee shall file a notice about
135 the status of any mortgage claim. The notice shall be
136 prepared using the appropriate Official Form and be
137 served on:
138 • the debtor;

Motion to Determine Status – new (f) - continued

Committee Notes

Subdivision (f) is new. It provides the a procedure for ~~a midcase assessment of~~ assessing the status of the mortgage at any point while the chapter 13 case is pending; ~~which~~ This optional procedure, which should be used only when necessary and appropriate for carrying out the plan, allows the debtor and the trustee to be informed of any deficiencies in payment and to reconcile records with the claim holder in time in the ~~chapter 13 case~~ to become current before the case is closed. The procedure ~~begins with the trustee providing notice of the status of the mortgage~~ is initiated by motion of the trustee or debtor. An Official Form has been adopted for this purpose. The ~~mortgage~~ claim holder then has to respond if it disagrees with facts

Motion to Determine Status – new (f) - continued

September 2022 Proposed Version

139 (2) ~~Response; Motion to Compel a~~
141 ~~Determination~~ Content and Service. (A)
142 ~~Deadline; Content and Service.~~ If the The
143 claim holder disagrees with facts set forth in the
144 motion, it shall must file a response to the trustee's
145 notice within 21 days after it the motion is served.
146 The response shall must be prepared using the
147 appropriate Official Form [] and be served on the
148 debtor; debtor's counsel attorney; and the trustee the
149 individuals listed in (b)(1).

157 (3) ~~Court Determination.~~ If a party in
158 interest objects to the response the claim holder's
159 response asserts a disagreement with facts set forth
160 in the motion, the court shall must, after notice and a
161 hearing, determine the status of the mortgage claim
162 and enter an appropriate order. If the claim holder
163 does not respond to the motion, the court may enter
164 an order favorable to the moving party based on the
165 facts set forth in the motion.

End of Case Process – (g)

September 2022 Proposed Version

166 (g) TRUSTEE'S END-OF-CASE
167 ~~MOTION TO DETERMINE THE STATUS OF NOTICE~~
168 ~~OF PAYMENTS MADE ON A MORTGAGE CLAIM;~~
169 RESPONSE; COURT DETERMINATION.
170 (1) *Timing; Content and Service.* Within
171 45 days after the debtor completes all payments due
172 to the trustee under a ~~chapter~~ Chapter 13 plan, the
173 trustee —if the trustee has made any payments on a
174 claim described in (a)—shall must file a ~~motion~~
175 notice stating:

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176 (g) TRUSTEE'S END-OF-CASE MOTION TO
177 DETERMINE THE STATUS OF A MORTGAGE CLAIM.
178 (1) *Timing; Content and Service.* Within
179 45 days after the debtor completes all payments
180 under a chapter 13 plan, the trustee shall file a motion
181 to determine the status of a mortgage claim,
182 including whether any prepetition arrearage has been
183 cured. The motion shall be prepared using the
184 appropriate Official Form and be served on:

End of Case Process – (g) - continued

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176 ~~(A) to determine the status of a mortgage~~
177 ~~claim, including whether any prepetition~~
178 ~~arrears has been cured. the amount, if any,~~
179 ~~the trustee paid to the claim holder to cure~~
180 ~~any default and whether the default has been~~
181 ~~cured; and~~
182 ~~(B) the amount, if any, the trustee paid to the~~
183 ~~claim holder for contractual payments that~~
184 ~~came due during the pendency of the case and~~
185 ~~whether contractual payments are current as~~
186 ~~of the date of the notice.~~
187 ~~The notice must also inform the claim holder of its~~
188 ~~obligation to respond under (g)(2).~~ ~~The motion shall~~
189 ~~notice must~~ be prepared using ~~the appropriate~~
190 Official Form [] and be served on:

Consequences of Failure to Comply with 3002.1 – new (h)

September 2022 Proposed Version

276 (h) CLAIM HOLDER'S FAILURE TO GIVE
277 NOTICE OR RESPOND. If the claim holder fails to provide
278 any information as required by this rule, the court may, after
279 notice and a hearing, do one or more of the following:

280 (1) preclude the holder from presenting
281 the omitted information in any form as evidence in
282 any contested matter or adversary proceeding in the
283 case—unless the court determines that the failure
284 was substantially justified or is harmless; ~~or~~

285 (2) award other ~~appropriate~~—relief,
286 including reasonable expenses and attorney's fees
287 caused by the failure and, in appropriate
288 circumstances, noncompensatory sanctions; and

289 (3) take any other action authorized by
290 this rule.

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263 (i) CLAIM HOLDER'S FAILURE TO
264 ~~NOTIFY~~ GIVE NOTICE OR RESPOND. If the ~~holder of a~~
265 claim holder fails to provide any information ~~as~~ required by
266 ~~subdivision (b), (c), or (g) of this rule~~, the court may, after
267 notice and a hearing, ~~take either or both~~ do one or more of
268 the following ~~actions~~:

269 (1) preclude the holder from presenting
270 the omitted information, in any form, as evidence in
271 any contested matter or adversary proceeding in the
272 case, ~~—~~ unless the court determines that the failure
273 was substantially justified or is harmless; ~~or~~

274 (2) award other appropriate relief,
275 including reasonable expenses and attorney's fees
276 caused by the failure; and

277 (3) take any other action authorized by
278 this rule.

Foreclosure

Potential impacts to future BK filing rates

THANK YOU!