Consumer Mortgage Issues in Bankruptcy

Western District of Virginia Bankruptcy Conference

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This session will cover:

1. Requirements under Fed. R. Bankr. Proc. 3002 as to filing Proof of Claims.

2. Required attachment Form B410A for mortgages on the Debtor's principal residence and how to complete same

3. Who needs to file Proof of Claims?

4. What happens if a claim is not filed timely? Can a creditor file a Motion to Allow Late Claim?

5. How are mortgage payments to be applied during a bankruptcy?

6. How is escrow calculated during a Chapter 13 bankruptcy?

Fed. R. Bankr. Proc. 3002

When must the POC be filed?

Rule 3002 was amended in 2017 to clarify that ALL secured creditors MUST file a POC in order to have an allowed secured claim and receive distributions

So what does that mean to a creditor?

1. ALL secured creditors MUST file a proof of claim.
2. This requirements INCLUDES Mortgage servicers/holders
3. The claim should be filed whether the secured obligation is being paid thru the Trustee conduit or outside the Trustee conduit.
4. The claim should be filed timely- before the bar date- 70 days after the date of the filing or the bankruptcy or date of conversation.

Fed. R. Bankr. Proc 3002(c)(2)

Rule 3002(c)(2), as amended, provides that for the debtor's principal residence, the POC is timely filed if filed within 70 days of the petition date

And includes the Official Form B410A which is required by Rule 3001(c)(2)(c) if the property is the Debtor's principal residence.

Form B410A- Mortgage Attachment

Mortgage Proof of Claim Attachment (12/15)

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 & interest due:	_____	Principal & interest:	_____
Debtor 1:	_____	Interest due:	_____	Prepetition fees due:	_____	Monthly escrow:	_____
Debtor 2:	_____	Fees, costs due:	_____	Escrow deficiency for funds advanced:	_____	Private mortgage insurance:	_____
Last 4 digits to identify:	___ ___ ___ ___	Escrow deficiency for funds advanced:	_____	Projected escrow shortage:	_____	Total monthly payment:	_____
Creditor:	_____	Less total funds on hand:	– _____	Less funds on hand:	– _____		
Servicer:	_____	Total debt:	_____	Total prepetition arrearage:	_____		
Fixed accrual/daily simple interest/other:	_____						

Part 5 : Loan Payment History from First Date of Default

		Account Activity				How Funds Were Applied/Amount Incurred					Balance After Amount Received or Incurred				
A.	**B.**	**C.**	**D.**	**E.**	**F.**	**G.**	**H.**	**I.**	**J.**	**K.**	**L.**	**M.**	**N.**	**O.**	**P.**	**Q.**
Date	Contractual payment amount	Funds received	Amount incurred	Description	Contractual due date	Prin, int & esc past due balance	Amount to principal	Amount to interest	Amount to escrow	Amount to fees or charges	Unapplied funds	Principal balance	Accrued interest balance	Escrow balance	Fees / Charges balance	Unapplied funds balance

Form B410A - Proof of Claim
Mortgage Attachment Part 1

Mortgage and Case Information

- Case number
- the names of Debtor 1 and Debtor 2
- last 4 digits of number used to identify the mortgage
- the creditor's name
- the servicer's name, if applicable
- the method used to calculate interest on the debt (i.e., fixed accrual, daily simple interest, or other method)

Part 1: Mortgage and Case Information

Case number: _____

Debtor 1: _____

Debtor 2: _____

Last 4 digits to identify: __ __ __ __

Creditor: _____

Servicer: _____

Fixed accrual/daily simple interest/other: _____

Form B410A - Proof of Claim
Mortgage Attachment Part 2

Total Debt Calculation

the principal balance on the debt

the interest due and owing

any fees or costs owed under the note or mortgage and outstanding as of the date of the bankruptcy filing

Any escrow deficiency for funds advanced

the amount of any prepetition payments for taxes and insurance that the servicer or mortgagee made out of its own funds and for which it has not been reimbursed

Part 2: Total Debt Calculation

Principal balance: _____

Interest due: _____

Fees, costs due: _____

Escrow deficiency for funds advanced: _____

Less total funds on hand: - _____

Total debt: _____

What are the components of a pre petition arrearage?

1. Principal and Interest payments due and not paid as of the date of the bankruptcy filing. This does NOT include the escrow portion of the payment.

2. Fees and Costs paid by the servicer that remain unpaid as of the date of the bankruptcy filing.

3. Taxes and insurance advanced by the servicer that remain unpaid as of the date of the bankruptcy filing.

4. The amount required in the escrow account as required by RESPA to maintain a “cushion” for the projected 12 months.

5. Less the funds on hand or in suspense account.

Form B410A - Proof of Claim Mortgage Attachment Part 3

Arrearage as of the Date of the Petition

Mortgage Proof of Claim Attachment (12/15)

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 & interest due:	_____	Principal & interest:	_____
Debtor 1:	_____	Interest due:	_____	Prepetition fees due:	_____	Monthly escrow:	_____
Debtor 2:	_____	Fees, costs due:	_____	Escrow deficiency for funds advanced:	_____	Private mortgage insurance:	_____
Last 4 digits to identify:	___ ___ ___ ___	Escrow deficiency for funds advanced:	_____	Projected escrow shortage:	_____	Total monthly payment:	_____
Creditor:	_____	Less total funds on hand:	– _____	Less funds on hand:	– _____		
Servicer:	_____	Total debt:	_____	Total prepetition arrearage:	_____		
Fixed accrual/daily simple interest/other:	_____						

Part 5 : Loan Payment History from First Date of Default

		Account Activity					How Funds Were Applied/Amount Incurred					Balance After Amount Received or Incurred				
A.	B.	C.	D.	E.	F.	G.	H.	I.	J.	K.	L.	M.	N.	O.	P.	Q.
Date	Contractual payment amount	Funds received	Amount incurred	Description	Contractual due date	Prin, int & esc past due balance	Amount to principal	Amount to interest	Amount to escrow	Amount to fees or charges	Unapplied funds	Principal balance	Accrued interest balance	Escrow balance	Fees / Charges balance	Unapplied funds balance

Form B410A - Proof of Claim
Mortgage Attachment Part 3

Arrearage as of the Date of the Petition:

Insert the amount of the principal and interest portion of all prepetition monthly installments that remain outstanding as of the petition date

The escrow portion of prepetition monthly installment payments should NOT be included in this figure

Part 3: Arrearage as of Date of the Petition

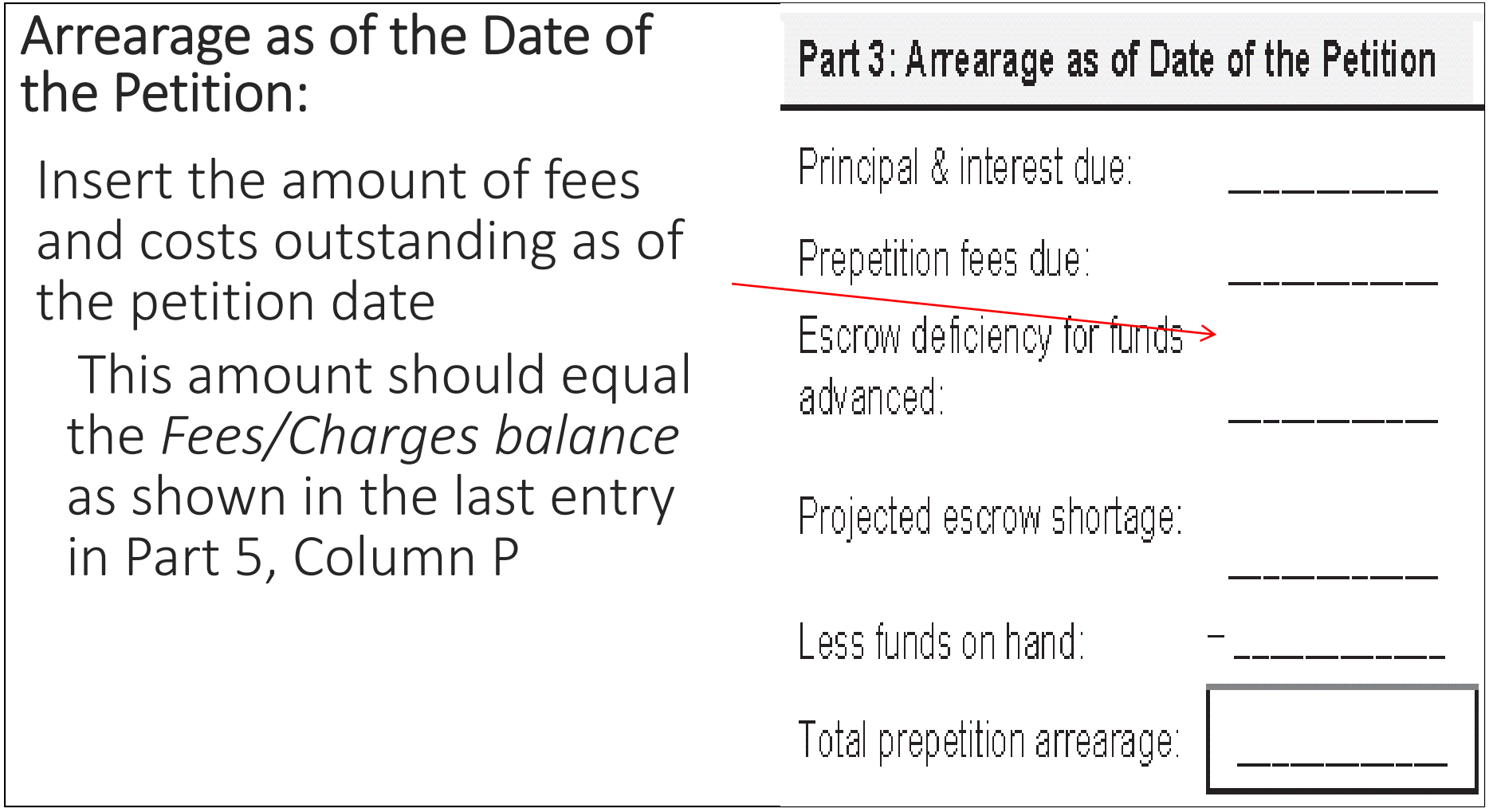
Principal & interest due:	_____
Prepetition fees due:	_____
Escrow deficiency for funds advanced:	_____
Projected escrow shortage:	_____
Less funds on hand:	- _____
Total prepetition arrearage:	_____

Form B410A - Proof of Claim
Mortgage Attachment Part 3

Arrearage as of the Date of the Petition:

Insert the amount of fees and costs outstanding as of the petition date

This amount should equal the *Fees/Charges balance* as shown in the last entry in Part 5, Column P



Part 3: Arrearage as of Date of the Petition

Principal & interest due: _____

Prepetition fees due: _____

Escrow deficiency for funds advanced: _____

Projected escrow shortage: _____

Less funds on hand: - _____

Total prepetition arrearage: _____

Form B410A - Proof of Claim
Mortgage Attachment Part 3

Arrearage as of the Date of the Petition:

Insert any escrow deficiency for funds advanced

This amount should be the same as the amount of escrow deficiency stated in Part 2

Part 3: Arrearage as of Date of the Petition

Principal & interest due:	_____
Prepetition fees due:	_____
Escrow deficiency for funds advanced:	_____
Projected escrow shortage:	_____
Less funds on hand:	- _____
Total prepetition arrearage:	_____

Form B410A - Proof of Claim
Mortgage Attachment Part 3

Arrearage as of the Date of the Petition:

IMPORTANT

The escrow deficiency amount (i.e., the negative balance in the escrow account on the day the case was filed) is ordinarily the starting balance for the escrow analysis

Although not spelled out in the instructions, it has been determined that because the escrow deficiency is being listed on a separate line in Part 3, the escrow account needs to be brought up to zero prior to running the escrow analysis.

Part 3: Arrearage as of Date of the Petition

Principal & interest due:	_____
Prepetition fees due:	_____
Escrow deficiency for funds advanced:	_____
Projected escrow shortage:	_____
Less funds on hand:	- _____
Total prepetition arrearage:	_____

Form B410A - Proof of Claim
Mortgage Attachment Part 3

Arrearage as of the Date of the Petition:

Insert the projected escrow shortage as of the date the bankruptcy petition was filed (should be based on and consistent with escrow analysis performed as of the date of the petition under Rule 3001)

The calculation should include 1/6 of the anticipated annual charges against the escrow account or 2 months of the monthly pro rata installments due by the borrower as calculated under RESPA guidelines

Part 3: Arrearage as of Date of the Petition

Principal & interest due:	_____
Prepetition fees due:	_____
Escrow deficiency for funds advanced:	_____
Projected escrow shortage:	_____
Less funds on hand:	- _____
Total prepetition arrearage:	_____

Form B410A - Proof of Claim
Mortgage Attachment Part 3

Arrearage as of the Date of the Petition:

The shortage is the difference between the actual amount in the escrow account and the required amount

The amount actually held should equal the amount of a positive escrow account balance as shown in the last entry in Part 5,Column O

Part 3: Arrearage as of Date of the Petition

Principal & interest due:	_____
Prepetition fees due:	_____
Escrow deficiency for funds advanced:	_____
Projected escrow shortage:	_____
Less funds on hand:	-_____
Total prepetition arrearage:	_____

Form B410A - Proof of Claim
Mortgage Attachment Part 3

Arrearage as of the Date of the Petition:

IMPORTANT

The escrow portion of missed prepetition mortgage payments will not be recovered as a separate line item

Part 3: Arrearage as of Date of the Petition

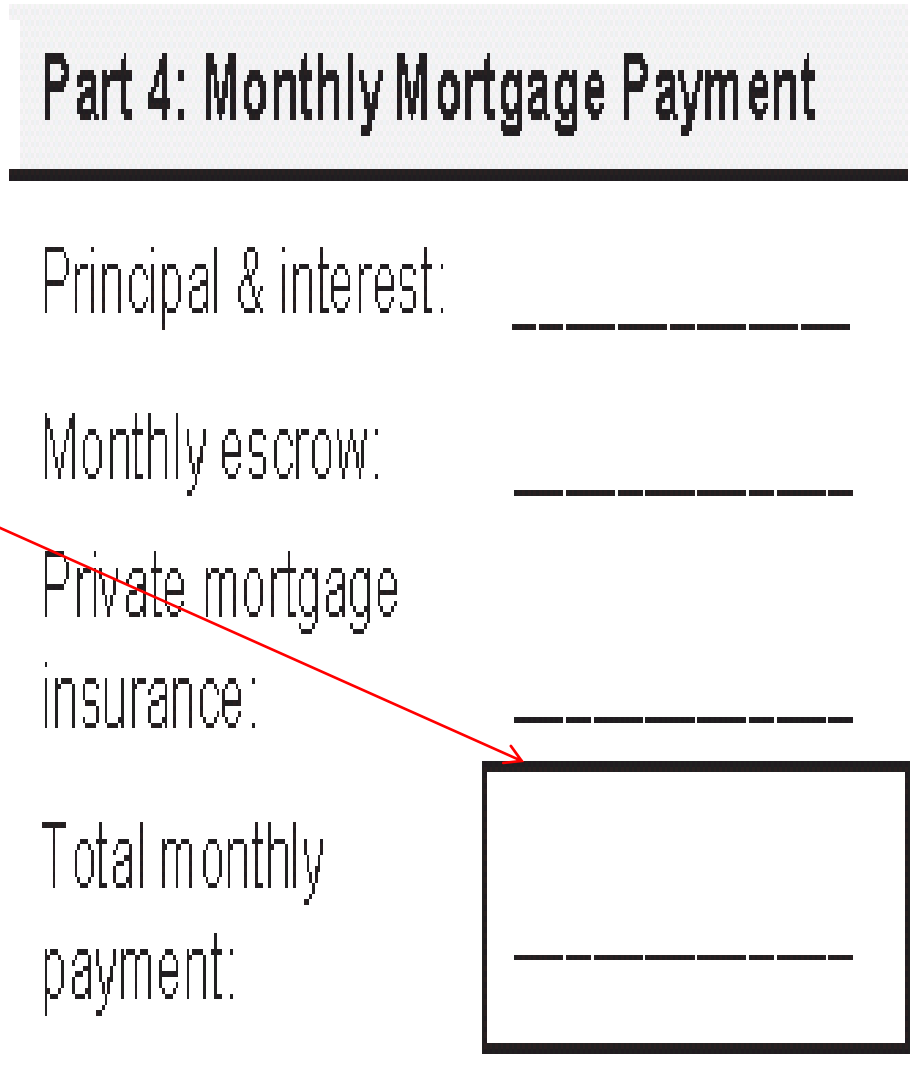
Principal & interest due:	_____
Prepetition fees due:	_____
Escrow deficiency for funds advanced:	_____
Projected escrow shortage:	_____
Less funds on hand:	- _____
Total prepetition arrearage:	_____

Form B410A - Proof of Claim
Mortgage Attachment Part 4

Monthly Mortgage Payment:

The Total Monthly Payment is the sum of the principal and interest, monthly escrow, PMI, and other amounts (e.g., credit life insurance)

The monthly escrow should not include any shortage or deficiency from Part 3



Form B410A - Proof of Claim Mortgage Attachment Part 5

The B410A form requires a home mortgage creditor to provide a loan history starting with the first date of default

This is the first date on which the borrower failed to make a payment in accordance with the terms of the note and mortgage unless the note was subsequently brought current with no principal, interest, fees, escrow payment, or other charges “immediately payable”

Form B410A - Proof of Claim
Mortgage Attachment Part 5

The loan history required in the attachment shows:

1. What payments were due
2. When the debtor made payments
3. How payments were applied
4. When fees and charges were incurred
5. What the balances were for various components of the loan after amounts were received or fees and charges were incurred

Form B410A - Proof of Claim
Mortgage Attachment Part 5

Loan Payment History from the First Date of Default

Beginning with the First Date of Default, enter:

- the date of the default in Column A
- amount incurred in Column D
- description of the charge in Column E

Part 5 : Loan Payment History from First Date of Default

		Account Activity					How Funds Were Applied/Amount Incurred					Balance After Amount Received or Incurred				
A.	B.	C.	D.	E.	F.	G.	H.	I.	J.	K.	L.	M.	N.	O.	P.	Q.
Date	Contractual payment amount	Funds received	Amount incurred	Description	Contractual due date	Prin, int & esc past due balance	Amount to principal	Amount to interest	Amount to escrow	Amount to fees or charges	Unapplied funds	Principal balance	Accrued interest balance	Escrow balance	Fees / Charges balance	Unapplied funds balance

Form B410A - Proof of Claim
Mortgage Attachment Part 5

Loan Payment History from the First Date of Default

Beginning with the First Date of Default, enter:

- the date of the default in Column A
- amount incurred in Column D
- description of the charge in Column E
- principal balance, escrow balance, and unapplied or suspense funds balance as of that date in Columns M, O, and Q, respectively

Part 5 : Loan Payment History from First Date of Default

		Account Activity					How Funds Were Applied/Amount Incurred					Balance After Amount Received or Incurred				
A.	B.	C.	D.	E.	F.	G.	H.	I.	J.	K.	L.	M.	N.	O.	P.	Q.
Date	Contractual payment amount	Funds received	Amount incurred	Description	Contractual due date	Prin, int & esc past due balance	Amount to principal	Amount to interest	Amount to escrow	Amount to fees or charges	Unapplied funds	Principal balance	Accrued interest balance	Escrow balance	Fees / Charges balance	Unapplied funds balance

Form B410A - Proof of Claim
Mortgage Attachment Part 5

For:

(1) all subsequently accruing installment payments;
(2) any subsequent payment received;
(3) any fee, charge, or amount incurred; and
(4) any escrow charge satisfied since the date of first default

enter the information in date order, showing:

the amount paid, accrued, or incurred

description of the transaction

contractual due date

how the amount was applied or assessed

the resulting principal balance, accrued interest balance, escrow balance, outstanding fees or charges balance, and the total unapplied funds held or in suspense

Form B410A - Proof of Claim
Mortgage Attachment Part 5

Loan Payment History from the First Date of Default

The principal balance, escrow balance, and unapplied funds balance on the date the bankruptcy case was filed should be the figures in the last row of the history for Columns M, O, and Q, respectively. If the amount at the bottom of Column O is negative, this is the amount of the escrow deficiency to be entered in Parts 2 and 3 of Form 410A.

Part 5 : Loan Payment History from First Date of Default

		Account Activity					How Funds Were Applied/Amount Incurred					Balance After Amount Received or Incurred				
A.	B.	C.	D.	E.	F.	G.	H.	I.	J.	K.	L.	M.	N.	O.	P.	Q.
Date	Contractual payment amount	Funds received	Amount incurred	Description	Contractual due date	Prin, int & esc past due balance	Amount to principal	Amount to interest	Amount to escrow	Amount to fees or charges	Unapplied funds	Principal balance	Accrued interest balance	Escrow balance	Fees / Charges balance	Unapplied funds balance

Form B410A - Proof of Claim
Mortgage Attachment Part 5

The requirement to produce a history back to the “first date of default” could mean the servicer must go back several years

Even If the loan has been transferred from another servicer, the current servicer will need to provide the information about any fees or costs incurred listed as due and owing.

If the servicer cannot document the fees and costs, then they should be waived.

What else needs to be filed with the POC? Fed. R. Bankr. Proc. 3001(c)(1)&(2)

The documentation required by Rule 3001(c)(1) and (d) (supporting documents showing the proof of perfection, assignments, etc.) may be filed as a supplement no later than 120 days after the petition.

What happens if a secured creditor fails to file a POC? Fed. R. Bankr. Proc 3002 & 3004

- If creditor does not file a proof of claim, the claim will be ineligible to receive distributions under the confirmed plan.
- § 501(c) of the Bankruptcy Code and Rule 3004 address this issue by allowing a debtor or trustee to file a "surrogate" proof of claim, thereby resulting in the secured claim being eligible for treatment under the plan

WHAT ABOUT LATE CLAIMS

Grounds for extension of time are ***very limited if allowed at all.***

Completely within the discretion of the court and the burden of proof is on the creditor to show insufficient notice.

What about “excusable neglect,” “for cause” or other reasons?

What if the debtor wants the claim paid?

What if no one objects to a late claim?

What about late filed claims? Can you file a Motion to Allow the Proof of Claim? In re Burtenog (Bankr. Alabama)

Chapter 13 plan provided for mortgages arrears

Mortgage servicer files its proof of claim after the deadline to file a proof of claim and after entry of the order confirming the plan

The servicer filed a motion to allow the late claim (per local custom)

The new judge on the bench denied the motion: because it is not necessary

Section 501: Once a proof of claim is filed, it is deemed allowed until a party in interest objects

What about late filed claims? Can you file a Motion to Allow the Proof of Claim? In re Benner (Bankr. Indiana)

Chapter 13 plan provided for mortgages arrears

Mortgage servicer filed its proof of claim one day after the deadline to file a proof of claim

Neither the debtor nor the trustee objected to the claim

The bankruptcy court said it could not "gloss" over the fact the claim was filed late

Following precedent from the Seventh Circuit Court of Appeals, the bankruptcy court determined the mortgage servicer should never have received a distribution on its late-filed claim

This decision was later reversed.

Escrow 101
Escrow Shortage

Rule 3001 requires a mortgage servicer to run an escrow analysis when the bankruptcy case is filed

Case law requires the escrow shortage be placed into the proof of claim (i.e., the arrears)

Escrow Shortage is the difference between the required balance (including cushions required by RESPA) and projected balance as of the date of the filing of the bankruptcy.

The instructions to Form 410A provide that the escrow shortage is to be listed on the “Projected” Escrow Shortage line in Part 3

Escrow 101

The Shortage-Only Arrears Claim

There are no exceptions listed in Rule 3001, the case law, or the instructions to Form 410A for the situation when the loan is current with respect to regular payment

Regulation X specifically says that the provisions regarding escrow shortages only apply if the borrower is current.

Therefore, RESPA specifically contemplates that an escrow shortage can exist when the loan is current with respect to payments

Escrow 102

Escrow Analyses During the Case

- Section (f)(5) of Regulation X requires the servicer to provide the borrower with notice of any shortage or deficiency in the escrow account on at least an annual basis
- There is NO exception or exemption from providing an annual escrow statement, and there is NO excuse for the servicer from having to provide notice of an escrow shortage or deficiency on at least an annual basis

Escrow 102

Post-Petition Escrow Accounting

The post petition ongoing payments received during the bankruptcy should be applied to the first payment due post petition, with the proper escrow component shown in the analysis.

The escrow calculation is done on a post petition basis- NOT a contractual basis.

That requires the first payment due after the date of filing is the starting date of the subsequent analysis, with the payments being applied as delineated in the escrow statements and Form B410A as to principal and Interest and escrow

Escrow 102

Post-Petition Escrow Accounting

Once the debtor's chapter 13 plan is confirmed in a case involving the cure of a long-term mortgage debt, the creditor’s claim is split into two claims - the underlying debt and the arrearages

The debtor's ongoing postpetition mortgage payments must be applied from the petition date to the underlying debt based on the mortgage contract terms and original loan amortization as if no default exists

Post-Petition Escrow Accounting

This separate accounting for pre- and postpetition payments is consistent with industry standards

Under the topic of “Processing Pre-Petition and Post-Petition Payments,” the Fannie Mae Servicing Guide states: “The servicer must monitor and separately account for all pre-petition and post-petition payments”

Once a Chapter 13 bankruptcy plan has been confirmed, the Fannie Mae Servicing Guide states the servicer must “continue to monitor the timely receipt of all payments for the pre-petition arrearages and any post-petition payments that come due”

Post-Petition Escrow Accounting

This same bankruptcy accounting applies to the treatment of escrow accounts

The portion of each postpetition mortgage payment that is attributable to escrow must be applied as if no default exists

This means that the monthly postpetition escrow payments must be applied as deposits to the escrow account in accordance with the escrow account analysis prepared as of the petition date, and all subsequent postpetition analyses done during the case

The escrow portion of postpetition payments must not be applied to any prepetition escrow deficiency or shortage, as this is being paid separately as part of the prepetition arrearage

Post-Petition Escrow Accounting

The failure of a servicer to manage escrow accounts in accordance with industry practice and the Bankruptcy Code can have a devastating impact on debtors in Chapter 13 cases

By misapplying postpetition payments, a debtor's escrow account will be either underfunded or overfunded, depending upon the circumstances

If the escrow account is overfunded, the debtor is asked to deposit more than is required, and this may cause postpetition defaults and unnecessary dismissal of the Chapter 13 case

Post-Petition Escrow Accounting

If the escrow account is underfunded and the error is not discovered until the end of the plan, it may not be feasible for the plan to be amended so as to bring the account fully current

Even worse, debtors may complete their plans believing that they are fully current, only to receive notice of an escrow deficiency once the bankruptcy case is closed

Post-Petition Escrow Accounting

Chapter 13 trustees look at how payments and escrow deposits have been applied when a notice of mortgage payment change is filed

If the escrow payment in the escrow activity or historical portion of the new escrow analysis does not match the analysis attached to the PoC or previous payment change notice, expect an inquiry or objection

Post-Petition Escrow Accounting

Assuming the servicer receives 12 payments in the next escrow computation period, there should be no escrow shortage on the subsequent analysis unless there is an increase in the amount of anticipated disbursements

If there is a true post-petition escrow shortage, the servicer can raise the mortgage payment as allowed under RESPA to recoup the shortage. See Hosley v. Wells Fargo Bank Minnesota, 2008 WL 516953 (N.D.N.Y. 2008)

Payment Change Notices

What to Look For:

Unless the loan has been transferred, the loan number and claim number should match the PoC and any prior payment change notices filed in the case

In Year 2:

The “Current Escrow Payment” should be the same as the “Monthly Escrow” in Part 4 of Form 410A from the PoC

In Years 3, 4, and 5:

The “Current Escrow Payment” should be the same as the “New Escrow Payment” from the Payment Change Notice filed the previous year

Why you need to see your client's Monthly Mortgage Statements

As of April 2018, servicers are required to provide a monthly periodic statement to all Debtors in a Chapter 13 who are retaining their personal residence subject to a mortgage.

As of April 2018, servicers are required to provide a monthly periodic statement to all Debtors in a Chapter 7 who are retaining their interest in real estate, reaffirmed their interest in real estate or have opted into receiving monthly statements in real estate in which they have an interest.

Why do you need to see the monthly statements?

Only the Debtors receive the monthly statements. (Some servicers are sending them also to the Debtor's attorney- but no servicer sends them to the Trustee)

As the Trustee's office does not see the monthly statement, we cannot monitor how the servicer is applying the funds our office send each month.

It is easy to verify payment application and mortgage status when comparing the statement to the Trustee's website .

Check Monthly payment amount and post delinquency amount compared to the Trustee's system or NDC.

Does the Trustee or NDC show the Debtor is post petition current on his mortgage- yet the servicer shows they are delinquent more than a month?

Check that the servicer applied the Trustee/Debtor payments in that month correctly .

Did the servicer apply the amount the Trustee sent for the pre-petition arrearage to the pre petition arrearage owed?

Does the amount paid YTD on the mortgage equal what the servicer shows in its breakdown?

If the Trustee has made 6 payments of $600 each- does the servicer show a total of $3600 in payments received?

Check the amount that the Trustee's office has paid with:

the amount shown by the servicer for arrearage total claim vs. allowed arrears,

amount paid to date and last month with the Summary listed on the Statement

By reviewing the statements, we can resolve issues with the servicers BEFORE the end of the bankruptcy

ABI Consumer Commission is proposing changes to the 3002.1(g) response process to replace the current 3002.1(h) Motion and Order.

The Advisory Committee on Bankruptcy Rules will be reviewing the recommendations and then will publish same for comment.

Thank you for your attention

CASE LAW – MORTGAGES IN CHAPTER 13

Western District of Virginia Bankruptcy Conference

June 2019

APPLICATION OF PAYMENTS IN BANKRUPTCY

In re Collins, 2007 WL 2116416 (ED Tenn 2007).

Collins was one of the first to look in depth at whether plan terms managing payments to and responsibilities of a mortgage creditor violated the protection from modification in § 1322(b)(2). Section 12(a)(1) of the *Collins* plan, imposing an affirmative duty on the mortgage creditor to apply arrearage cure payments only to arrearages, was "not only reasonable but required." Requiring Beneficial "to set up and designate payments into a specific 'corporate advance arrearage account' is overreaching and unnecessary." It was enough that Beneficial was required to separately account for arrearage and maintenance payments to permit curing of default.

Section 12(a)(2) of the *Collins* plan "deemed" prepetition arrearages "contractually" cured at confirmation. The arrearage would not actually be cured until paid in full, but "deeming" the mortgage current as of confirmation was merely procedural and requires only that Beneficial update its accounting procedures to ensure that the Debtors' account is not subject to any additional charges associated with any prepetition default. In other words, as of the date of confirmation, as long as the prepetition arrearage is provided for in the plan and payments are made as set forth therein, Beneficial must, pursuant to § 1322(b)(5), divide the Debtors' mortgage into a "current" prepetition balance and a post-petition maintenance balance which, as of the date of confirmation, is, with respect to the arrearage claim, contractually "current." This provision addresses Beneficial's ***claims,*** not its ***rights,*** and is not an impermissible modification under § 1322(b)(2).

Deeming the mortgage current at confirmation is complementary to requiring proper application of plan payments, which in turn implements the debtor's statutory opportunity to cure default under § 1322(b)(5). As explained by a bankruptcy court in Arkansas:

The right to cure pre-petition arrearages under § 1322(b)(5) would be meaningless if the creditor did not deem pre-petition arrearages as contractually current and, accordingly, continued to accrue post-petition default interest, costs, and fees on payments that are otherwise permissibly addressed in the debtor's plan. The "catch 22" effect would be an ever-increasing pre-petition arrearage amount that totally negates the debtor's statutorily conferred right to address, in his plan, a presumably fixed pre-petition arrearage amount. . . . Additionally, the right to cure pre-petition arrearages would be equally meaningless if the mortgage holder was allowed to take ongoing payments and apply them to the oldest outstanding payment, thus rendering the current payments immediately past due. Again, past due charges, interest, and fees would accrue.

In re Nosek, 544 F3d 34 (1st Cir.)

U.S. Court of Appeals for the First Circuit in *Ameriquest Mortgage Co. v. Nosek (In re Nosek)* reversed a substantial award of damages by the bankruptcy court that was based on a

mortgage holder's failure to properly distinguish between and apply pre- and postpetition payments—not because the plan could not require that distinction, but because the plan in *Nosek* was not sufficiently precise to impose liability for what the creditor failed to do.

In re Nosek, 363 BR 643 (Bankr. Mass. 2007)

The Bankruptcy Court was outraged at the servicer's poor accounting practices for homeowners in bankruptcy. The servicer used a variety of excuses for failing to properly account for the hom eowners' payments during bankruptcy, all of which the court found to be unacceptable. As the court said: "Even if Ameriquest must manually account for these payments. . Ameriquest is not excused from doing it right, even if it is an administrative burden. Ameriquest is simply unable or unwilling to conform its accounting practices to what is required under the Bankruptcy Code, something this Court can encourage by assessing punitive damages under Section 105(a). The court awarded the consumer $250,000 in emotional distress damages and $500,000 in puni tive damages for Ameriquest's violation of section 1322(b) of the Bankruptcy Code. On appeal t he First Circuit Court of Appeals reversed the decision finding no violation of the debtor's right t o cure under chapter 13 because the debtor had failed to include a provision in her plan directing how payments should be applied.

In re Rodriguez, 421 BR 356 (Bankr. SD Texas 2009)

Confirmation obligated mortgage lender to ensure that debtor had opportunity to cure arrearages under § 1322(b)(5). Mortgage creditor was obligated to allocate payments properly among principal, interest and arrearages as prescribed in plan. When creditor admitted misapplication of some mortgage payments, but disputed amounts, genuine issue of material fact existed.

In re Herreara, 422 BR 698 (BAP 9th Cir 2010)

The Bankruptcy Appellate Panel for the Ninth Circuit in *Greenpoint Mortgage Funding, Inc. v. Herrera (In re Herrera)* noted that the First Circuit in *Nosek* had "admonished the bankruptcy court for failing to require additional accounting and reporting by the creditor and that such additional reporting would not have been a prohibited modification under § 1322(b)(2)."

The *Herrera* panel examined the reporting duties imposed on mortgage lenders by the Model Plan against the backdrop of this somewhat limited view of the "rights" protected by § 1322(b)(2):

Courts that have examined the meaning of modification of rights of mortgage creditors in bankruptcy have held that only a mortgage creditor's rights to payment are protected from modification.

The BAP cited Fourth Circuit authority for the proposition that the protection from modification in § 1322(b)(2) "only applied to 'fundamental' aspects of a claim, i.e., the payment terms." Perhaps ironically, the *Herrera* panel found these focused views of "rights" and "modification" were consistent with the Supreme Court's expansive analysis of "rights" in *Nobelman.*[1]

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In re Padilla v GMAC, 389 BR 409 (ED Pa. 2008)

The confirmed plan in the Pennsylvania *Padilla* case did not include any provisions that imposed an obligation on GMAC Mortgage "to give notice or make demand for payment of postpetition legal expenses during the pendency of the case." Contrary to Texas *Padilla,* Pennsylvania *Padilla* held that neither § 506(b) nor Bankruptcy Rule 2016(a) applied to mortgage creditors' postpetition legal fees or charges if allowed by contract. As to § 506(b): "From a policy perspective, a rational, and perhaps even compelling case, can be made that the bankruptcy system should impose disclosure and/or other procedural requirements on a secured creditor's right to assess legal expenses arising postpetition in a case in which the creditor's claim is being treated and cured in a confirmed chapter 13 plan through 11 U.S.C. § 1322(b)(5). The debtor's performance of the postpetition contractual obligations takes place within the context of a court supervised financial rehabilitation process. Any assessments by the secured creditor for legal expenses incurred postpetition constitute part of the amount necessary to cure the default and directly impact the debtor's prospects for a successful chapter 13 rehabilitation. The failure to notify the debtor can have pernicious consequences."

Boday v. Franklin, 397 BR 846, (ND Ohio 2008)

Mortgage creditor must adjust its records to show debtors current and arrearages paid consistent with confirmed plan. "Section 1322(b)(5), by splitting a claim, means that a creditor is no longer permitted to allocate payments according to the terms of its [prepetition] contract. Instead, its effect is to require that any prepetition arrearage claim must be paid separately, according to the terms of the debtor's confirmed plan, based upon the creditor's allowed claim. The remaining debt, consisting of those payments which become due after the petition is filed, is then paid according to the terms of the parties' contract and original loan amortization as if no default ever existed. . . . From an accounting standpoint, this requires that a creditor allocate a debtor's loan payments in the following manner: First, the creditor must apply the arrearage payments it receives during the plan's duration in accordance with the terms of the plan, so that upon completion of the plan the debtor is deemed current on the prepetition amortization schedule. . . . Second, payments received from the debtor to service those payments which contractually accrue postpetition, must be allocated according to the terms of the parties' contract as if not default had occurred. . . . Creditors who adopt accounting procedures contrary to this method can be held liable for damages suffered by the debtor." Mortgage creditor improperly applied debtors' contractual payment to prepetition interest and other charges that continue to accrue under contract and wrongly credited payments received from debtors to oldest outstanding installment so that debtors were never brought current during plan and note was never cured as required under § 1322(b)(5). "Not only does this accounting fail to adequately take into consideration that the 'cure' provision of § 1322(b)(5) operates so as to split a creditor's secured claim into two separate claims—the underlying debt and the prepetition arrearage—the Defendant's accounting is violative of other aspects of bankruptcy law. First, it goes contrary to the binding effect of the Debtors' confirmed plan of reorganization, whose terms, among other things, provided that the Defendant was required to adjust its record so as to indicate that all arrearages had been paid, and that the amount due should correspond to the Parties' original amortization schedule. Second, to

the extent that the Defendant seeks to collect from the Debtors, as a personal liability, funds for which it has not properly accounted, the Defendant is in violation of this Court's order of discharge.").

Winnecour v Countrywide, 396 BR 138 (WD Pa 2008).

Proposed settlement of trustee's motions in 293 cases to compel Countrywide to provide loan histories and proper accounting is approved subject to further consideration whether $325,000 cash portion of settlement should go to trustee.

In re Jones, 489 BR 645, (ED La. 2013)

After remand, bankruptcy court awarded punitive damages 10 times $317,115.40 compensatory damage award. District court affirmed, holding amount did not violate due process limitations. Bankruptcy court found that mortgage lender violated automatic stay, misapplying plan payments without notice to debtor and without leave of court in numerous cases. Wells Fargo was on sufficient notice that actions were impermissible and could incur significant penalties.), *aff'g* No. 06-1093, 2012 WL 1155715 (Bankr. E.D. La. Apr. 5, 2012) (Magner), *on remand from* 439 Fed. Appx. 330 (5th Cir. Aug. 24, 2011) (unpublished) (Higginbotham, Smith, Haynes), *remanding* No. CIV. 07-3599, 2010 WL 3398849 (E.D. La. Aug. 24, 2010) (Lemelle) (Bankruptcy court appropriately determined that punitive damages would not deter or punish Wells Fargo and that injunctive relief was required. "Since the Bankruptcy Court did not abuse its discretion in refusing to grant punitive damages, and since Wells Fargo has not appealed the Accounting Procedures Injunction, this court does not need to address issues surrounding the imposition or justification of the injunction."), *aff'g* 418 B.R. 687, 698-99 (Bankr. E.D. La. Oct. 1, 2009) (Magner) (On remand, punitive damages would not remedy Wells Fargo's misconduct in Chapter 13 cases; injunctive relief is necessary to require Wells Fargo to implement accounting procedures for prevention of future violations of automatic stay and for compliance with confirmed plans. Procedures ensure that plan payments are properly allocated between postpetition and prepetition obligations, that debtors are notified of charges incurred and that creditor seeks permission before imposing charges for professional or other postpetition fees payable from estate funds. Wells Fargo had originally assured bankruptcy court that it would alter its procedures but then reneged prior to appeal. Wells Fargo had adopted "scream or die" approach: "[E]very debtor in the district should be made to challenge, by separate suit, the proofs of claim or motions for relief from the automatic stay filed by Wells Fargo. It has steadfastly refused to audit the pleadings or proofs of claim on file in the district for errors and has refused to voluntarily correct any errors that come to light except through threat of litigation. Although its own representatives have admitted that it routinely misapplied payments on loans and improperly charged fees, they have refused to correct past errors. They stubbornly insist on limiting any change in their conduct prospectively, even as they seek to collect on loans in other cases for amounts owed in error."

In re Galloway, 2010 WL 364336 (ND Miss 2010)

Allegation that mortgage creditor misapplied plan payments states causes of action for violations of stay, discharge injunction and Bankruptcy Rule 2016, and for abuse of bankruptcy process; court may also use § 105(a) equitable powers. It is "plainly evident that § 506(b) and Bankruptcy Rule 2016, in concert, create both rights and duties for creditors in bankruptcy cases."

In re Gorshtein, 285 BR 118 (Bankr. SDNY 2002)

Court determined that sanctions were warranted against several servicers for filing motions to lift the automatic stay based upon attorney affidavits certifying material postpetition defaults, when in fact, there were no material defaults by the debtors. The court rejected what it termed as the mortgage servicers' "dog ate my homework" excuses, such as those relating to "the Servicing Agent's defective computer system, which could not cope with payments by the debtor except in the exact amount programmed into the computer, or the Bank's mistake in taxing the debtor with the premium on a $1 million property insurance policy for a $100,000 house." The court emphasized the damage to the judicial process that occurs when a court is asked to rule on incorrect or baseless facts. It also noted that in each instance, the mortgage servicers' actions had created a danger that a debtor would lose his or her home without just cause and in violation of the debtor's rights under the Bankruptcy Code.

In re Nosek, 363 BR 643 (Bankr. D Mass. 2007), *In re Nosek* 544 F3d 34 (1st Cir. 2008),

Court was outraged at the servicer's poor accounting practices for homeowners in bankruptcy. The servicer used a variety of excuses for failing to properly account for the homeowners' payments during bankruptcy, all of which the court found to be unacceptable. As the court said: "Even if Ameriquest must manually account for these payments . . . Ameriquest is not excused from doing it right, even if it is an administrative burden. . . . Ameriquest is simply unable or unwilling to conform its accounting practices to what is required under the Bankruptcy Code, something this Court can encourage by assessing punitive damages under Section 105(a)."[80] The court awarded the consumer $250,000 in emotional distress damages and $500,000 in punitive damages for Ameriquest's violation of section 1322(b) of the Bankruptcy Code. On appeal the First Circuit Court of Appeals reversed the decision finding no violation of the debtor's right to cure under chapter 13 because the debtor had failed to include a provision in her plan directing how payments should be applied.

Ogden v. PNC Bank, 2016 WL 1077355 (D. Colo. Mar. 18, 2016) affirmed actual damages, punitive damages, and attorney fees when servicer did not properly apply postpetition payments.

In re Gravel, 556 B.R. 561 (Bankr. D. Vt. 2016) Sanctioned servicer $375,000 for misapplying mortgage payments and improperly assessing fees.

In re Jones, 489 B.R. 645 (Bankr. E.D. La. 2012) sanctioned servicer more than $3 million for its "high reprehensible" actions, including routine misapplication of payments and overcharging accounts, aff'd, 489 B.R. 645 (E.D. La. 2013);

In re Scott, 2015 WL 9986691 (Bankr. N.D. Okla. July 28, 2015) failure to properly credit payments violated § 524(i)).

In re Boday, 397 B.R. 846 (Bankr. N.D. Ohio 2008) Creditor violated plan confirmation order and discharge order by failing to apply portions of debtor's ongoing postpetition payments to reduce principal balance as if loan were not in default

In re Rodriguez, 396 B.R. 436 (Bankr. S.D. Tex. 2008) A private right of action under section 105 may proceed to remedy servicers' errors in applying payments contrary to plan terms.

In re Myles, 395 B.R. 599 (Bankr. M.D. La. 2008) Debtor may assert claims for breach of contract and stay violation against creditor who improperly treated postpetition payments as if loan was in default.

In re Moffitt, 390 B.R. 368 (Bankr. E.D. Ark. 2008) Granted injunction against servicer based on misapplication of payments.

In re Payne, 387 B.R. 614 (Bankr. D. Kan. 2008) Imposed sanctions upon servicer who improperly created a postpetition escrow arrearage by applying debtors' payments to prepetition debt rather than to the currently due monthly installments.

In re Hudak, 2008 WL 4850196, at *5 (Bankr. D. Colo. Oct. 24, 2008) Bankruptcy code, not language of deed of trust, determines how ongoing payments will be applied while debtor cures default in chapter 13.

In re Collins, 2007 WL 2116416 (Bankr. E.D. Tenn. July 19, 2007) Upon plan confirmation, creditor must update accounting system so that postpetition maintenance of payment installments are treated as contractually current.

In re Wines, 239 B.R. 703 (Bankr. D.N.J. 1999) (example of case reconciling payments made and proof of claim

Newcomer v. Litton Loan Servicing, Ltd. P'ship, 438 B.R. 527 (Bankr. D. Md. 2010) Ordered servicer to recalculate money due on mortgage, including removal of postpetition obligation used to pay prepetition escrow deficiencies.

Home Direct Funds v. Monroy (In re Monroy), 650 F.3d 1300 (9th Cir. 2011) Discussing plan addendum dealing with, among other things, the application of payments.

ESCROW ISSUES

Notice of payment changes should be scrutinized to ensure that servicers are properly calculating the escrow amounts due. One court has noted that the escrow analysis provided by the servicer along with the notice of payment change was "utterly incomprehensible.

In re Breit, 490 B.R. 821 (Bankr. N.D. Ind. 2013) (disallowing more than $3000 of mortgage creditor's claim based on improper escrow calculation);

In re Newcomer, 438 B.R. 527 (Bankr. D. Md. 2010) By improperly collecting prepetition escrow deficiency from postpetition payments, servicer collected same amount twice.

In re Pitts, 354 B.R. 58 (Bankr. E.D. Pa. 2006) Incongruity of proof of claim that seemed to claim taxes as a separate item as well as escrow deficiency satisfied debtor's burden of challenging validity of claim, and mortgage company failed to meet burden of presenting evidence justifying taxes claimed.

In re Laskowski, 384 B.R. 518 (Bankr. N.D. Ind. 2008) Bankruptcy exemption in Regulation X relating to escrow statement does not relieve servicer of duty to conduct annual escrow analysis.

FEES IN BANKRUPTCY

In re Obasi, 2011 WL 6336153 (Bankr. S.D.N.Y. Dec. 19, 2011) Attorney's failure to properly review proof of claim before filing it with his electronic signature violated Rule 9011; but conduct not sanctionable due to debtor's failure to send safe harbor letter.

In re Prevo, 394 B.R. 847, 851 (Bankr. S.D. Tex. 2008) Reviewing servicers' practices of inflating proofs of claim with undocumented and excessive fees, court concludes, "[b]ased upon hearings in this and other cases, the Court believes that certain members of the mortgage industry are intentionally attempting to game the system by requesting undocumented and potentially excessive fees and then reducing those fees in amended proofs of claim only after being exposed by debtor's counsel."

In re Carr, 468 B.R. 806 (Bankr. E.D. Va. 2012) Rejected creditor's claim for fees related to its response to the chapter 13 trustee's notice of final cure payment.

In re Herman, 2016 WL 520306 (Bankr. S.D. Tex. Feb. 9, 2016) Denying flat proof-of-claim fee when creditor did not establish that fees were for services rendered that were necessary, that the fees were actually incurred, and the amounts charged were reasonable.

In re Myles, 395 B.R. 599 (Bankr. M.D. La. 2008) Allowing debtor to proceed with claims for violation of stay and breach of contract based on creditor's misapplication of debtor's postpetition payments to undisclosed fees and charges.

In re Payne, 387 B.R. 614 (Bankr. D. Kan. 2008) Servicer violated stay and plan confirmation order by applying postpetition payments to late fees, excessive interest, legal costs, and escrow deficiencies during pendency of confirmed plan.

ISSUES WITH 3002.1 FEES

Courts have not permitted mortgage creditors to charge attorney fees for notices they are required to file under rule 3002.1, because such notices are administrative in nature and do not require an attorney to make the computations required.

In re Jerrilan Keys, # 11-62887, Bankr. WD Va., 10/25/12 Order (Anderson). **Rule 3002.1 charge of $425 assessed by mortgagee against a totally current debtor disallowed, and debtor awarded $500 in attorney fees.** Debtor was current on mortgage pre-petition and remains current on mortgage post-confirmation. Mortgagee filed Rule 3002.1 notice assessing $425 in attorney fees against the debtor; there was no description of why the fees were incurred. Debtor objected, and sought disallowance of the fee and $1,000 in damages for the debtor's attorney fee incurred in objecting to this charge. Court ruled that the charge would be disallowed, and debtor's attorney would be awarded a $500 fee assessed against the mortgagee.

In re David Vatter, Bankr. W.D. Va., # 14 50370, 12/23/14 order (Connelly). **Creditor attorney fees of $150 for plan review and $275 for filing a proof of claim are allowed.** Debtor's objection to creditor attorney fees on a 3002.1 notice for $150 for attorney review of plan and $275 for filing a proof of claim are overruled. (Judge's comments from the bench: objection should have been under 3002.1 procedures, not under 506. If the POC is filed "in house," attorney fees should not normally be allowed. Attorney fees for plan review should not normally be allowed where the mortgage is being paid by the debtor or Trustee and there are no arrears.)

In re Phillip and Brandy Robertson, Bankr. Ct. W.D. Va., # 13 71986, 12/30/15 opinion (Black). **Debtors may provide that Rule 3002.1 post-petition charges be paid by the Trustee, but they must add additional funds to the plan to cover these charges; they should not be paid from funds earmarked for the unsecured creditors.** Chapter 13 Trustee filed a motion to pay Rule 3002.1 post-petition fees, expenses, and charges in 9 separate cases, both already-sought fees and future fees, in these cases and in other cases. The Trustee proposed that the fees were to be paid subject to certain conditions: (1) there would be no impact on Chapter 7 test requirement; (2) all of the debtors' disposable income has been committed to the plan; (3) payment of the charges would not reduce any noticed 100% dividend; and (4) due process would be satisfied by the use of standard notice language to be put in paragraph 11 [advising the unsecured creditors that the actual percentage payout may vary from the noticed percentage because the Trustee will pay 3002.1 charges from the general unsecured creditors pool; if you object to this proposal, you must object before confirmation]. The Trustee referred to the process in Kansas, where such notices are treated as an amendment to the creditor's claim and the debtor's plan, and all delinquent mortgages must be paid through the plan.

The Court stated that this district does not follow that procedure; the other Chapter 13 Trustee does not "buy in" to what is being proposed; this process would make this part of the District an outlier to the other part of the District and to the ED of VA.; only 1 of the 9 cases here is a conduit case; and most of the fees sought are relatively small. The Court quoted from the ED VA Sheppard case as to the history and purposes of Rule 3002.1. Held: (i) The Court will allow the payment of these fees by increasing the Chapter 13 plan payments without having to file a modified plan, but not from the unsecured pool; (ii) the request to pre-approve language in future cases is denied. A rift between Courts need not be caused by this issue. Trustee can alert counsel, and counsel can alert the debtors, about any such fees, and a simple motion to increase plan payments (not an amended plan) could be filed; the Court is not opposed to considering a modification to Standing Order 15-1 to address such a motion. Increasing the plan payments to cover these charges over the remaining life of the plan should not be overly burdensome to the Trustee, the debtors, or debtors' counsel. This will provide the paper trail to show that the debtors are current on the mortgage at plan completion. Because the Court believes that the cost of maintaining the debtors' principal residence should be shouldered by the debtors, it will not pre-sanction a provision which takes the funds to pay additional charges "from the pockets of the unsecured creditors." In this case, the Court will grant the debtors' request to pay $200 to cover certain 3002.1 charges, but the debtors will have to increase their plan payment by that amount, plus the Trustee's commission. The Trustee and debtors' counsel may bring additional motions to increase plan payments should future charges be incurred and noticed.

In re Michael and Crystal Crews, Bankr. W.D. Va,, # 16 60898, 6/23/17 Order (Connelly). **Allowable creditor fees for filing Rule 3002.1 notices.** Debtors are maintaining their long term mortgage payments per Code sec. 1322(b)(5). [Plan showed pre-petition arrears of $1; POC was filed with $726 in pre-petition arrears.] Mortgagee filed two 3002.1 notices of post-petition fees and costs, and Debtors objected to both. At the initial hearing, the Court ruled that (i) Debtors can't be charged a fee for filing the notice: it is a "ministerial act and a cost of doing business for the creditor"; (ii) $550 is a "rebuttable maximum amount" for the entire case for review of the plan, attorney's fees, the filing of a POC and amended POC, notice of appearance, and notice of payment change; this amount can be raised or lowered in any particular case if

evidence is presented to warrant such a change; and (iii) the parties were invited to present evidence at a subsequent hearing as to an appropriate guideline.

Court now holds that: (1) Rule 3002.1 applies in this case; (2) Because the parties failed to present adequate evidence regarding the Court's proposed guidelines, "*the Court now rejects its proposed $550 rebuttable maximum and declines to institute a standard";* (3) Rule 3002.1(e) provides a process by which the Debtor may object to such fees and costs; in this case the Debtors failed to file such a motion, but instead objected to the 3002.1 notice filed by the creditor. The Court will rule on the objection despite this procedural error. (4) The filing of a 3002.1 notice is like sending a monthly mortgage statement, so fees for sending it may not be charged to the Debtors. (5) The Court rejects the Debtors' argument that once they assert that the charges are unreasonable, the charges must be disallowed unless the creditor proves with specificity each and every charge. (6) Creditor charged the Debtors $300 for plan review and $600 for filing a POC, a total of $900; Debtors do not object to the former fee. The Court "cannot fathom" how the latter fee can be twice that of the former. Fannie Mae guidelines limit the total fee to $750. The creditor has presented no evidence to justify this higher fee. (7) The Debtors' objection to the 3002.1 notice is sustained. The fee for filing the POC is reduced to $300, and is recoverable against the Debtors or their property only to that extent; this amount is in addition to the $300 fee for plan review. The $100 fee for filing the 3002.1 notice shall not be an additional debt of the Debtors secured by the deed of trust.

In re Roife, 2013 WL 6185025 (Bankr. S.D. Tex. Nov. 26, 2013) Disallowing $125 legal fee for filing notice of postpetition mortgage fees, expenses, and charges.

In re Carr, 468 B.R, 806 (Bankr. E.D. Va. 2012) Response statement under Rule 3002.1(g) is not a pleading and its preparation does not involve the practice of law.

In re Adams 2012 WL 1570054 (Bankr. E.D.N.C. May 3, 2012) Disallowing $50 charge for filing a notice of mortgage payment change.

Korea First Bank v. Lee, 14 F. Supp. 2d 530 (S.D.N.Y. 1998) Lender can collect no more than it agreed to pay its counsel.

NOTICE OF FEES, EXPENSES AND CHARGES 3002.1(c)

In re David and Amy Quesenberry, #12,62001, Bankr. W.D. Va., 8/26/13 Consent Order (Connelly). **Rule 3002.1(c) notices are not claims, Trustee cannot pay them, and filing them is an administrative function.** Trustee sought a ruling from the Court that Rule 3002.19(c) notices were not claims that needed to be provided for in the debtors' plan. Court entered a consent order which stated that: (a) it was using the reasons set forth in In re Johnny and Christina Sheppard, #10-33959-KRH, Bankr. ED VA; (b) a post-petition Rule 3002.l (c) Notice of fees, expenses, or charges such as that filed in this case is filed for informational purposes only, and does not constitute a proof of claim or otherwise amend the proof of claim it is filed to supplement; (c) the Trustee is not obligated, and is not authorized, to make payments from estate property on fees, etc., set forth in Rule 3002.1 Notices, and is only authorized to make payments based upon proofs of claim filed under Code section 501 and allowed under section 502 or upon a specific Court order; (d) such post-petition fees, expenses, or charges shall not require modification of the debtor's plan to pay them; (e) instead, any such fees, expenses, or charges shall, if permitted by state or federal law and the applicable loan documents, and if not otherwise

disallowed, be payable by the debtor outside the Plan unless the debtor chooses to modify his plan to provide for them and such fees, etc., are allowed claims in the case; (f) this ruling shall not prejudice or prevent Chase from recovering the fees and charges set forth in the Rule 3002.1(c) Notice outside the Plan and Chase expressly reserves all of its rights and remedies to collect such fees as permitted by state and federal law and the applicable loan documents; and (g) filing this supplement should be an administrative function that the creditor can accomplish entirely on its own without the need of an attorney.

ISSUES WITH FAILURE TO FILE 3002.1 NOTICE

In re Charles and Deborah McCallam, Bankw. W.D. Va., # 13 60770, 9/19/17 Order (Connelly). **Reopening a closed case in which the automatic stay had been lifted will not allow the Court to review a subsequent default or re-impose the stay.** Debtors moved to reopen a closed case to allow the Trustee to file a 3002.1(f) notice which he had neglected to file, to determine if the debtor was current on all post-petition mortgage payments, and to re-impose the automatic stay to stop a scheduled foreclosure sale. Pursuant to a consent order regarding the stay, the mortgagee had filed a notice asserting default by the debtors on post-petition payments; the debtors failed to respond to that notice. The case was subsequently closed after the debtors completed their payments to the Trustee. Now, four months later, the debtors seek to reopen the case. Held: (1) Debtors have failed to explain how reopening the case or issuing a 3002.1 notice will reinstate or impose an automatic stay. (2) This Court is no longer the appropriate forum to contest the pre-case-closing default or the post-case-closing default, so the case will not be reopened.

11 U.S.C. 524(i) CASES

In re Hudak, 2008 WL 4850196 (Bankr. D. Colo. 2008)

Colorado bankruptcy court concluded that a plan term requiring the mortgage creditor to apply payments "to the month in which they were made whether they are immediately applied to the loan or are placed into suspense" was not a modification of rights under the deed of trust but served the goal to prevent the loan from constantly being in late status if payments were applied first to the oldest month in arrears. As explained: While requiring post-petition mortgage payments made under a plan to be credited to the post-petition month in which the payment is made may be an accounting headache for Creditor, it does not improperly modify the loan under 11 U.S.C. § 1322(b)(2). More importantly, leaving the loan in "late" status . . . for the duration of a confirmed Chapter 13 plan and beyond is likely violative of 11 U.S.C. §§ 362 and 524(a)(2) and (i)reviewed the House Report that accompanied BAPCPA and concluded that a plan term requiring a mortgage creditor to comply with § 524(i) "is designed to compel compliance with a confirmed plan and force transparency and proper accounting by Creditor." With this purpose in mind, the plan term was appropriate, remembering that, at the conclusion of the case, the debtor would be required to "show that creditor has *willfully* failed to credit payments in a manner in which debtor has been materially injured.

In re Emery, 387 B.R. 721 (Bankr. E.D. Ky. May 16, 2008).

Court held that plan provisions controlling the application of arrearage and ongoing payments and requiring advance notice of payment changes did not modify creditor rights. On the way to that holding, the court observed that the predicate to liability under § 524(i)—"willful failure . . . to credit payments received . . . in a manner required by the plan"—was an acknowledgment that debtors "will craft plan language that directs the application of payments." Seen in this light, the issue is not whether § 524(i) supports specific plan terms at confirmation, but whether specific plan terms are consistent with the potential remedy.

In re Anderson, 382 B.R 496 (Bankr. D. Or. Feb. 12, 2008)

Anderson court to be surplusage since the Bankruptcy Code already provided after BAPCPA that "if the home lenders don't apply these payments to the arrears, they expose themselves to a § 524(i) claim for contempt. An Oregon bankruptcy court in *In re Anderson*[52] agreed with *Collins* that § 524(i) was a remedy available to debtors at the end of the case, but that § 524(i) "does not dictate what is permissible under a Chapter 13 plan. Rather, that task is governed by §§ 1322 and 1325."

In re Carlton, 437 BR 412, 417 NDAL (2010)

An Alabama bankruptcy court echoed that § 524(i) has no application at confirmation but is available as a post-discharge remedy

In re Ballard, 2007 WL 7340479, D SC (2007)

Plan can include "Best Practices" provisions with respect to management of home mortgage debt to encourage compliance with § 524(i) without violating mortgage creditor's rights under § 1322(b)(2).)

Portions of Summaries taken from Keith Lundin, LundinonChapter13: Home of the Bankruptcy Workshop, www.lundinonchapter13.com.

Portions of summaries taken from "Mortgage Servicing and Loan Modifications" National Consumer Law Digital Library, 2019 Edition

Thank you to Trustee Herbert Beskin for providing local summaries of WDVA cases.

§ 131.3 — Bankruptcy Rule 3002.1: Mortgage Management after 2011

Revised:

Show Section Text **Show Updater Cases**

***Alvarez v. Bayview Loan Servicing, LLC (In re Alvarez)*, No. NC-18-1104-BKuF, 2018 WL 6715728 (B.A.P. 9th Cir. Dec. 21, 2018) (unpublished) (Brand, Kurtz, Faris)** (Bankruptcy court did not abuse discretion by refusing to award attorney fees under 3002.1(i) when Bayview Loan Servicing filed confusing accounting in response to notice of final cure under Rule 3002.1(h) but debtors eventually agreed that the arrearage amount calculated by Bayview was correct. Although not awarded in this case, fees are recoverable under Bankruptcy Rule 3002.1(i) by reference to (g) in (h) and (i) references (g).).

***Howard v. Derham-Burke (In re Howard)*, No. 17-1064-STaB, 2018 WL 2107787, at *1–*5 (B.A.P. 9th Cir. May 7, 2018) (unpublished) (Spraker, Taylor, Brand)** (Fees incurred after completion of payments for successfully defending Bankruptcy Rule 3002.1 Notice of Final Cure are administrative expenses that are dischargeable without regard to payment and cannot be collected from the debtor personally. Counsel could have but didn't get agreement for direct payment of remaining fees, together with a waiver or exception to discharge. Debtor could have, but didn't, make additional payments to cover the unpaid attorney fees. Debtor can still voluntarily pay attorney under § 524(f). "The fees fall within the statutory definition of administrative expense claims. They were awarded under § 330(a)(4)(B), and such fees are specifically covered by the administrative expense statute, § 503(b)(2). . . . Moran successfully precluded PNC Bank from introducing evidence of alleged outstanding escrow advances under Rule 3002.1(i)(1) and was awarded fees and costs incurred in this matter under Rule 3002.1(i)(2). . . . Moran separately obtained a determination that Howard was current on her PNC Bank mortgage obligations under Rule 3002.1(h). However, the bankruptcy court denied Howard's request that PNC Bank pay the balance of Moran's fees and costs arising from the motion under Rule 3002.1(h) because that subdivision does not provide for the recovery of attorneys' fees. . . . Because most chapter 13 plans provide for payment of all administrative expenses through the plan, such fees can be discharged upon completion of the plan even if such fees were not actually paid. . . . The postconfirmation fees Howard incurred at the end of her chapter 13 case were administrative expenses that were discharged pursuant to Howard's chapter 13 plan. . . . We are not unsympathetic to Moran's situation. . . . Although the completion of the plan payments

and term precluded modification of the plan, it did not necessarily foreclose the debtor from making additional payments on outstanding plan obligations if required. . . . Courts may allow debtors to make payments directly to counsel on fees excepted from the discharge. . . . Even after entry of discharge, nothing prevents Howard from voluntarily repaying Moran's approved fees.").

***CIT Bank, N.A. v. Griswold-Stanton (In re Griswold-Stanton)*, No. 2:16-CV-2722 JCM, 2018 WL 3489238, at *5–*6 (D. Nev. July 19, 2018) (Mahan)** (Sanctions under Bankruptcy Rule 9011 were not appropriate with respect to 3002.1 notices filed by CIT; Rule 3002.1 does not require CIT to attach evidentiary support and bankruptcy court did not consider whether CIT made a reasonable or competent inquiry before filing its notice. CIT filed a 3002.1 notice of mortgage fees, expenses and charges that totaled $1,406 for postpetition fees and expenses including attorney fees, proof of claim charges, broker's opinion fees and property inspection fees. The debtor mailed a 9011 demand that CIT withdraw the notice. CIT refused and the bankruptcy court imposed sanctions of $9,603 against CIT for violation of Bankruptcy Rule 9011. "The official form referenced in Bankruptcy Rule 3002.1(d) required CIT to provide the category of the expense, the amount, a description, and the date incurred. . . . CIT was not required to provide evidentiary support for the post-petition expenses. . . . [T]he bankruptcy court treated CIT's failure to provide evidentiary support for the second notice as establishing that the filing was baseless. . . . This holding was clear error, and cannot support a ruling that CIT violated Bankruptcy Rule 9011(b). . . . [T]he bankruptcy court held that 'it was impossible for the creditor, CIT, to properly explain or support the amounts that were set forth in that particular notice of post-petition mortgage fees, expenses, and charges.' . . . Yet, Bankruptcy Rule 3002.1(d) does not require a notice to contain supporting documentation. . . . CIT did not violate Bankruptcy Rule 9011(b)(3) by failing to provide evidentiary support for the proof of claim expense. . . . [T]he bankruptcy court did not consider whether CIT failed to make a reasonable and competent inquiry before filing the second notice.").

***Ocwen Loan Servicing, LLC for Deutsche Bank Nat'l Tr. Co. v. Randolph*, No. 18-21, 2018 WL 2220843 (W.D. Pa. May 15, 2018) (Conti)** (District court denies untimely motion to extend time to move for rehearing of appeal of show-cause order requiring Ocwen to explain why it failed to comply with court orders to provide loan histories to Chapter 13 trustee after Ocwen confessed that it had wrongfully charged attorney fees for reviews of Chapter 13 plans.), *denying reconsideration of* Nos. 18-21, 18-22, 2018 WL 1141737, at *1 (W.D. Pa. Mar. 2, 2018) (Conti) (District court easily rejects Ocwen's request for immediate appeal of bankruptcy court orders to show cause with respect to noncompliance with prior orders requiring complete loan histories in cases in which Ocwen admits it inappropriately charged $400 legal fees for "plan review." "[T]he bankruptcy court observed that Ocwen Loan Servicing, LLC . . . , a mortgage servicing company, had improperly charged

a $400 legal fee for 'plan review' in both cases. Further inquiry revealed that Ocwen may have charged this improper fee in at least 30 other bankruptcy cases. Ocwen conceded that the fees should not have been charged and agreed to remove them from the loans. In order to verify that this had been done, the bankruptcy court issued an order directing Ocwen to produce the complete loan histories for all those cases to the Chapter 13 Trustee for review. . . . [T]he trustee . . . reported to the bankruptcy court that Ocwen had only provided partial loan histories . . . . The bankruptcy court issued a second order on each docket . . . directing Ocwen to respond . . . . At the hearing, the bankruptcy court confirmed that Ocwen had provided only partial loan histories to the Trustee. The bankruptcy court issued another order on each docket directing Ocwen to supply complete loan histories and raising the possibility of sanctions for non-compliance. . . . [T]he Trustee reported that Ocwen had still not complied. The bankruptcy court issued an order in each case . . . directing Ocwen and its counsel to appear at a hearing to 'show cause for and justify their failure to comply' with the three previous orders.").

***PHH Mortg. Corp. v. Sensenich*, No. 5:16-cv-00256-gwc, 2017 WL 6999820, at *5–*9 (D. Vt. Dec. 18, 2017) (Crawford)** (Bankruptcy court lacked authority to impose $375,000 sanction on PHH Mortgage for violations of Bankruptcy Rule 3002.1 and violations of orders with respect to faulty servicing. "[T]he Bankruptcy Court's order imposing sanctions pursuant to Rule 3002.1(i) exceeded the scope of the Bankruptcy Court's powers as delineated by statute and precedent and therefore exceeded the scope of Rule 3002.1(i). . . . [O]n balance, the better-reasoned authorities favor the narrower construction of the Bankruptcy Court's statutory and inherent punitive sanctions power. . . . [T]he statutory and inherent powers of the Bankruptcy Court are not sufficient to support the Bankruptcy Court's imposition upon PHH of $300,000 in punitive sanctions.").

***Saccameno v. Ocwen Loan Servicing, LLC*, No. 15 C 1164, 2017 WL 5171199, at *1–*8 (N.D. Ill. Nov. 8, 2017) (Gottschall)** (Summary judgment motion by Ocwen denied in most respects in action under RESPA, FDCPA, state law and for violation of discharge injunction after flubbed Rule 3002.1 process. After completion of payments in Chapter 13 case, Ocwen failed to respond to trustee's 3002.1 notice of final cure payment. Ocwen then commenced foreclosure in spite of continuing payments from debtor and evidence of accounting and other errors by Ocwen. "Ocwen's bankruptcy department coded the action as 'dismissed' rather than as discharged. As a result, the loan was returned to Ocwen's foreclosure department . . . . Ocwen rejected seventeen of Saccameno's payments . . . ; assessed her account with unauthorized fees and costs; and failed to dismiss the foreclosure action for thirteen months . . . . [P]unitive damages may be awarded for violations of discharge injunctions.").

***Taylor v. Ocwen Loan Servicing, LLC*, No. 4:16-cv-04167-SLD-JEH, 2017 WL 3443209, at *3–*6 (C.D. Ill. Aug. 10, 2017) (Darrow)** (Claims of fraud and misrepresentation by Ocwen that induced debtors to sign a loan modification $30,000 larger than bankruptcy court order declaring mortgage current under Bankruptcy Rule 3002.1 at end of Chapter 13 case are not actionable under RICO for failure to plead a criminal enterprise and are not actionable under FDCPA because of statute of limitations. Debtors confirmed a plan in 2009 that would cure default and maintain payments on a home mortgage. In 2014 trustee filed a notice of final cure payment and served it on Ocwen, which did not respond. In June of 2014 the bankruptcy court entered an order declaring the mortgage cured and that Ocwen did not have the right to claim any additional payment or charges. At that point, the balance on the mortgage was $52,729.05. One month later, in July 2014, Ocwen mailed the debtors a statement that they owed $84,447.58, including interest that had accrued during the bankruptcy of $28,391 and a "Fee/Cost Adjustment" of $2,248.85. Ocwen then offered the debtors a loan modification agreement that increased the principal owed to $82,112.07. Fearful of losing their home, debtors signed the larger loan modification and then sued Ocwen. "These allegations fail to depict a RICO enterprise . . . . The three 2014 account statements described in the amended complaint are outside the statute of limitations. . . . [T]he loan modification agreement does matter: it cabins potential violations of the FDCPA to debt communications that preceded it.").

***Sokoloski v. PNC Mortg.*, No. 2:14-1374 WBS CKD, 2014 WL 6473810, at *6 (E.D. Cal. Nov. 18, 2014) (Shubb)** (Mortgagee's failure to respond to trustee's Notice of Final Cure Payment under Bankruptcy Rule 3002.1(g)—coupled with ambiguous communications regarding loan modification and declaration of default three months after completion of plan—gave rise to causes of action for breach of implied covenant of good faith and fair dealing, negligence and violation of California's Unfair Competition Law. Mortgagee's conduct deprived debtors of "a fair accounting of their debt under the loan contract." Debtors also stated cause of action under California's Rosenthal Fair Debt Collection Practices Act when claim arose out of improper conduct in loan servicing.).

***In re Mandeville*, No. 17-40777-JJR, 2019 WL 366402, at *3–*11 (Bankr. N.D. Ala. Jan. 28, 2019) (Robinson)** (Postpetition fees under Bankruptcy Rule 3002.1 for plan review and filing proof of claim are disallowed to extent related to prior Chapter 13 case and allowed with respect to current case. Fees for prior case should have been included in prepetition proof of claim in current case, not added to Rule 3002.1 notice in second case. Attorney fees for review of plan, participation in current case and filing proof of claim are necessary and reasonable, are allowed by deed of trust and by reference to HUD regs and flat fee amount of $300 was reasonable. "'The "reasonableness standard" applied under § 506(b) challenges does not apply to postpetition fees, expenses, and charges necessary to cure a

default as § 1322(e) explicitly excepts § 506(b) from consideration. Instead, the underlying agreement and applicable nonbankruptcy law are determinative. . . . ' . . . [P]aragraph 8 of the Mortgage provides that 'Lender may collect fees and charges authorized by [HUD].' . . . The latest HUD authorization regarding the collection of fees and charges for FHA-insured mortgages is found in HUD's Mortgagee Letter 2016-03 dated February 5, 2016 . . . . Alabama law recognizes the enforceability of provisions in mortgages that obligate a mortgagor to pay for the attorney's fees incurred by her mortgagee in connection with, *inter alia*, collecting the mortgage debt . . . . A chapter 13 bankruptcy case is a 'legal proceeding' and as discussed below, has the potential to significantly and adversely affect a mortgagee's interest in mortgaged property. . . . The risks and penalties associated with a flawed proof of claim are not insignificant . . . . A residential mortgagee's claim must comply with the mandates of the Code and Rules to avoid significant consequences and may have repercussions not readily apparent to a layman. Accordingly, employing an experienced bankruptcy lawyer for that purpose is not only reasonable but is prudent. . . . In addition, the court is not willing to say that HUD's requirements that its insured lenders not only utilize counsel when faced with a bankruptcy filing, but do so on an expedited basis, are *per se* unreasonable . . . . Code § 1327 and binding Eleventh Circuit authority highlight the danger of a naïve reliance on § 1322(b)(2) or any other Code provision that purports to protect a creditor's rights. . . . [I]t was reasonable and necessary for Carrington to employ an attorney to review the Debtor's plan and other bankruptcy related documents and to consider their proposed treatment of Carrington's interest in the Mortgaged Property. . . . [T]he time expended and legal expertise required to perform the tasks described by Carrington's attorneys justified the $300 . . . the fee is reasonable under Alabama law, and notably was less than half the maximum fee authorized by HUD for preparing a proof of claim and plan review. . . . Fees charged in the First Case were necessarily incurred before the instant case was filed and should not have been included in the Postpetition Fee Notice.").

***In re McKillop*, No. 14-75418-ast, 2019 WL 354702 (Bankr. E.D.N.Y. Jan. 25, 2019) (Trust)** (After failing to appear at hearing on its objection to trustee's notice of final cure payment under Bankruptcy Rule 3002.1, Apple Bank's motion for reconsideration under Rules 59 and 60 of the Federal Rules of Civil Procedure is denied for lack of any ground under either rule.).

***In re Okafor*, 595 B.R. 903, 907–10 (Bankr. W.D. Mo. Dec. 17, 2018) (Dow)** (California attorney allowed reduced fee of $600 for review of plan and filing proof of claim in Chapter 13 case in Missouri. California attorney did not practice law unlawfully in Missouri because work was done in California and attorney did not make appearance in Missouri bankruptcy court. Requested fee of $900 was unreasonable. Bank instead allowed two hours at $300 per hour. Debtor objected to notice of postpetition mortgage fees, expenses and charges by Bank of New York Mellon. Bank retained a national law firm in California to review

the debtor's plan and prepare the proof of claim. The attorneys were not licensed in Missouri. Attorneys filed notice of postpetition mortgage fees, expenses and charges requesting $550 for preparing the proof of claim and $350 for reviewing the plan. "The plain language of the Deed of Trust authorizes the allowance of attorneys' fees in the case of the Debtors' bankruptcy filing. . . . Reviewing the plan and filing a proof of claim are unquestionably appropriate actions to protect a lender's interest in estate property. . . . Rule 9010 governs the authority of persons or entities to act in bankruptcy proceedings . . . . This Rule is not applicable here because the Attorneys did not appear before the Court. . . . If the preparation and filing of the proof of claim and review of the plan was [*sic*] all done outside of Missouri then it was not the unauthorized practice of law in Missouri by the out of state Attorneys. . . . [T]he review of a plan and filing of a proof of claim is [*sic*] not an appearance or practice before this Court. . . . Something more that [*sic*] an out-of-state attorney's review of a Chapter 13 plan and preparing and filing a proof of claim (and the Notice of Fees that supplements such proof of claim) while in that other state is required to meet the threshold of unauthorized practice of law in Missouri. . . . Secured creditors are not entitled to be reimbursed for fees incurred in every action taken by their counsel. . . . Lender's Attorneys have requested $900.00 . . . . These fees were likely flat fee amounts but the Court is not bound by an attorney's flat fees. . . . While the Court believes that it was reasonable for the Attorneys to prepare and file a proof of claim and review the plan, it does not believe that $900.00 is a reasonable fee for a large law firm that regularly performs such tasks for lenders. The time and labor involved for these tasks should have been minimal for attorneys specializing in this area and familiar with the procedure. . . . [I]t would not be unreasonable for the legal tasks required to file a proof of claim and review the plan to take one (1) hour each. Thus, the Court finds that fees in the amount of $600.00 ($300.00/hour x 2 hours) is reasonable[.]").

***Clark v. Select Portfolio Servicing, Inc. (In re Clark)*, No. 17-01031-R, 2018 WL 6266179, at *6–*11 (Bankr. N.D. Okla. Nov. 26, 2018) (Rasure)**

(Mortgagee's failure to respond to notice of final cure from trustee precludes mortgagee under Rule 3002(i) from presenting evidence that there is an arrearage based on a preconfirmation notice of payment change five years earlier. Mortgagee was bound by amount of payment in confirmed plan and cannot claim after discharge that its preconfirmation notice of payment change allows foreclosure after completion of payments and discharge. Combined with plan provision that mortgage would be current at discharge, all arrears cured and all postpetition amounts paid if debtor completed payments, effect of Rule 3002.1(i) ruling is that mortgage was current at discharge and mortgagee cannot collect any amount other than the contractual, amortized amount going forward. Mortgagee's withdrawal of notice of payment change years earlier when it could not explain large escrow default defeated purpose of Rule 3002.1 because it precluded debtors from adjusting payments in the middle of the case. Consistent with proof of claim filed before confirmation, plan proposed to pay a prepetition arrearage of $32,000 and to maintain payments. Servicer claimed that four months before confirmation mortgagee filed a notice of payment change that was approximately $350 per month higher than the amount stated in the proposed plan. Mortgagee did not object to plan and confirmed

plan provided for ongoing payments at the lesser amount. Two years after confirmation, mortgagee filed a notice of payment change based on an escrow shortage in excess of $12,000. The debtors objected and the mortgagee withdrew the notice without presenting any evidence of how or when the large escrow balance accrued. Three years later the trustee filed a notice of final cure payment indicating that the mortgage was current and the debtors were eligible for discharge. "The Mortgagee did not file a statement indicating whether, consistent with § 1322(b)(5), the Clarks were current on their postpetition mortgage payments. . . . [T]he Court entered an Order of Discharge . . . . Fifteen months after the Clarks' bankruptcy case was closed, the Mortgagee filed . . . yet another Notice of Mortgage Payment Change . . . to which it attached another escrow analysis that reflected an escrow surplus of $4,568.43. . . . The Final Cure Notice advised the Mortgagee of its obligation to file and serve a response under Rule 3002.1(g) . . . . The Mortgagee failed to file the mandatory response . . . . Accordingly, the Clarks are entitled to an order under Rule 3002.1(i) barring SPS from presenting any evidence that the mortgage was not current as of the date of the Final Cure Notice. . . . The purpose of Rule 3002.1(g) is to let debtors know what the mortgagee contends is the status of the mortgage *at the conclusion of the plan*. SPS's failure to give the Clarks information to which they were entitled deprived them of their right to seek a judicial determination of the alleged underpayments under Rule 3002.1(h). . . . SPS's admitted failure to comply with Rule 3002.1(g) was not substantially justified nor was it harmless. . . . The Mortgagee, having due notice . . . , slept on its rights. It remained silent in the face of a proposed plan that failed to provide for adequate maintenance payments in addition to cure payments, which violated the Mortgagee's rights under § 1322(b)(2) and (5). . . . Because the Mortgagee did not object to its treatment, the Court assumed that the Second Amended Plan fully complied with § 1322(b), and confirmed the Plan under § 1329(a), binding all parties to its terms under § 1327(a). . . . To the extent that SPS now contends that the Plan did not comply with § 1322(b)(5) . . . its position is barred by the binding effects of the unopposed and unappealed orders of confirmation and discharge. . . . The Mortgagee did not object to the discharge . . . . [P]ursuant to paragraph 10 of the Plan, the Order of Discharge . . . constituted 'a determination that all prepetition and postpetition defaults with respect to the debtors' mortgage account [were] deemed current and reinstated on the original payment schedule under the note and mortgage as if no default had ever occurred.' . . . The Clarks are therefore entitled to judgment as a matter of law declaring that . . . the mortgage was current and reinstated on the original payment schedule.").

***In re Wyatt*, No. 13-06272-JW, 2018 WL 6984448, at *2–*4 (Bankr. D.S.C. Nov. 6, 2018) (Waites)** (After notice of final cure, response from mortgagee under Rule 3002.1 and motion for discharge filed by debtor, further hearing is necessary to determine whether note and deed of trust required debtor to pay force-placed insurance or delinquent taxes. Plan that required debtor to pay ongoing mortgage payments directly to the creditor "provided for" mortgage for purposes of discharge and debtor's entitlement to discharge will turn on whether failure to pay force-placed insurance or taxes is default. "Debtor does not dispute that he has not paid the post-petition fees and expenses to U.S. Bank. Debtor's counsel argues that the payments of post-petition fees and expenses on a mortgage claim

treated under 11 U.S.C. § 1322(b)(5) are not 'payments under the plan' as defined in 11 U.S.C. § 1328(a), and therefore, Debtor should be entitled to a discharge regardless of whether he has paid those post-petition fees and expenses. . . . In *In re Dowey*, 580 B.R. 168 (Bankr. D.S.C. [Feb. 9, 2017) (Waites)], this Court . . . held that a debtor's ongoing maintenance payments provided for under § 1322(b)(5) that are paid directly by the debtor to the creditor are 'payments under the plan' for purposes of a discharge under § 1328(a). . . . Debtor intended, through the Chapter 13 Plan, to maintain all post-petition payments under the Note and Mortgage, including both monthly ongoing payments and fees and expenses that become due post-petition. . . . [I]t does not appear that either the Note or Mortgage provides that Debtor must maintain insurance on the Principal Residence or that U.S. Bank has the authority to recover the fees for force placed insurance from Debtor.").

***In re Garcia Rivera*, No. 15-07601 (ESL), 2018 WL 5281625, at *1–*4 (Bankr. D.P.R. Oct. 22, 2018) (Lamoutte)** (Mortgage lender is not allowed $150 fee for filing a postpetition notice of payment change under Bankruptcy Rule 3002.1. "In July 2017 BPPR filed the first notice under Rule 3002.1 requesting fees in the amount of $150.00. Upon debtor's request, which was uncontested, the request for fees was denied by the court. On August 30, 2017 BPPR filed the second notice of payment change informing a change in the monthly mortgage payment. On the same date BPPR filed a notice of post-petition fees in the amount of $150.00. . . . The second notice was also objected by the debtor . . . . Debtor alleges that charging any fee for preparing the Rule 3002.1 notice is prohibited by 12 U.S.C. § 2610 . . . . The mortgage deed . . . provides . . . that '[l]ender may collect fees and charges authorized by the [HUD] Secretary.' . . . [T]he mortgage deed executed by the parties allows for the charging of a fee in the amount of $150 for the purposes authorized by HUD. However, there is no specific reference as to whether HUD regulations include authorization to charge a fee for a Rule 3002.1 notice. . . . [N]either the RESPA nor the TILA expressly or impliedly prohibit charging for Rule 3002.1 notices. . . . Generally, the filing of a Rule 3002.1 notice as a supplement to a proof of claim is business function that does not require the assistance of counsel. . . . [A] creditor may claim attorney's fees for compliance with Rule 3002.1 if the notice turns into a contested matter.").

***Beiter v. Chase Home Fin., LLC (In re Beiter)*, 590 B.R. 446 (Bankr. S.D. Ohio Sept. 14, 2018) (Preston)** (In adversary proceeding after discharge alleging Chase misapplied payments, failed to treat mortgage as current and violated Bankruptcy Rule 3002.1, most of complaint survives motion to dismiss. Chase admitted it failed to correctly apply at least one payment and failed to give at least one notice of mortgage payment change required by Rule 3002.1. "Deemed current" order at end of case required Chase to fix amount of mortgage based on amortization schedule with any unclaimed arrearage or fees discharged. Complaint stated a claim that Chase violated that order by seeking to collect amounts that were discharged.).

***In re Dworek*, 589 B.R. 267, 270–76 (Bankr. W.D. Pa. Aug. 22, 2018) (Agresti)** (Quicken Loans is allowed to withdraw 3002.1 notices with respect to postpetition attorney fees that are not allowable under Pennsylvania law with conditions: withdrawal is with prejudice to any collection of postpetition attorney fees; mortgagee must certify that the fees have been removed from the debtors' loans and will not be assessed again in the future; fees for litigating the withdrawal of these notices may not be added to the loans; mortgagee must supply a complete loan history to prove compliance with all conditions; and court reserves right to seek sanctions under Bankruptcy Rule 9011 given that mortgagee had no good-faith claim to fees under Pennsylvania law but litigated at great length before moving to withdraw its notices. Pennsylvania law contains limitation that attorney fees are recoverable only if a foreclosure or other legal action had been commenced. Quicken filed 3002.1 notice seeking attorney fees of $550 and a second notice seeking attorney fees of $150 for filing an amended proof of claim. The trustee objected. After months of back-and-forth with the trustee, Quicken moved to withdraw its notices. "Counsel for Quicken stated that the Notice in this and the other cases were being withdrawn because Quicken had concluded that under [Pennsylvania law] attorney fees were not recoverable in the current matter. . . . [T]he dispute between Quicken and the Trustee as to whether Quicken should be permitted to add attorney fees on to its claims against the various debtors in these matters is a contested matter, and dismissal of that matter is therefore governed by *Fed.R.Civ.P. 41*. . . . [T]he only way that the Notices may be voluntarily withdrawn is by court order, on such terms as the Court considers proper, pursuant to *Rule 41(a)(2)*. . . . It is troubling to the Court that Quicken commenced this litigation in the first place by filing the Notices, and then vigorously pursued it for so long after the Objections were filed, before coming to the realization that [Pennsylvania law] posed a statutory roadblock to the requested fees . . . . [M]any such Notices were being filed with little or no supporting documentation, yet were passing through the system without objection, apparently because the amounts being sought in the Notices (typically less than $1000) meant that the legal expense the debtor would incur in challenging them could not be financially justified. . . . [W]hat happened in the three cases addressed in the present Order is not merely an isolated problem. . . . Quicken's filing of the Notices and its continued litigation of the Objection in the face of the [Pennsylvania law] prohibition seems a clear violation of *Fed.R.Bankr.P. 9011(b)(1)* . . . . Should not an attorney conducting a reasonable inquiry in advance of filing the Notices have realized that existing law did not support the claim for attorney fees? . . . Quicken shall file a certification in each of these three cases stating that it has provided an Affidavit to the Trustee and the respective debtors to the effect that the loan history in each case has been corrected to eliminate any reference to the attorney fees that are the subject of the particular Notice, that it will not seek to impose any of its expenses related to this litigation on the debtors, and that it has provided the Trustee with a complete loan history from the inception of the loan to the date of this Order.").

***In re Clark*, 593 B.R. 661, 663 (Bankr. S.D. Ala. Aug. 6, 2018) (Oldshue)** (On debtor's Motion to Determine Mortgage Fees and Expenses Pursuant to Rule 3002.1(e) filed in response to mortgagee's Rule 3002.1(c) Notice of Postpetition Fees and Expenses, attorney fees are not allowable because mortgage does not unambiguously describe a right to attorney fees. "[T]he alleged postpetition 'filing fees and costs' and fees for 'plan review' are not for the payment of taxes, hazard insurance or any other items referenced in paragraph 2 of the mortgage. Even if the language in the mortgage was intended to create an obligation by the debtor to repay attorney fees incurred after a default, the language is unclear and ambiguous to that effect. . . . [W]ithin the four corners of the loan document, there exists no unambiguous language establishing a mortgagor obligation for mortgagee attorney fees incurred after an event of default.").

***In re Garcia*, No. 17-60124-RLJ-13, 2018 WL 3203385, at *1–*2 (Bankr. N.D. Tex. June 28, 2018) (Jones)** (Two 3002.1 notices for postpetition fees filed by Nationstar Mortgage—one for $300 and one for $600—are allowed over trustee's objection, notwithstanding general order that allows secured creditors a "no look" fee of $700. Trustee did not contest the reasonableness of the $900 total of the two notices. "The first notice (for the first $300.00) states that the fees are for counsel's reviewing the Garcias' chapter 13 plan . . . . The second notice (for $600.00) reflects a charge of $250.00 for 'Proof of Claim Loan Payment History' and $350.00 for 'Proof of Claim' . . . . These charges . . . are the agreed-upon standard charges between Nationstar and its counsel. . . . The services and charges here fall within the so-called Fannie Mae guidelines . . . . The Court's General Order 2017-01, which governs the chapter 13 practice in the Northern District of Texas, deems $700.00 as reasonable compensation for a secured creditor's attorney, provided that such fees and expenses are otherwise allowable under 'applicable non-bankruptcy law.' The Court regularly approves such amount in chapter 13 cases without a supporting application . . . . Nationstar satisfactorily explained the basis for the fees and expenses. The Court will therefore approve the requested fees and expenses of $900.00. This should not, however, be construed as an endorsement of secured creditors seeking fees in excess of the no-look fee without filing a proper application or motion as required by the General Order.").

***In re Minor*, No. 17-33644(1)(13), 2018 WL 3078177, at *1, *1 (Bankr. W.D. Ky. June 20, 2018) (Lloyd)** (On debtor's objection to Bankruptcy Rule 3002.1 notice of postpetition fees for mortgagee's attorney fees, lodestar analysis reduces request from $3,001.20 to $1,760 because "[m]any of the time entries were for routine matters that should have taken less time than were shown on the time records." "Creditor contends the fees are reasonable and include pre-petition foreclosure fees and extensive work performed by counsel in the case. This work included reviewing the Petition, Schedules and Plan, attending the 341 Meeting, filing a Motion to Terminate the Stay and a Notice of Non–Compliance, as well as Objecting to Confirmation of the Plan and negotiations with the Debtor's attorney. . . . [U]sing

the lodestar analysis . . . , the Court must determine whether the services rendered were reasonable, actual and necessary. . . . The Court determines that a reasonable amount of time spent on the tasks set forth in the Creditor's Notice would be approximately 8 hours in a similar case. The Court will therefore allow attorney's fees of $1,760.").

***Stanley v. Guaranteed Rate, Inc. (In re Stanley)*, No. 5-17-bk-00884-JJT, 2018 WL 2979852, at *1 (Bankr. M.D. Pa. June 12, 2018) (Thomas)**

(Chapter 13 debtor's motion to determine postpetition fees under Bankruptcy Rule 3002.1(c) is resolved against mortgage lender based on Pennsylvania law that prohibits mortgagee from collecting attorney fees prior to or during the 30-day notice period required by § 403 of the Pennsylvania Loan Interest and Protection Law. Guaranteed Rate, Inc., filed a notice of postpetition mortgage fees and expenses seeking $1,550 in postpetition attorney fees. Debtors responded with a motion under Bankruptcy Rule 3002.1(e) asking the bankruptcy court to make a determination of the appropriateness of the charges. "A number of cases have applied Act 6 limitations to mortgagee's attorney fees generated by proceedings in bankruptcy. . . . I am satisfied that Act 6 is applicable to the facts in this case and the mortgagee can charge no legal fees prior to the notice period in Act 6.").

***In re Hadfeg*, 585 B.R. 208, 210–14 (Bankr. S.D. Fla. May 1, 2018) (Mark)**

(Citing *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (Mar. 23, 2010), and § 1327(a), confirmed plan that stated condo association's prepetition arrearage was $5,000 to be paid in full precluded association from collecting additional $33,480 prepetition arrearage it claimed four years later. Association did not object to confirmation and did not file proof of claim. Association first questioned amount of prepetition arrears when order was entered at end of case declaring association payments current. Association cannot collect the prepetition arrearage it claims from the debtor, from the property or from a subsequent purchaser of the property because the debt has been preclusively paid in full pursuant to the confirmed plan. In contrast, confirmed plan did not address payment of postpetition special assessments and notice of final cure under Bankruptcy Rule 3002.1 was ambiguous with respect to postpetition assessments. Association granted relief from order declaring payments current to extent order purported to eliminate unpaid postpetition special assessments. Special assessments by condo association are not subject to payment change notice requirements of Bankruptcy Rule 3002.1. Association's failure to file 3002.1 notices did not waive its right to seek collection of unpaid postpetition special assessments not provided for by plan and not paid by debtor. "The Association did not lose its lien rights by failing to file a claim, but the order confirming the Plan is *res judicata* on the amount of debt secured by the lien. . . . The Debtor in this case has satisfied her prepetition debt in full. Entry of the Confirmation Order bound the Association to the prepetition arrearage provisions of the Plan, including the amount of the arrearage and the payment terms. 11 U.S.C. § 1327(a). Upon completion of the Plan, there is no prepetition debt,

11 U.S.C. § 1328(a), and neither the *in rem* rights of the Association nor its rights under Florida's Condominium laws to enforce debts against subsequent purchasers revive[ ] a fully-paid and extinguished prepetition debt. . . . While a bankruptcy court cannot eliminate a condominium association's statutory enforcement rights, it can determine with finality the amounts that are owed and enforceable. . . . [T]he Association's *in rem* claim against the condominium units for the alleged balance due on account of prepetition arrearages ($33,480), and *in personam* claim against potential future owners of the condominiums for the same balance ($33,480), are no longer enforceable. . . . The Court rejects the Debtor's argument that the Association's failure to file a Notice of Payment Change is tantamount to a representation that out–of–Plan payments are current. . . . Other Charges are not the type of 'contractual installment payments' subject of Fed. R. Bankr. P. 3002.1 . . . . [T]he Other Charges assessed postpetition remain outstanding claims enforceable against the Debtor and, under Florida law, enforceable against subsequent purchasers if the condominium units are sold.").

***In re Hockenberger*, No. 12-32367, 2018 WL 1770172, at *2–*6 (Bankr. N.D. Ohio Apr. 11, 2018) (Whipple)** (Postpetition default in direct payment of $61,445.21 claimed by mortgage servicer in response to trustee's Bankruptcy Rule 3002.1 notice of final cure is reduced to $38,658.85 after hearing. Servicer had burden of proof with respect to actual amount of postpetition arrearage. Records supplied by servicer were incomplete with respect to prior servicing of loan. Debtor's claim of an oral loan modification agreement with prior servicer was unenforceable under statute of frauds notwithstanding acceptance of monthly payments consistent with that oral agreement for several years. Debtor was in default for difference between contract amount at the petition and oral agreement amount actually paid by the debtor. Escrow shortage was added to that amount. "SN Servicing's actual first-hand knowledge regarding Debtor's mortgage payments only relates to payments received between May 2017 and December 2017 . . . . Nevertheless, she testified regarding what she described as a summary of Debtor's mortgage payment history since May 21, 2012, through May 31, 2017[,] . . . based on records obtained by SN Servicing from a prior servicing agent 'when U.S. Bank got the loan.' The court, however, places little weight on this exhibit and finds it less than helpful in determining an amount owed due to postpetition arrearages. . . . [T]he mortgage holder has the burden to establish outstanding postpetition obligations on the mortgage. . . . While Debtor was clearly required to make monthly escrow payments . . . U.S. Bank has not met its burden of proving what escrow payment amount it required of Debtor . . . and the court will not speculate as to such amount.").

***Meyer v. Wells Fargo Bank, N.A. (In re Meyer)*, No. 1-17-ap-00138-RNO, 2018 WL 1663292 (Bankr. M.D. Pa. Apr. 4, 2018) (Opel)** (Complaint alleging that Wells Fargo, Wilmington Savings Fund Society and Selene Finance should be sanctioned under Bankruptcy Rule 3002.1(i) for failing to file notices of postpetition fees and expenses and for violating discharge injunction by including fees and expenses that were not noticed as

part of payoff demand at postdischarge sale of underlying property is dismissed as to Wells Fargo because the debt was transferred to Wilmington and is not dismissed as to Wilmington and Selene. Chapter 13 case lasted from July of 2012 to April of 2017. Wells Fargo filed a proof of claim with respect to mortgage but transferred the debt in 2015 to Wilmington. In 2017 debtor reopened completed case and filed a complaint alleging that the defendants failed to file notices of fees, expenses and charges in violation of Bankruptcy Rule 3002.1(c) and violated the discharge injunction in § 524(a) by seeking to collect fees, expenses and charges in a payoff statement after discharge in the Chapter 13 case. "Wilmington was granted relief from the automatic stay on June 16, 2016 with respect to the real property. . . . Debtor states that the Defendants seek to recover fees, expenses, or charges that were not timely disclosed to the Debtor, and therefore the Defendants should be sanctioned pursuant to Rule 3002.1(i). . . . Debtor asserts that he requested and received a Payoff Statement from Selene on June 12, 2017, in which 'Selene . . . includes and seeks to recover . . . Escrow/Impound Draft . . . Corporate Advance(s) Balance . . . Unpaid Late Charges.' . . . Under Rule 3002.1(c), a notice is required to be filed for . . . all fees or expenses that were incurred post-petition in connection with a mortgage holder's claim that are asserted to be recoverable against the debtor or his principal residence. . . . I cannot find that the Debtor's claim is precluded by waiver. The Response to the Notice of Final Cure by Wilmington was filed on May 16, 2017. Seven days later on May 23, 2017, prior to the expiration of the 21–day period for the Debtor to file a motion, the trustee filed a withdrawal of the Notice of Final Cure. This alone nullified the Response, and therefore any requirement of the Debtor to file a motion under Rule 3002.1(h) within 21 days would no longer apply. I also find there is an absence of case law finding that a failure to file a motion under Rule 3002.1(h) constitutes waiver of a claim under Rule 3002.1(c) or 3002.1(i). . . . Upon examination of Rule 3002.1, I cannot find that the Debtor is required to establish harm or a lack of substantial justification in order to state a claim for relief. . . . [U]nder 3002.1(i)(2), the court may still award reasonable expenses and attorney's fees regardless of whether there was harm. . . . [T]he Debtor has sufficiently pled facts establishing harm . . . . The Complaint alleges that Wilmington and Selene seek to now recover fees, expenses or charges that were not disclosed under Rule 3002.1(c) . . . . The Debtor was allegedly 'forced to pay' fees and costs at the settlement of the real property in order to pass along good title to the buyer, which is money that 'he should have otherwise had in his pocket.' . . . [T]he Debtor has pled a plausible claim for sanctions under Rule 3002.1(i) against Wilmington and Selene.").

***In re Ochab*, 586 B.R. 803, 807–10 (Bankr. M.D. Ala. Mar. 30, 2018) (Sawyer)** (Mortgage servicers failed to prove entitlement to or reasonableness of $300 or $500 postpetition charges for filing proofs of claim and of $350 or $400 fees for review of Chapter 13 plans when mortgages were protected from modification by § 1322(b)(2). Applying § 1322(e), state law and contract control allowance of postpetition fees and expenses when debtor moves for determination after 3002.1 notice. No presumptions apply. Contract in one case only allowed attorney fees in foreclosure, precluding fees for participation in the Chapter 13 case. State law imposed reasonableness requirement. Filing proof of claim does not justify $300 or $500 fees. Plan that is protected from modification by § 1322(b)(2) does not

require $400 review by an attorney. Once debtor moves for determination under Bankruptcy Rule 3002.1(e) creditor must put on proof of reasonableness and of a contract or state law right to fees. "Upon a debtor filing a motion to determine mortgage fees, expenses, and charges pursuant to § 1322(e), the Court must look to the underlying agreement and applicable nonbankruptcy law to determine if the amounts are permissible. . . . It is well-established law in Alabama that the parties to a mortgage may agree to the payment of *reasonable* fees if certain circumstances arise or actions are taken. . . . [T]he mortgage pertaining to the Englands' personal residence only permits the recovery of fees incurred during a foreclosure proceeding initiated pursuant to a power of sale clause; however, the fees listed in the Notice of Postpetition Mortgage Fees, Expenses, and Charges were incurred in connection with a bankruptcy, not a foreclosure, proceeding. . . . [C]harging $400 for an attorney to review the Debtor's Chapter 13 plan is unreasonable considering the protections provided to lenders by the antimodification rule . . . . Some courts even go as far as to say that reviewing a debtor's plan is purely ministerial and not necessary to file a proof of claim; thus, an attorney fee for plan review should not be permitted. . . . Likewise, the act of filing of proof of claim is a relatively simple matter. . . . A $500 fee for filing a proof of claim on a debtor's personal residence is excessive and unreasonable, whether or not an attorney prepares the proof of claim. Loan documents and payment history are regularly kept in the ordinary course of business. Filing a proof of claim should merely require transcribing information, which is already available to the lender, to a proof of claim form. . . . [O]nce a debtor files a Motion to Determine Fees pursuant to Rule 3002.1(e), the burden shifts to the creditor to substantiate the fees, expenses, and charges stated in the Rule 3002.1 Notice. . . . Failure to provide an adequate description of the charges in response to a motion [to] determine fees will not suffice.").

***In re England*, 586 B.R. 795 (Bankr. M.D. Ala. Mar. 30, 2018) (Sawyer)** (*See In re Ochab*, No. 16-12205-WRS, 2018 WL 1614164, at *3–*5 (Bankr. M.D. Ala. Mar. 30, 2018) (Sawyer).).

***Forson v. Nationstar Mortg., LLC (In re Forson)*, 583 B.R. 704, 707–16 (Bankr. S.D. Ohio Mar. 21, 2018) (Preston)** (On summary judgment before class certification, letters and phone calls from Nationstar Mortgage violated discharge injunction by demanding amounts discharged during Chapter 13 case. Order entered after notice of final cure under Bankruptcy Rule 3002.1 declared mortgage current, declared all arrears paid, required reamortization based on loan being current at discharge and discharged all fees, costs and expenses not otherwise sought and allowed during the Chapter 13 case. Without explanation, Nationstar demanded payments after discharge that included arrears and other charges that were discharged. "Plaintiff's confirmed Chapter 13 Plan provided for regular monthly payments on the Mortgage Loan to be made by 'conduit' through the Chapter 13 Trustee. Plaintiff successfully completed the Plan, and . . . upon motion by the Chapter 13

Trustee, the Court entered an order deeming the Mortgage Loan current . . . . The Mortgage Order also directed Defendant to adjust the Mortgage Loan balance to reflect the balance delineated in the original amortization schedule . . . and ordered that any amounts in excess of that balance were discharged. Thereafter, . . . Plaintiff maintained his monthly payments to Defendant, Defendant sent letters and mortgage statements to Plaintiff indicating the Mortgage Loan was delinquent. . . . The Amended Complaint . . . alleges that Defendant has a uniform set of policies and procedures for servicing mortgage loans, that Defendant has routinely failed to correct its records following a debtor's receipt of a Chapter 13 discharge, and that Defendant systemically collects and/or attempts to collect discharged debts from Chapter 13 debtors. . . . The Mortgage Order . . . specifically provided . . . (a) All pre-petition arrearage claims of [Nationstar Mortgage] have been paid in full . . . (b) All regular, post-petition mortgage payments have been made by the Trustee . . . (c) The mortgage obligation to [Nationstar Mortgage] is hereby deemed current . . . (d) [Nationstar Mortgage] shall adjust its loan balance to reflect the balance delineated in the original amortization schedule . . . . Any amounts in excess of that balance, including any alleged arrearage, costs, fees or interest are hereby discharged . . . . Defendant provides no explanation . . . as to why the . . . mortgage statement indicated the total amount due was $6,900.28 even after Plaintiff made all the monthly mortgage payments after entry of the Mortgage Order. . . . The Court can draw no conclusion but that the . . . Mortgage Loan statement was an attempt to collect discharged debt and violated the discharge injunction. . . . The Court notes that [one] letter did contain a disclaimer that stated if the account holder had received a discharge in bankruptcy, the letter is not an attempt to collect a debt from the account holder personally, but was provided for informational purposes. This disclaimer, however, does not neutralize the remaining provisions of the letter that were designed to encourage if not coerce payment from Plaintiff. . . . Defendant was an active participant in Plaintiff's Chapter 13 proceeding, and as a result, had actual knowledge of the discharge injunction when it sent the letters and mortgage statement to Plaintiff.").

***Kenderes v. Nationstar Mortg. LLC*, No. 17-03103dwh, 2018 WL 1442233, at *2 (Bankr. D. Or. Mar. 21, 2018) (unpublished) (Hercher)** (Material disputed facts preclude summary judgment for Nationstar in adversary proceeding alleging that Nationstar violated automatic stay by including prepetition escrow shortage in the arrearage portion of its proof of claim and then using the same escrow shortage as the basis for a postpetition notice of mortgage payment change. "[T]he stay does not prohibit creditors from using the claims-filing process or requesting relief from the stay . . . . Nationstar invites me to conclude, on the same logic, that a notice of mortgage-payment change can never be a stay violation. I disagree. The purpose of a notice of mortgage-payment change is to enable a chapter 13 debtor-homeowner to make mortgage-maintenance payments required by section 1322(b)(5). . . . As long as a creditor uses the notice only to specify the amounts and due dates of postpetition mortgage-maintenance installment payments and not to include any amounts that were due before the petition date or that come due because of a prepetition default or the filing of the petition, the creditor of course does not violate the stay. But the Kendereses have alleged that the amount that Nationstar stated in its notice of mortgage-payment change

included not just their required postpetition installment payment, but also some or all of the amount by which they were in default to Nationstar as of the petition date. If true, that act by Nationstar would constitute a stay violation. . . . [T]he Kendereses essentially allege that Nationstar tricked them into paying a prepetition shortage by making them believe it was a postpetition shortage. That kind of trickery might not qualify as coercion or harassment, but it would be equally, if not more, likely than coercion or harassment to result in a debtor's payment of a prepetition debt.").

***In re Formosa*, 582 B.R. 423, 428–36 (Bankr. E.D. Mich. Jan. 19, 2018) (Shefferly)** (Bankruptcy Rule 3002.1(c) and (e) are not congruent: debtor and trustee can use an "objection" to challenge the allowance of fees and expenses under 3002.1(c) but must file a "motion" under Rule 3002.1(e) to determine whether payment of fees and expenses is required to cure and maintain payments under § 1322(b)(5). Attorney fees incurred by bank to unwind a foreclosure sale conducted in violation of the automatic stay are not recoverable under § 3002.1(c) because the note and deed of trust allow fees only when incurred "to protect [the lender's] interest in the property." $2,500 attorney fee in lender's 3002.1 notice is at high end of reasonable for representing bank in a Chapter 13 case, but that amount need not be paid by the debtor to cure and maintain payments through the plan because the lender has not given the "notice" required by the deed of trust to request payment. The bank's notice of postpetition fees and expenses under Rule 3002.1 is not the same as the "notice" required by the deed of trust when a mortgagee wants to be paid postpetition fees and expenses. The postpetition fees and expenses will be added to the amount owed by the debtor and will become payable when the note matures absent notice from the lender requesting earlier payment. "While the issues required to be adjudicated by motion under Rule 3002.1(e) are similar to the issues encompassed by Rule 3002.1(c), they are not identical. Rule 3002.1(e) expressly requires a motion when either a debtor or a trustee seeks a determination of whether payment of a claimed fee or expense 'is required by the underlying argument, and applicable nonbankruptcy law to cure a default or maintain payments in accordance with § 1322(b)(5) of the Code.' But a notice filed under Rule 3002.1(c) is not limited to fees and charges that are required to 'cure a default or maintain payments in accordance with § 1322(b)(5) of the Code.' . . . A notice filed under Rule 3002.1(c) may include *any* fees or expenses claimed by a creditor holding a mortgage on a debtor's principal residence, without regard to whether payment of such fees or expenses is required to 'cure a default or maintain payments in accordance with § 1322(b)(5) of the Code.' . . . [T]he Bank admits that the Law Firm's fees are not 'required to cure a default or maintain payments in accordance with § 1322(b)(5).' The Bank explains that the reason is because [section 9 of the mortgage] states that attorney fees . . . 'shall become additional debt of Borrower . . . and shall be payable . . . upon notice from Lender to Borrower requesting payment.' The Bank admits that it has not issued such notice and that payment of any of the Law Firm's fees at this time is not required for the Debtor to cure and maintain the Mortgage in accordance with § 1322(b)(5). . . . [T]he Law Firm's fees, to the extent recoverable at all under the Mortgage, simply become part of the debt owed by the Debtor to the Bank, due and payable only when the note secured by the

Mortgage matures and becomes due and payable, absent a notice from the Bank requesting payment. Therefore, the Debtor need not pay the Law Firm's fees in order to cure and maintain the Mortgage under § 1322(b)(5).").

***In re Chancellor*, No. 11-45924-13, 2017 WL 6371364, at *2–*3 (Bankr. W.D. Mo. Dec. 12, 2017) (Dow)** (Rule 60 relief is granted to vacate discharge order when neither trustee nor court was aware that debtor was in default of direct payments to mortgagee. Mortgagee failed to respond to trustee's notice of final cure under Bankruptcy Rule 3002.1, but debtor contributed to mistaken entry of discharge order by filing motion for entry of discharge without revealing substantial default in direct payments to mortgagee. "[W]hen a debtor's plan provides for ongoing payments directly to the creditor, and the debtor defaulted in such payments, the debtor is not entitled to a discharge under § 1328(a). . . . Creditor did not file a response to Debtor's motion for entry of discharge nor to Trustee's notice of final cure. While the Court agrees that Creditor was derelict in its duties to respond to either motion or notice, that does not change the fact that Debtor was not eligible for a discharge under § 1328(a) and that the Court granted such discharge on a mistake of fact that Debtor had in fact made all payments due under the plan. Debtor knew that she had not made all of the required post-petition payments but still filed a motion for entry of discharge and asserted that she was eligible for a discharge under all applicable Bankruptcy laws and rules when this was not true . . . . [F]undamental fairness requires that relief should be granted from the discharge order under Rule 60(b)(1).").

***In re Ferrell*, 580 B.R. 181, 185–89 (Bankr. D.S.C. Oct. 13, 2017) (Waites)** (Responding inaccurately and failing to prove delinquency after contest of final cure notice results in 3002.1 order that declares mortgage current, forbids Shellpoint Mortgage to collect disputed amounts or any other amount not included in a proper 3002.1 notice and court awards $1,500 attorney fees for the inaccurate and misleading information. Confirmed plan provided for cure of mortgage default and maintenance of regular payments under § 1322(b)(5). In response to notice of final cure payment, Shellpoint indicated the debtors were delinquent on postpetition payments of $6,671.65. Debtor's counsel provided Shellpoint with evidence that debtors had tendered every monthly mortgage payment. Shellpoint then represented to debtor's counsel that the arrearage was actually $12,459.64. Debtors moved for a hearing pursuant to Bankruptcy Rule 3002.1(h). Shellpoint did not appear. "[A] 3002.1(g) supplement does not enjoy the same *prima facie* presumption of validity as does the mortgage creditor's underlying proof of claim. . . . [T]he mortgage creditor must appear at the hearing on the debtor's Rule 3002.1(h) motion and present evidence to establish its entitlement to the postpetition amounts claimed . . . . [I]n response to the Supplement, the Debtors filed and served a timely motion pursuant to Rule 3002.1(h) . . . . Pursuant to Bankruptcy Rule 3002.1(h), the Court finds that Shellpoint has waived its right to the Disputed Amounts. The Court further finds that the Debtors have paid all required postpetition amounts . . . and declares that Loan

7209 is current . . . . Shellpoint failed to appear to prove its entitlement to the Disputed Amounts, and the evidence presented at the hearing calls into question the amounts the Supplement claims are due. . . . Because of the importance and mandatory nature of the Supplement, the Court has little difficulty finding that implicit in Rule 3002.1 is the requirement that the information the mortgage creditor provides be accurate. . . . Shellpoint provided the Debtors with inconsistent information regarding the status of their postpetition mortgage, failed to object to the Motion and Notice, and failed to appear at the hearing and submit evidence to support the figures contained in the Supplement. These factors, coupled with the Debtors' testimony that contradicts the amounts set forth in the Supplement, cause the Court to find the Supplement is incorrect and inaccurate. The filing of an incorrect and inaccurate Rule 3002.1(g) statement is the equivalent of filing no statement at all. Indeed, an incorrect statement could be viewed as worse than no statement. . . . [I]t is appropriate to treat Shellpoint's inaccurate Supplement as the equivalent of a failure to provide the information required by Bankruptcy Rule 3002.1(g), thus subjecting Shellpoint to sanctions pursuant to Bankruptcy Rule 3002.1(i) . . . and § 105. . . . Loan 7209 is deemed to be current . . . . The Disputed Amounts are deemed waived and/or cured by the Debtors' completion of their confirmed Chapter 13 plan. . . . To the extent that there exists any other postpetition amounts for fees, charges, and/or expenses that Shellpoint might assert were incurred . . . these sums are deemed waived, cancelled, and discharged. . . . Any attempt by Shellpoint to collected [*sic*] the Disputed Amounts or any other postpetition amounts for fees, charges, and or expenses, is and shall be a willful violation of this Order and the discharge injunction of § 524, and punishable by the contempt powers of this Court.").

***In re Newberry*, No. 12-52072-CAG, 2017 WL 4564704, at *2, *3, *4–*5 (Bankr. W.D. Tex. Oct. 11, 2017) (Gargotta)** (Motion to reopen Chapter 13 case three years after completion of payments and closing to amend Rule 3002.1 response to change mortgage default date and amount is denied when holder failed to follow 3002.1 and servicer seeks to amend response to gain litigation advantage in state court foreclosure. Trustee filed notice of final cure under Rule 3002.1(f) indicating that BOA's prepetition claim for mortgage arrears was paid in full. BOA filed response stating that debtor was "not otherwise current on all payments as they are due for 06/01/2014." Neither trustee nor debtors filed motion under Rule 3002.1(h) to determine status of mortgage. Discharge was entered. Three years later debtors defaulted on loan and foreclosure resulted. Foreclosing creditor moved to reopen to "correct a clerical error that has now resulted in state court litigation." "[T]he Response to the Trustee Final Notice of Cure Payment was incorrect because the due date for the loan at the time of BOA's response was June 1, 2013. . . . RCS recognizes that its error in its Response to Trustee's Notice of Final Cure has consequences in the Newberrys' state court action against RCS . . . . [T]he reality is that RCS wants to gain a litigation advantage in the state court . . . . BOA and RCS have failed to comply with the Bankruptcy Rules governing mortgage claims in this case. . . . BOA failed to notify the Court, Trustee, and the creditors that there was a post-petition mortgage delinquency and provide an itemization of BOA's post-petition charges . . . . BOA did not advise Trustee of a transfer of its claim. BOA did not correctly prepare its Response to Trustee's Notice of Final Cure . . . . RCS waited nearly three

years to correct the mistake in its Response to the Trustee's Notice of Final Cure and only did so when it became relevant in the state court case. Rule 3002.1 and its requirements are to avoid the types of mistakes made here by a mortgage servicer. The Court sees little reason to reopen the case to allow RCS to gain an advantage when it has been so materially deficient in administering the Newberrys' mortgage.").

***Cawood v. Seterus, Inc. (In re Cawood)*, No. 1:15-AP-1116-SDR, 2017 WL 4404258 (Bankr. E.D. Tenn. Sept. 29, 2017) (Rucker)** (Bankruptcy court denies motions to dismiss class action complaint alleging that Seterus and others "willfully and systematically" failed to properly account for mortgage payments in Chapter 13 cases. Plaintiff's home went into foreclosure after completion of Chapter 13 case that cured defaults and after a 3002.1 order in prior case declaring mortgage current. Bankruptcy court has jurisdiction over various state and federal causes of action that do not require enforcement of discharge because mortgage was not discharged in Chapter 13 case. Actions for damages do not implicate discharge but affect assets and liabilities in current Chapter 13 case. Determination of nationwide class action status is premature.).

***In re Trudelle*, No. 16-60382-EJC, 2017 WL 4411004, at *2–*10 (Bankr. S.D. Ga. Sept. 29, 2017) (Coleman)** (Bankruptcy Rule 3002.1 Notice of Fees for $600 in attorney fees for preparation of Form 410A and for proof of claim is rejected when PHH Mortgage failed to offer evidence after debtor objected to notice. Notice of fees and expenses under Bankruptcy Rule 3002.1 is not a proof of claim and is not entitled to presumption of validity. Allowance or disallowance of a notice under Bankruptcy Rule 3002.1 does not resolve whether or how the fees or charges will be paid—that typically requires modification of the plan. Confirmed plan provided that PHH Mortgage's claim would be paid directly by the debtor. "Accordingly, Rule 3002.1 applies to PHH Mortgage's claim. . . . Procedurally, this matter is before the Court on the Debtor's objection to the Notice of Fees. . . . [T]he Court is treating the objection . . . as a motion for determination of fees, expenses, or charges pursuant to Rule 3002.1(e). . . . [T]he burden of proof under Rule 3002.1(e) falls on the creditor asserting the fee, expense, or charge. . . . [S]ome courts seem to assume that a notice of fees filed pursuant to Rule 3002.1(c) necessarily implicates 11 U.S.C. § 506(b). . . . The Court is not convinced that attorneys' fees allowable under Rule 3002.1(e) are limited to over-secured creditors under the language of 11 U.S.C. § 506(b). Neither the text of Rule 3002.1, nor the Advisory Committee Notes, nor the Official Form make any reference to § 506(b). . . . Nothing in Rule 3002.1(c) suggests that the notice of fees is an alternative mechanism for amending the secured creditor's claim. Thus, while § 506(b) allows an over-secured creditor to augment its claim, that is not the function of Rule 3002.1(c). . . . ' . . . It is simply a statement that a creditor files to inform the debtor that postpetition expenses have been incurred. It is akin to providing an annual escrow statement.' . . . Official Form 410S2 does not require the holder of the claim to attach supporting documents . . . . 'Unlike a standard proof of claim, a notice filed

under Rule 3002.1 does not constitute *prima facie* evidence as to the validity or amount of the claimed charges.' . . . [O]nce the notice of fees is challenged, more evidence is required. . . . PHH Mortgage failed to appear . . . . Accordingly, the Court finds PHH Mortgage is not entitled to the $600 in attorneys' fees sought in its Notice of Fees.").

***In re Bethe*, No. 11-25388-GMH, 2017 WL 3994813, at *1–*4 (Bankr. E.D. Wis. Sept. 8, 2017) (Halfenger)** (After trustee issued notice of final cure consistent with Bankruptcy Rule 3002.1(f) and mortgagee responded that direct payments were in default, discharge is not vacated under § 1328(e) for lack of fraud and equities favor debtor for purposes of relief under Bankruptcy Rule 9024. "[T]he trustee served Select Portfolio with a 'Notice of Final Cure Payment' . . . . U.S. Bank timely responded . . . that the trustee had transferred funds sufficient to cure the prepetition default but . . . 'debtor[s] are not current on all postpetition payments consistent with § 1322(b)(5)'. . . . Neither the debtors nor the trustee moved the court for a determination that the debtors had cured the default or paid all required postpetition amounts. See Fed. R. Bankr. P. 3002.1(h). . . . In the course of reviewing the final report . . . the court discovered U.S. Bank's uncontested assertion that the debtors had not made all postpetition mortgage payments. . . . [T]he court scheduled a hearing . . . . [T]he trustee has no way to know whether the debtor made all postpetition maintenance payments when the plan requires the debtor to make those payments directly to the mortgage creditor. The debtors did not contest that they had failed to make all of the postpetition mortgage payments required by their plan. [Debtors'] counsel explained that the debtors had negotiated and ultimately obtained a loan modification. . . . The debtors did not qualify for a chapter 13 discharge. . . . The court should not have granted them a discharge. . . . Nothing suggests that the debtors engaged in fraud. Thus the discharge may not be revoked under 11 U.S.C. § 1328(e). . . . The equities of this case do not warrant vacating the discharge order. The debtors effectively cured their missed mortgage payments with the mortgage-holder's consent by renegotiating their loan.").

***In re Tanner*, No. 12-01429, 2017 WL 3641575, at *2–*9 (Bankr. N.D. Iowa Aug. 23, 2017) (Collins)** (Nationstar is in contempt for failing to comply with bankruptcy court orders after years of effort by Chapter 13 debtor to get loan history and explanation of payment calculations and loan balances. Compensatory damages awarded including $19,000 to debtor plus attorney fees. Punitive damages of $40,000 awarded for cavalier attitude toward bankruptcy court. Plan confirmed in November 2012 provided that debtor would make postpetition mortgage payments directly to Nationstar. Nationstar's proof of claim listed installment payment amount as $912.76. Trustee filed notice of final cure stating that debtor had paid $3,791 prepetition arrearage. Nationstar responded that debtor had paid prepetition arrearage but was delinquent in postpetition payments totaling $9,980.64. Debtor moved to amend the plan, though already completed. Debtor and Nationstar entered into settlement that required debtor to pay $7,207.62 to cure postpetition mortgage arrearages and required

Nationstar to provide debtor with a statement of how funds were applied, the new principal balance, the contractual due date and an amortization schedule. "Nationstar did not provide the required documentation to Debtor . . . . Nationstar eventually agreed to waive the $7,207.62 payment due from Debtor under the Settlement Order 'in exchange for additional time to complete the loan adjustment.' . . . Debtor agreed to 'give Nationstar more time to adjust the loan in exchange for Debtor keeping the lump sum payment for the arrearage.' The amortization schedule that Nationstar later provided to Debtor does not show that Nationstar actually waived the delinquency. Instead, it appears to show that Nationstar simply added additional payments to the back end of the loan. In essence, Nationstar did not waive the $7,207.62 payment, but simply deferred it to later in the loan payment schedule. This was not the agreement they had reached. . . . On August 22, 2016, the day before the show cause hearing, Nationstar retained new counsel. . . . [T]he change in counsel the day before the scheduled show cause hearing resulted in further delay caused entirely by Nationstar. . . . 'Almost a full year has passed since the December 1, 2015 Order without resolution by Nationstar.' . . . Nationstar failed to comply with the Settlement Order . . . . Nationstar has not shown cause for the failure to follow the Court's order—and the length of time this failure continued. . . . Debtor established a long history of delay, poor communication, and inconsistent answers from Nationstar. . . . [I]t became a pervasive pattern of conduct by Nationstar. . . . Debtor . . . has been unable to [keep clear records] because of lack of communication or cooperation from Nationstar. . . . Nationstar's failure to follow the Court's orders and additional delay also had a detrimental effect on Debtor's personal life. . . . Nationstar violated this Court's orders by not providing the documentation within the time required in the Settlement Order—and continued to violate the order for many more months. . . . Nationstar does not appear to have actually complied with its commitment to waive the arrearage payment of $7,207.62 . . . . Debtor's actual damages due to Nationstar's delay in complying with the Court's orders are as follows: $10,000 for the inordinate amount of time Debtor spent dealing with Nationstar's delay and the related mental and emotional anguish; $7,207.62 for the waived payments; and $2,000 in damage from tax costs and preparation expenses. Thus, the compensatory sanctions award totals $19,207.62. The Court will also award attorney's fees. . . . After Nationstar blatantly violated the Court's clear June 22, 2016 order . . . , Nationstar waited for the deadline to pass, and then—after a reminder from Debtor's counsel about the deadline—asked for clarification about what documentation it was supposed to provide. . . . Nationstar did not make complying with the Court's orders a priority in any way. This casual attitude toward, [if?] not a willful disregard of, the Court's orders is indefensible and will not be tolerated. To the extent that this attitude reflects Nationstar's current policies and procedures, things need to change. As a result, the Court awards punitive damages of $40,000—or just over double the compensatory award.").

***In re Thornton*, 572 B.R. 738, 739-42 (Bankr. W.D. Mo. June 28, 2017) (Federman)** (Mortgagee's objection to 3002.1 notice of final cure is sustained and debtor's motion for entry of discharge is denied when debtor was substantially in default of direct payment of mortgage notwithstanding completion of payments to trustee. "Debtor was actually current on her mortgage payments when she filed this case. According to the Local

Rules of this District, if a debtor has no past due payments or charges due to the holder of a mortgage claim, other than the regular payment due in the month of filing, the debtor may propose a Chapter 13 plan in which the debtor makes the postpetition mortgage payments directly to the holder of the claim, rather than through the Chapter 13 Trustee. . . . On March 28, 2017, the Trustee filed a Notice of Completion of Chapter 13 Plan . . . . [B]ecause the ongoing postpetition payments were to be paid by the Debtor directly, the Trustee stated he had no knowledge of whether the Debtor was current on those postpetition mortgage payments. . . . Select Portfolio filed a Statement in Response to the Trustee's Notice of Final Cure Payment, saying that there was a postpetition arrearage of $35,742.74 . . . . [S]ince the Debtor's plan provides for payment of the ongoing mortgage directly to the mortgagee, and the Debtor defaulted in such payments, the Debtor is not entitled to a discharge under § 1328(a).").

***Ridley v. M & T Bank (In re Ridley)*, 572 B.R. 352, 356-61 (Bankr. E.D. Okla. May 31, 2017) (Cornish)** (M & T Bank violated § 524(i) and is in civil contempt for declaring defaults, sending erroneous notices and adding improper fees, charges and corporate advances after concurring in 3002.1 notice that mortgage was current and all delinquencies cured. "[T]he Chapter 13 Trustee filed his Notice of Final Cure Payment . . . . M & T Bank filed its Statement in Response . . . wherein M & T bank stated it agrees that the Debtor was current with regard to all pre- and post-petition default payments. . . . M & T Bank has attempted . . . to collect from the Plaintiff Fees, Charges and Expenses that were not disclosed in the course of the Plaintiff's Chapter 13 Bankruptcy as required by F.R. Bankr. P. 3002.1. . . . This case represents one of the classic situations that led to the adoption of § 524(i): a chapter 13 debtor makes all the required payments on long-term debt required through the life of his confirmed plan, receives a discharge, and is then told that his mortgage is in default, he owes additional charges, and is threatened with foreclosure.").

***In re Tatum*, No. 15-31925 VFP, 2017 WL 3311219, at *3 (Bankr. D.N.J. May 15, 2017) (Papalia)** (Fees and expenses incurred by bank before the 180-day period in Bankruptcy Rule 3002.1(c) are disallowed. "[T]here is no question that $6,190.28 of the fees and expenses that the Bank seeks to recover were incurred outside the 180–day period . . . . [U]nder Rule 3002.1(i), the Court may exclude the fees outside the 180–day period, unless their omission was substantially justified or harmless. . . . [T]he Court finds that the omission of the additional $6,000 in fees from the notice . . . is not harmless. Instead, it is potentially fatal to the Debtor's plan. . . . [T]he sanction of disallowing fees and expenses incurred in this case outside the 180–day period is 'entirely aligned with the history and purpose of Rule 3002.1.'").

***In re Velazquez*, 570 B.R. 251 (Bankr. S.D. Tex. Apr. 17, 2017) (Rodriguez)** (When proof of claim filed by mortgagee shows monthly payment different than stated in confirmed plan, trustee is not authorized to retroactively adjust payments into the plan; instead, trustee must pay the mortgagee consistent with the allowed proof of claim and, if necessary, seek court order to modify plan. When mortgagee files a Bankruptcy Rule 3002.1 notice of mortgage payment change, local rules allow the trustee to notice that change to the debtor and to then adjust the plan payment prospectively—without the filing of a modified plan.).

***In re Cotsis*, No. 15-20588, 2017 WL 745591, at *2–*3 (Bankr. D. Me. Feb. 24, 2017) (Cary)** (U.S. Bank need not file Bankruptcy Rule 2016 disclosure to include postpetition attorney fees in its 3002.1 notice; if debtor disputes attorney fees in 3002.1 notice, proper procedure is not an objection but is a motion under Bankruptcy Rule 3002.1(e). "If U.S. Bank had been retained by the Debtors or their estate in accordance with § 327 and wished to be paid for services rendered or expenses incurred for such work, it would be required to satisfy the federal and local Rule 2016 requirements before receiving compensation. These preconditions apply even though U.S. Bank is a creditor. . . . But those requirements do not pertain to creditors whose contractual arrangement with debtors permit the recovery of attorneys' fees or expenses. . . . Rule 3002.1 provides a procedural vehicle by which the Debtors could object to the fees sought by U.S. Bank. 'On motion of the debtor . . . .' Fed. R. Bankr. P. 3002.1(e).").

***In re Salazar*, No. 14-34691, 2016 WL 6068819, at *1–*3 (Bankr. S.D. Tex. Oct. 14, 2016) (Isgur)** (Bankruptcy Rule 3002.1 notice filed on April 25, 2016, for fees and expenses incurred between January and May of 2015 is untimely and fails to comply with the 180-day requirement in Bankruptcy Rule 3002.1(c); consequence of failing to timely file notice is disallowance of fees and expenses under Bankruptcy Rule 3002.1(i). "The mandatory nature of the word 'shall' in 3002.1(c) suggests that the notice must be filed within the 180-day deadline. . . . The Advisory Committee Notes shed light on this purpose. . . . Nothing in subparagraph (i) purports to extend the generous 180-day deadline in subparagraph (c) . . . . The fees and expenses requested in [creditor's] untimely notice are disallowed.").

***In re Raygoza*, 556 B.R. 813, 819-24 (Bankr. S.D. Tex. Sept. 1, 2016) (Rodriguez)** (Legal fees were "incurred" for purposes of Bankruptcy Rule 3002.1 when creditor became liable, not when the fees were billed; objection to Bankruptcy Rule 3002.1 notice is sustained because notice was filed more than 180 days after legal services were performed. $825 charge for filing a proof of claim is reduced to one hour at $250. Bank filed notice of postpetition mortgage fees, expenses and charges on May 25, 2016, that included

legal services performed on November 6 and November 9, 2015. "In order to be timely, the creditor's notice for the fees, expenses or charges must be filed and served within 180 days from the day the creditor incurred the expense. . . . Rule 3002.1 does not expound on when exactly an expense is *incurred*. . . . [A]n expense is incurred when a legal obligation to pay the debt arises, which is the date the service is rendered. . . . Both the dictionary definition and the statutory context establish that an expense is 'incurred' [when] there is a legal obligation to pay the debt. The [notice of postpetition expenses] was filed outside the 180-day limit imposed by Rule 3002.1(c) for the legal fees incurred in November 2015. . . . There is considerable debate among bankruptcy courts as to whether services completed by attorneys drafting proofs of claim for their clients are considered legal acts warranting attorney's fees. . . . [S]everal bankruptcy courts regard the drafting and filing of a proof of claim as nothing more than a ministerial act, which does not require an attorney. . . . [T]he drafting and filing of a proof of claim is partially an 'administrative function' that does not constitute the practice of law, which in turn cannot be subject to attorney's fees. . . . [T]his Court will allow a portion of the December 2015 attorney's fees for work on the [proof of claim]. . . . Based on the lack of evidence presented, this Court finds that the nature and extent of . . . Counsel's services include one-hour of legal work in conducting the necessary legal services in preparing the [proof of claim].").

***In re Freyta*, No. 10-39595, 2016 WL 5390115 (Bankr. D. Colo. May 5, 2016) (Tallman)** (Debtor is not eligible for discharge and trustee's request for final decree is denied when mortgagee's response to Trustee's Notice of Final Cure Payment under Bankruptcy Rule 3002.1(f) stated that prepetition arrearage had not been fully paid and debtor failed to maintain postpetition payments consistent with § 1322(b)(5). Debtor was not eligible for a discharge and the trustee's request for a final decree was denied.).

***In re Marks*, 548 B.R. 703, 714 (Bankr. D.S.C. Apr. 21, 2016) (Waites)** (Bankruptcy Rule 3002.1 notice for $72,671 of postpetition attorney fees is reduced to $62,475 because some of the fees requested were untimely filed more than 180 days after fees were incurred. Court first determined that Nationstar had authority to enforce note and mortgage, including attorney fee provision that was triggered by debtor's unsuccessful state court lawsuit. Nationstar then filed 3002.1 notices for fees incurred in the state court litigation. "Nationstar failed to comply with Rule 3002.1 by filing notices that were untimely, vague, confusing, and lacked adequate documentation. Rule 3002.1(b) provides that the notice shall be served within 180 days after the date on which the fees, expenses, or charges are incurred. . . . Nationstar's Notice is untimely as to amounts incurred between May 2, 2012 and May 11, 2012 (the 180th day prior to the filing of the Notice). . . . [P]ursuant to Rule 3002.1(i), the Court will preclude Nationstar from recovering attorneys' fee based on requests that were untimely filed . . . and finds that a further reduction of the amount Nationstar is entitled to collect from Debtor is warranted[.]").

***In re Abila*, No. 10-18358, 2016 WL 5389266 (Bankr. D. Colo. Apr. 20, 2016) (Tallman)** (Debtor not entitled to discharge because Response to Trustee's 3002.1 Notice of Final Cure indicates that debtor failed to make all monthly mortgage payments directly to lienholder.).

***In re Tavares*, 547 B.R. 204, 215-16 (Bankr. S.D. Tex. Mar. 11, 2016) (Rodriguez)** (Confirmed plan that paid short-term mortgage "pro rata" did not provide for the mortgage under § 1322(b)(5) for purposes of Bankruptcy Rule 3002.1(f); trustee's notice of final cure was "stricken." Mortgagee protested trustee's 3002.1(f) notice of final cure payment. Confirmed plan provided for payment in full of mortgage with interest over 60 months on a "pro rata basis." Trustee's records and mortgagee's records disagreed because mortgagee had applied payments to interest and postpetition taxes rather than to principal and interest. "Rule 3002.1 . . . is entirely inapplicable to the instant case, because [mortgagee's] claim was provided for under § 1322(c)(2) and not 1322(b)(5), as required by Rule 3002.1(a). . . . [T]he underlying claim did not contemplate the existence of the debt beyond the date in which final payments were to be made under the plan. . . . Rule 3002.1 applies in cases where the security interest is the debtor's principal residence *and* for which payments are provided under § 1322(b)(5).").

***In re Herman*, No. 15-80027-G3-13, 2016 WL 520306, at *2-*3 (Bankr. S.D. Tex. Feb. 9, 2016) (Paul)** (Oversecured mortgagee, whose debt was current and being paid directly under confirmed plan, failed to prove reasonableness or necessity under § 506(b) for $425 postpetition charge for filing proof of claim. "Although Debtors are current on their payments to Creditor who is being paid outside of the confirmed plan, the fact that the bankruptcy proceeding is pending might still significantly affect Creditor's interest in the property. . . . [I]t is not unreasonable for Creditor to have filed a proof of claim under the facts of this case, regardless of whether the creditor is required to do so. . . . The court has concluded in other bankruptcy cases, after the submission of evidence, that a flat or fixed fee of $425 for the filing of a proof of claim is reasonable. In order for the court to determine that the fees are reasonable under section 506(b) of the Bankruptcy Code, the creditor must establish that fees were for services rendered that were necessary, that the fees were actually incurred, and that the amounts charged for the services rendered were reasonable. Creditor offered no testimony or evidence. . . . [N]o evidence was submitted or proffer made to describe the services rendered . . . . Creditor failed to sustain its burden of proof to show that the fees are reasonable under section 506(b) of the Bankruptcy Code. . . . [T]he burden of proof is on the oversecured creditor . . . . [T]he court must determine whether the creditor took

the kinds of actions that similarly situated creditors might reasonably conclude should be taken under the circumstances and that the fees and costs claimed are reasonable amounts to charge for the services rendered.").

***In re Davenport*, 544 B.R. 245, 254-56 (Bankr. D.D.C. Dec. 31, 2015) (Teel)** (Bankruptcy Rule 3002.1 does not apply when confirmed plan provided that debtor would pay claim secured by real estate directly to the creditor and the creditor filed a proof of claim that did not include prepetition arrears. When debtor completed payments under the plan, creditor asserted unpaid prepetition arrears which could not be challenged in the bankruptcy court for lack of subject matter jurisdiction. "[T]he arrears claim at issue was *not* provided for by the plan, and thus the property remains subject to the arrears claim. . . . It is true that Fed. R. Bankr.P. 3002.1 provides a procedure for the debtor to obtain a determination of whether the debtor has cured any arrears when a claim secured by a security interest in the debtor's principal residence is 'provided for under § 1322(b)(5) of the Code in the debtor's plan.' Here, however, the issue of determining whether the debtor has cured the arrears does not arise because the plan did *not* make provision for payment of any arrears owed on the $80,000 promissory note, and Rule 3002.1 is thus inapplicable." Bankruptcy court does not explain this holding given that the confirmed plan provided that the debtor would pay directly the mortgage claim "to the extent they are 11 U.S.C. § 1322(b)(5) claims" and the claim at issue was such a claim.).

***In re Fitch*, 540 B.R. 13, 14-15 (Bankr. D. Me. Nov. 3, 2015) (Fagone)** (Direct payment of mortgage "provides for" mortgage under § 1322(b)(5), triggering Bankruptcy Rule 3002.1. Bankruptcy Rule 3002.1 applies when there are no arrears and payments are made directly by the debtor. Motion to determine that mortgage is current is denied—notwithstanding absence of response or objection—because debtors did not follow Bankruptcy Rule 3002.1. Plan stated debtors would make monthly mortgage payments directly to BAC Home Loans. Debtors completed all payments under confirmed plan and received a discharge. Debtors then moved to determine status of mortgage as current. "Although no party objected to the Motion to Determine, the Court conducted a hearing on . . . a single legal question: whether Fed. R. Bankr. P. 3002.1 is applicable to BofA's claim in this case, where there was no pre-petition default to be cured and where the Debtors made payments on account of the secured claim directly to the holder of the claim. . . . [T]he answer is 'Yes.' . . . The Debtors' plan does not expressly provide for BofA's claim under section 1322(b)(5). That said, . . . section 1322(b)(5) is the only part of chapter 13 that would permit the Debtors to maintain payments on the long-term debt associated with BofA's secured claim. . . . [T]he rule requires notice of payment changes . . . and notice of certain fees, expenses, and charges incurred post-petition. . . . This is the type of information that any chapter 13 debtor would want, regardless of whether the mortgage loan was in default before or after the commencement of the case.").

***In re Thibeault*, No. 11-10072, 2015 WL 5924392, at *1-*3 (Bankr. D. Me. Oct. 8, 2015) (Fagone)** (Debtors' motion for an order declaring residential mortgage current and arrears cured is denied because motion was inconsistent with procedure in Bankruptcy Rule 3002.1. "On August 5, 2015, the Debtors filed their Motion to Determine that Mortgage Default is Cure [*sic*], Post-Petition Payments Have Been Made . . . . More than a month *after* the Motion to Determine was filed, the chapter 13 trustee filed his Notice of Final Cure Payment. . . . On September 25, 2015, CitiFinancial filed its statement . . . . CitiFinancial agreed that the Debtors had 'paid in full the amount required to cure the default . . . ' and that the Debtors were 'current with respect to all payments . . . .' . . . The process spelled out in Rule 3002.1 has not been followed in this case. The Motion to Determine was filed well *before* the trustee filed his notice pursuant to Rule 3002.1(f). . . . [A] motion seeking declaratory relief under Rule 3002.1(h) is supposed to await the service of the Rule 3002.1(f) notice *and* the service of a response by the holder of the claim under Rule 3002.1(g). There is a logical sequence . . . . That sequence was not followed here. The ability of the Court to grant declaratory relief under some other statute or rule does not excuse compliance with the specific procedures set forth in Rule 3002.1.").

***Kilbourne v. CitiMortgage, Inc. (In re Kilbourne)*, 555 B.R. 628 (Bankr. S.D. Ohio Mar. 23, 2015) (Preston)** (Bankruptcy court refuses to dismiss class action request in adversary proceeding alleging that CitiMortgage routinely violated discharge injunction by attempting to collect fees, costs and expenses that were not noticed during Chapter 13 cases under Bankruptcy Rule 3002.1 and in which orders were entered declaring the mortgage current at completion of payments.).

***In re Pittman*, No. 14-03404, 2015 WL 1262837, at *2-*3 (Bankr. D.S.C. Mar. 16, 2015) (Burris)** (Objection to 3002.1 notice: $225 "Attorney fees" and $425 "Bankruptcy/proof of claim fees" disallowed based on lack of response, appearance or proof by Nationstar. Debtor was current on mortgage, and there were no arrears. Plan was confirmed without objection. "[A] notice filed under Rule 3002.1 does not constitute *prima facie* evidence as to the validity or amount of the claimed charges. . . . In this matter, the Court cannot even determine from the documents provided that any attorney was involved in the preparation and filing of Nationstar's claim and 3002.1 Notice. Without any response, testimony, or other evidence presented by Nationstar to demonstrate that the requested fees are allowable pursuant to the underlying agreement or non-bankruptcy law, or that such fees were actually incurred and are necessary and/or reasonable, there is insufficient information for a finding that the requested fees for the services are permissible.").

***In re Hale*, No. 14-04337-HB, 2015 WL 1263255, at *3 (Bankr. D.S.C. Mar. 16, 2015) (Burris)** ($150 charge for "Review of Plan" and $150 for "Proof of Claim" disallowed when Bank of America did not respond to objection to 3002.1 notice. "[M]ortgage creditors' Rule 3002.1 notices must provide adequate descriptions for such contractual charges. . . . [S]imply including 'Review of Plan' or 'Proof of Claim' on the 3002.1 Notice . . . does not necessarily explain to the debtor, the trustee, or the Court why the services of an attorney were needed, whether the charges are reasonable on the particular facts of the case, who performed the work, the time spent on the task, the rate charged, etc. . . . Without any response, testimony, or other evidence presented by B of A to supplement the insufficient 3002.1 Notice and to demonstrate that the requested fees are allowable pursuant to the underlying loan agreement or non-bankruptcy law and were necessary and/or reasonable, there is insufficient information for a finding that the requested fees for the services are permissible.").

***In re Luzier*, 580 B.R. 725, 730–31 (Bankr. N.D. Ohio Oct. 3, 2014) (Woods)** (Nationstar's failure to respond to Notice of Final Cure in prior Chapter 13 case precludes Nationstar under Bankruptcy Rule 3002.1(i) from presenting evidence that it is owed amounts that were not paid during the prior case. Confirmed plan cured default through the trustee and required debtor to make ongoing payments directly to mortgagee. Trustee gave Notice of Final Cure and Nationstar did not respond. Debtor received discharge. Nationstar then threatened foreclosure claiming that debtor did not make all the required direct payments and claiming that some of the debts discharged in prior case were still owing. Debtor filed second case to stop foreclosure. "Federal Rule of Bankruptcy Procedure 3002.1(g) required Nationstar to respond to the Notice of Final Cure if it did not agree with the amounts set forth therein. . . . Nationstar has offered no explanation for its failure to file the statement required by Rule 3002.1(g); there is no basis for a finding that the failure was substantially justified. As a consequence, . . . Nationstar is precluded from presenting any information that could have been included in a statement in response to the Notice of Final Cure, in any form, as evidence in any contested matter or adversary proceeding in this case . . . . [The court] will set a further hearing to determine reasonable expenses and attorney's fees caused by Nationstar's failure to file the statement required by Rule 3002.1(g).").

***Winnecour v. First Commonwealth Bank (In re Susanek)*, No. 12-23545-GLT, 2014 WL 4960885, at *2 (Bankr. W.D. Pa. Sept. 30, 2014) (Taddonio)** (Oversecured creditor may recover attorney fees for preparation of notice of postpetition fees and expenses required by Bankruptcy Rule 3002.1 when fees otherwise satisfy § 506(b). "Notices under Rule 3002.1 are mandatory. If the creditor seeks to recover postpetition charges or alter the monthly payment or escrow charge, it must file a notice in compliance with the Bankruptcy Rules. The notices required under Rule 3002.1 are considered to be a

supplement to the creditor's proof of claim. . . . [T]he preparation and filing of a proof of claim is not a perfunctory act. . . . It logically follows that filing a supplement to a proof of claim (such as a notice of post-petition fees), is similarly vital to the protection of a creditor's claim and is not a ministerial act. Because Rule 3002.1 imposes substantial consequences for creditors that fail to comply, it is reasonable for a creditor to rely upon legal counsel to prepare a claim supplement.").

***In re Dibling*, 514 B.R. 254, 258 (Bankr. S.D. Ohio Aug. 4, 2014) (Caldwell)** (Mortgage creditor violated Order Deeming Mortgage Current when it failed to immediately update its records and rejected debtors' payments on ground loan was in default. Creditor's rejection of payments did not excuse debtors' obligation to tender each mortgage payment following completion of plan. "Debtors should have continued to submit all mortgage payments as they fell due, and upon rejection, deposit the funds in a separate account. In this manner, once the Creditor corrected its records in compliance with the Order Deeming the Mortgage Current, the Debtors would have been able to forward all the payments that were due back to [conclusion of plan]. To hold otherwise, would require this Court to fashion a new note and mortgage.").

***In re Heinzle*, 511 B.R. 69, 80 (Bankr. W.D. Tex. May 30, 2014) (Gargotta)** (Trustee's notice under Bankruptcy Rule 3002.1(f) that debtors cured any default did not estop trustee from objecting that debtors had not stayed current on their mortgage. "[Section] 1322(b)(5) requires that Debtors cure and maintain payments for long term debt. That is, Debtors may cure a pre-petition mortgage delinquency through the plan, but they must do so by also staying current on their mortgage. . . . *Foster* [*v. Heitkamp (In re Foster),* 670 F.2d 478, 486 (5th Cir. Mar. 1, 1982) (Garza, Randall),] dictates that regardless how a plan is written, post-petition mortgage payments are payments made pursuant to the plan and the failure to maintain such payments will result in dismissal, conversion, or denial of discharge.").

***Ogden v. PNC Bank, N.A. (In re Ogden)*, 532 B.R. 329, 331-34 (Bankr. D. Colo. Apr. 3, 2014) (Brown)** (Convoluted mortgage accounting by bank—including two sets of books—did not violate automatic stay, confirmation order or Bankruptcy Rule 3002.1 when bank promised it would "true up" the accounting and eliminate all accrued charges if debtor completed payments under the plan. In earlier action under RESPA, bank agreed to reduce mortgage balance and pay the debtor $5,000. During Chapter 13 case, debtor sought evidence that bank had actually carried out the settlement. Discovery revealed additional postpetition fees and corporate advances that did not appear on statements from the bank. "[The Bank's witness] attempted to eliminate the confusion by explaining that the Bank keeps essentially two sets of books . . . one for bankruptcy purposes and one that accounts for the

loan as if she had not filed for bankruptcy. . . . The reason the Bank uses two forms of accounting is because, unless the Debtor completes her plan, she will remain subject to all of the terms of her promissory note and deed of trust, including the accrual of late fees and the like. . . . The Debtor asserts that the Bank's accounting practices violate the automatic stay, her confirmed plan, and [Bankruptcy Rule 3002.1] by applying her postpetition payments to the oldest contractually due payment, contrary to her plan, as well as by tacking on numerous postpetition fees and charges. She asserts that this method of accounting results in her being charged more interest and receiving less principal reduction than she would otherwise realize. . . . The problem is that the Bankruptcy Code and [Bankruptcy Rule 3002.1] provide only limited oversight by the bankruptcy court during the term of the plan. . . . In this case, the Bank has filed only three notices in compliance with [Bankruptcy Rule 3002.1] . . . . It has not filed any notices to reflect the additional $5,500 in postpetition charges and fees set forth in the August 15, 2013 reinstatement quote. . . . [Bankruptcy Rule 3002.1] prescribes a 180-day deadline for filing a notice that begins when each postpetition charge or fee is incurred. . . . [I]t would be logical to conclude that the fees and charges will no longer be collectable against the Debtor or her home if the Bank fails to comply with this provision. Subsection (i), however, sets forth the consequences for failure to provide notices. . . . Whether 'other appropriate relief' includes the ability to preclude the mortgage holder from later collecting the fees and charges is an open question. . . . [I]t makes no mention of whether the notice requirements of subsections (b) and (c) have a continuing effect in the event that a debtor later obtains a hardship discharge, modifies her plan, or converts to a chapter 7 proceeding. . . . The Court must accept [the bank's] testimony on its face that, if the Debtor completes her plan payments, the Bank will 'true up' her loan at the end of the plan. If it fails to do so, this Court will stand ready, willing, and able to enforce § 524(i)'s sanctions. The Debtor may preempt subsequent litigation by invoking [Bankruptcy Rule 3002.1's] 'notice of final cure payment' provisions under subsection (f) to obtain a court order declaring the loan to be current. The Court acknowledges that this may be an imperfect solution. If the loan is deemed 'current,' but the Debtor has not received as much principal reduction as she should have realized, then this may be of little comfort to the Debtor. A better solution may lie outside of the bankruptcy world. . . . RESPA contains procedures for requesting information from a loan servicer, sets deadlines for the servicer's response, and imposes sanctions against a servicer who either fails to provide a timely response or to correct the borrower's account.").

***In re Owens*, No. 12-40716, 2014 WL 184781, at *3, *4 (Bankr. W.D.N.C. Jan. 15, 2014) (Whitley)** (Miscellaneous fees and expenses disallowed when lender failed to comply with Bankruptcy Rule 3002.1(c). Rule 3002.1(c) "does not turn on the subjective intent of the creditor"—lender's assertion that it may not seek to collect fees if plan is successful is irrelevant. "Rule 3002.1(c) makes no mention of the timing of collections, only that a particular form of notice is required to be filed and served in a particular way when a creditor wants to assert a recoverable fee. It does not turn on creditor intent.").

***In re Roife*, No. 10-34070, 2013 WL 6185025, at *2-*3 (Bankr. S.D. Tex. Nov. 26, 2013) (Isgur)** (Mortgage holder paid in accordance with contract pursuant to confirmed plan must comply with Bankruptcy Rule 3002.1; $125 legal fee for preparation of Bankruptcy Rule 3002.1 notice is not allowed. "[I]f a plan makes a provision for an unmodified secured claim, the plan provides for the claim. . . . [N]o fee should be charged to a debtor for filing the Fee Notice [or notice of payment change] because a creditor has a duty under non-bankruptcy law to inform a debtor of amounts due under a mortgage. . . . [A] Fee Notice is not a pleading, but a supplement to the creditor's proof of claim. . . . It can easily be derived from the creditor's records with no significant burden on the creditor. . . . It is a business function, akin to issuing a receipt for payments received under a chapter 13 plan. . . . Its preparation is not the practice of law and requires no legal analysis. . . . [M]ere fact that sanctions may be imposed for incorrectly performing this task does not justify the award of fees. Non-bankruptcy law provides penalties for failing to comply with the notice requirements of RESPA, but fees may not be charged for providing the statutorily required payment notices under RESPA.").

***Bodrick v. Chase Home Fin., Inc. (In re Bodrick)*, 498 B.R. 793 (Bankr. N.D. Ohio Oct. 8, 2013) (Woods)** (Debtor's failure to file motion under Bankruptcy Rule 3002.1(h) within 21 days after lender filed statement disputing trustee's notice of final cure payment does not preclude or waive debtor's postdischarge adversary proceeding challenging lender's postpetition arrearage claim. No final determination of lender's claim occurred for purposes of res judicata analysis. The lender's response is not entitled to any presumption of validity, and Bankruptcy Rule 3002.1(h) does not mandate debtor action to preserve a claim dispute.).

***In re Nieves*, 499 B.R. 222, 225, 224-25 (Bankr. D.P.R. Sept. 25, 2013) (Godoy)** (Creditor disagreeing with trustee's notice of final cure payment issued under Bankruptcy Rule 3002.1(f) must respond using Form 1052 and must state with "'**particularity** the amounts that remain unpaid.'" "Like Rule 3002.1(g), Rule 3002.1(c) requires the holder of the claim to file and serve '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.' . . . And Rule 3002.1(d) requires that the Rule 3002.1(c) notice be prepared using Form 10S2 [Supplement 2 to Official Proof of Claim Form 10]. Form 10S2 requires the claim holder to '[i]temize the fees, expenses, and charges incurred on the debtor's mortgage account after the petition was filed' by providing a description, dates incurred, and amount, item by item. And the form must be signed by the holder under penalty of perjury. . . . So, '[t]he creditor must respond to that notice [of final cure payment] by acknowledging that it is correct, or if it is not, stating **with particularity** the amounts that remain unpaid.' . . . [In addition,] the Rule 3002.1(g) response must be signed by the holder under penalty of perjury.").

***In re Rodriguez*, No. 08-80025-G3-13, 2013 WL 3430872, at *3-*4 (Bankr. S.D. Tex. July 8, 2013) (Paul)** (Mortgage declared cured and current under Bankruptcy Rule 3002.1(h) when Nationstar did not respond to trustee's Notice with respect to postpetition charges, Nationstar did not file all notices required by Bankruptcy Rule 3002.1(c) and Nationstar presented no evidence to support any notice that it did file. Nationstar filed a proof of claim for a prepetition arrearage of $17,733.21. Confirmed plan provided for full payment of that arrearage. On August 3, 2011, trustee filed a "Notice of Bar Date for Asserting Claim for Post-petition Charges Accruing on Residential Mortgage Claims." The notice required Nationstar to supplement its proof of claim if it asserted charges, fees or additional arrearage during the case. Nationstar did not file a supplemental proof of claim. In June and July of 2012, Nationstar filed notices of postpetition mortgage fees, expenses and charges pursuant to Bankruptcy Rule 3002.1(c) totaling $908.28. The debtor did not object to those notices. On January 3, 2013, the trustee filed a Notice of Final Cure Payment together with a motion to deem the mortgage current. Nationstar filed a response asserting postpetition arrearage of $25,798.02. Nationstar claimed that it had paid taxes and insurance for several years, but Nationstar presented no evidence as to any disbursements it may have made. " [T]he Trustee filed a notice on August 3, 2011, which was sufficient to alert Nationstar as to the need to make a claim for those charges. The court concludes that Nationstar is barred from collecting those charges arising prior to August 3, 2011. Bankruptcy Rule 3002.1 took effect on December 1, 2011. . . . [T]he claimant bears the burden of proof under Bankruptcy Rule 3002.1(h). . . . [A]fter December 1, 2011, Nationstar filed two notices of postpetition fees, expenses, and charges, totaling $908.28. Debtor did not object to those notices. The notices were timely filed. However, those notices do not enjoy a presumption of validity. Nationstar presented no evidence of any disbursements, either before or after December 1, 2011. . . . [U]nder Bankruptcy Rule 3002.1(h), on the basis of the evidence before the court, . . . Debtor has cured the default, and paid all required postpetition amounts.").

***Landry v. Bank of Am., N.A. (In re Landry)*, 493 B.R. 541 (Bankr. E.D. Cal. May 15, 2013) (Sargis)** (Mailing notice of change in escrow amount, as required by Bankruptcy Rule 3002.1, could not violate automatic stay, even though notice demanded payment, but complaint sufficiently alleged that defendants were debt collectors, with potential liability under California's Rosenthal Fair Debt Collection Practices Act.).

***In re Ortega*, No. 10-40698-H3-13, 2013 WL 2099726, at *2 (Bankr. S.D. Tex. May 14, 2013) (Paul)** (Mortgage holder not entitled to $50 fee for preparing Bankruptcy Rule 3002.1 notice of mortgage payment change. "[T]he claimant did not sustain its burden of proof as to the reasonableness of a $50 fee. The court concludes that the $50 fee

for preparing the Notice of Mortgage Payment Change is not 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.").

***In re Tollios*, 491 B.R. 886, 888-93 (Bankr. N.D. Ill. May 13, 2013) (Doyle)** (Chase violated Bankruptcy Rule 3002.1 by sending debtor notice of increase in escrow payment but failing to file notice with court or to serve counsel or trustee; Bankruptcy Rule 3002.1 applies when confirmed plan pays mortgage directly by debtor notwithstanding that there was no prepetition arrearage. Court will consider awarding attorney fees as sanction but declines to bar evidence of escrow adjustment because debtor was not harmed by Chase's payment of postconfirmation property taxes. "Rule 3002.1 was adopted in December 2011 to address a significant problem caused when mortgage companies applied fees and costs to a debtor's mortgage while the debtor was in bankruptcy without giving notice to the debtor and then, based on these post-petition defaults, sought to foreclose upon the debtor's property after the debtor completed the plan. Rule 3002.1 deals with this problem by requiring notice of payment changes and providing an opportunity for the debtor to contest them during the chapter 13 case. . . . [T]he rule applies in chapter 13 cases to claims secured by the debtor's principal residence and provided for under § 1322(b)(5) . . . . [T]he debtors' plan provides that they will make current monthly payments to Chase's predecessor directly to the creditor instead of through a payment from the trustee. This provision of the plan brings Chase's claim within the scope of Rule 3002.1. . . . [Section] 1325(b)(5) makes it clear that debtors may maintain monthly payments regardless of whether they owe pre-petition arrears. . . . [A]ny plan that pays current monthly payments on a mortgage loan that extends beyond the plan term provides for the mortgage claim under § 1322(b)(5) for purposes of Rule 3002.1(a), regardless of whether there are pre-petition arrears. . . . Construing Rule 3002.1 to apply to mortgage claims only when the debtor owes prepetition arrears makes no sense in light of the requirements of the rule. It deals solely with *post[-]petition* changes to the monthly payment and *post-petition* charges the lender imposes under the loan agreement. . . . [T]here is a compelling reason for applying the rule both to debtors who owe pre-petition arrears and those who do not. Both types of debtors have an equal need to know of post-petition changes in the monthly payment and charges imposed by lenders so they can be fully current on their mortgages when they complete the plan. . . . Given that the debtors suffered no harm from Chase's noncompliance with the rule, the court will not bar Chase from presenting evidence of the notice served on the debtors at any future hearing on this issue. . . .[T]he court will consider whether an award of attorneys' fees is appropriate.").

***In re Boyd*, No. 12-80400-G3-13, 2013 WL 1844076, at *2 (Bankr. S.D. Tex. May 1, 2013) (Paul)** (Fifty dollar fee to file Bankruptcy Rule 3002.1 notice is disallowed. "[N]o fee should be charged to a debtor for filing the form providing Notice as a creditor has a

duty under nonbankruptcy law to inform a debtor of amounts that come due under a mortgage. . . . The court disallows the $50 charge for preparing the Notice.").

***In re Kreidler*, 494 B.R. 201 (Bankr. M.D. Pa. Mar. 29, 2013) (Thomas)** (Mortgage creditor should not be sanctioned for filing tardy supplement to claim pursuant to Rule 3002.1(g). Tardiness did not prejudice debtor, whose motion and response to supplemental claim triggered necessary hearing.).

***In re Taylor*, No. 12-11463-NPO, 2013 WL 1276507 (Bankr. N.D. Miss. Mar. 27, 2013) (Olack)** (On debtor's objection to payment change notice, creditor failed to prove prepetition arrearage for unpaid principal and interest, late charges and taxes; arrearage for insurance was allowed.).

***In re Pillow*, No. 1-11-BK-11688, 2013 WL 10252924, at *2-*5 (Bankr. W.D. Mich. Mar. 18, 2013) (Dales)** (Applying Bankruptcy Rule 9006, 21-day mortgage payment change reporting requirement in Bankruptcy Rule 3002.1 is modified to once every six months for mortgagee with HELOC. "Under the loan documents, the interest rate on the HELOC, and therefore the Debtor's payment obligation, changes monthly . . . . [T]he Bank concedes it is obligated to give notice of this change to the Debtor, her lawyer and the chapter 13 trustee. . . . Giving monthly notice of these small changes does not materially advance the purpose of Rule 3002.1, which . . . is to permit debtors to 'cure and maintain' under § 1322(b)(5) during their bankruptcies, and avoid unhappy surprises when their plan terms come to an end. . . . [T]he borrower is ultimately responsible for the lender's collection costs. . . . Over a five year plan period, a debtor could be required to pay substantial additional collection costs to compensate her HELOC lender for giving notice of payment changes in the range of $1.00-$3.00 per month, all in the name of transparency. . . . Rule 9006(b) grants the court authority to enlarge deadlines prescribed in the rules or by court order, subject to enumerated exceptions or conditions . . . . If the drafters of the rules intended to make the twenty-one day time period impregnable, they could have included Rule 3002.1 among the rules listed in Rule 9006(b)(2) or (b)(3). They did not.").

***In re Holman*, No. 12-50023, 2013 WL 1100705, at *3 (Bankr. E.D. Ky. Mar. 15, 2013) (unpublished) (Wise)** (Bankruptcy Rule 3002.1 requirements apply notwithstanding that mortgage creditor was granted stay relief. "It is easy to contemplate the need for the information required by Rule 3002.1 after stay relief is granted. Stay relief does

not prevent a debtor from attempting to keep his home. Following stay relief, a debtor may seek to defend a foreclosure action, enter into a loan modification, propose further plan amendments, or sell the residence by private sale. Required Rule 3002.1 disclosures, such as changes in rates, late fees and penalties, will assist a debtor in any of these post-stay relief options and thus serve the Code's policy of a fresh start. Requiring continued disclosure may further benefit the debtor and chapter 13 trustee in their review of a creditor's post-foreclosure deficiency claim.").

***In re Cloud*, No. 09-60299, 2013 WL 441543 (Bankr. S.D. Ga. Jan. 31, 2013) (Dalis)** (Plan provision for direct payments by debtor "outside the plan" did not relieve mortgagee of obligation to comply with Bankruptcy Rule 3002.1. Plan provided for debtor to pay mortgage claim directly to creditor. Phrase "outside the plan" lacks legal significance. Plan satisfied § 1322(b)(5) by providing for curing arrearage and maintaining payments. Lender was required to comply with Bankruptcy Rule 3002.1.).

***In re Soto*, No. 12-12373, 2013 WL 323319 (Bankr. N.D. Cal. Jan. 26, 2013) (Jaroslovsky)** (Local form addendum required of mortgagees on debtors' residences was inconsistent with Rule 3002.1, which now controlled.).

***In re Lopez*, No. 10-30844-H3-13, 2012 WL 6760175 (Bankr. S.D. Tex. Dec. 31, 2012) (Paul)** (Mortgage lender's proof of claim predated required use of Official Form for postpetition fees, expenses and charges, but claimant's failure to appear in support of its notice justified denial of requested fees. Debtor's attorney was not entitled to fees for objecting to lender's notice.).

***In re Creggett*, No. 10-33473-HE-13, 2012 WL 6737813 (Bankr. S.D. Tex. Dec. 28, 2012) (Paul)** (Failure to provide documentation of escrow amount in notice of payment change was not sanctionable when mortgage servicer's proof of claim predated required use of Official Form B10S1.).

***In re Baca*, No. 13-10-10765 JA, 2012 WL 6647733, at *4 (Bankr. D.N.M. Dec. 20, 2012) (Jacobvitz)** (Lender is barred from seeking postpetition fees or charges not included in the itemization attached to its Rule 3002.1(g) response to notice of final cure.

"Equitable estoppel principals [*sic*] bar Beneficial from seeking fees or other charges in excess of the unpaid regular mortgage installment payments included in the Response that may have accrued up through the date of the filing of the Response." Whether debtors were entitled to discharge despite failure to make all postpetition mortgage payments was not ripe for determination.).

***In re Weigel*, 485 B.R. 327 (Bankr. E.D. Va. Dec. 6, 2012) (Mayer)** (Lender not required to comply with Bankruptcy Rule 3002.1 when there were no prepetition arrearages to be cured and § 1322(b)(5) was not applicable.).

***In re Thongta*, 480 B.R. 317 (Bankr. E.D. Wis. Oct. 18, 2012) (Kelley)** (After stay relief and withdrawal of claim, mortgage creditor was not required to comply with Rule 3002.1. Since there was no pending claim secured by debtor's residence, trustee was not required to file notice of final cure payment.).

***Hollingsworth v. Option One Mortg. Corp. (In re Hollingsworth)*, No. 08-00244-BGC, 2012 WL 4465593 (Bankr. N.D. Ala. Sept. 25, 2012) (Cohen)** (Rules 3002.1 and 3001(c) provide what secured creditor must include in proof of claim and disclosures required for postpetition fees and costs, making injunctive relief against lender unnecessary. Debtors failed to show that lender attempted to collect postpetition fees and costs during case.).

***In re Wallett*, No. 11-10801, 2012 WL 4062657 (Bankr. D. Vt. Sept. 14, 2012) (Brown)** (Mortgage creditor was not required to file Rule 3002.1 notice with respect to nonresidential mortgage and was not entitled to attorney fees for filing unnecessary notice.).

***In re Tuneberg*, No. 11-80629-G3-13, 2012 WL 3744719 (Bankr. S.D. Tex. Aug. 28, 2012) (Paul)** (Objection to notice of postpetition fees, expenses and charges denied without prejudice when debtors did not serve mortgagee's counsel.).

***In re Adkins*, 477 B.R. 71 (Bankr. N.D. Ohio Aug. 10, 2012) (Woods)** (Difficulty of compliance did not excuse second mortgage creditor's compliance with Rule 3002.1.).

***In re Merino*, No. 9:09-bk-22282-FMD, 2012 WL 2891112, at *1 (Bankr. M.D. Fla. July 16, 2012) (Delano)** (Bankruptcy Rule 3002.1 does not apply to direct payments by debtor to mortgage holder; filing of notice contemplated by Bankruptcy Rule 3002.1 did not require response when direct payment rendered the rule inapplicable. "[T]he legislative history of 3002.1 reveals that the rule was adopted to 'aid in the implementation of § 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.' An inference may be drawn that Rule 3002.1 does not apply to claims being paid outside the plan.").

***Pompa v. Wells Fargo Home Mortg., Inc. (In re Pompa)*, No. 11-3651, 2012 WL 2571156, at *6 (Bankr. S.D. Tex. June 29, 2012) (Isgur)** (New Bankruptcy Rule 3002.1 does not supplant authority to sanction mortgage lender for failure to provide notice of postpetition fees. "[T]he text of the new provision does not exclude sanctions under § 105. It is equally possible that Rule 3002.1 was amended to clarify that relief already existed. In any event, under the confirmed plan in this case, Wells Fargo had the duty to seek its fees. There cannot be any reading of Rule 3002.1 that it would override the terms of a previously confirmed plan. Nor could a rule upset the binding effect of a confirmed chapter 13 plan." Debtor's motion alleging inappropriate charging of fees and expenses during plan administration survived motion to dismiss.).

***In re Garduno*, No. 11-45243-EPK, 2012 WL 2402789, at *1 (Bankr. S.D. Fla. June 26, 2012) (Kimball)** (Bankruptcy Rule 3002.1 does not apply when bank's claim is not provided for under § 1322(b)(5); bank was not required to file Notice of change of payment amount, and debtor was not required to file objection. Plan listed bank as a secured creditor but stated that bank was to receive "$0.00." Bank filed Notice of payment change, and debtor filed objection. "The Bank's claim is not 'provided for under § 1322(b)(5) of the Code' within the meaning of Bankruptcy Rule 3002.1 . . . . [T]he Bank gained nothing by filing the Notice. . . . [B]ecause the above-cited rules do not apply to the Bank's claim, the filing of the Notice did not trigger a need for the Debtors to respond.").

***In re Fischer*, No. 11-12668-B-13, 2012 WL 8453339 (Bankr. E.D. Cal. June 26, 2012) (unpublished) (Lee)** (Debtor's objection to mortgagee's notice of change in payment for escrow is sustained when escrow for taxes and insurance was not required by mortgage agreement and debtor had been paying taxes and insurance directly for years.).

***In re Adams*, No. 12-00553-8-RDD, 2012 WL 1570054 (Bankr. E.D.N.C. May 3, 2012) (Doub)** ($50 charge not allowed for filing notice of postpetition mortgage expense required by Bankruptcy Rule 3002.1. Lender failed to show that attorney was required.).

***In re Sheppard*, No. 10-33959-KRH, 2012 WL 1344112, at *4 (Bankr. E.D. Va. Apr. 18, 2012) (Huennekens)** (After debtors and mortgage creditor entered into agreed plan modification to provide for payment of postpetition fees and expenses, lender was not required to file, and should not have filed, notice required by Rule 3002.1(c). Supplement 2 to Official Form 10 provides that creditor must disclose amounts not previously itemized in notice filed in case or ruled on by court. Consent between debtors and bank, resulting in amended plan, was a determination by court of postpetition fees and charges. Further notice or disclosure would be duplicative, "once again creat[ing] uncertainty as to the total sums for which debtors will be liable upon emerging from bankruptcy." Supplement was not intended to be pleading and should be filed in claims register, not on court docket: "It is simply a statement that a creditor files to inform the debtor that postpetition expenses have been incurred. It is akin to 'providing an annual escrow statement.'").

***In re Kraska*, No. 11-63013, 2012 WL 1267993, at *2 (Bankr. N.D. Ohio Apr. 13, 2012) (Kendig)** (New Bankruptcy Rule 3002.1 applies even when plan surrenders home. Although bulk of Rule was intended to address arrearage cure, after collateral liquidation, bank would be filing unsecured deficiency claim, and compliance with Rule would assist in "obtaining accurate information for the calculation of the underlying claim.").

***In re Reynolds*, 470 B.R. 138 (Bankr. D. Colo. Apr. 9, 2012) (Tallman)** (Amended Rule 3001(c)(2)(D) puts in question whether *B-Line, LLC v. Kirkland (In re Kirkland),* 379 B.R. 341 (B.A.P. 10th Cir. Dec. 21, 2007) (Bohanon, Michael, Brown), continues to control claim disallowance for lack of documentation; remedies in Rule for lack of documentation do not include disallowance. Advisory Committee Note stated that failure to provide required

information did not constitute ground for disallowance of claim, but instead triggered evidentiary sanction of precluding introduction of documents at subsequent hearing on claim objection under § 502(b).).

***In re Carr*, 468 B.R. 806, 807-09 (Bankr. E.D. Va. Mar. 19, 2012) (Mayer)**

(Creditor not entitled to additional attorney fee of $150 for preparation of response to Chapter 13 trustee's Notice of Final Cure Payment. "[T]he chapter 13 trustee filed his Notice of Final Cure Payment. The creditor's response to the chapter 13 trustee's notice showed that the debtor had cured the default on the creditor's mortgage and was current with respect to all post-petition mortgage payments. In fact, the creditor filed two responses. One was on the prescribed form, Form B 10 (Supplement 2), 'Notice of Postpetition Mortgage Fees, Expenses and Charges,' and filed in the claims register as a supplement to the proof of claim. The second was filed as a pleading in the court's docket and titled 'Response to Notice of Final Cure Payment'. . . . The . . . process starts with the chapter 13 trustee filing a Notice of Final Cure Payments. Rule 3002.1(f). The creditor must respond to that notice by acknowledging that it is correct, or if it is not correct, stating with particularity the amounts that remain unpaid. Rule 3002.1(g). If the debtor or the trustee contests the creditor's claim for unpaid amounts, the debtor or the trustee must file a motion to determine whether the debtor has cured the default and paid all required payments and fees. Rule 3002.1(h). . . . The purpose of Rule 3002.1 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. This was done by requiring the trustee to file an initial statement and the creditor to file a response. This response is not a pleading. It is a supplement to the creditor's proof of claim and is filed in the claims registry not on the court's docket. It is simply a statement by the creditor as to the status of the loan at the conclusion of the chapter 13 plan. This can be derived simply and quickly from the creditor's records and poses no significant burden on the creditor. This is a business function that can be done by a claims administrator in the creditor's own office. It is akin to issuing a receipt for payments received under the chapter 13 plan . . . . Its preparation is not the practice of law. . . . An attorney need not sign it. No additional pleading is required and none should be filed . . . . No additional fee is permitted to satisfy the creditor's response requirement under Rule 3002.1(g). . . . The only thing necessary is for the creditor to respond to the trustee's Notice of Final Cure, that is, complete Official Form 10 (Supplement 2), . . . and file it as a supplement to its proof of claim. . . . No fee will be permitted for preparing this statement whether the creditor is in agreement or disagreement with the trustee's notice; whether all post-petition payments have been made or there is a post-petition default; or whether there are unpaid post-petition fees.").