

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.

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

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.

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 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:

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

Part 3: Arrearage as of Date of the Petition

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

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

Part 4: Monthly Mortgage Payment

Principal & interest: _____

Monthly escrow: _____

Private mortgage insurance: _____

Total monthly payment: _____

A large empty rectangular box with a black border, intended for a signature or stamp. A red arrow points from the text 'The monthly escrow should not include any shortage or deficiency from Part 3' to the top-left corner of this box.

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

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

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.

Date of filing 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

Date of filing

Escrow Shortage

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

Mortgage Payment Application

11 U.S.C. 1322(b)(5) - Splits the Debtor's mortgage obligation into 2 separate parts.

1. Pre petition arrearage- which must be cured during the term of the bankruptcy.
2. Post petition ongoing payments- Debtor must maintain the ongoing monthly payments pursuant to the terms of the mortgage and note- paying as and when due.
3. 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

Boday v. Franklin, 397 B.R. 846 (Bankr. ND Ohio 2008)

Mortgage Payment Application

Pre petition arrearage payments are to be applied and credited to those amounts due and owing BEFORE the bankruptcy.

Post petition payments (monthly mortgage payments) are to be applied and credited to those amounts due and owing AFTER the bankruptcy.

Applying all payments applied contractually is CONTRARY to the terms of all confirmed plan

Bankruptcy and RESPA

- 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

Post-Petition Escrow Accounting

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

“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

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

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

First escrow analysis after the proof of claim is filed- generally 12 months after filing

1. Starting balance is the RESPA required balance calculated on the date of filing. In most cases that is the escrow shortage amount.
2. Each post petition escrow payment made is credited including those payments expected but not yet due
3. Each actual amount for taxes, insurance, PMI paid during the lookback period is debited including those payments expected to be paid but not yet due
4. The escrow balance is the actual post petition escrow balance to be used to start the forward analysis to project the RLP and escrow component.

PROPOSED NEW ESCROW "LOOK BACK" ESCROW CALCULATION

DEBTOR NAME DATE OF FILING	DEBTOR 123 1/25/2017	MORTGAGE SERVICER	ABC SERVICER	LOAN NO:	12-12345	DATE OF ANALYSIS	ANALYSIS 12.17 FOR 2.2018	
TRANSACTION DATE	POST PETITION PAYMENT DUE	POST PETITION PAYMENTS MADE	POST PETITION ESCROW RECEIVED	PRE PETITION ESCROW RECEIVED	ACTUAL POST PETITION ESCROW PAID	DESCRIPTION	POST PETITION ESCROW BALANCE	CONTRACTUAL ESCROW BALANCE
2/1/2017	\$ 750.00						\$ 600.00	\$ (3,000.00)
2/14/2017		\$ 750.00	\$ 150.00				\$ 750.00	\$ (2,850.00)
3/1/2017	\$ 750.00						\$ 750.00	\$ (2,850.00)
3/17/2017		\$ 750.00	\$ 150.00		\$ 450.00	TAXES	\$ 450.00	\$ (3,150.00)
4/1/2017	\$ 750.00						\$ 450.00	\$ (3,150.00)
4/10/2017		\$ 750.00	\$ 150.00				\$ 600.00	\$ (3,000.00)
5/1/2017	\$ 750.00						\$ 600.00	\$ (3,000.00)
6/1/2017	\$ 750.00						\$ 600.00	\$ (3,000.00)
7/1/2017	\$ 750.00						\$ 600.00	\$ (3,000.00)
7/10/2017		\$ 2,250.00	\$ 450.00	\$ 140.00			\$ 1,050.00	\$ (2,410.00)
8/1/2017	\$ 750.00						\$ 1,050.00	\$ (2,410.00)
8/15/2017		\$ 750.00	\$ 150.00	\$ 160.00			\$ 1,200.00	\$ (2,100.00)
8/17/2017					\$ 975.00	INSURANCE	\$ 225.00	\$ (3,075.00)
9/1/2017	\$ 750.00						\$ 225.00	\$ (3,075.00)
9/10/2017		\$ 750.00	\$ 150.00	\$ 300.00			\$ 375.00	\$ (2,625.00)
10/1/2017	\$ 750.00				\$ 500.00	TAXES	\$ (125.00)	\$ (3,125.00)
10/10/2017		\$ 750.00	\$ 150.00	\$ 150.00			\$ 25.00	\$ (2,825.00)
11/1/2017	\$ 750.00						\$ 25.00	\$ (2,825.00)
11/15/2017		\$ 750.00	\$ 150.00	\$ 300.00			\$ 175.00	\$ (2,375.00)
12/1/2017	\$ 750.00						\$ 175.00	\$ (2,375.00)
12/15/2017		\$ 750.00	\$ 150.00	\$ 450.00			\$ 325.00	\$ (1,775.00)
1/1/2018	\$ 750.00						\$ 325.00	\$ (1,775.00)
1/15/2018		\$ 750.00	\$ 150.00				\$ 475.00	\$ (1,625.00)

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Debtor Name	DEBTOR TEST			Calculation of ongoing monthly payment					
Case Number	12-12345			Principal and Interest		\$477.89			
Date of Analysis	12.27.2017			Ongoing Escrow		\$160.42			
Month Effective	February			PMI		\$0.00			
				Escrow Shortage Adj.		\$27.26			
				Total Monthly Payment		\$665.56			
Escrow Shortage/Surplus Calculation									
	Beginning balance of escrow account					\$475.00			
	Homeowner's insurance			12	months @	\$81.25	per month		
	Property Taxes			12	months @	\$79.17	per month		
	Calculated Escrow Shortage			\$327.08		Calculated Escrow Surplus			
						\$0.00			
	Payment			Select Cushion	Monthly				
				months (0,1,2)	Payment	Cushion	Month Due		
	Annual Hazard Ins:	\$975.00	2		\$81.25	\$162.50	August		
	1st Half County Taxes:	\$450.00	2		\$37.50	\$75.00	March		
	2nd Half County Taxes:	\$500.00	2		\$41.67	\$83.33	October		
	Total:	\$1,925.00			\$160.42	\$320.83			
	PMI		monthly						
AGGREGATE ANALYSIS									
	STEP #1 INITIAL TRIAL			STEP #2 ADJUSTED TRIAL BALANCE			STEP #3 TRIAL BAL WITH CUSHION		
MONTH	PAY IN	PAY OUT	BALANCE	PAY IN	PAY OUT	BALANCE	PAY IN	PAY OUT	BALANCE
	0		\$475.00	0		\$481.25	0		\$802.08
February	\$160.42	\$0.00	\$635.42	\$160.42	\$0.00	\$641.67	\$160.42	\$0.00	\$962.50
March	\$160.42	\$450.00	\$345.83	\$160.42	\$450.00	\$352.08	\$160.42	\$450.00	\$672.92
April	\$160.42	\$0.00	\$506.25	\$160.42	\$0.00	\$512.50	\$160.42	\$0.00	\$833.33
May	\$160.42	\$0.00	\$666.67	\$160.42	\$0.00	\$672.92	\$160.42	\$0.00	\$993.75
June	\$160.42	\$0.00	\$827.08	\$160.42	\$0.00	\$833.33	\$160.42	\$0.00	\$1,154.17
July	\$160.42	\$0.00	\$987.50	\$160.42	\$0.00	\$993.75	\$160.42	\$0.00	\$1,314.58
August	\$160.42	\$975.00	\$172.92	\$160.42	\$975.00	\$179.17	\$160.42	\$975.00	\$500.00
September	\$160.42	\$0.00	\$333.33	\$160.42	\$0.00	\$339.58	\$160.42	\$0.00	\$660.42
October	\$160.42	\$500.00	(\$6.25)	\$160.42	\$500.00	\$0.00	\$160.42	\$500.00	\$320.83
November	\$160.42	\$0.00	\$154.17	\$160.42	\$0.00	\$160.42	\$160.42	\$0.00	\$481.25
December	\$160.42	\$0.00	\$314.58	\$160.42	\$0.00	\$320.83	\$160.42	\$0.00	\$641.67
January	\$160.42	\$0.00	\$475.00	\$160.42	\$0.00	\$481.25	\$160.42	\$0.00	\$802.08

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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)

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

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

End of Bankruptcy- FRBP 3002.1(f)

Every residential mortgage in a Chapter 13 should be taken thru the FRBP 3002.1 process prior to discharge.

Within 30 days of the final payment, a Notice of Final Cure should be served on the servicer and filed with the Court.

End of Bankruptcy- FRBP 3002.1(f)

This Notice tells the servicer that:

1. The Debtor has paid the pre petition arrearage in full
2. The Debtor should be current on their post petition payments and the mortgage should be contractually current in their system
3. Any fees or costs that were NOT timely applied for under FRBP 3002.1(c) need to be waived on the system of record
4. Any fees or costs applied for under FRBP 3002.1(c) should have been paid

End of Bankruptcy- FRBP 3002.1(g)

A servicer is REQUIRED to file a Response to the Notice of Final Cure within 21 days.

If the mortgage is not current, the arrearage has not been paid in full or there are fees or costs outstanding, the servicer must itemize those amounts due in the Response.

End of Bankruptcy- FRBP 3002.1(h)

If the Debtor or Trustee does not agree with the amounts asserted by the service in the Response, they then have 21 days to ask the Court to set the matter for hearing.

If no Motion is filed, then the Debtor or Trustee are deemed to agree with the information on the Response.

End of Bankruptcy - Servicers

Prior to releasing the mortgage from the bankruptcy hold or removing the bankruptcy code-

Ensure that ALL recoverable fees, costs are removed that were not applied for from the system of record

Ensure that the mortgage record is consistent with the Response filed with the Bankruptcy Court.

End of Bankruptcy NDIN

New Local Rule requiring a specific form to be used (based on Directors Form 4100R)

Form requires servicer to provide:

- Unpaid principal balance,
- Balance of fees or costs due and owing,
- Balances of escrow and suspense accounts,
- Date next contractual payment is due,
- Amount of next payment due.

This is to ensure the Debtor, Trustee and servicer records are consistent at the end of the bankruptcy.

This is consistent with some of the ABI Consumer Commission 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