

LBR 3002.1.1
REQUIRED STATEMENTS FOR SECURED DEBTS ON
A PERSONAL RESIDENCE

(a) Scope of Rule. This rule requires certain statements from creditors of consumer debtors who are directly repaying debt secured by a mortgage on real property or a lien on personal property the debtor occupies as the debtor's personal residence. This rule applies in Chapters 7, 12, and 13, applies only to consumer loan relationships, and applies only as long as the debtor is in bankruptcy and protected by the automatic stay.

(b) Purpose.

(1) The purpose of this rule is to maintain, to the greatest degree possible, the routine flow of information from secured creditors to debtors with respect to secured loans constituting secured debt (as that term is defined by 11 U.S.C. § 101(8)) where the debtor is retaining possession of the collateral and continuing to make the regular installment payments directly to the secured creditor during a bankruptcy case. It is the intent of this rule to support the normal issuance of regular monthly statements typically issued by secured creditors to consumer borrowers who are not in bankruptcy and to provide consumer debtors with a creditor contact point so that a debtor can obtain specific information on the status of such loans, if needed.

(2) A creditor's good faith attempt to comply with this order in furnishing information to the consumer debtor shall not expose the secured creditor to claims of violating the automatic stay.

(c) Defined Term. For purposes of this rule, the term "Mortgage Creditor" shall include all creditors whose claims represent consumer debts secured in whole or in part by a mortgage on real property or a lien on a personal property interest in manufactured housing where the debtor occupies such real property or manufactured housing as the debtor's personal residence.

(d) Mortgage Creditor's Duties.

(1) Except as provided in paragraph (2) of this section, and except as provided in LBR 3015(b).2, if the Mortgage Creditor provided monthly statements to the consumer debtor pre-petition, the Mortgage Creditor shall continue to provide monthly statements to all Chapter 12 and Chapter 13 consumer debtors who have indicated an intent to retain the subject collateral in their plan, and to all Chapter 7 debtors whose statement of intention (Official Form 108) indicates an intent to reaffirm the debt secured by the subject collateral. Such statements shall be provided unless and until the Mortgage Creditor is granted relief from the automatic stay under 11 U.S.C. § 362(d). The monthly statements shall contain at least the following information concerning post-petition payments:

(i) The date of the statement and the date the next payment is due;

- (ii) The amount of the current monthly payment;
- (iii) The portion of the payment attributable to escrow, if any;
- (iv) The post-petition amount past due, if any, and from what date;
- (v) Any outstanding post-petition late charges;
- (vi) The amount and date of receipt of all payments received since the date of the last statement;
- (vii) A telephone number and contact information that the debtor or the debtor's attorney may use to obtain reasonably prompt information regarding the loan and recent transactions; and
- (viii) The proper payment address.

(2) If pre-petition the Mortgage Creditor provided the debtor with "coupon books" or some other pre-printed, bundled evidence of payments due, the Mortgage Creditor shall not be required to provide monthly statements under (1) of this section. The Mortgage Creditor shall, however, be required to supply the debtor with additional coupon books as needed or requested in writing by the debtor.

(3) The Mortgage Creditor shall provide the following information to the debtor upon the reasonable written request of the debtor:

- (i) The principal balance of the loan;
- (ii) The original maturity date;
- (iii) The current interest rate;
- (iv) The current escrow balance, if any;
- (v) The interest paid year to date; and
- (vi) The property taxes paid year to date, if any.

(4) If the case is a Chapter 12 or 13 case where the secured consumer debt is not modified or paid through the plan, and the Mortgage Creditor believes the debtor is in default, the Mortgage Creditor shall send a letter alleging such default to the debtor and debtor's attorney not less than 14 days before taking any steps to modify the automatic stay. Such written notice of default shall not be required in instances where the debtor has filed with the Court a plan or plan modification in which the debtor makes known the intent to abandon or surrender the property securing the Mortgage Creditor's claim.

(e) Form of Communication. For the purposes of this rule, Mortgage Creditors shall be considered to have sent the requisite documents or monthly statements to the debtor when the creditor places it in any form of communication, which in the usual course would result in the debtor receiving the document or monthly statement, to the address that the debtor last provided to the Court. The form of communication may include, but is not limited to,

electronic communication, United States Postal Service, or use of a similar commercial communications carrier.

(f) Issuance of Monthly Statements is not a Stay Violation. Mortgage Creditors who provide account information or monthly statements under subsection (d) of this rule shall not be found to have violated the automatic stay by doing so, and Mortgage Creditors may contact the debtor about the status of insurance coverage on property that is collateral for the Mortgage Creditor's claim, may respond to inquiries and requests for information about the account from the debtor, and may send the debtor statements, payment coupons, or other correspondence that the Mortgage Creditor sends to its non-debtor customers without violating the automatic stay. In order for communication to be protected under this provision, the communication must indicate it is provided for information purposes and does not constitute a demand for payment.

(g) Motions to Show Cause. As a result of a Mortgage Creditor's alleged non-compliance with this rule, a debtor may file a Motion for the Creditor to Show Cause no earlier than 60 days after the Mortgage Creditor's failure to comply with this rule. Before filing the motion, the debtor must make good faith attempts in writing to contact the Mortgage Creditor and determine the cause of any omission, and must indicate in the motion the good faith attempts taken, together with a summary description of any response provided by the Mortgage Creditor.

(h) Non-Conforming Statements and Substantial Compliance. If a Mortgage Creditor's regular billing system can provide a statement to a debtor that substantially complies with this rule, but does not fully conform to all of its requirements, the Mortgage Creditor may request that the debtor accept such statement. If a debtor declines to accept the non-conforming statement, a Mortgage Creditor may file a motion, on notice to the debtor and the debtor's attorney, if any, seeking a declaration of the Court that cause exists to allow such non-conforming statements to satisfy the Mortgage Creditor's obligations under this rule. For good cause shown, the Court may grant a waiver for purposes of a single case or multiple cases, and for either a limited or unlimited period of time. No waiver will be granted, however, unless the proffered statement substantially complies with this rule.

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