



AMERICAN
BANKRUPTCY
INSTITUTE

Midwest Regional Bankruptcy Seminar

Consumer Track

Hot Topics in Consumer Chapter 13 Filings

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Bankruptcy Rules 3002 & 3002.1

Chapter 13 Trustee Issues on
Proof of Claims and Related Pleadings

Filing of Claims - FRBP 3002 (and 3004)

- Deadline: 70 days from filing (180 for governmental units)
 - Attachments for Claims on Primary Residences must be filed within 120 days.
- Extension of time:
 - Upon Motion, if the Court finds that the notice was “insufficient under the circumstances” to give the creditor a reasonable time to file a claim.
 - The extension may be no more than 60 days from entry of the order granting the Motion.
 - See In re Lambert, 2024 Bankr. LEXIS 1845 / 2024 WL 3713138
 - Multiple, conflicting Notices went out advising creditors of the need to file claims in the Chapter 7 case. The case was filed as an asset case, and a Notice to File Claims was sent. Trustee then determined there were assets and sent a second notice with a later deadline. Some creditors complied with the date in the 2nd Notice. However, upon objection of the Debtor, the Court had rescinded the second bar date. Trustee attempted to pay only those filed prior to the original deadline. Court reviewed and determined that the notices were not sufficient due to the confusion created and extended the deadline for the later-date creditors.

Upcoming Changes to FRBP 3002.1

(effective Dec. 1, 2025)

- **Motion to Determine Status – 3002.1(f)**
- At any time during the case the Debtor or Trustee may file a Motion to Determine the status of any claim on debtor's principal residence.
 - Must use the new form (Form 410C13-M1)
 - 28 days for the claim holder to respond if they disagree (Form 410C13-M1R)
 - Court **must** hold a hearing if there is a disagreement on the facts set forth in the response. (If no response, Court can simply grant the Motion)
- Lack of limits on this process - could this be burdensome to courts, trustees, etc.?
- How often do YOU (dear reader) envision filing such a request?
- Only when an issue pops up on a statement? Annually?

Upcoming Changes to FRBP 3002.1

(effective Dec. 1, 2025)

- **Trustee's End-Of-Case Notice of Payments Made – 3002.1(g)**
 - No longer known as the "Notice of Final Cure"
 - Trustee now will have **45 days after completion of payments to file** this Notice, instead of the 30 days under the old Rule
 - Trustee must use the new Form 410 C13 - N
 - Claim holder has **28 days to respond** to the End-Of-Case-Notice using the new Form 410 C13 - NR. It is also filed as a supplement to the claim holder's POC.
 - Trustee or Debtor may then file a Motion to Determine Final Cure and Payment of Mortgage Claim
 - Can be **filed after response is filed, or w/in 45 days of the service of the original notice if no response** (new Form 410 C13 – M2)
 - Claim holder then has **28 days to respond** to the Motion for Determination if they disagree with the facts, and must use new Form 410 C13 – M2R.
 - Failure by claim holder to respond can result in the court:
 - Precluding the claim holder from presenting omitted information in any contested matter or adversary proceeding
 - Award other appropriate relief including expenses and attorney fees caused by the failure; and
 - Take any other action authorized by the rule.
 - These changes to the rules may delay entry of these orders, as the timelines have been significantly expanded.

Upcoming Changes to FRBP 3002.1

(effective Dec. 1, 2025)

- **Payment Change Notices -late filed notices - 3002.1(b)(3):**

- Payment change notices still MUST be filed at least 21 days prior to the new payment due date.
- However, for late filed payment change notices, here is the result:
 - If the payment *INCREASES*, the “effective date of the new payment amount” is effective on the 1st payment due date that is at least 21 days after the untimely notice was filed and served.
 - If the payment *DECREASES*, the “effective date of the new payment amount” is the actual payment due date, *even if it is prior to the notice*.
 - For Debtors making direct payments, what effect does this have on them?
 - Is this when a Motion to Determine Status is needed?

Upcoming Changes to FRBP 3002.1

(effective Dec. 1, 2025)

- **HELOC Payment Change Notices:**

- The Rules finally take another stab at dealing with payment changes on HELOCs.
- Creditor can follow 3002.1(b)(1) and do notices whenever the interest rate or escrow account adjust, OR an Annual notice.
- Annual Notice requirements:
 - Initial notice must be filed within one year of the Bankruptcy filing; annually thereafter.
 - Must contain the payment amount for the month when the notice is filed AND a reconciliation amount to account for overpayments or underpayments in the prior year.
 - First payment after the annual notice will include the adjustment for the amount of the reconciliation.
 - The new, ongoing payment amount then takes effect the month following the month of the reconciliation payment amount.
 - IN ANNUAL NOTICE SITUATIONS, IF THE PAYMENT CHANGES BY MORE THAN \$10 IN ANY MONTH, the creditor must also provide a notice of payment change per 3002.1(b)(1) for that month.

2025 MIDWEST REGIONAL BANKRUPTCY SEMINAR

Official Form 410C13-M1 (12/25)

United States Bankruptcy Court
District of _____

In re _____ Debtor Case No. _____ Chapter 13

Motion Under Rule 3002.1(f)(1) to Determine the Status of the Mortgage Claim

The [trustee/debtor] states as follows:

1. The following information relates to the mortgage claim at issue:

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

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

Property address: _____

City _____ State _____ ZIP Code _____

2. As of the date of this motion, [I have/the trustee has] disbursed payments to cure arrearages as follows:

a. Allowed amount of the prepetition arrearage, if any: \$ _____

b. Total amount of the prepetition arrearage disbursed, if known: \$ _____

c. Allowed amount of postpetition arrearage, if any: \$ _____

d. Total amount of postpetition arrearage disbursed, if known: \$ _____

e. Total amount of arrearages disbursed: \$ _____

3. As of the date of this motion, [I have/the trustee has] disbursed payments for postpetition fees, expenses, and charges as follows:

a. Amount of postpetition fees, expenses, and charges noticed under Rule 3002.1(c) and not disallowed: \$ _____

b. Amount of postpetition fees, expenses, and charges disbursed: \$ _____

4. As of the date of this motion, [I have/the trustee has] made the following payments on the postpetition obligations: \$ _____

(5. If needed, add other information relevant to the motion.)

6. I ask the court for an order under Rule 3002.1(f)(3) determining the status of the mortgage claim addressed by this motion and whether the payments required by the plan to be made as of the date of this motion have been made.

Signed: _____ Date: ____/____/____
(Trustee/Debtor)

Address _____

Number _____ Street _____

City _____ State _____ ZIP Code _____

Contact phone (____) ____-____ Email _____

Official Form 410C13-M1

Motion to Determine the Status of the Mortgage Claim

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Fill in this information to identify the case:

Debtor 1 _____

Debtor 2 _____

Debtor 3 _____

United States Bankruptcy Court for the _____ District of _____

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: _____

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	\$ _____

Official Form 410C13-N

Trustee's Notice of Payments Made

page 1

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 servicer.

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)(2)

Within 30 days after service of this notice, the holder of the claim must file a response using Official Form 410C13-AR.

X _____ Date: ____/____/____

Signature _____

Trustee: _____

Address: _____

City _____ State _____ ZIP Code _____

Contact phone: (____) ____-____ Email: _____

Official Form 410C13-N

Trustee's Notice of Payments Made

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Post-Petition Causes of Action in Consumer Bankruptcy Cases



Property of the Estate: 11 U.S.C. § 541

- Prepetition or postpetition?
- State law.
- “Discovery rule” vs.
- Exemptions.

See pages 159-161, 163

Property of the Estate in Chapter 13 Cases

- 11 U.S.C. § 1306 – Postpetition property.
- 11 U.S.C. § 1327 – Vesting approaches.
- Equitable considerations?

See Pages 162-165

Disclosure; Turnover

- Ongoing duty to disclose.
- Income? Property? Ability to pay?
- Plan modifications; timing issues.
- Conversion – bad faith?

See pages 166-167; 162-163

Bankruptcy Court Requirements (?)

- Retention of counsel. 11 U.S.C. §§ 327, 329; FRBP 2014.
- Approval of settlement. FRBP 9019.
- Approval of fees. FRBP 2016.

See pages 168-169.

Judicial Estoppel

- Effect of failure to disclose.
- Bars recovery by debtor.
- Bars recovery by the estate?

See pages 170-171.

Real World Strategies

- Debtor attorney point of view.
- Trustee point of view.
- All-or-nothing?

Questions?

Thank You!

Faculty

Edward A. Bailey is a Standing Chapter 13 Bankruptcy Trustee in Columbus, Ohio. He was appointed by the U.S. Trustee for Region 9, and officially took charge of his office on Oct. 1, 2020. Previously, Mr. Bailey was a creditors' rights attorney for 21 years, representing creditors throughout Ohio and Kentucky. Before entering the creditor world, he was at a general practice firm, where he handled various types of cases including debtor bankruptcy, as well as criminal, domestic and personal-injury matters. Mr. Bailey has been a frequent speaker on bankruptcy law, including at events such as the NACTT National meeting, the Midwest Regional Bankruptcy Seminar, the Consumer Education Coalition seminars and others, including targeted training and seminars for creditors and clients to educate them on how to handle issues arising out of bankruptcy cases. He has also written articles for many industry journals and publications. Mr. Bailey received his undergraduate degree from Hiram College and his J.D. from Capital University Law School.

Beverly M. Burden has served as the chapter 13 trustee for the Eastern District of Kentucky in Lexington since 1999. She previously clerked for Hon. Joe Lee, and prior to that was an assistant attorney general for the Commonwealth of Kentucky in its Consumer Protection Division, concentrating on consumer fraud litigation. Ms. Burden has served on the faculty of the annual meeting of the National Conference of Bankruptcy Judges, the annual convention of the National Association of Chapter Thirteen Trustees (NACTT), the Judge Joe Lee Biennial Bankruptcy Institute, the UK Biennial Consumer Bankruptcy Law Conference, the Midwest Regional Bankruptcy Seminar, ABI's Southeast Bankruptcy Workshop, and other regional and local CLE programs. She writes a blog for practitioners in the Eastern District of Kentucky at www.ch13edky.wordpress.com and is the chair of the Biennial University of Kentucky Consumer Bankruptcy Law Conference. Ms. Burden is a member of the National Association of Chapter Thirteen Trustees (NACTT) and serves on the board of directors of the NACTT Academy for Consumer Bankruptcy Education (www.considerchapter13.org). She also served on the Chapter 13 Advisory Committee to the ABI Commission on Consumer Bankruptcy. Ms. Burden is a 2017 inductee as a Fellow in the American College of Bankruptcy. She received her J.D. from the University of Kentucky College of Law and holds a B.B.A. in accounting.

Eric W. Goering is partner with Goering & Goering, LLC in Cincinnati and has more than 20 years of experience in bankruptcy law. His practice concentrates in business and consumer bankruptcy, including loan workouts and commercial loan restructuring for the large business client. He handles an average of 100 cases per month as trustee and debtor's counsel. Mr. Goering was appointed in 2003 as a chapter 7 trustee in the Southern District of Ohio. He is a past president of the Cincinnati Bar Association, a member of the Judicial Liaison Committee, Bankruptcy Local Rules Committee and Volunteer Lawyers, and an advisory board member of ABI's Midwest Regional Bankruptcy Seminar. He is also a frequent lecturer throughout the country regarding chapter 7, 11 and 13 bankruptcy issues. Mr. Goering received his B.A. in economics from Denison University in 1989 and his J.D. from Salmon P. Chase College of Law in 1992.

John M. Hauber is the Chapter 13 Trustee for the Southern District of Indiana in Indianapolis, appointed on April 1, 2015. Prior to his appointment, he was a partner in the Indianapolis office of Tom

Scott & Associates, P.C., where his practice included business and consumer bankruptcy, debtor and creditors' rights including financial restructuring and workouts, and all aspects of bankruptcy litigation. Mr. Hauber worked for the Indiana Attorney General's Consumer Protection Division from 1993-97 as a deputy attorney general, and he was a member of the National Association of Consumer Advocates and the Indiana Home Defense Task Force. He worked in private practice from 1997-2002 emphasizing the representation of consumer bankruptcy debtors. Mr. Hauber was a staff attorney for Chapter 13 Trustee Robert A. Brothers in December 2002 before returning to consumer bankruptcy practice in August 2008. He is admitted to all Indiana state courts, federal courts for the Northern and Southern Districts of Indiana and the Seventh Circuit Court of Appeals. Mr. Hauber is currently an adjunct professor at the I.U. McKinney School of Law and has lectured on all aspects of consumer bankruptcy for ICLEF, the Indianapolis Bar Association, ABI and the Office of the U.S. Trustee for Region 10 since 2002. He received his A.B. from Wabash College in 1990 and his J.D. from Indiana University Robert H. McKinney School of Law in 1993.

John G. Jansing is the chapter 13 trustee for the Southern District of Ohio's Western Division in Dayton. He was appointed in July 2019 and started as trustee on Oct. 1, 2019. Mr. Jansing's office administers about 2,026 cases currently. Prior to his appointment as a chapter 13 trustee, he served as a chapter 7 trustee for about 10 years and represented mostly creditors in all chapters of bankruptcy for about 25 years. Prior to his bankruptcy practice, Mr. Jansing clerked for the Ohio Court of Appeals and managed a title company and handled commercial real estate matters. He is a member of the American Bar Association, the Ohio Bar Association, the Dayton Bar Association and the American Bankruptcy Law Forum. Mr. Jansing received his B.A. *cum laude* in history from the University of Cincinnati in 1985 and his J.D. from the University of Dayton School of Law in 1988.