

Faye D. English

Chapter 13 Trustee
Southern District of Ohio
10 West Broad Street, Suite 900
Columbus, Ohio 43215-3449
Telephone: (614) 420-2555
Facsimile: (614) 420-2550
www.ch13columbus.com

CHAPTER 13 TRUSTEE'S POSITION STATEMENT¹ REGARDING NOTICES OF PAYMENT CHANGE UNDER FRBP 3002.1

Rule 3002.1 of the Federal Rules of Bankruptcy Procedure ("FRBP"), which became effective December 1, 2011, concerns claims that are (1) secured by a security interest in the debtor's principal residence, and (2) provided for under 11 U.S.C. §1322(b)(5).

Conduit Cases

Late Filed Notices of Payment Change

In cases where any mortgage on the principal residence is being paid via conduit, the Trustee will object to any Notice of Payment Change ("NOPC") that was not filed at least 21 days before the new payment amount is due, as required by FRBP 3002.1(b). During the time an objection to a late-filed NOPC is pending, the Trustee will continue to pay the mortgage at the previously filed and allowed payment amount.

Where the new payment is a *decrease from the prior payment*, it would appear the late-filed NOPC is harmless and would benefit the debtor. Pursuant to FRBP 3002.1(i)(1), the Trustee will generally request an order allowing the late-filed NOPC as of its effective date.

In the event allowing the late-filed NOPC will result in an overpayment to the mortgage holder, the Trustee will request an order finding that the pre-petition arrearage is reduced by the amount of the overpayment. If there is no balance remaining on the pre-petition arrearage, the Trustee will request an order finding that the next conduit payment is reduced by the amount of the overpayment. If there is no balance remaining on the pre-petition arrearage and there are no further conduit payments to be made, the Trustee will request an order directing the mortgage holder to return the overpaid funds to the Trustee.

Where the new payment is an *increase from the prior payment*, it would appear the late-filed NOPC results in harm to the debtor. Pursuant to FRBP 3002.1(i)(1), the Trustee will request an order disallowing the late-filed NOPC and will further request a finding which precludes the mortgage holder from presenting the omitted information, in any form, as evidence in any contested matter.

¹ The Trustee reserves the right to proceed in any manner that is appropriate based upon the facts of each case, and as permitted under applicable bankruptcy law.

Payment Changes in Proofs of Claim

Where a Proof of Claim includes payment changes beyond the initial post-petition payment amount, the Trustee will not recognize the payment changes. The mortgage holder must file a separate NOPC in compliance with FRBP 3002.1(b).

Payment Changes Resulting From Mortgage Loan Modifications

Please refer to the Trustee's Position Statement regarding Mortgage Loan Modifications.

Direct Pay Cases

In direct pay cases, the Trustee will take no action with respect to Notices of Payment Changes.