

United States Bankruptcy Court, Southern District of Alabama
Quarterly Bankruptcy Section Meeting, December 2, 2025

1. Section chair Alex Garrett
2. Welcome sponsor Irvin Grodsky
3. Judges Callaway and Oldshue
 - Filing numbers – see attached chart. Chapter 13 filings through November are up 14.45% from 2024, chapter 7 filings up .90%
 - New administrative order 2025-08 regarding HELOC payment changes
 - New chapter 11 filing events on the way
 - Case summaries are attached
4. Andrea Redmon, Clerk of Court
 - Rule 3002 changes (redline copy attached)
5. Mark Zimlich, Bankruptcy Administrator
6. Chris Conte, Chapter 13 Trustee
 - Rule 3002 changes and forms (attached)
 - Revised 341 interrogatories (attached)
 - Recent increase in filings
7. Jennifer Morgan –
 - Submitting orders to chambers (see attachment)
8. Consumer committee – Lacy Robertson
9. Business committee – Evan Parrott
10. Kent McPhail –
 - Holiday party Thursday 12/4 at 5:30 p.m., Firehouse Wine Bar, 216 St. Francis St.
11. Open the floor
12. Next meeting Tuesday, February 24, 2026, jury assembly room, second floor of Federal Courthouse, with Microsoft Teams component. Let Andrea Redmon know if you would like to sponsor.

Monthly bankruptcy filings in the Southern District of Alabama since January 2019

600

500

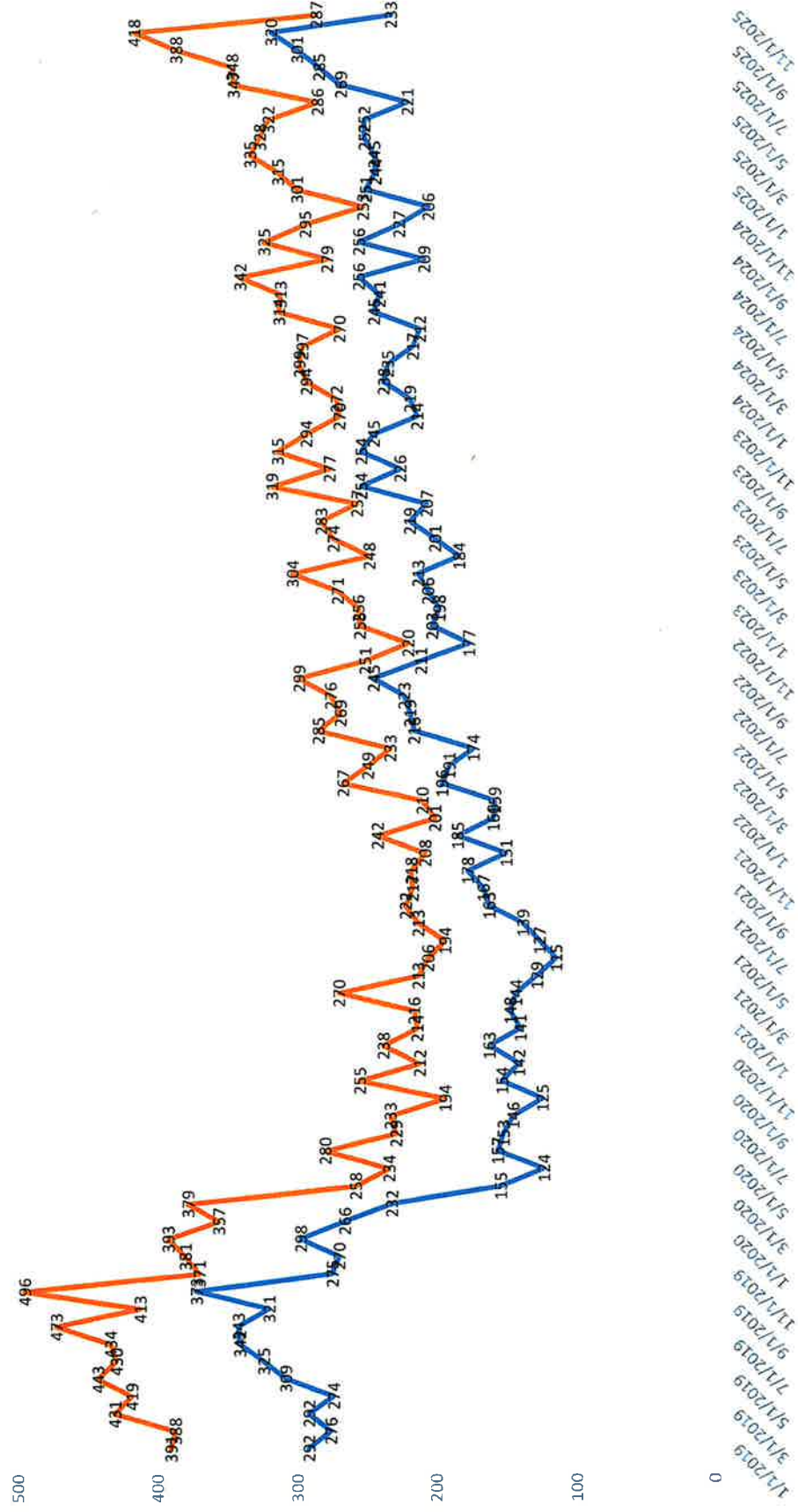
400

300

200

100

0



13's Total filings

Tips for getting your order entered quickly

- Use Word (not WordPerfect).
- Use Times New Roman, size 12, font.
- Double-space throughout, including ensuring that spacing is consistent throughout.
- Don't put "END OF ORDER" and don't add a line for the judge (we have an automatic button that will add that).
- Hearing date and time is not necessary in the order, but if you include it, make sure the date is correct.
- Spellcheck and proofread, please.
- Debtor (singular) versus Debtors (plural) – please check that this is correct based on the style of the case and that it is consistent throughout.
- Form orders are available under "Local Forms" on the website. If there is a form order, please use it as your template (including for conditional denials on motions for relief from stay).
- Rule 4001(a) – the Rule was amended effective December 2024 and the 14-day stay of an order is now in Rule 4001(a)(4) – not (a)(3). Please use the correct rule and change any form orders referring to the old rule number.
- If an order is one that was to be circulated and/or approved, please make sure to notate on the order that that was in fact done (*i.e.*, the trustee approved, etc.).

Recent Decisions of the Bankruptcy Court of the Southern District of Alabama

Updated October 16, 2025

The following case summaries are intended solely to assist the bankruptcy bar in identifying cases with pertinent issues and facts. These summaries might not include or reflect any subsequent case history or appeals. It is the user's responsibility to examine the full opinion to determine the court's holding. Later changes in the bankruptcy code or state law may also render cases obsolete.

486. In re Trotter, No. 23-12550 (HAC) October 16, 2025

Absent extraordinary circumstances, the judges intend for the \$750 creditor's attorney fee allowed by Local Administrative Order 2025-05 to encompass all aspects of a motion for relief from stay, including amending or filing a proof of claim for postpetition arrearage if the motion is conditionally denied. The court thus granted a debtor's motion to determine and disallowed the \$150 charged to the debtor by the creditor in connection with an order conditionally denying motion for relief from stay.

485. Garvin v. West Coast WinSupply, Inc., AP No. 23-3008 (HAC) Bankr. N.D. Fla. Oct. 3, 2025

The defendant had special rights as a material supplier under both Florida and Alabama law. The court thus found, with one exception, that the defendant did not receive more than it would have in chapter 7 and ruled in favor of the defendant in six out of the seven preference claims brought by the chapter 7 trustee under Code § 547.

484. In re Watson, No. 25-10581 (HAC) September 9, 2025

The court should not consider the hypothetical costs of sale in calculating the extent to which a judgment lien impairs a chapter 13 debtor's homestead exemption and thus can be avoided under Bankruptcy Code § 522(f).

483. In re Wood, No. 25-10097 (JCO) August 25, 2025

The court overruled the debtor's objection to a creditor's proof of claim. Although the claim was filed after the time provided in Bankruptcy Rule 3002(c), it was filed by the date contained in the notice of chapter 13 case transmitted to creditors. The court reasoned that (1) it was appropriate to allow the claim filed in reliance on the notice issued by the court; (2) since the court noticing was incorrect, disallowance of the claim would be contrary to due process and fundamental fairness; and (3) extending the claims deadline was warranted under Rule 3002(c)(7) and Bankruptcy Code § 105(a).

482. In re Moore, No. 24-12977 (HAC) August 20, 2025

Bankruptcy Code § 362's stay does not apply to an action by a governmental unit to enforce its police and regulatory power – here, the city's condemnation of a dilapidated house.

481. In re Easley, No. 20-11814 (HAC) August 19, 2025

The chapter 13 debtor was injured in a postpetition auto accident. She timely amended her schedules to add the personal injury claim and obtained court approval to employ special counsel. A year after completing plan payments and receiving a discharge, the debtor and special counsel settled the claim. Under the plain language of Bankruptcy Code § 1329(a), it was too late for the trustee to move to modify the plan to increase the percentage paid on unsecured claims, and the debtor was thus entitled to the net settlement proceeds.

480. In re CDF Inc., No. 25-10197 (JCO) August 7, 2025

The court denied a creditor's motion for relief from stay to appeal a ruling of the Oklahoma Court of Appeals regarding a prepetition garnishment and proceed with state law remedies. The court found that: (1) the creditor was adequately protected; (2) there was not sufficient cause for relief; (3) such relief would be prejudicial to the debtor and creditors; (4) duplicitous litigation related to the debtor's assets in more than one forum is contrary to the spirit and purpose of the Bankruptcy Code; and (5) extraneous litigation could lead to inconsistent results, waste estate resources, increase the debtor's expenses, detract from the management of the estate, and deprive the estate of funding that is necessary for an effective reorganization.

479. Merchant v. Breland, 2025 WL 2246963 (Bankr. S.D. Ala. Aug. 6, 2025) (JCO)

The court dismissed the adversary proceeding because adjudication of the plaintiff's claims, arising from alleged breach of a contract executed by plaintiff and a non-debtor third party entity, was not appropriate in the context of the bankruptcy. The plaintiff was not a creditor in the bankruptcy, the individual debtor and chapter 11 trustee were not a party to the contract, the contract was entered into without bankruptcy court approval, the time for filing administrative claims had expired, and the administration of the bankruptcy cases was nearing its conclusion. The adversary claims did not arise under the provisions of Title 11, were not core proceedings, and did not concern the administration of the estate. The fact that the individual debtor held an interest in the third-party entity was not sufficient for the bankruptcy court to exercise jurisdiction over postpetition, postconfirmation claims involving a non-debtor. The court further noted that even if it had jurisdiction over the claims, permissive abstention was warranted in the interest of justice, judicial economy, and respect for state law because revesting had occurred, state law issues predominated, and the state courts are well suited to handle such matters.

478. In re Richardson, No. 25-10839 (HAC) August 5, 2025

Alabama law defines a PMSI in terms of the manner in which the interest was created rather than in terms of the entity in favor of whom the interest was created. An assignment of a security interest in a vacuum thus did not destroy its status as PMSI. Because there was no dispute about the purchase-money nature of the original transaction or that the vacuum qualified as a "consumer good," the court overruled the debtor's objection asking the court to reclassify the creditor's claim as unsecured.

477. In re Tunsill, No. 25-40091 (HAC) Bankr. N.D. Fla. August 5, 2025

Fill in this information to identify the case:

Debtor 1 _____

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: _____ District of _____
(State)

Case number _____

Official Form 410C13-N

Trustee's Notice of Disbursements Made

12/25

The trustee must file this notice in a chapter 13 case within 45 days after the debtor completes all payments due to the trustee. Rule 3002.1(g)(1).

Part 1: Mortgage Information

Name of claim holder: _____

Court claim no. (if known): _____

Last 4 digits of any number you use to identify the debtor's account: _____

Property address:

Number _____ Street _____

City _____ State _____ ZIP Code _____

Part 2: Statement of Completion

The debtor has completed all payments due the trustee under the chapter 13 plan. A copy of the trustee's disbursement ledger for all payments to the claim holder is attached or may be accessed here: _____ (web address).

Part 3: Arrearages

	Amount
a. Allowed amount of prepetition arrearage:	\$ _____
b. Total amount of prepetition arrearage disbursed by the trustee:	\$ _____
c. Total amount of postpetition arrearage disbursed by the trustee:	\$ _____
d. Total amount of arrearages disbursed by the trustee:	\$ _____

Part 4: Postpetition Payments

Check one:

- ☐ Postpetition payments are made by the debtor.
- ☐ Postpetition payments are paid through the trustee.
- ☐ Other: _____

If the trustee has disbursed postpetition payments, complete a and b below; otherwise leave blank.

- a. Total amount of postpetition payments disbursed by the trustee as of date of notice: \$ _____
- b. The last ongoing mortgage payment disbursed by the trustee was the payment due on _____ All subsequent ongoing mortgage payments must be made directly by the debtor to the mortgage claimant.

Part 5: Postpetition Fees, Expenses, and Charges

Amount of postpetition fees, expenses, and charges disbursed by the trustee: \$ _____

Part 6: A Response Is Required by Bankruptcy Rule 3002.1(g)(3)

Within 28 days after service of this notice, the holder of the claim must file a response using Official Form 410C13-NR.

X

Signature

Date ____/____/____

Trustee

First Name

Middle Name

Last Name

Address

Number

Street

City

State

ZIP Code

Contact phone (____) ____-____

Email _____

Fill in this information to identify the case:

Debtor 1 _____

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: _____ District of _____
(State)

Case number _____

Official Form 410C13-NR

Response to Trustee's Notice of Disbursements Made

12/25

The claim holder must respond to the Trustee's Notice of Payments Made within 28 days after it was served. Rule 3002.1(g)(3).

Part 1: Mortgage Information

Name of claim holder: _____ Court claim no. (if known): _____

Last 4 digits of any number you use to identify the debtor's account: _____

Property address:

Number _____ Street _____

City _____ State _____ ZIP Code _____

Part 2: Arrearages

The total amount received to cure any arrearages as of the date of this response: \$ _____

Check all that apply:

- ☐ The amount required to cure any prepetition arrearage has been paid in full.
- ☐ The amount required to cure the prepetition arrearage has not been paid in full. Amount of prepetition arrearage remaining unpaid as of the date of this notice: \$ _____.
- ☐ The amount required to cure any postpetition arrearage has been paid in full.
- ☐ The amount required to cure the postpetition arrearage has not been paid in full. Amount of postpetition arrearage remaining unpaid as of the date of this notice: \$ _____.

Part 3:**Postpetition Payments**

(a) Check all that apply:

- ☐ The debtor is current on all postpetition payments, including all fees, charges, expenses, escrow, and costs.
- ☐ The debtor is not current on all postpetition payments. The claim holder asserts that the debtor is obligated for the postpetition payment(s) that first became due on: ____/____/____.
- ☐ The debtor has fees, charges, expenses, negative escrow amounts, or costs due and owing.

(b) The claim holder attaches a payoff statement and provides the following information as of the date of this response:

- i. Date last payment was received on the mortgage: ____/____/____
- ii. Date next postpetition payment from the debtor is due: ____/____/____
- iii. Amount of the next postpetition payment that is due: \$ _____
- iv. Unpaid principal balance of the loan: \$ _____
- v. Additional amounts due for any deferred or accrued interest: \$ _____
- vi. Balance of the escrow account: \$ _____
- vii. Balance of unapplied funds or funds held in a suspense account: \$ _____
- viii. Total amount of fees, charges, expenses, negative escrow amounts, or costs remaining unpaid: \$ _____

Part 4**Itemized Payment History**

If the claim holder disagrees that the prepetition arrearage has been paid in full, states that the debtor is not current on all postpetition payments, or states that fees, charges, expenses, escrow, and costs are due and owing, it must attach an itemized payment history disclosing the following amounts from the date of the bankruptcy filing through the date of this response:

- all prepetition and postpetition payments received;
- the application of all payments received;
- all fees, costs, escrow, and expenses that the claim holder asserts are recoverable against the debtor or the debtor's principal residence; and
- all amounts the claim holder contends remain unpaid.

Part 5:**Sign Here**

The person completing this response must sign it. Check the appropriate box:

- ☐ I am the claim holder.
- ☐ I am the claim holder's authorized agent.

I declare under penalty of perjury that the information provided in this response is true and correct to the best of my knowledge, information, and reasonable belief.

X

Signature

Date ____/____/____

Name

First name Middle name Last name

Title

Company

Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Number Street

City State ZIP Code

Contact phone _____

Email _____

**CHRISTOPHER T. CONTE
CHAPTER 13 STANDING TRUSTEE
SOUTHERN DISTRICT OF ALABAMA**

RE: _____

CASE NUMBER: _____

**INTERROGATORIES TO DEBTOR
TO SUBMIT TO TRUSTEE PRIOR TO MEETING OF CREDITORS**

As supplement to the personal appearance at a meeting of creditors as required by 11 U.S.C. sec. 341(a), the following interrogatories are submitted to the debtor, to be answered under oath and under penalty of perjury:

1. What is your name and current mailing address?

2. Have you transferred any property in the last 2 years?

If so list the item or property transferred, the date of the transfer, and any amounts received you for the transfer:

Description of . Property	Person property was transferred to and relation to Debtor (if any)	Date of transfer	Amount received by Debtor

3. Have you filed all of your tax returns that have been required to be filed in the last 4 years?

If not list the years not filed and the timing of finalizing those returns:

4. Do you have any pending lawsuits or any lawsuits that you could file against anyone for money damages?

If so, list the type of lawsuit and the name and address of the attorney representing you in that lawsuit:

5. Do you owe anyone for child support or any other spousal support?

If so, are you current on that support obligation since you filed your petition?

List the name and address of the recipient of that support:

Name of Recipient	Address of Recipient	Age of Child	Amount of Monthly Support	Current (Yes or No)

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6. For each vehicle listed in your schedules provide the name of the owner of the vehicle and the primary driver of the vehicle. For each primary driver other than you, provide the age, full address and relationship of the primary driver to you.

Vehicle Description	Owner on Title	Primary Driver	Relationship to Owner (if Primary Driver is not the Owner)

7. If you list regular income from another (such as help from friends and/or family) on schedule I, then please provide the name of the individual providing the income, the relationship of the individual to you and the length of time you have been receiving such income.

Name of Individual Providing Support	Relationship to Debtor	Length of Time Provided	Amount

8. If you list regular charitable contributions as an expense, then please identify the recipient(s) of the contributions and how long you have been making the contributions.

Recipient of Contribution	Amount of Monthly	Nature of Recipient	Length of Time Pre-Petition
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	Contribution	(Church, food bank, etc...)	

9. Please provide a copy of the declaration page for the insurance providing coverage for each vehicle listed on your schedules.
10. Please provide a copy of any VA disability benefits letter, if applicable.
11. Please provide a copy of the most recent tax assessor value for any real property listed in your schedules.
12. If you list any real property in your schedules as owned jointly with another, please provide a copy of any deeds or other documents that evidence such ownership.
13. If you have any unexpired leases that are being assumed, list the creditor, the collateral, the monthly payment and the payout date:
14. Do you have an ownership interest in any business? If so, please list the business below and the amount of ownership interest:

Name and Address of Business	Ownership Interest	Nature of Business	Is Business still Active?
-------------------------------------	---------------------------	---------------------------	----------------------------------

15. Please provide a copy of the declarations page (or other evidence of the premium payment) for any life insurance policies in which you are either the holder or the beneficiary.

16. If you have lived in any state other than Alabama in the last four years, please provide the following information:

Address	Dates of Residence

I declare under penalty of perjury that the above answers are true and correct to the best of my knowledge and belief.

Sworn to this ____ day of ____ 202__.

DEBTOR

**PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE¹**

1 **Rule 3002.1. ~~Notice Relating to~~ Chapter 13—**
2 **~~Claims—~~Claim Secured by a**
3 **Security Interest in the Debtor’s**
4 **Principal Residence ~~in a Chapter~~**
5 **~~13 Case~~²**

6 (a) **In General.** This rule applies in a Chapter 13 case to
7 a claim that is secured by a security interest in the
8 debtor’s principal residence and for which the plan
9 provides for the trustee or debtor to make contractual
10 ~~installment~~ payments. Unless the court orders
11 otherwise, the ~~notice~~ requirements of this rule cease
12 when an order terminating or annulling the automatic
13 stay related to that residence becomes effective.

¹ New material is underlined in red; matter to be omitted is lined through.

² The changes indicated are to the restyled version of Rule 3002.1, not yet in effect.

(b) **Notice of a Payment Change; Home-Equity Line
of Credit; Effect of an Untimely Notice;
Objection.**

(1) **Notice by the Claim Holder—In General.**

The claim holder must file a notice of any change in the payment amount, ~~of an installment payment including any change~~ one resulting from an interest-rate or escrow-account adjustment. ~~At least 21 days before the new payment is due, the~~ The notice must be ~~filed and~~ served on:

- the debtor;
- the debtor's attorney; and
- the trustee.

Except as provided in (b)(2), it must be filed and served at least 21 days before the new payment is due. ~~If the claim arises from a home-equity line of credit, the court may~~

32 ~~modify this requirement.~~

33 (2) *Notice of a Change in a Home-Equity Line*
34 *of Credit.*

35 (A) *Deadline for the Initial Filing; Later*
36 *Annual Filing.* If the claim arises
37 from a home-equity line of credit, the
38 notice of a payment change must be
39 filed and served either as provided in
40 (b)(1) or within one year after the
41 bankruptcy-petition filing, and then at
42 least annually.

43 (B) *Content of the Annual Notice.* The
44 annual notice must:

45 (i) state the payment amount due
46 for the month when the notice
47 is filed; and
48 (ii) include a reconciliation
49 amount to account for any

50 overpayment or
51 underpayment during the
52 prior year.

53 (C) Amount of the Next Payment. The
54 first payment due at least 21 days
55 after the annual notice is filed and
56 served must be increased or decreased
57 by the reconciliation amount.

58 (D) Effective Date. The new payment
59 amount stated in the annual notice
60 (disregarding the reconciliation
61 amount) is effective on the first
62 payment due date after the payment
63 under (C) has been made and remains
64 effective until a new notice becomes
65 effective.

66 (E) Payment Changes Greater Than \$10.
67 If the claim holder chooses to give

68 annual notices under (b)(2) and the
69 monthly payment increases or
70 decreases by more than \$10 in any
71 month, the holder must file and serve
72 (in addition to the annual notice) a
73 notice under (b)(1) for that month.

74 (3) *Effect of an Untimely Notice.* If the claim
75 holder does not timely file and serve the
76 notice required by (b)(1) or (b)(2), the
77 effective date of the new payment amount is
78 as follows:

79 (A) when the notice concerns a payment
80 increase, on the first payment due
81 date that is at least 21 days after the
82 untimely notice was filed and served;
83 or

84 (B) when the notice concerns a payment
85 decrease, on the first payment due
86 date after the date of the notice.

87 (4) ***Party in Interest's Objection.*** A party in
88 interest who objects to ~~the~~ a payment
89 change noticed under (b)(1) or (b)(2) may
90 file and serve a motion to determine
91 ~~whether the change is required to maintain~~
92 ~~payments under § 1322(b)(5)~~ the change's
93 validity. Unless the court orders otherwise,
94 if no motion is filed ~~by~~ before the day
95 ~~before~~ the new payment is due, the change
96 goes into effect on that date.

97 **(c) Fees, Expenses, and Charges Incurred After the**
98 **Case Was Filed; Notice by the Claim Holder.**
99 The claim holder must file a notice itemizing all
100 fees, expenses, and charges incurred after the case
101 was filed that the holder asserts are recoverable

102 against the debtor or the debtor's principal
 103 residence. Within 180 days after the fees,
 104 expenses, or charges ~~were~~are incurred, the notice
 105 must be filed and served on the individuals listed
 106 in (b)(1).

- 107 • ~~the debtor;~~
- 108 • ~~the debtor's attorney; and~~
- 109 • ~~the trustee.~~

110 **(d) Filing Notice as a Supplement to a Proof of Claim.**

111 A notice under (b) or (c) must be filed as a
 112 supplement to ~~the~~a proof of claim using Form 410S-
 113 1 or 410S-2, respectively. The notice is not subject
 114 to Rule 3001(f).

115 **(e) Determining Fees, Expenses, or Charges.** On a

116 party in interest's motion ~~filed within one year after~~
 117 ~~the notice in (c) was served~~, the court must, after
 118 notice and a hearing, determine whether paying any
 119 claimed fee, expense, or charge is required by the

120 underlying agreement and applicable nonbankruptcy
121 law. ~~to cure a default or maintain payments under~~
122 ~~§ 1322(b)(5).~~ The motion must be filed within one
123 year after the notice under (c) was served, unless a
124 party in interest requests and the court orders a
125 shorter period.

126 (f) **Motion to Determine Status; Response; Court**
127 **Determination.**

128 (1) **Timing; Content and Service.** At any time
129 after the date of the order for relief under
130 Chapter 13 and until the trustee files the
131 notice under (g)(1), the trustee or debtor may
132 file a motion to determine the status of any
133 claim described in (a). The motion must be
134 prepared using Form 410C13-M1 and be
135 served on:

- 136 • the debtor and the debtor's
- 137 attorney, if the trustee is the
- 138 movant;
- 139 • the trustee, if the debtor is the
- 140 movant; and
- 141 • the claim holder.

142 (2) **Response; Content and Service.** If the claim

143 holder disagrees with facts set forth in the

144 motion, it must file a response within 21 days

145 after the motion is served. The response must

146 be prepared using Form 410C13-M1R and be

147 served on the individuals listed in (b)(1).

148 (3) **Court Determination.** If the claim holder's

149 response asserts a disagreement with facts set

150 forth in the motion, the court must, after

151 notice and a hearing, determine the status of

152 the claim and enter an appropriate order. If

153 the claim holder does not respond to the

154 motion or files a response agreeing with the
155 facts set forth in it, the court may grant the
156 motion based on those facts.

157 **(fg) ~~Notice of the Final Cure Payment. Trustee's End-~~**
158 **of-Case Notice of Payments Made; Response; Court**
159 **Determination.**

160 (1) ~~Contents of a Notice~~ **Timing and Content.**

161 Within ~~30~~ 45 days after the debtor completes
162 all payments due to the trustee under a
163 Chapter 13 plan, the trustee must file a notice:

164 (A) stating ~~that the debtor has paid in full~~
165 ~~the~~ what amount ~~required, if any, the~~
166 trustee paid to the claim holder to cure
167 any default ~~on the claim~~ and whether
168 it has been cured; ~~and~~

169 (B) ~~the~~ stating what amount, if any, the
170 trustee paid to the claim holder for
171 contractual payments that came due

172 during the pendency of the case and
 173 whether contractual payments are
 174 current as of the date of the notice;
 175 and the claim holder of its obligation to
 176 file and serve a response under (g).

177 (C) informing the claim holder of its
 178 obligation to ~~file and serve a response~~
 179 respond under (g) (3).

180 (2) ~~*Serving the Notice*~~ *Service*. The notice must
 181 be prepared using Form 410C13-N and be
 182 served on:

- 183 • the claim holder;
- 184 • the debtor; and
- 185 • the debtor's attorney.

186 (3) *Response.* The claim holder must file a
 187 response to the notice within 28 days after its
 188 service. The response, which is not subject
 189 to Rule 3001(f), must be filed as a

190 supplement to the claim holder's proof of
191 claim. The response must be prepared using
192 Form 410C13-NR and be served on the
193 individuals listed in (b)(1).

194 ~~(3) *The Debtor's Right to File.* The debtor may~~
195 ~~file and serve the notice if:~~

196 ~~(A) the trustee fails to do so; and the~~
197 ~~debtor contends that the final cure~~
198 ~~payment has been made and all plan~~
199 ~~payments have been completed.~~

200 (4) *Court Determination of a Final Cure and*
201 *Payment.*

202 (A) *Motion.* After service of the response
203 under (g)(3) or within 45 days after
204 service of the trustee's notice under
205 (g)(1) if no response is filed by the
206 claim holder, the debtor or trustee
207 may file a motion to determine

208 whether the debtor has cured all
209 defaults and paid all required
210 postpetition amounts on a claim
211 described in (a). The motion must be
212 prepared using Form 410C13-M2 and
213 be served on the entities listed in
214 (f)(1).

215 (B) Response. If the claim holder
216 disagrees with the facts set forth in the
217 motion, it must file a response within
218 21 days after the motion is served.
219 The response must be prepared using
220 Form 410C13-M2R and be served on
221 the individuals listed in (b)(1).

222 (C) Court Determination. After notice
223 and a hearing, the court must
224 determine whether the debtor has
225 cured all defaults and paid all

226 required postpetition amounts. If the
227 claim holder does not respond to the
228 motion or files a response agreeing
229 with the facts set forth in it, the court
230 may enter an appropriate order based
231 on those facts.

232 ~~(g) — Response to a Notice of the Final Cure Payment.~~

233 ~~(1) — Required Statement.~~ Within 21 days after the
234 notice under (f) is served, the claim holder
235 must file and serve a statement that:

236 ~~(A) — indicates whether:~~

237 ~~(i) — the claim holder agrees that~~
238 ~~the debtor has paid in full the~~
239 ~~amount required to cure any~~
240 ~~default on the claim; and~~

241 ~~(ii) — the debtor is otherwise~~
242 ~~current on all payments under~~
243 ~~§ 1322(b)(5); and~~

244 ~~(B) itemizes the required cure or~~
 245 ~~postpetition amounts, if any, that the~~
 246 ~~claim holder contends remain unpaid~~
 247 ~~as of the statement's date.~~

248 ~~(2) **Persons to be Served.** The holder must serve~~
 249 ~~the statement on:~~

- 250 ~~• the debtor;~~
- 251 ~~• the debtor's attorney; and~~
- 252 ~~• the trustee.~~

253 ~~(3) **Statement to be a Supplement.** The statement~~
 254 ~~must be filed as a supplement to the proof of~~
 255 ~~claim and is not subject to Rule 3001(f).~~

256 ~~(h) **Determining the Final Cure Payment.** On the~~
 257 ~~debtor's or trustee's motion filed within 21 days after~~
 258 ~~the statement under (g) is served, the court must, after~~
 259 ~~notice and a hearing, determine whether the debtor~~
 260 ~~has cured the default and made all required~~
 261 ~~postpetition payments.~~

- 262 **(ih) Claim Holder's Failure to Give Notice or**
263 **Respond.** If the claim holder fails to provide any
264 information as required by ~~(b), (c), or (g)~~ **this rule**, the
265 court may, after notice and a hearing, ~~take one or both~~
266 ~~of these actions~~ **do one or more of the following:**
- 267 (1) preclude the holder from presenting the
268 omitted information in any form as evidence
269 in a contested matter or adversary proceeding
270 in the case—unless **the court determines that**
271 the failure was substantially justified or is
272 harmless; ~~and~~
- 273 (2) award other appropriate relief, including
274 reasonable expenses and attorney's fees
275 caused by the failure; **and**
- 276 **(3) take any other action authorized by this rule.**

277 **Committee Note**

278 The rule is amended to encourage a greater degree of
279 compliance with its provisions and to allow assessments of
280 a mortgage claim's status while a chapter 13 case is pending
281 in order to give the debtor an opportunity to cure any

282 postpetition defaults that may have occurred. Stylistic
283 changes are made throughout the rule, and its title and
284 subdivision headings have been changed to reflect the
285 amended content.

286 Subdivision (a), which describes the rule's
287 applicability, is amended to delete the word "installment" in
288 the phrase "contractual installment payment" in order to
289 clarify the rule's applicability to reverse mortgages, which
290 are not paid in installments.

291 In addition to stylistic changes, subdivision (b) is
292 amended to provide more detailed provisions about notice of
293 payment changes for home-equity lines of credit
294 ("HELOCs") and to add provisions about the effective date
295 of late payment change notices. The treatment of HELOCs
296 presents a special issue under this rule because the amount
297 owed changes frequently, often in small amounts. Requiring
298 a notice for each change can be overly burdensome. Under
299 new subdivision (b)(2), a HELOC claimant may choose to
300 file only annual payment change notices—including a
301 reconciliation figure (net overpayment or underpayment for
302 the past year)—unless the payment change in a single month
303 is for more than \$10. This provision also ensures at least 21
304 days' notice before a payment change takes effect.

305 As a sanction for noncompliance, subdivision (b)(3)
306 now provides that late notices of a payment increase do not
307 go into effect until the first payment due date after the
308 required notice period (at least 21 days) expires. The claim
309 holder will not be permitted to collect the increase for the
310 interim period. There is no delay, however, in the effective
311 date of an untimely notice of a payment decrease.

312 The changes made to subdivisions (c) and (d) are
313 largely stylistic. Stylistic changes are also made to

314 subdivision (e). In addition, the court is given authority,
315 upon motion of a party in interest, to shorten the time for
316 seeking a determination of the fees, expenses, or charges
317 owed. Such a shortening, for example, might be appropriate
318 in the later stages of a chapter 13 case.

319 Subdivision (f) is new. It provides a procedure for
320 assessing the status of the mortgage at any point before the
321 trustee files the notice under (g)(1). This optional procedure,
322 which should be used only when necessary and appropriate
323 for carrying out the plan, allows the debtor and the trustee to
324 be informed of any deficiencies in payment and to reconcile
325 records with the claim holder in time to become current
326 before the case is closed. The procedure is initiated by
327 motion of the trustee or debtor. An Official Form has been
328 adopted for this purpose. The claim holder then must
329 respond if it disagrees with facts stated in the motion, again
330 using an Official Form to provide the required information.
331 If the claim holder's response asserts such a disagreement,
332 the court, after notice and a hearing, will determine the status
333 of the mortgage claim. If the claim holder fails to respond or
334 does not dispute the facts set forth in the motion, the court
335 may enter an order favorable to the moving party based on
336 those facts.

337 Under subdivision (g), within 45 days after the last
338 plan payment is made to the trustee, the trustee must file a
339 notice of final cure and payment. An Official Form has been
340 adopted for this purpose. The notice will state the amount
341 that the trustee has paid to cure any default on the claim and
342 whether the default has been cured. It will also state the
343 amount, if any, that the trustee has paid on contractual
344 obligations that came due during the case and whether those
345 payments are current as of the date of the notice. The claim
346 holder then must respond within 28 days after service of the

347 notice, again using an Official Form to provide the required
348 information.

349 Either the trustee or the debtor may file a motion for
350 a determination of final cure and payment. The motion,
351 using the appropriate Official Form, may be filed after the
352 claim holder responds to the trustee's notice under (g)(1), or,
353 if the claim holder fails to respond to the notice, within 45
354 days after the notice was served. If the claim holder
355 disagrees with any facts in the motion, it must respond
356 within 21 days after the motion is served, using the
357 appropriate Official Form. The court will then determine the
358 status of the mortgage. A Director's Form provides guidance
359 on the type of information that should be included in the
360 order.

361 Subdivision (h) was previously subdivision (i). It has
362 been amended to clarify that the listed sanctions are
363 authorized in addition to any other actions that the rule
364 authorizes the court to take if the claim holder fails to
365 provide notice or respond as required by the rule. Stylistic
366 changes have also been made to the subdivision.

**PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE¹**

1 **Rule 8006. Certifying a Direct Appeal to the**
2 **Court of Appeals²**

3 * * * * *

4 (g) Request After Certification for ~~Leave to Take a~~
5 ~~Direct Appeal to a Court of Appeals After~~
6 ~~Certification~~ to Authorize a Direct Appeal. Within
7 30 days after the certification has become effective
8 under (a), ~~a request for leave to take a direct appeal~~
9 ~~to a court of appeals must be filed~~ any party to the
10 appeal may ask the court of appeals to authorize a
11 direct appeal by filing a petition with the circuit clerk
12 in accordance with Fed. R. App. P. 6(c).

¹ New material is underlined in red; matter to be omitted is lined through.

² The changes indicated are to the restyled version of Rule 8006, not yet in effect.

13

Committee Note

14

Rule 8006(g) is revised to clarify that any party to the

15

appeal may file a request that a court of appeals authorize a

16

direct appeal. There is no obligation to do so if no party

17

wishes the court of appeals to authorize a direct appeal.