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Rules Suggestion 25-BK-J

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VIA E-MAIL

July 16, 2025

Advisory Committee on the Federal Rules of Bankruptcy Procedure ("Advisory Committee")
RulesCommittee_Secretary@ao.uscourts.gov

RE: Proposed Amendment to Fed. R. Bankr. P. 3001 ("Rule 3001")

Dear Honorable Members of the Advisory Committee:

In general, the amounts contained in a proof of claim are determined as of the petition date. The instructions to Official Form 410 specifically state "[f]ill in all the information about the claim as of the *date the case was filed.*" (see page one (1) of Form 410 in the second box, just above the heading "Part 1") (emphasis added). See also the Committee Notes to Forms 410 and 410A (page 1: "as of the petition date"; page 4: "The form, which implements Rule 3001(c)(2), requires an itemization of prepetition interest, fees, expenses, and charges included in the claim amount, as well as a statement of the amount necessary to cure any default *as of the petition date.*") (emphasis added).

Section 502(b) of the Bankruptcy Code also provides that if there is an objection to claim: "the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States *as of the date of the filing of the petition.*" (emphasis added). See also *Instructions for Mortgage Proof of Claim Attachment – Official Form 410A*, at page 2 ("Insert the amount of the principal and interest portion of all prepetition monthly installments that remain outstanding as of the petition date.").

My recollection is that several years ago, the Mortgage Committee of the National Association of Chapter 13 Trustees (NACTT) adopted as a best practice that when a Chapter 7 case converts to Chapter 13, any outstanding post-petition mortgage payments through the date of conversion should be added to the arrears in the proof of claim. Of course, this practice is consistent with those decisions holding that a Chapter 13 debtor can cure any default through the plan, including a post-petition default. See, e.g., *In re Hoggle*, 12 F.3d 1008 (11th Cir. 1994).

In addition to adding the post-petition mortgage payments through the conversion date to the arrears, the escrow analysis required by Rule 3001(c)(2)(C)(ii) is performed as of the conversion date instead of the petition date.



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A recent bankruptcy court decision from Northern Illinois calls this practice into question, largely in part to the fact the plain language of Rule 3001 requires the escrow analysis to be performed as of the petition date. See, *In re Davis-Peters*, 669 B.R. 308 (Bankr. N.D. Ill. 2025) (Thorne, J.).

My proposal is to add a sentence to Rule 3001(c)(2)(C)(ii) to accommodate those situations where a case converts from Chapter 7 to Chapter 13. Revised Rule 3001(c)(2)(C)(ii) would appear as follows:

(c) Required Supporting Information.

(1) *Claim or Interest Based on a Writing*. If a claim or an interest in the debtor's property securing the claim is based on a writing, the creditor must file a copy with the proof of claim—except for a claim based on a consumer-credit agreement under (4). If the writing has been lost or destroyed, a statement explaining the loss or destruction must be filed with the claim.

(2) *Additional Information in an Individual Debtor's Case*. If the debtor is an individual, the creditor must file with the proof of claim:

(A) an itemized statement of the principal amount and any interest, fees, expenses, or other charges incurred before the petition was filed;

(B) for any claimed security interest in the debtor's property, the amount needed to cure any default as of the date the petition was filed; and

(C) for any claimed security interest in the debtor's principal residence:

(i) Form 410A; and

(ii) if there is an escrow account connected with the claim, an escrow-account statement, prepared as of the date the petition was filed, that is consistent in form with applicable nonbankruptcy law. In a case converted from chapter 7 to chapter 13, the escrow-account statement may be performed as of the date the case was converted to chapter 13. (emphasis added)

I have elected to use “may” instead of “shall” since there may be occasions where it would not be appropriate to perform the escrow analysis as of the conversion date (e.g., where the debtor maintained the post-petition mortgage payments through the conversion date).

Please let me know if the Advisory Committee has questions, or you require more information. Thank you.

Sincerely,

Michael J. McCormick, Esq.
Senior Partner