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Consumer Bankruptcy Practice
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Federal Bankruptcy Rule 3002.1

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Introduction

Bankruptcy is a federally supervised proceeding in which individuals and businesses eliminate or repay debt while under the protection of the bankruptcy court. The main principal behind filing for bankruptcy protection is obtaining a fresh financial start in life. A fresh financial start means that once you have exited bankruptcy you will have discharged all of the debt that is dischargeable and begin to live a life free of debt, creditor harassment, lawsuits, repossessions, and foreclosures.

Your typical chapter 13 consumer bankruptcy case involves a long-time commitment from the lawyer, anywhere from three to five years. That is a long time for things to go wrong. A good consumer bankruptcy lawyer does not just assemble a chapter 13 file and submit it to the court. Instead he/she will stay awake at the wheel during the case and monitor it to ensure that the case runs smoothly throughout its life cycle. Your typical chapter 13 case will involve the preparation of schedules, statement of financial affairs, and a plan. After reading this paper, the consumer lawyer should add an annual audit of the chapter 13 case as part of his or her duties.

Federal Bankruptcy Rule 3002.1 became effective on December 1, 2011. Prior to its enactment, charges, fees, and costs relating to the debtor's principal residence could accrue during the course of the bankruptcy but remain hidden until the debtor received a discharge. At that juncture, debtors often resorted to re-filing for

bankruptcy protection to address these charges, or else face a possible foreclosure on their home.

Rule 3002.1 requires creditors with claims secured by the debtor's principal residence to serve notice on the debtor, debtor's counsel, and the trustee of payment changes and an itemization of post-petition fees, expenses, or charges recoverable against the debtor or the debtor's residence. More importantly, Rule 3002.1 provides disclosure to prevent debtors from defaulting at the conclusion of a Chapter 13 case, while affording expedited review of post-petition mortgage disputes. The Rule further allows debtors and trustees to challenge charges accrued prior to discharge and permits sanctions for non-compliance.

Bankruptcy courts across the country have published numerous opinions seeking to define the parameters of Federal Rule 3002.1. Two interrelated lines of inquiry are developing. One line of inquiry addresses efforts to shift the economic burden of complying with the Rule from creditors to debtors. The other considers whether waiver of compliance is ever permissible or even necessary. What follows is a summary of some of those cases and how the Rule is being applied.

Finally, how are you handling the Notices of Post Petition Mortgage Fees, Expenses and Charges in your district? Is your chapter 13 trustee paying those expenses or are your clients paying for them directly? Remember, Rule 3002.1 is not intended to be either a pleading or a claim. It is simply a statement that a creditor files to inform the debtor that post-petition expenses have been incurred. It is akin to providing an annual escrow statement. Section 501 of the Bankruptcy Code sets forth the manner in

which claims may be filed, while § 502 governs how claims may be allowed. The Trustee has no obligation or authority to pay fees, expenses or charges identified in a notice filed in accordance with Rule 3002.1. Remember 3002.1 requires that a notice of post-petition fees, expenses, or charges be filed as a “supplement to the holder’s proof of claim,” not an amended proof of claim. A creditor that wants to be paid for post-petition fees or charges through the chapter 13 plan must file a formal proof of claim. 11 U.S.C. §1305.

Rule 3002.1 Interpretations and Actions

The Advisory Committee Note to Rule 3002.1 provides that the Rule was enacted to aid in the implementation of 11 U.S.C. § 1322(b)(5), which permits a chapter 13 debtor to cure a default and maintain payments of a home mortgage over the course of the debtor’s plan. It applies regardless of whether the trustee or the debtor is the disbursing agent for post-petition payments.

Rule 3002.1(a)

In General Rule 3002.1 applies only” to claims in a Chapter 13 case that are (1) secured by a security interest in the debtor’s principal residence and (2) provided for under 11 U.S.C. § 1322(b)(5) in the plan.”

It is important to note that forthcoming amendments to Rule 3002.1(a) will begin to take effect on December 1, 2016. Please reference the new discussion below discussing these amendments in further detail.

APPLICABLE CASES

In re Holman, 2013 WL 1100705 (Bankr. E.D. Ky 2013)

In this particular case, the lender filed a motion for relief from stay, which included a request to cease filing notices of payment change under Rule 3002.1. The court granted the motion for relief from stay, but refused to allow the lender to stop filing the notices of payment changes. The lender’s argument was that since the stay lifted, the claim was no longer provided for under 11 U.S.C. § 1322(b)(5) in the plan, and thus Rule 3002.1 no longer applied. The court disagreed and stated that even though the debt is no longer being paid, the claim remains “provided for under that section of the plan.” The court cited to the Supreme Court decision in *Rake v. Wade*, 508 U.S. 464, 473 (1993) to show that it adopted the broad definition that a plan need only “make a provision for it; i.e., deal with it or refer to it.”

In re Kraska, 2012WL1267993 (Bankr. N.D. Ohio 2012)

In this particular case, the lender filed a motion for relief from stay and submitted a proposed order that also waived compliance with Rule 3002.1. The debtor was surrendering the collateral, but the court found that it didn’t matter if the claim was secured or unsecured, as § 1322(b)(5) covers both secured and unsecured claims. The court also advised the lender that the Rule does not contain any exceptions which would allow the court to grant the requested relief. In this particular state, a mortgage deficiency claim would be filed in the debtor’s case, post foreclosure and this, the court said, could have an impact on debtor’s 100% plan.

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