

The new bankruptcy rules are coming!

6 September 2011

The United States Supreme Court has approved significant changes to the Rules of Bankruptcy Procedure that will take effect 1 December 2011. The most notable changes are to Bankruptcy Rule 3001 regarding requirements for creditors in the claims they make in bankruptcy cases in general; and the addition of Bankruptcy Rule 3002.1 regarding how parties are to handle claims by secured creditors against the debtor's principal residence in chapter 13 cases. These rules are aimed to curb ongoing, recurring problems in claims in general, and claims in chapter 13 bankruptcy cases in particular, that have caused much consternation to debtors and their attorneys. Overall, these soon-to-come changes appear to be welcomed by the debtor's bar and judges.

Rule 3001 will require all parties making claims to itemize any interest, fees, expenses, or other charges associated with their claims. It will require claims involving a security interest to state the amount necessary to "cure" any default. It will require claims involving a security interest in the debtor's primary residence to attach an Official Form and if an escrow account is involved, a further escrow account statement must also be attached. If the Court finds that the creditor failed to provide this information, it may preclude the creditor from raising the omitted information in a further proceeding and/or award reasonable attorney fees "caused by the failure [to provide the information]."

Rule 3002.1 only applies to claims made in chapter 13 cases involving the debtor's primary residence. However, in those types of cases the changes are significant and new steps applicable to every such case will be added. It requires a secured creditor to notify the debtor of any changes in mortgage payments no later than 21 days prior to when the new amount goes into effect while the chapter 13 case is open. It also requires a secured creditor to file an itemized statement of any fees, expenses, or charges incurred in connection with its claim after the bankruptcy case was filed, again using an Official Form. It allows a trustee or debtor to challenge this itemized statement and obtain a determination from the bankruptcy court on whether the fees, etc. are required to cure a default of the mortgage on the debtor's primary residence. (Curing this default is arguably the most important relief available in chapter 13 and the most sought after relief from chapter 13 debtors.) George E. Bourguignon, *Statutory Interpretation of Bankruptcy Code § 1322(C)(1): Arguing for a Bright-Line Approach to the Debtor's Statutory Right to Cure a Residential Mortgage Default*, Article, 7 U.C. Davis Bus. L. J. 461 (2007).

The last portion of Bankruptcy Rule 3002.1 will arguably make the most change in chapter 13 bankruptcy practice. After the debtor completes the payments required under his plan, the trustee (or debtor if the trustee fails to) must send a notice of final cure. The secured creditor must respond or consequences may flow. Without providing every detail, basically the rule is attempting to flush out and decide for good whether the debtor has cured the default, and decide this before the case closes. (In other words, there is no more arrearage due and he is back on track with the mortgage and only need to pay the usual monthly payment going forward.) It will be quite interesting if in practical reality the rule achieves its goal on this score.

These changes will make the claims process more complicated and add to the administrative and legal burden on all parties, especially in chapter 13 cases and on secured creditors of mortgages on the debtor's primary residence. The changes will give the debtor more tools to combat unsubstantiated claims. But indirectly they may cause higher attorney's fees by increasing the attorney's obligations to object to claims that do not meet the new requirements that would not have been objected to previously. Exactly how much these amendments will change bankruptcy practice will remain to be seen, but we can confidently say they will change the practice to some degree. We can also say that indirectly these new rules will make it even more important for a chapter 13 debtor to obtain competent counsel to get the most from using the new rules that less competent counsel may not.

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Rules of bankruptcy procedure/rules to follow in bankruptcy case/most important bankruptcy rules/new bankruptcy rules effective 12/1/2011