

# **BANKRUPTCY BROWN BAG**

**RULES, FORMS, PROCEDURES**

**Monday, November 21, 2011**

# Amended Federal Rules

- 1004.2 – Chapter 15 petitions
- 2003 – Continued 341 meetings
- 2019 – Disclosures by Chapter 11 Committees
- 4004 – Extensions to object to discharge
- 6003 – Employment orders – effective date

# Claims-Related Changes

- 3001 – Proofs of Claim
  - Amended Rule
  - Amended Proof of Claim form
  - *New* Mortgage Proof of Claim Attachment
- 3002.1 – Secured Claims in Chapter 13 Cases
  - *New* Rule
  - *New* Notice of Mortgage Payment Changes
  - *New* Notice of Postpetition Mortgage Fees, Expenses, and Charges

## Rule 3001

- In an individual-debtor case (any chapter), secured or unsecured creditor must provide an itemized statement of the interest, fees, expenses, and other charges incurred before the petition was filed
- Secured claim – must include a statement of amount needed to cure default
- Secured claim in debtor's principal residence – creditor must attach new form “Mortgage Proof of Claim Attachment”

UNITED STATES BANKRUPTCY COURT _____ DISTRICT OF _____		<b>PROOF OF CLAIM</b>
Name of Debtor: _____ Case Number: _____		<b>COURT USE ONLY</b>
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): _____		
Name and address where notices should be sent: _____  Telephone number: _____ email: _____		<input type="checkbox"/> Check this box if this claim amends a previously filed claim.  Court Claim Number: _____ (If known)  Filed on: _____
Name and address where payment should be sent (if different from above): _____  Telephone number: _____ email: _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
1. Amount of Claim as of Date Case Filed: \$ _____		
If all or part of the claim is secured, complete item 4.		
If all or part of the claim is entitled to priority, complete item 5.		
<input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
2. Basis for Claim: _____ (See instruction #2)		
3. Last four digits of any number by which creditor identifies debtor: _____	3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.		
Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: _____	Basis for perfection: _____	
Value of Property: \$ _____	Amount of Secured Claim: \$ _____	
Annual Interest Rate: _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)	Amount Unsecured: \$ _____	
5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.		
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725* earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. §507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).
<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(____). Amount entitled to priority: \$ _____
*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.		
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)		

7. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8. Signature: (See instruction #8)

Check the appropriate box

I am the creditor.  I am the creditor's authorized agent.  I am the trustee, or the debtor, or their authorized agent.  I am a guarantor, surety, indorser, or other codebtor. (Attach copy of power of attorney, if any.) (See Bankruptcy Rule 3004.) (See Bankruptcy Rule 3005.)

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

Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Company: \_\_\_\_\_  
Address and telephone number (if different from notice address above): \_\_\_\_\_ (Signature) \_\_\_\_\_ (Date) \_\_\_\_\_  
Telephone number: \_\_\_\_\_ email: \_\_\_\_\_

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**  
The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.  
Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:  
Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:  
Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

4. Secured Claim:  
Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a).  
If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:  
An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:  
Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:  
The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, attach a complete copy of any power of attorney, and provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

1. Amount of Claim as of Date Case Filed:  
State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:  
State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:  
State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:  
Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:  
If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

**Mortgage Proof of Claim Attachment**

If you file a claim secured by a security interest in the debtor's principal residence, you must use this form as an attachment to your proof of claim. See Bankruptcy Rule 3001(c)(2).

Name of debtor: \_\_\_\_\_ Case number: \_\_\_\_\_

Name of creditor: \_\_\_\_\_ Last four digits of any number you use to identify the debtor's account: \_\_\_\_\_

**Part 1: Statement of Principal and Interest Due as of the Petition Date**

Itemize the principal and interest due on the claim as of the petition date (included in the Amount of Claim listed in Item 1 on your Proof of Claim form).

1. Principal due		(1) \$ _____																				
2. Interest due	<table border="1"> <thead> <tr> <th>Interest rate</th> <th>From mm/dd/yyyy</th> <th>To mm/dd/yyyy</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>_____ %</td> <td>__/__/__</td> <td>__/__/__</td> <td>\$ _____</td> </tr> <tr> <td>_____ %</td> <td>__/__/__</td> <td>__/__/__</td> <td>\$ _____</td> </tr> <tr> <td>_____ %</td> <td>__/__/__</td> <td>__/__/__</td> <td>\$ _____</td> </tr> <tr> <td colspan="3">Total interest due as of the petition date</td> <td>\$ _____</td> </tr> </tbody> </table>	Interest rate	From mm/dd/yyyy	To mm/dd/yyyy	Amount	_____ %	__/__/__	__/__/__	\$ _____	_____ %	__/__/__	__/__/__	\$ _____	_____ %	__/__/__	__/__/__	\$ _____	Total interest due as of the petition date			\$ _____	Copy total here ▶ (2) + \$ _____
Interest rate	From mm/dd/yyyy	To mm/dd/yyyy	Amount																			
_____ %	__/__/__	__/__/__	\$ _____																			
_____ %	__/__/__	__/__/__	\$ _____																			
_____ %	__/__/__	__/__/__	\$ _____																			
Total interest due as of the petition date			\$ _____																			
3. Total principal and interest due		(3) \$ _____																				

**Part 2: Statement of Prepetition Fees, Expenses, and Charges**

Itemize the fees, expenses, and charges due on the claim as of the petition date (included in the Amount of Claim listed in Item 1 on the Proof of Claim form).

Description	Dates incurred	Amount
1. Late charges	_____	(1) \$ _____
2. Non-sufficient funds (NSF) fees	_____	(2) \$ _____
3. Attorney's fees	_____	(3) \$ _____
4. Filing fees and court costs	_____	(4) \$ _____
5. Advertisement costs	_____	(5) \$ _____
6. Sheriff/auctioneer fees	_____	(6) \$ _____
7. Title costs	_____	(7) \$ _____
8. Recording fees	_____	(8) \$ _____
9. Appraisal/broker's price opinion fees	_____	(9) \$ _____
10. Property inspection fees	_____	(10) \$ _____
11. Tax advances (non-escrow)	_____	(11) \$ _____
12. Insurance advances (non-escrow)	_____	(12) \$ _____
13. Escrow shortage or deficiency (Do not include amounts that are part of any installment payment listed in Part 3.)	_____	(13) \$ _____
14. Property preservation expenses. Specify: _____	_____	(14) \$ _____
15. Other. Specify: _____	_____	(15) \$ _____
16. Other. Specify: _____	_____	(16) \$ _____
17. Other. Specify: _____	_____	(17) + \$ _____
18. Total prepetition fees, expenses, and charges. Add all of the amounts listed above.		(18) \$ _____

**Part 3. Statement of Amount Necessary to Cure Default as of the Petition Date**

Does the installment payment amount include an escrow deposit?

- No
- Yes. Attach to the Proof of Claim form an escrow account statement prepared as of the petition date in a form consistent with applicable nonbankruptcy law.

1. Installment payments due	Date last payment received by creditor _____	
	Number of installment payments due (1) _____	
2. Amount of installment payments due	_____ installments @ \$ _____	
	_____ installments @ \$ _____	
	_____ installments @ + \$ _____	
	Total installment payments due as of the petition date \$ _____	Copy total here ▶ (2) \$ _____
3. Calculation of cure amount	Add total prepetition fees, expenses, and charges	Copy total from Part 2 here ▶ + \$ _____
	Subtract total of unapplied funds (funds received but not credited to account)	- \$ _____
	Subtract amounts for which debtor is entitled to a refund	- \$ _____
	Total amount necessary to cure default as of the petition date	(3) \$ _____

Copy total onto Item 4 of Proof of Claim form

## Failure to Comply?

The court may:

- “preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case,” or
- award other appropriate relief such as reasonable expenses and attorney fees caused by the creditor’s failure to comply.

## Rule 3002.1

- Applies only in Chapter 13
- Applies only with respect to security interest in debtor's principal residence
- New Forms:
  - Notice of Mortgage Payment Change
  - Notice of Postpetition Mortgage Fees, Expenses, and Charges

# Notice of Mortgage Payment Change

(B 10 Supplement 1)

- Must be filed and served:
  - on debtor, debtor's attorney, and trustee
  - 21 days before new payment amount is due

UNITED STATES BANKRUPTCY COURT  
District of Hawaii (Honolulu)

In re:  
Debtor(s)  
[REDACTED]

Case No.: [REDACTED]  
Chapter: 13

Loan Number (Last 4): 3402

NOTICE OF PAYMENT CHANGE

JPMorgan Chase Bank, N.A., its successor or assign, hereby gives its Notice of Payment Change as follows:

Payment Change Reason:		<u>Escrow</u>
Effective Date of New Payment:		<u>January 01, 2012</u>
Current Monthly Payment:	Principal and Interest	<u>\$1,948.61</u>
	Tax and Other Amount	<u>\$216.53</u>
	Mortgage Insurance	<u>\$0.00</u>
	Optional Insurance Amount	<u>\$0.00</u>
	Over/Shortage Amount	<u>\$0.00</u>
	Hazard Insurance Amount	<u>\$138.25</u>
	Total Payment Amount	<u>\$2,303.39</u>
New Monthly Payment:	Principal and Interest	<u>\$1,948.61</u>
	Tax and Other Amount	<u>\$206.62</u>
	Mortgage Insurance	<u>\$0.00</u>
	Optional Insurance Amount	<u>\$0.00</u>
	Over/Shortage Amount	<u>\$0.00</u>
	Hazard Insurance Amount	<u>\$138.91</u>
	Total Payment Amount	<u>\$2,294.14</u>

Diana Duarte  
JPMorgan Chase Bank, N.A.  
Chase Records Center Attn: Correspondence Mail Mail Code  
LA4-5555 700 Kansas Lane  
Monroe, LA 71203  
Telephone: 800-848-9380  
Fax:  
Email Address:

Date: November 10, 2011

By: /s/ Diana Duarte  
Authorized Agent for Filer

- I431493

742790-429453dc-8743-4caa-ab5f-11ee150dbf6c

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2011, I have served a copy of this Notice and all attachments to the following by U.S. Mail, postage pre paid and via filing with the US Bankruptcy Court's CM ECF system.

Debtor's Attorney:

Raymond C. Cho  
Affinity Law Group, L.L.L.C.  
1188 Bishop Street, Suite 3408  
Honolulu, HI 96813

Trustee:

Howard M.S. Hu  
1132 Bishop Street, Suite 301  
Honolulu, HI 96813

/s/ Bill Taylor

As Authorized Filing Agent for Filer

742790-8c7dee8a-1f7b-4bcf-af83-6d166ccbe184

# UNITED STATES BANKRUPTCY COURT

\_\_\_\_\_ District of \_\_\_\_\_

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_

Chapter 13

## Notice of Mortgage Payment Change

If you file a claim secured by a security interest in the debtor's principal residence provided for under the debtor's plan pursuant to § 1322(b)(5), you must use this form to give notice of any changes in the installment payment amount. File this form as a supplement to your proof of claim at least 21 days before the new payment amount is due. See Bankruptcy Rule 3002.1.

Name of creditor: \_\_\_\_\_ Court claim no. (if known): \_\_\_\_\_

Last four digits of any number you use to identify the debtor's account: \_\_\_\_\_

**Date of payment change:**  
Must be at least 21 days after date of \_\_\_\_/\_\_\_\_/\_\_\_\_  
this notice

**New total payment:** \$ \_\_\_\_\_  
Principal, interest, and escrow, if any

### Part 1: Escrow Account Payment Adjustment

Will there be a change in the debtor's escrow account payment?

- No  
 Yes. Attach a copy of the escrow account statement prepared in a form consistent with applicable nonbankruptcy law. Describe the basis for the change. If a statement is not attached, explain why:

Current escrow payment: \$ \_\_\_\_\_ New escrow payment: \$ \_\_\_\_\_

### Part 2: Mortgage Payment Adjustment

Will the debtor's principal and interest payment change based on an adjustment to the interest rate in the debtor's variable-rate note?

- No  
 Yes. Attach a copy of the rate change notice prepared in a form consistent with applicable nonbankruptcy law. If a notice is not attached, explain why: \_\_\_\_\_

Current interest rate: \_\_\_\_\_% New interest rate: \_\_\_\_\_%

Current principal and interest payment: \$ \_\_\_\_\_ New principal and interest payment: \$ \_\_\_\_\_

### Part 3: Other Payment Change

Will there be a change in the debtor's mortgage payment for a reason not listed above?

- No  
 Yes. Attach a copy of any documents describing the basis for the change, such as a repayment plan or loan modification agreement. (Court approval may be required before the payment change can take effect.)

Reason for change: \_\_\_\_\_

Current mortgage payment: \$ \_\_\_\_\_ New mortgage payment: \$ \_\_\_\_\_

### Part 4: Sign Here

The person completing this Notice must sign it. Sign and print your name and your title, if any, and state your address and telephone number if different from the notice address listed on the proof of claim to which this Supplement applies.

Check the appropriate box.

- I am the creditor.     I am the creditor's authorized agent.  
(Attach copy of power of attorney, if any.)

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

**X** \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_  
Signature

Print: \_\_\_\_\_ Title \_\_\_\_\_  
First Name Middle Name Last Name

Company \_\_\_\_\_

Address \_\_\_\_\_  
Number Street

City State ZIP Code

Contact phone (\_\_\_\_) \_\_\_\_-\_\_\_\_ Email \_\_\_\_\_

# Notice of Postpetition Mortgage Fees, Expenses, and Charges

(B 10 Supplement 2)

- Must be filed and served:
  - on debtor, debtor's attorney, and trustee
  - within 180 days after obligations are incurred
- Motion to determine fees, etc., by debtor or trustee due 1 year after service of notice

# UNITED STATES BANKRUPTCY COURT

\_\_\_\_\_ District of \_\_\_\_\_

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_  
Chapter 13

## Notice of Postpetition Mortgage Fees, Expenses, and Charges

If you hold a claim secured by a security interest in the debtor's principal residence, you must use this form to give notice of any postpetition fees, expenses, and charges that you assert are recoverable against the debtor or against the debtor's principal residence. File this form as a supplement to your proof of claim. See Bankruptcy Rule 3002.1.

Name of creditor: \_\_\_\_\_ Court claim no. (if known): \_\_\_\_\_

Last four digits of any number you use to identify the debtor's account: \_\_\_\_\_

Does this notice supplement a prior notice of postpetition fees, expenses, and charges?

- No  
 Yes. Date of the last notice: \_\_\_\_/\_\_\_\_/\_\_\_\_

### Part 1: Itemize Postpetition Fees, Expenses, and Charges

Itemize the fees, expenses, and charges incurred on the debtor's mortgage account after the petition was filed. Do not include any escrow account disbursements or any amounts previously itemized in a notice filed in this case or ruled on by the bankruptcy court.

Description	Dates incurred	Amount
1. Late charges	_____	(1) \$ _____
2. Non-sufficient funds (NSF) fees	_____	(2) \$ _____
3. Attorney fees	_____	(3) \$ _____
4. Filing fees and court costs	_____	(4) \$ _____
5. Bankruptcy/Proof of claim fees	_____	(5) \$ _____
6. Appraisal/Broker's price opinion fees	_____	(6) \$ _____
7. Property inspection fees	_____	(7) \$ _____
8. Tax advances (non-escrow)	_____	(8) \$ _____
9. Insurance advances (non-escrow)	_____	(9) \$ _____
10. Property preservation expenses. Specify: _____	_____	(10) \$ _____
11. Other. Specify: _____	_____	(11) \$ _____
12. Other. Specify: _____	_____	(12) \$ _____
13. Other. Specify: _____	_____	(13) \$ _____
14. Other. Specify: _____	_____	(14) \$ _____

The debtor or trustee may challenge whether the fees, expenses, and charges you listed are required to be paid. See 11 U.S.C. § 1322(b)(5) and Bankruptcy Rule 3002.1.

### Part 2: Sign Here

The person completing this Notice must sign it. Sign and print your name and your title, if any, and state your address and telephone number if different from the notice address listed on the proof of claim to which this Supplement applies.

Check the appropriate box.

- I am the creditor.  
 I am the creditor's authorized agent. (Attach copy of power of attorney, if any.)

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

**X** \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_  
Signature

Print: \_\_\_\_\_ Title \_\_\_\_\_  
First Name Middle Name Last Name

Company \_\_\_\_\_

Address \_\_\_\_\_  
Number Street  
City State ZIP Code

Contact phone (\_\_\_\_) \_\_\_\_-\_\_\_\_ Email \_\_\_\_\_

## Notice of Final Cure Payment

- Trustee must file and serve notice that debtor has paid in full amount to cure default:
  - within 30 days after debtor completes plan payments
  - on creditor, debtor, and debtor's attorney
- Creditor's response due 21 days after service of trustee's notice
- Debtor's motion to determine need to pay is due 21 days after service of creditor's response

# Trustee's form

UNITED STATES BANKRUPTCY COURT District of _____	
In re _____ Debtor	Case No. _____ Chapter 13
<b>Notice of Final Cure Payment and Completion of Payments under the Plan</b>	
Pursuant to Fed. Bankr. Rule 3002.1(f), the Trustee files Notice that the amount required to cure the default in the below claim has been paid in full and that the Debtor has completed all payments under the plan.	
Name of creditor: _____ Court claim no. (if known): _____	
Last four digits of any number used to identify the debtor's account: _____	
<b>Final Cure Amount</b>	
Amount of Allowed Pre Petition Arrearage	\$ _____
Amount Paid by Trustee	\$ _____
<b>Monthly Ongoing Mortgage Payment:</b>	
<input type="radio"/> Mortgage paid thru the Chapter 13 conduit and is due for the _____ payment	
<input type="radio"/> Mortgage is paid directly by Debtors	
Within 21 days of the service of this Notice, the creditor must file and serve same on the debtor, debtor's counsel and the trustee, pursuant to Fed. Bankr. Rule 3002.1(g), a statement indicating whether it agrees that the debtor has paid in full the amount required to cure the default and whether, consistent with §1322(b)(5), the debtor is otherwise current on all payments or be subject to further action of the court including possible sanctions.	
Dated: _____	Respectfully Submitted:  

## Sequence of Events

<b>Filer</b>	<b>Document</b>	<b>Deadline</b>	<b>FRBP</b>
Creditor	Proof of Claim (B10)	90 days after first date set for 341 meeting	3002(c)
Creditor	Mortgage Proof of Claim Attachment	Attached to Proof of Claim	3001(c)(2)(B)
Creditor	Notice of Mortgage Payment Change; Certificate of Service	21 days before new payment amount due	3002.1(b)
Creditor	Notice of Postpetition Mortgage Fees, Expenses, and Charges; Certificate of Service	180 days after obligations are incurred	3002.1(c)
Debtor	Motion to Determine Mortgage Fees and Expenses re: Rule 3002.1; Notice of Hearing; Certificate of Service	1 year after service of creditor's notice of fees	3002.1(e)
Trustee	Notice of Final Cure Payment; Certificate of Service	30 days after debtor completes plan payments	3002.1(f)
Creditor	Response to Notice of Final Cure Payment; Certificate of Service	21 days after service of notice of final cure payment	3002.1(g)
Debtor	Motion to Determine Final Cure and Mortgage Payment re: Rule 3002.1; Notice of Hearing; Certificate of Service	21 days after service of creditor's response	3002.1(h)

## Creditor's failure to comply under Rule 3002.1(b), (c), or (g)?

The court may:

- “preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case,” or
- award other appropriate relief such as reasonable expenses and attorney fees caused by the creditor's failure to comply.

- Mortgage Proof of Claim Attachment
- Notice of Mortgage Payment Change
- Notice of Postpetition Mortgage Fees and Expenses re: Rule 3002.1
- Response to Notice of Final Cure Payment

#### Claims

[File Claims](#)

[Claim Actions](#)

[Claims Upload](#)

[Creditor Claimant Activity](#)

[Creditor Batch Events](#)

**Claim Events**

[11-00123 James Doe](#)

Type: bk Chapter: 13 v Assets:

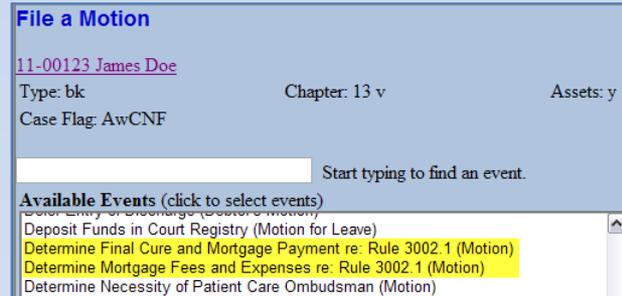
Case Flag: AwCNF

Start typing to find another event. Hold

**Available Events** (click to select events)

1Notice of Transfer of Claim (NEW EVENT - USE FOR ALL TRANSFERS)  
 Application for Unclaimed Funds  
 Notice of Claim Filed by Debtor or Trustee [hib\_3004]  
 Notice of Mortgage Payment Change  
 Notice of Postpetition Mortgage Fees, Expenses, and Charges  
 Objection to Claim  
 Objection to Transfer of Claim  
 Request for Payment of Administrative Expense - DO NOT USE - File in Claims Register  
 Response to Notice of Final Cure Payment Rule 3002.1

- Motion to Determine Mortgage Fees and Expenses re: Rule 3002.1
- Motion to Determine Final Cure Payment re: Rule 3002.1



**File a Motion**

11-00123 James Doe

Type: bk Chapter: 13 v Assets: y

Case Flag: AwCNF

Start typing to find an event.

**Available Events** (click to select events)

- Deposit Funds in Court Registry (Motion for Leave)
- Determine Final Cure and Mortgage Payment re: Rule 3002.1 (Motion)
- Determine Mortgage Fees and Expenses re: Rule 3002.1 (Motion)
- Determine Necessity of Patient Care Ombudsman (Motion)

- Responses to motions, notices of hearing, certificates of service – regular menu items under Bankruptcy

# Local Bankruptcy Rules

- **LBR 4001-1. Automatic Stay – Relief From** - Changes deadline to reply to opposition to relief from automatic stay (not chapter 13 codebtor stay) from 3 days to 7 days before the hearing date.
- **LBR 5005-4. Electronic Filing**
  - Filing Agent – agency relationship and attorney is responsible for matter filed
  - Retention of originally signed documents for 1 year after case or proceeding is closed

- **LBR 7055-1. Default** - Adds requirement for declaration regarding sufficiency of service, including service in a foreign country, when requesting clerk's entry of default.
- Common deficiencies regarding service:
  - Summons stale after 14 days after issuance. FRBP 7004(e).
  - Service must be made on both debtor and debtor's attorney. FRBP 7004(g).
  - Corporation, partnership, other unincorporated entity – must send to the attention of an officer, managing or general agent, if not represented by an attorney. FRBP 7004(b)(3).
  - Insured depository institution – **certified** mail to the attention of an officer, if no attorney. FRBP 7004(h).
  - Outside United States – Hague Convention; amended LBR 7055-1 requires declaration regarding sufficiency of service.

- **LBR 9018-1. Sealing and Redaction of Documents** - Clarifies procedure, including electronic filing of confidential documents. Refers to requirements to be issued by clerk and posted on website.
  - **CM/ECF Procedures**
    - **Motion to Seal Document(s)** – public document; should not have any confidential information included or attached
    - **Sealed Document(s)** – docket entry is public document but PDF will have access restricted to the court *if this specific filing selection is made*
    - **Disposition:**
      - Motion to seal **granted** – court considers sealed document(s) in ruling
      - Motion **denied** – access to originally filed document(s) remains on the docket but restricted; court will not consider information when ruling; party may then file (or not file) a public document to have the information considered

## Sealed Document Submitted on Paper

- Place in sealed envelope
- Attach case caption with title of document
- Include in the envelope a CD or DVD with a PDF of the unredacted document – together with a “wet signature” declaration that the media contains a true and correct image of the subject document

## Sealed Document vs. Restricted Internet Access

- Documents in cases filed before 12/1/2003 and which have been closed more than 1 year have *access restricted* in PACER over the Internet, but they are not sealed.
  - Message to ECF user with login who represented a party in the case or proceeding: “The document you are about to view is restricted; protect it from unauthorized viewing.”
  - Message to public: “Access to this document is restricted” or “The document is not available”
- These documents are available for viewing using the public terminals in the Clerk’s Office

# Chapter 13 Plan

- Section 2 – Payments to Trustee: Clarifies provision in section 2.06 regarding pre-confirmation adequate protection payments.
- Section 4 – Classification of Claims: Omits reference in section 4.01-3 Maintenance Payments by Trustee to section 7.06 of the plan; deemed unnecessary due to provisions of new Bankruptcy Rule 3002.1 effective December 1, 2011; adds check boxes for “principal residence” and “other property”.
- Section 7 – Miscellaneous Provisions: Omits current procedures following final plan payment as unnecessary due to provisions of new Bankruptcy Rule 3002.1; clarifies that any default by debtor in making direct payments to creditor postpetition is debtor’s responsibility, not to be paid by the trustee.

**2.06 Pre-Confirmation Adequate Protection Payments and Payments to Lessors.**

If checked, Trustee shall make adequate protection or lease payments under 11 U.S.C. § 1326(a)(1) (B) or (C) to the parties listed below. Trustee shall make the payments below as soon as practicable after the creditor or lessor files a proof of claim. After confirmation, Trustee shall make distributions as provided elsewhere in this plan. The adequate protection payment amount shall be as indicated below. If no payment amount is indicated below, the adequate protection payment amount shall be two percent of the estimated value of the collateral, unless section 8 provides otherwise.

<i>Creditor/ Lessor</i>	<i>Property description (&amp; est. value if adequate protection)</i>	<i>Mo. Pmt.</i>

**4.01-3 Maintenance Payments by Trustee.** From the plan funding, Trustee shall pay all postpetition installments due to Class 1 claimants identified by a checked box in the table below, as and when due under the applicable agreement and applicable law, and Trustee shall promptly remit the same to the Class 1 claimant.

**4.01-4 Application and Calculation of Postpetition Installments.** Class 1 claimants shall apply payments under paragraph 4.01-2 and 4.01-3 only to the postpetition installments. The amount of the postpetition installments shall be determined as if the claim was not in default on the petition date.

<i>Class 1 Creditor / Collateral</i>	<i>Maturity date</i>	<i>Est. arrearage</i>	<i>Interest rate</i>	<i>Est. mo. pmt.</i>
<b>Principal Residence:</b>				
<input type="checkbox"/>				
<b>Other Property:</b>				
<input type="checkbox"/>				

**7.06 Postpetition Obligations Paid Directly by Debtor.** If this plan provides that Debtor will directly pay any postpetition obligations to a creditor, any postpetition fees, expenses, or charges, including those alleged to be due under Bankruptcy Rule 3002.1(a), (c), or (e), are the personal responsibility of Debtor and, unless the court orders otherwise, these postpetition fees, expenses, or charges shall not be paid by Trustee or through the plan.

# Practice Pointers

**Relief from Stay Motions – Account Statement.** Not being filed when required.

LBR 4001-1(a)(4) Account Statement.

(A) ***When Statement Required.*** If the motion alleges that the debtor has defaulted in making payments to the moving party, the motion must include an account statement and an admissible declaration attesting to the statement's accuracy. The statement must cover the entire period during which the moving party contends that the debtor has been in default. The statement and declaration must be written in language comprehensible to a lay person, and must include the following information:

- (i) a description of the accrued and unpaid obligations, including the nature of the obligation (e.g., principal and interest, escrow, etc.), the date on which it accrued;
- (ii) the amount of any payments during the period of the statement; and
- (iii) the date of receipt and posting of each such payment.

(B) ***When Statement Not Required.*** An account statement is not required if the debtor has indicated in the Chapter 7 Individual Debtor's Statement of Intention or in a Chapter 13 plan that the property which is the subject of the motion will be surrendered to the moving party.

## **Reaffirmation Agreements. Common deficiencies:**

- Using an incorrect or outdated form  
Note: amended form effective 12/1/2011
- Failure to obtain required signatures
- Failure to attach mandatory cover sheet

- Answer in Part II.C.1.b. of the Form B240A for “monthly expenses” includes the debt being reaffirmed – instructions state this amount should be excluded, unlike the total amount for expenses in schedule J

B240A, Reaffirmation Documents		Page 3
1. Your present monthly income and expenses are:		
a. Monthly income from all sources after payroll deductions (take-home pay plus any other income)		\$ <input type="text"/>
b. Monthly expenses (including all reaffirmed debts except this one)		\$ <input type="text"/>
c. Amount available to pay this reaffirmed debt (subtract b. from a.)		\$ <input type="text"/>
d. Amount of monthly payment required for this reaffirmed debt		\$ <input type="text"/>

- The disclosure statement in Part V of Form B240A is not attached – this should be included to support the assumption that the debtors were informed of their rights concerning the reaffirmation of the debt
- Credit union debts being reaffirmed will be more closely scrutinized and possibly set for hearing when debtor is unrepresented by counsel
- Hearings on reaffirmation agreements may be taken off calendar if additional information is filed to support approval – specifically, facts supporting the debtor’s ability to make the payments under the agreement or a convincing need to retain the collateral; declarations regarding these should be filed before the hearing date

# Court Updates

- **eOrders**
  - available in early to mid-2012
  - PDF is uploaded in CM/ECF for review and processing (similar to eDocs used by attorneys for debtors)
  - Signature space for judge is at top of first page
- **Paper orders** – if delivered to court or brought to a hearing, order should have traditional signature line for judge (same as now)



  
Anthony J. Metz III  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF INDIANA  
PO Box 44978  
Indianapolis, IN 46244  
SGENERIC (rev 11/2010)

In Re: Top Quality Glass & Mirror, Co. Inc. Case Number: 08-02765-AJM-11  
SSN: NA EIN: 35-1697977  
Debtor(s)

**ORDER**

A(n) Second Motion for Authority for an Order Extending Time to Respond to Debtor's Motion to Amend Confirmed Plan Post Confirmation to and including 11/30/11 was filed with the Clerk of Court on November 11, 2011, by Creditor International Painters and Allied Trades Industry.

IT IS THEREFORE ORDERED that the Second Motion for Authority for an Order Extending Time to Respond to Debtor's Motion to Amend Confirmed Plan Post Confirmation to and including 11/30/11 is GRANTED.

###

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Entered on Docket  
October 28, 2011

  
Hon. Lloyd King  
United States Bankruptcy Judge

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**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEVADA**

In re: XYIENCE INCORPORATED,  
a Nevada corporation,  
Debtor.  
DAVID HERZOG, as Liquidating Trustee,  
Plaintiff,  
v.  
ZYEN, LLC, a Nevada limited liability company,  
FERTITTA ENTERPRISES, INC., a Nevada  
corporation, WILLIAM BULLARD, ADAM

Case No.: BK-S-08-10474-MKN  
Chapter 11

Adversary No. 09-1402-MKN

101551-004/1358028

- **Digital Audio of Hearings**

- Estimated to be available in January, 2012
- Click on docket number; when PDF file with audio attachment appears, click on attachments tab or “paper clip” icon, then click on audio file
- PACER charge is \$2.40 regardless of length of hearing
- Statements made at hearings will be more readily available to the public – care should be taken as to any protected personal identifiers such as Social Security Numbers, etc. [Note: New A/V equipment in courtroom – check with courtroom deputy in advance about using equipment]

- To object to audio being accessible in PACER:
  - LBR 5073-1(b): “A party objecting to access to an audio recording being made available on PACER must file an objection no later than the time of the hearing or trial and bring it to the attention of the judge at the commencement of the proceeding.”

- **Website & Social Media**

- PDF/A – will be required mid-2012; information at website
- **Facebook** <http://www.facebook.com/pages/United-States-Bankruptcy-Court-District-of-Hawaii/216388468374524>
- **Twitter** <http://twitter.com/HIBKC>
- Google Translate <http://translate.google.com>

# **Q & A with Judge Robert Faris**