

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**

**In re:
MODIFICATION OF THE LOCAL RULES
OF PRACTICE AND PROCEDURE
IN THE U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF VERMONT**

TO CREATE LOCAL RULES 3002.1-1, 3002.1-2 AND 3002.1-3

STANDING ORDER # 20-02

**REGARDING NEW PROCEDURES FOR HELOC
CREDITORS TO FILE PAYMENT CHANGE NOTICES
ANNUALLY, AMOUNT OF PAYMENT TO BE MADE
AFTER A PAYMENT CHANGE NOTICE WHILE AN
OBJECTION IS PENDING, AND CONTENT OF MOTIONS
AND PROPOSED ORDERS SEEKING A DECLARATION
THE DEBTOR IS CURRENT ON MORTGAGE**

Federal Rule of Bankruptcy Procedure 3002.1 (“Rule 3002.1”) generally requires the holder of a claim secured by a chapter 13 debtor’s principal residence to file and serve a notice each time the amount of the mortgage payment on its claim changes. Subpart (b)(1) states, “If the claim arises from a home-equity line of credit, this requirement may be modified by court order.” After this question was raised by an attorney who represents holders of secured claims based on home-equity lines of credit (“HELOCs”) and investigated by a Task Force, and after input from the Vermont Bankruptcy Bar at Bench Bar meetings in 2019, the Court determined fairness required the general rule be modified in this District, and further determined it would adopt the procedure recommended by the ABI Commission. See FINAL REPORT OF THE ABI COMMISSION ON CONSUMER BANKRUPTCY, § 2.07 (2017–19), available at <https://consumercommission.abi.org/commission-report>.

New Vt. LBR 3002.1-1

To implement this modification of the generally applicable requirement set forth in Rule 3002.1, when the secured claim arises from a HELOC, IT IS HEREBY ORDERED that the following Local Rule is enacted:

VT. LBR 3002.1-1 – HELOC CREDITORS’ NOTICES OF MORTGAGE PAYMENT CHANGE

Notwithstanding the general requirement of Bankruptcy Rule 3002.1(b)(1) that secured creditors whose claims are secured by a chapter 13 debtor’s principal residence must file and serve a notice each time the amount of the mortgage payment on its claim changes, if the secured claim is based on a home-equity line of credit (a “HELOC”), the holder of that claim (the “HELOC Creditor”) shall be excused from complying with that requirement if

- (a) the monthly payment amount does not increase or decrease by more than \$10 in any single month,
- (b) the HELOC Creditor sends an annual statement, within the same one-month period each year, and
- (c) the annual statement includes
 - (1) a reconciliation statement showing the amounts of any monthly over- or under-payments over the course of the prior year,
 - (2) if there was a net over-payment for the prior year, the amount and application of the over-payment, the current balance the HELOC Creditor is holding, the location of the funds, and how the HELOC Creditor proposes to apply it against the current year’s amounts due, and
 - (3) if there was a net under-payment for the prior year, an invoice for the amount needed to satisfy that under-payment.

If the HELOC Creditor chooses to send an annual statement in lieu of notices of each payment change, it may not assess any late fee, or declare the debtor to be in default, as a result of any shortfall in a monthly payment, as long as the debtor’s payment was at least as much as was set forth on the last annual statement or any subsequent separate notices of payment change.

New Vt. LBR 3002.1-2

Rule 3002.1 provides that the holder of a claim secured by a security interest in the debtor’s principal residence (the “Mortgage Creditor”) must serve any notice of payment change no later than 21 days before a payment in the new amount is due, and that the new payment shall go into effect the day the proposed new payment is due, unless an objection is filed by that date or the court orders otherwise, see Rule 3002.1(b)(1) and (2). Rule 3002.1 does not specifically address, however, at what point the debtor must begin making the new payment when an objection has been filed. Since, in this District, the chapter 13 trustee (the “Trustee”) makes the mortgage payments on any mortgage that was in default on the date the petition was filed (known as a conduit mortgage payment or “CMP”), this raises the question of whether the Trustee has authority to make the pre-notice payment in CMP cases until the objection to the notice of payment change has been resolved. To clarify the amount of the payment a debtor or the Trustee must make during the time an objection to a notice of payment change is pending, IT IS HEREBY ORDERED that the following new Local Rule is enacted:

VT. LBR 3002.1-2 – AMOUNT OF PAYMENT THE TRUSTEE OR DEBTOR MUST MAKE AFTER FILING AN OBJECTION TO A NOTICE OF PAYMENT CHANGE

- (a) If, pursuant to Fed. R. Bankr. P. 3002.1(b), the debtor or Trustee files a timely objection to a notice of payment change filed by the holder of a claim secured by a security interest in the debtor’s principal residence (the “Mortgage Creditor”), in a Conduit Mortgage Payment (as that term is defined in Vt. LBR 3015-6(a)(1)) case, then
 - (1) the debtor is not required to increase the plan payment, and neither the debtor nor the Trustee is required to increase the monthly disbursement to the Mortgage Creditor, until the Court enters an Order ruling on that objection;
 - (2) if the Court enters an Order overruling the objection, and allowing the payment change, then, within 14 days of entry of that Order, the debtor must file a motion to modify the plan and confirmation order with a proposed modified plan curing any post-petition mortgage default, increasing the monthly mortgage payment going forward, and adjusting the terms of the plan and amount of plan payments accordingly; and
 - (3) if the Court enters an Order sustaining the objection, and denying the payment change, the docket and claims register will reflect that ruling.
- (b) The Mortgage Creditor may not declare a default, or seek to enforce its rights against the debtor, based on the debtor or Trustee’s failure to make the new mortgage payment during the time an objection to that Mortgage Creditor’s notice of payment change is pending, or while the debtor’s motion to modify is pending, as long as the debtor or Trustee timely filed the objection, and the debtor timely filed any required motion to modify.
- (c) If the debtor chooses to increase plan payments based on the notice of payment change, notwithstanding the debtor or Trustee’s filing of a timely objection, then
 - (1) the Trustee shall retain those additional sums and continue to make pre-notice payment amounts until the Court rules on the objection; and
 - (2) if the Court sustains the objection, the Trustee will apply any such funds the Trustee is holding either (A) as sums due under the confirmed plan (thus reducing the term of the plan) or (B) to the funds to be distributed to the general unsecured creditors (thus increasing the dividend to that class of creditors), as the debtor elects.

New Vt. LBR 3002.1-3

After considering input from the Vermont Bankruptcy Bar, the Court has also determined that a new Local Rule related to Rule 3002.1 is necessary to specify the contents of a motion and proposed order to declare a debtor current, see Rule 3002.1(f). In order for the Court to establish the status of the loan, and permit the homeowner to monitor the status of the loan, after the Debtor has completed all payments under the confirmed plan, the Court has concluded Rule 3002.1 orders declaring the Debtor current must include certain information. Thus, IT IS HEREBY ORDERED that the following Local Rule is enacted:

VT. LBR 3002.1-3 – CONTENT OF MOTION AND PROPOSED ORDER DECLARING DEBTOR CURRENT ON MORTGAGE, AFTER CONCLUSION OF CHAPTER 13 PLAN PAYMENTS

- (a) Every motion filed to comply with the requirement of Rule 3002.1(f) and (h) shall:

- (1) inform the holder of a claim secured by a security interest in the debtor's principal residence (the "Mortgage Creditor") of its obligation to file and serve a response under Rule 3002.1(g) that includes the information specified in paragraph (b) of this Local Rule, and
 - (2) include in the proposed order a directive to enter on the Mortgage Creditor's (or its servicer's) books an entry reflecting the date and content of the Court order, including any corrective entry necessary to align its books with the Court order.
- (b) Every response filed by a Mortgage Creditor or its servicer to comply with the requirements of Rule 3002.1(g) shall contain the following information:
- (1) whether it agrees the debtor has paid in full the amount required to cure the pre-petition default,
 - (2) whether the debtor is otherwise current on all post-petition payments, including all fees, charges, escrow, expenses, and costs with the mortgage loan due through the date of the response,
 - (3) any unpaid principal balance owed as of that date,
 - (4) any escrow account balance as of that date,
 - (5) any suspense or other unapplied account balances as of that date, and
 - (6) any fees, expenses, and charges allowable but unpaid as of that date.
- (c) In this District, the duty to file a motion to declare a debtor current under Rule 3002.1 is on the chapter 13 trustee in Conduit Mortgage Payment (as that term is defined in Vt. LBR 3015-6(a)(1), "CMP") cases and on the debtor's counsel (or the debtor, if there is no debtor's counsel), in non-CMP cases, *i.e.*, where the debtor has made the mortgage payments directly to the mortgagee or its servicer during the chapter 13 case.

IT IS FURTHER ORDERED these new Local Rules are effective upon entry of this Order.

February 25, 2020
Burlington, Vermont



Colleen A. Brown
United States Bankruptcy Judge