SMACKDOWN!

WHEN PRACTICE AREAS COLLIDE!

BANKRUPTCY AND RESIDENTIAL MORTGAGE ISSUES AND (AS AN ADDED BONUS) NEW BANKRUPTCY RULES AND FORMS

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The consumer bankruptcy world has changed quite a bit over the last few years and it appears that this trend will continue for a while longer.

- More and more Chapter 13 Trustees have "gone conduit." This means that the Trustee, not the borrower/debtor, disburses the periodic payments due to the mortgage lender after the case is filed;
- Some Federal Bankruptcy Rules are changing on December 1, 2016 and others are changing on December 1, 2017;
- There has been a substantial hullabaloo over a National Plan Form for Chapter 13 cases, culminating in a form plan and an opt-out provision that allows the continued use of local plan forms that meet certain requirements. The National Plan Form and the opt-out are expected to be effective on December 1, 2017;
- Official Form 410A, the attachment to the proof of claim form that must be completed by a lender secured by the debtor's principal place of residence, became effective on December 1, 2015 as did the new proof of claim form (Official Form 410);
- There is new case law regarding the post-confirmation modification of Chapter 13 plans;
- In August, 2016, the Bureau of Consumer Financial Protection (CFPB) announced amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), including changes regarding providing periodic statements on a mortgage loan when the borrower is/was a debtor in bankruptcy; and
- Mortgage lenders are attempting to enforce property preservation clauses that could create problems when a borrower files bankruptcy.

All in all, there are lots of changes and lots to talk about.[1]

A. A CHANGE IN THE RULES THAT BECOMES EFFECTIVE ON DECEMBER 1, 2016

On April 28, 2016, the Supreme Court adopted amendments to the Federal Rules of Bankruptcy Procedure which become effective on December 1, 2016, including certain provisions of Rule 3002.1. This Rule is titled "Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence." Rule 3002.1 applies only in Chapter 13 cases.[2]

Pursuant to Rule 3002.1, a lender that is secured by the debtor's principal place of residence is required to file and serve a Notice of Payment Change and a Notice of Fees,

[1] As the old curse has it: "May you live in interesting times." Well, we do.

[2] All of these notices are discussed in greater detail in subpart D of this paper. Only the actual amendment to Rule 3002.1 is discussed in subpart A.

Expenses, and Charges throughout the life of the case.[3] The amendment resolves a split in case authority regarding when the lender is obligated to send the notices required in Rule 3002.1. The short answer, according to the amended version of the Rule, is all of the time.

The amendment to Rule 3002.1 clarifies that the mortgage lender must comply with the requirements of the Rule even if the debtor is current, is not curing a pre-petition arrearage through the Chapter 13 plan, and even if the Chapter 13 Trustee is not the disbursing agent. The amended Rule further provides that, unless the court orders otherwise, the notice requirements in Rule 3002.1 cease if and when the automatic stay is terminated or annulled.

The amended version of Rule 3002.1(a) reads:

> 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 claims.

Unfortunately, amended Rule 3002.1 does not answer all concerns raised by mortgage lenders, such as problems incurred in calculating timely payment amounts for daily simple interest accounts and home equity lines of credit (HELOCS) or the burdens associated with filing a Notice of Payment Change for a *de minimis* amount. Consideration of further proposed amendments is supposed to be "in the works" but no one knows when we will see them or what those changes will be.

B. COMING SOON TO A BANKRUPTCY COURT NEAR YOU!

Additional changes are on track to become effective on December 1, 2017.

National Plan Form

Several years ago, a movement began to create a required form to be used for all Chapter 13 plans filed anywhere in the country. The idea of standardization of the plan form apparently began in the creditor community as a way to make it easier to train staff to analyze plans from different jurisdictions. Early drafts of the National Plan Form were sharply criticized. There was substantial push-back against having a National Plan Form at all. A compromise seems to have been reached in by way of proposed Rules 3015 and 3015.1 of the Bankruptcy Rules of

[3] Rule 3002.1 also requires the lender lo respond to a Notice of Final Cure Payment at the end of the case.

Title search: Smackdown! When Practice Areas Collide! Bankruptcy and Residential Mortgage Issues and (as an Added Bonus) New Bankruptcy Rules and Forms

Also available as part of the eCourse
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