

I serve as the Standing Chapter 13 Bankruptcy Trustee for the Northern District of Indiana, South Bend and Fort Wayne Divisions. I have served as trustee for 10 years and have consistently being a "trustee conduit" district during that time.

I am speaking personally in this comment and not as a representative of the NACTT or the NACTT mortgage committee. I write in support of the new changes to Rules 3001 and to urge for the committee to adopt standard forms for the Notices required under the Rule and for a standard proof of claim attachment form for mortgages. I appreciate the time and thought that went into the drafting and formation of these rules and believe these changes in procedures will benefit all parties, mortgage creditors, debtors and trustees.

Our district has interpreted that an action to deem the mortgage current at the end of the bankruptcy must be filed as an adversary proceeding. Nor do we have Local Rules that provide the mortgage is current upon the entry of discharge. Instead, our office is required to verify the status of each mortgage prior to discharge to verify that the post petition mortgage is current, the pre petition arrearage is paid in full and that there are no outstanding fees, costs or negative escrow amounts due.

As the Northern District of Indiana is a conduit pay jurisdiction and our office has the records to prove the payments made, this process should be simple. Instead, our office is required to spend hours on more than 40% of the cases ready for discharge to try to work through issues at the end of the bankruptcy. I believe that the proposed Rules, when adopted and implemented, will help reduce these issues.

Payment changes for escrow and interest changes should be required to be filed with the court.

In many cases, our office has not been advised of payment changes for interest or escrow changes during the life of the bankruptcy. We have found that many servicers fail to perform the required RESPA analysis when the escrow balance becomes negative. The servicer pays out larger sums for taxes and insurance than what is paid by our office during the bankruptcy without adjusting the payment and a large negative balance remains at the end of the bankruptcy. This leaves the debtor/borrower sometimes owing more for those increases in taxes and insurance than the amount they were behind on their mortgage prior to the bankruptcy. The same result occurs when our office and/or the borrower is not advised of interest rate changes during the bankruptcy. By the filing of the payment changes with Court and the provisions of the Rule as proposed, this will no longer be an issue in a few years.

Post petition fees, costs and protective advances should be required to be filed with the court.

In other cases, servicers have paid out substantial sums to protect the house in non-escrowed loans for forced placed insurance or to save the real estate from tax sale and never advise our office. In a case last week, the servicer has paid out over \$9000 in forced placed insurance during the five years of bankruptcy. As our office and the borrower were not advised, when our office attempted to verify the mortgage to allow the debtor to get her discharge, the problem was found. The debtor is unable to modify her bankruptcy under 11 USC 1329 to pay these sums as she has completed her bankruptcy. By requiring the filing of these with the Court, and with the provisions of the Rules as proposed, this will no longer be an issue in a few years.

The rule should include a mechanism at the end of the bankruptcy to determine whether or not the mortgage is contractually current with no outstanding fees, costs or negative escrow.

The new Rule attempts to put a procedure in place to verify that the mortgage is current, but is unclear as to whether or not the procedure is done only when the prepetition arrearage has been paid in full or at the time of discharge. In Chapter 13 cases that pay funds to unsecured creditors, the prepetition arrearage amount is actually fully paid prior to the last payment of the bankruptcy. In our district, we have cases that pay the pre-petition arrears in full with the first disbursement after confirmation. In those cases, it would appear that the verification would be completed 30 days after confirmation with no ability to verify the mortgage when it is most critical at discharge. In order to best utilize this Rule, the debtor may be forced to pay the arrears over the full term of the plan to be able to force this verification later in the bankruptcy. I would ask the Committee to implement a like verification at the time a Trustee files a Notice of Plan Completion to address this issue.

The Rules Committee should adopt a standard form for the pre-petition arrearage with instructions on completion. This form needs to provide a quick, easy way to identify the amounts due, the current post petition mortgage payment, persons to contact with questions, the type of loan and whether or not the loan is escrowed.

As a Trustee, I want to make sure that our office is paying the correct creditor the amount that is due and to easily identify any possible issues with the mortgage during the bankruptcy. We continually see proof of claims that do not identify the proper post petition payment amount, whether or not the loan is escrowed, and fail to identify what type of mortgage is being claimed. A standard adopted form could contain all of this information. It is a delicate balance- the form needs to provide enough information to allow Debtors and Trustees to identify possible issues and administer the bankruptcy, yet not so

cumbersome that it takes hours for the servicer to gather the information and adds hundreds in attorneys fees to fill out- a cost which is in turn passed on to the Debtor making the bankruptcy more expensive.

If the Committee chooses to adopt such a form, I would ask the Committee to include the following additional information that is critical for our offices.

The person completing the form with their contact information for questions.

The type of mortgage (30 year fixed, 5 year balloon, ARM adjustable 6 months, interest only, reverse mortgage)

The actual securitized trust that holds the note (Example: Securitized Asset Backed Receivables LLC Trust 2007-BR1 Mortgage Pass-Through Certificates, Series 2007-BR1) which allows our office and the Debtor to track servicer changes thru the SEC/EDGAR online.

The Rules Committee should work with the Clerk's Group and Administrative Office to allow a new docket type to be implemented to allow the mortgage servicer's and their attorneys to begin to file the Notices required by the new proposed rule.

Many clerks are waiting for the comment period to end to setup the process by which the creditor can file the Notices of Payment Change and Protective Advances with the Court. This ability to file the Notices is critical to allow the servicers to begin to comply on a nationwide basis with the NACTT Mortgage Committee Best Practices. The Notice would be filed as a Supplemental Claim thru the Claims Process and not on the court docket. I hope that local rules committees would adopt the new rules and begin implementation to allow this process to begin so that in our district the mortgages with issues becomes less of a problem and the servicers have a more nationwide procedure to comply with.

Again, thank you for your time and effort.

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