"ALL" YOU EVER NEED TO KNOW ABOUT THE NOTICE REQUIREMENTS IN CHAPTER 7s AND CHAPTER 13s

by: Rachael H. Lenoir,
Law Clerk and
Brooke Trusty,
Law Clerk for Neil P. Olack
United States Bankruptcy Judge for the
Northern and Southern Districts of Mississippi

March 2012

"ALL" YOU EVER NEED TO KNOW ABOUT
THE NOTICE REQUIREMENTS
IN CHAPTER 7s AND CHAPTER 13s[1]

Due process is derived from two amendments to the United States Constitution, both of which limit governmental action. The Fifth Amendment to the United States Constitution mandates that "[n]o person shall . . . be deprived of life, liberty, or property, without due process or law." U.S. CONST. amend. V. This clause is known as the Due Process Clause. The Fourteenth Amendment extends due process rights to actions by the individual states. U.S. CONST. amend. XIV.

The two cornerstones of due process are "notice" and a "hearing," which are related concepts. As explained by the United States Supreme Court, "[t]he purpose of notice under the Due Process Clause is to apprise the affected individual of, and permit adequate preparation for, an impending 'hearing.'" *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 14 (1978) (citation omitted).

The traditional view of "fair" notice in judicial proceedings, as articulated in the seminal case of *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), and in its progeny, *Tulsa Prof'l Collection Services, Inc. v. Pope*, 485 U.S. 478, 489-91 (1988), *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 797-800 (1983), and *Memphis Light*, 436 U.S. at 14, applies to bankruptcy cases. *Western Auto Supply Co. v. Savage Arms, Inc. (In re Savage Indus., Inc.)*, 43 F.3d 714, 721 (1st Cir. 1994); *Drabkin v. Midland-Ross Corp.* (*In re Auto-Train Corp.)*, 810 F.2d 270, 278 (D.C. Cir. 1987); *IRS v. Hairopoulos (In re Hairopoulos)*, 118 F.3d 1240, 1244 (8th Cir. 1997). Although the Bankruptcy Code was itself enacted pursuant to specific constitutional authority, U.S. CONST. Art. I, § 8, Cl. 4, the Supreme Court has held that the Bankruptcy Code is limited by the prohibitions in the Fifth Amendment. *U.S. v. Sec. Indus. Bank*, 459 U.S. 70, 75 (1982).

The phrase "notice and a hearing" appears throughout the Bankruptcy Code and is defined as "such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances." 11 U.S.C. § 102(1) (A). This definition, taken from *Mullane*, does not specify the "quality" or "quantity" of notice that must be given in any particular context. Rather, the definition is sufficiently non-specific to allow for occasions when bankruptcy courts must resolve matters on limited notice.

The Federal Rules of Bankruptcy Procedure (the "Rules"), unlike the Bankruptcy Code, provide specific procedures meant to satisfy due process rights in bankruptcy proceedings. These Rules state the form and extent of notice and a hearing to which an individual is entitled in various matters. Compliance with the Rules, however, may not always satisfy the constitutional components of due process because constitutional requirements vary depending on the underlying facts and may be more or less stringent than the specific procedures required in the Rules. Russell A. Eisenberg & Frances Gecker, *Due Process and Bankruptcy: A Contradiction in Terms?* 10 EMORY BANKR. DEV.

---

[1] These materials are designed to provide general educational information regarding the subject matters covered and do not reflect the personal views and opinions of the authors or the presenter.

J. 47, 71 (1993-94).

The Rules are replete with notice procedures.[2] For example, Rule 9014, which governs contested matters, requires that "reasonable notice and opportunity for hearing . . . be afforded the party against whom relief is sought." FED R. BANKR. P. 9014(a). Rule 3007, which governs objections to claims, requires that the objector file a written objection and serve a copy of the objection with notice of the hearing date on the debtor and the trustee, at least 30 days prior to the hearing. FED. R. BANKR. P. 3007. The plethora of Rules, and exceptions, can be challenging to apply. This paper highlights a few of those Rules.

1. Bar Dates

Inadequate notice to creditors of the deadline for filing a proof of claim (known as the "claims bar date") may preclude the discharge of claims under 11 U.S.C. § 523(a)(3) and provide a basis for the late filing of a proof of claim. *Chemetron Corp. v. Jones*, 72 F.3d 341, 345-45 (3d Cir. 1995). Normally, all that is required in a chapter 7 case is notice of the date the debtor filed his petition for relief because the claims bar date can be easily computed from the petition date and creditors are not expected to sit on their rights. Rule 3002 requires that the claims bar date be set at 90 days after the first creditors' meeting, which must be held between 20 and 40 days after the filing of the chapter 7 petition or between 20 and 50 days after the filing of a chapter 13 petition. FED. R. BANKR. P. 2003(a), 3002(c). A diligent creditor, therefore, might consider filing his proof of claim within 110 days after the petition date.

When a case is converted to a chapter 7 case, however, the creditor may not know how to compute the claims bar date and may be entitled to actual notice of that specific date in order to satisfy due process requirements. *Fogel v. Zell*, 221 F.3d 955, 964 (7th Cir. 2000).

In "no-asset" chapter 7 cases, notice of the claims bar date or of the bankruptcy case is irrelevant under the exception in Rule 3002(c)(5). *Deutsch-Sokol v. Northside Savs. Bank (In re Deutsch-Sokol*, 290 B.R. 27 (S.D.N.Y. 2003).

[2] Effective December 1, 2009, the Bankruptcy Code and the Bankruptcy Rules were amended to change most time periods less than 30 days to either seven, fourteen, 21, or 28 days. The purpose of the amendments was to simplify the method for computing time periods by making it more likely that any deadline would fall on a weekday, rather than on a weekend. Now, Rule 9006(a) makes every day count when computing any time period, even if that day is a legal holiday. An exception applies if the last day of the period is a Saturday, Sunday, or legal holiday, in which event the time period continues to run. Specific time periods are set out in the *Chart of Chapter 7 and 13 Notice of Hearing Requirements*, which is attached to the end of this paper.

2. Dischargeability Deadlines

Rule 7001 specifies the types of matters for which an adversary proceeding must be conducted. For the most part, adversary proceedings resemble contested civil proceedings. Rule 7004 details the procedure and requirements for a summons, service, proof of service, and service of the complaint with the summons.

Rules 4004(a) and 4007(c) govern the timing for filing a complaint objecting to the debtor's discharge under 11 U.S.C. § 727, 11 U.S.C. § 1328(f), or 11 U.S.C. § 523, or for filing a motion objecting to discharge under 11 U.S.C. § 727(a)(8) or (a)(9). Rule 4004(a) provides that in chapter 7 cases, the complaint or motion must be filed no later than 60 days after the first date set for the meeting of creditors under 11 U.S.C. § 341(a). In chapter 13 cases, a motion objecting to the debtor's discharge under 11 U.S.C. § 1328(f) must be filed no later than 60 days after the first date set for the meeting of creditors. Similarly, Rule 4007(c) provides that in chapter 7 and 13 cases, a complaint to determine the dischargeability of a specific debt under 11 U.S.C. § 523(c) must be filed no later than 60 days after the first date set for the meeting of creditors.

Effective December 1, 2011, Rule 4004(b) was amended to allow extensions of time for objecting to a discharge in certain narrow circumstances where there is a gap between the deadline for objecting to a discharge and the date the court actually enters a discharge order.

Whether any deadline may be extended or waived depends on whether the time requirement in the Rule is characterized as jurisdictional in nature. In *Kontrick v. Ryan*, 540 U.S. 443 (2004), the Supreme Court held that the time limitation in Rule 4004 is not a jurisdictional requirement. "Only Congress may determine a lower federal court's subject-matter jurisdiction," *Kontrick,* 540 U.S. at 452, citing U.S. CONST art. III, § 1. The Rules "do not delineate what cases bankruptcy courts are competent to adjudicate." *Id.* at 454.

3. Fair Notice

Notice, to be fair, must include three elements: (1) content that reasonably conveys to the recipient all the required information; (2) transmission of the information in a manner that is reasonably calculated to reach all interested parties; and (3) a reasonable time for response. *Greyhound Lines, Inc. v. Rogers (In re Eagle Bus Mfg., Inc.),* 62 F.3d 730, 735 (5th Cir. 1995).

a. Content of Notice

Whether a notice contains "all the required information" depends on the surrounding factual circumstances. If the notice is unclear, the fact that it was actually received will not render it adequate. *Mullane*, 339 U.S. at 314; *Folger Adam Sec., Inc. v. DeMatteis/MacGregor, JV*, 209 F.3d 252, 265 (3d Cir. 2000); *Am. Bank & Trust Co. v. Jardine Ins. Servs. Tex., Inc. (In re Barton Indus., Inc.)*, 104 F.3d 1241, 1245-56 (10th Cir. 1997); *Piedmont Trust Bank v. Linkous (In re Linkous)*, 990 F.2d 160, 162-63 (4th Cir. 1993). For example, notice that a bankruptcy court would hold a confirmation hearing on a proposed bankruptcy plan did not satisfy due process requirements when the notice did not inform creditors that a valuation hearing under 11 U.S.C. § 506 would also take

place at the hearing. *Green Tree Acceptance, Inc. v. Calvert (In re Calvert)*, 907 F.2d 1069 (11th Cir. 1990).

b. Method for Delivery of Notice

In the seminal case of *Mullane*, the Supreme Court noted that the Due Process Clause requires that the chosen method for delivering notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane*, 339 U.S. at 315, citing *Milliken v. Meyer*, 311 U.S. 457 (1941). As long as the delivery is reasonable, due process does not require actual receipt of the notice. *Dusenbery v. United States*, 534 U.S. 161, 170 (2002). However, if one becomes aware after sending the notice that the selected method of delivery failed, due process requires additional follow-up measures to effect notice. *Jones v. Flowers*, 547 U.S. 220, 234 (2006).

The Constitution does not require a particular method for delivering notice. There are two traditional methods: (1) direct notice by first-class mail and (2) constructive notice by publication in a newspaper or magazine. If a person's name and address are reasonably ascertainable, he is usually entitled to have the notice sent directly to him. If not, then publication of the notice in a newspaper or other periodical that he is likely to see is usually considered sufficient. *In re Crystal Oil Co.*, 158 F.3d 291, 297 (5th Cir. 1998); *Chemetron*, 72 F.3d at 345. Creditors in the former category are sometimes referred to as "known creditors," and creditors in the latter category are sometimes known as "unknown creditors." The distinction between "known" and "unknown" creditors is important for the reasons discussed below.

It is sometimes more problematic to determine who is *not* entitled to notice then who is entitled. There is no Bankruptcy Rule that states who is *not* entitled to notice. The rule of thumb is that actual notice should be given "to all interested parties." FED. R. BANKR. P. 2002(a).

(1.) Known Creditors

Known creditors are those whose names and addresses are either known to the debtor or can be readily ascertained. *Fogel*, 221 F.3d at 963. As noted previously, known creditors are usually entitled to receive direct notice. However, when the sheer number of known creditors in relation to the size of their claims makes it excessively costly to provide direct notice by mail to all of them, notice by publication may be sufficient. *Novak v. Callahan (In re GAC Corp.)*, 681 F.2d 1295, 1300 (11th Cir. 1982) (notice by publication in 53 leading newspapers worldwide to non-holding debenture purchasers was sufficient notice, given cost to the trustees of identifying them and the speculative nature of their claims). Rule 2002(a)(*l*) permits a court to order notice by publication "if it finds that notice by mail is impracticable or that it is desirable to supplement the notice." FED. R. BANKR. P. 2002(*l*).

(2.) Unknown Creditors

As stated above, unknown creditors are those whose identities or claims are not reasonably ascertainable or those who hold merely conceivable, conjectural, or speculative claims. *In re Thomson McKinnon Sec., Inc.*, 130 B.R. 717, 720 (Bankr. S.D.N.Y. 1991). Traditionally, notice by publication or "constructive notice" is permitted "when the names, interests and addresses of persons are unknown." *City of New York v. N.Y., New Haven & Hartford R.R.*, 344 U.S. 293, 296 (1953); *In re Thomas McKinnon Sec. Inc.*, 130 B.R. 717, 719 (Bankr. S.D.N.Y. 1991); *see* FED. R. BANKR. P. 2002(*1*), 9008. A debtor need not be "omnipotent" or "clairvoyant" in ascertaining the identities of all of his creditors. *Chemetron*, 72 F.3d at 346-47. Instead, a debtor need only undertake "reasonably diligent efforts." *Mennonite Bd.*, 462 U.S. at 798 n.4, citing *Mullane*, 339 U.S. at 317. For example, notice by publication in THE WALL STREET JOURNAL and in one local newspaper in California was insufficient notice to unknown creditors residing in Florida in *White v. New Century TRS Holdings, Inc. (In re New Century TRS Holdings, Inc.)*, 450 B.R. 504 (Bankr. D. Del. 2011). In contrast, notice by publication in THE NEW YORK TIMES, USA TODAY, and THE WALL STREET JOURNAL, as well as in several regional Texas newspapers, was found to constitute sufficient notice to unknown Texas creditors in *Grant v. U.S. Home Corp. (In re U.S.H. Corp. of New York)*, 223 B.R. 654, 658-60 (Bankr. S.D.N.Y. 1998).

A tort claimant who does not file a proof of claim because he was unaware of his claim during the course of the bankruptcy proceeding may challenge the effectiveness of any purported notice of the claims bar date. *See Jeld-Wen, Inc. v. Brunt (In re Grossman's Inc.)*, 607 F.3d 114 (3d Cir. 2010) (holding that tort claim brought ten years after plan was confirmed was pre-petition claim and was discharged in bankruptcy if claimant received sufficient notice of the claims bar date).

(3.) Electronic Service by E-mail

Almost all federal courts use electronic filing systems through which registered users may file pleadings and view and search court records over the Internet.[3] Despite this leap into new technology, the courts have not fully embraced e-mail as a means for delivering service of process. The Bankruptcy Rules do not expressly permit service by electronic e-mail. Rule 4(f)(3) of the Federal Rules of Civil Procedures, as incorporated by reference by Rule 7004, permits service of process on an individual in a foreign county "by other means" if such service is court-ordered and is not prohibited by international agreement. The bankruptcy court in *In re Int'l Telemedia Assocs.*, 245 B.R. 713 (Bankr. N.D. Ga. 2000), authorized international service by e-mail pursuant to the flexible approach allowed under Rule 4(f)(3) and, more importantly, concluded that e-mail service

[3] For example, the local rules of the bankruptcy courts for the Northern and Southern Districts of Mississippi have designated all cases to be assigned to the Case Management/Electronic Case Files ("CF/ECF") system. MISS. BANKR. LOCAL RULE 5005-1. By registering as CM/ECF users in order to file documents electronically, attorneys are deemed to have given their consent to receive electronic service or notice of documents filed in the CM/ECF system, with the exception of service of a summons and complaint under FED. R. BANKR. P. 7004 for adversary proceedings.

comported with due process requirements. *See* Rachel Cantor, Comment, *Internet Service of Process: A Constitutionally Adequate Alternative?*, 66 U. CHI. L. REV. 943 (1999). The bankruptcy court recognized that "communication by facsimile transmission and electronic mail have now become commonplace in our increasingly global society. The federal courts are not required to turn a blind eye to society's embracement of such technological advances." *Telemedia*, 245 B.R. at 721. Later, in *Rio Props, Inc. v. Rio Inter'l Interlink*, 284 F.3d 1007 (9th Cir. 2002), the Ninth Circuit similarly held that notice by international e-mail satisfied due process after finding that foreign defendants had succeeded in evading service of process by traditional means.

c. Time for Response

A notice received by a creditor one day before a scheduled hearing was held to be untimely and a violation of due process in *Owens-Corning Fiberglass Corp. v. Center Wholesale, Inc. (In re Center Wholesale, Inc.,*), 759 F.2d 1440 (9th Cir. 1985). A notice received several hours before the hearing, however, was considered sufficient in *Archer v. Macomb County Bank*, 853 F.2d 497, 498-99 (6th Cir. 1988).

4. Claimed Exemptions & Rule 4003(b)

A debtor may reclaim certain property of the bankruptcy estate as exempt under 11 U.S.C. § 522(*l*). Rule 4003(b) requires a trustee or creditor to "file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors . . . is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later." FED. R. BANKR. P. 4003(b) (1). Unless the trustee or creditor objects, property listed by the debtor as exempt is excluded from the bankruptcy estate.

The consequences of a trustee's failure to object to a claimed exemption in a timely manner was the subject of two Supreme Court decisions, *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992), and *Schwab v. Reilly*, 130 S. Ct. 2652 (2010). In *Taylor*, the Supreme Court held that a trustee who had failed to raise a timely objection to an exemption under Rule 4003(b) could not challenge that exemption. The Supreme Court found by "negative implication" that Rule 4003(b) prevented a creditor from filing an untimely objection. *Taylor*, 503 U.S. at 643. The Supreme Court declined to address the issue whether the bankruptcy court could have invoked its equitable powers under 11 U.S.C. § 105 to extend the deadline.

In contrast, the Supreme Court in *Schwab* held that a trustee who had failed to raise a timely objection to an exemption under Rule 4003(b) could challenge that exemption. According to the Supreme Court in *Schwab*, the result reached in *Taylor* did not dictate a contrary result, because unlike the debtor in *Schwab*, the debtor in *Taylor* did not state the value of the claimed exemption as a specific dollar amount that was at, or below, the limit allowed by statute. In *Taylor*, there were warning flags that warranted the filing of an objection by the trustee that were not present in *Schwab*. The trustee in *Schwab* had no notice that the debtor was claiming the *entire* value of the property.

5. Agreements Relating to Relief from the Automatic Stay & Rule 4001(d)

Rule 4001, which applies in chapter 7, 9, 11, and 13 cases, contains the procedures that implement 11 U.S.C. § 362. *See* Advisory Committee's 1983 Notes on FED. R. BANKR. P. 4001. If an agreement exists between the debtor and his creditor to lift the automatic stay, Rule 4001(d) usually requires notice of that agreement. The enforceability of an agreement for which court approval has not been sought is questionable. Rule 4001(d) was adopted "[t]o remedy what was perceived as a growing problem of 'sweetheart' deals between the debtor and secured creditors." *Am. Savs. & Loan Ass'n v. Weber (In re Weber)*, 99 B.R. 1001, 1006 (Bankr. D. Utah 1989). Its purpose was not to protect the parties who entered into the agreement but to protect other creditors.
Rule 4001(d) is set forth below:

(d) Agreement Relating to Relief from the Automatic Stay, Prohibiting or Conditioning the Use, Sale, or Lease of Property, Providing Adequate Protection, Use of Cash Collateral, and Obtaining Credit.

(1) Motion; Service.

(A) Motion. A motion for approval of any of the following shall be accompanied by a copy of the agreement and a proposed form of order:

(i) an agreement to provide adequate protection;
(ii) an agreement to prohibit or condition the use, sale, or lease of property;
(iii) an agreement to modify or terminate the stay provided for in § 362;
(iv) an agreement to use cash collateral; or
(v) an agreement between the debtor and an entity that has a lien or interest in property of the estate pursuant to which the entity consents to the creation of a lien senior or equal to the entity's lien or interest in such property.

(B) Contents. The motion shall consist of or (if the motion is more than five pages in length) begin with a concise statement of the relief requested, not to exceed five pages, that lists or summarizes, and sets out the location within the relevant documents of, all material provisions of the agreement. In addition, the concise statement shall briefly list or summarize, and identify the specific location of, each provision in the proposed form of order, agreement, or other document of the type listed in subdivision (c)(1)(B). The motion shall also describe the nature and extent of each such provision.

(C) Service. The motion shall be served on: (1) any committee elected under §705 or appointed under § 1102 of the Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list filed under Rule 1007(d); and (2) on any other entity the court directs.

(2) Objection. Notice of the motion and the time within which objections may be filed and served on the debtor in possession or trustee shall be mailed to the parties on whom service is required by paragraph (1) of this subdivision and to such other entities as the court may direct. Unless the court fixes a different time, objections may be filed within 14 days of the mailing of notice.

(3) Disposition; Hearing. If no objection is filed, the court may enter an order

approving or disapproving the agreement without conducting a hearing. If an objection is filed or if the court determines a hearing is appropriate, the court shall hold a hearing on no less than seven days' notice to the objector, the movant, the parties on whom service is required by paragraph (1) of this subdivision and such other entities as the court may direct.

(4) Agreement in Settlement of Motion. The court may direct that the procedures prescribed in paragraphs (1), (2), and (3) of this subdivision shall not apply and the agreement may be approved without further notice if the court determines that a motion made pursuant to subdivisions (a), (b), or (c) of this rule was sufficient to afford reasonable notice of the material provisions of the agreement and opportunity for a hearing.

Rule 4001(d)(4) excuses a motion to approve an agreement if the original motion gave adequate notice of the possibility of the agreed upon relief being granted and an opportunity for a hearing on such relief. According to the 1991 Advisory Committee Note, the terms of the agreement must be "within the scope of those proposed in the motion."

6. Negative Notices

Negative notices shift the burden to an interested party to evaluate his claim and the debtor's objections, and then make his own decision whether an evidentiary hearing would be helpful, and request a hearing, if desired. Because Rule 9007 "grants bankruptcy courts the discretion to set the particularities of notice procedures," the Eighth Circuit in *Roberts v. Pierce (In re Pierce)*, 435 F.3d 891 (8th Cir. 2006), concluded that a bankruptcy court did not err in failing to hold an evidentiary hearing on a proof of claim to which a chapter 13 debtor had objected. Under 11 U.S.C. § 502, if a debtor objects to a proof of claim, "the court, after notice and a hearing, shall determine the amount of such claim." 11 U.S.C. § 502(b). The phrase "after notice and a hearing" is defined in 11 U.S.C. 102(1)(B)(1) to "authorize[ ] an act without an actual hearing if such notice is given properly and if . . . such a hearing is not requested timely by a party in interest." 11 U.S.C. § 102(1)(B)(i).

7. Objections to Confirmation

The Supreme Court in *United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367 (2010), held that if a creditor fails to object to a proposed chapter 13 plan in a timely manner, the confirmed plan is binding under 11 U.S.C. § 1327 so long as the creditor received actual notice of the proposed plan. This holding by the Supreme Court has generated much debate. The issue in *Espinosa* concerned an order confirming a chapter 13 plan that included "discharge by declaration" language. The debtor had not complied with the procedural requirements of Rule 7004 for discharging student loan debt and had not obtained a finding of "undue hardship." Although the creditor had filed a proof of claim, it did not object to the plan. The Supreme Court found that the debtor's violation of Rule 7004 did not render the confirmation order void because it did not result in a violation of the creditor's due process rights.

8. Notice Provisions Regarding Home Mortgages: Rule 3002.1

Rule 3002.1, effective December 1, 2011, requires certain disclosures in chapter 13 cases for claims secured by the debtor's principal residence that are included in the debtor's plan under 11 U.S.C. § 1322(b)(5). Rule 3002.1 does not extend to *all* arrearages allowed under 11 U.S.C. § 1322(b)(5) but only to those secured by the debtor's principal residence.

Rule 3002.1 addresses the interplay between the claims process and the plan confirmation process by requiring, among other things, that a mortgage creditor provide a debtor, the debtor's counsel, and the trustee notice of: (1) any change in the amount of the home mortgage at least 21 days prior to the effective date of the new payment amount and (2) any post-petition fees, expenses or other charges that the mortgage creditor asserts are recoverable against the debtor or against the debtor's principal residence within at least 180 days of the date those fees, expenses, or charges are incurred. Under Rule 3002.1(e), the debtor or trustee may contest the validity of post-petition fees, expenses or charges by filing a motion within one year after service of the notice.

At the end of the debtor's case, Rule 3002.1(f) requires the trustee to serve notice of a final cure payment "within 30 days after the debtor completes all payments under the plan." The notice must (1) include a statement that the debtor has paid in full the amount required to cure any default on the claim and (2) inform the mortgage creditor of its obligation to file a response. The debtor may file the notice if the trustee fails to do so.

Even if the mortgage creditor agrees that the debtor is current in his home mortgage, Rule 3002.1(g) requires the mortgage creditor to file a response within 21 days. Under Rule 3002.1(h), the debtor or trustee may respond to the mortgage creditor's response by seeking a motion for a determination as to whether the default has been cured but must do so, if at all, within 21 days of the creditor's response.

Rule 3002.1(i) contains a sanction provision in the event a mortgage creditor "fails to provide any information as required by subdivision (b), (c), or (g) of this rule . . . "

[T]he court may, after notice and a hearing, take either or both of the following actions:

(1) preclude the holder [of a claim] from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or

(2) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

FED. R. BANKR. P. 3002.1(i).

Also effective December 1, 2011, are substantial changes to Rule 3001(c), which, consistent with Rule 3002.1, require mortgage creditors to attach additional supporting information to proofs of claims filed in cases where the debtor is an individual. Rule 3001(c)(2)(D) contains the same

sanctions provision as Rule 3002.1(i).

9. The Servicemembers Civil Relief Act

In 2003, the Servicemembers Civil Relief Act ("SCRA"), 50 App. U.S.C. §§ 501-596, was enacted to replace the Soldiers' and Sailors' Civil Relief Act. The SCRA provides "servicemembers" with numerous procedural and substantive rights, such as the suspension of judicial proceedings and the setting aside of default judgments. 50 App. U.S.C. §§ 501-596. The SCRA covers servicemembers in military service and their dependents. A debtor qualifies as a "servicemember" if he is a member of the "uniformed services" as defined in 10 U.S.C. § 101(a)(5).

(5) The term "uniformed services" means–
(A) the armed forces;
(B) the commissioned corps of the National Oceanic and Atmospheric Administration; and
(C) the commissioned corps of the Public Health Service.

10 U.S.C. § 101(a)(5). The term "armed forces" is defined as the Army, Navy, Air Force, Marine Corps, and Coast Guard. 10 U.S.C. § 101(a)(4).

Military service starts when the servicemember is called to active duty. During the period of active duty, most statutory time limitations are tolled or do not run, either for or against the servicemember. 50 App. U.S.C. § 525. The court, in its discretion, may stay a proceeding on persons secondarily liable, such as sureties and guarantors. 50 App. U.S.C. § 513; *see In re Templehoff*, 339 B.R. 49, 54 (Bankr. S.D.N.Y. 2005) (holding that the SSCRA requires creditors to review a debtor's petition for relief to determine the debtor's military status); *Baxter v. Watson (In re Watson*, 292 B.R. 441 (Bankr. S.D. Ga. 2003) (holding that predecessor statute to SCRA applies to bankruptcy proceedings).

CHART OF
CHAPTER 7 AND 13
NOTICE OF HEARING REQUIREMENTS

Prepared by and used with the permission of:
Melissa Herman
Herman & Russo, P.C.
Woodstock, Georgia

Chapter 7 and 13 Notice of Hearing Requirements*

Pleading	Time	Code/Rule	Parties to Serve
Compensation and Expenses [Application]	21 days	§ 503, Rules 2002(a)(6) and 9034(e)	D, DA, T, UST, All
Employ Professional Persons [Application]	14 days	Rules 2014 and 9034(d)	D, DA, T, UST
Proposed Abandonment or Disposition of Property [Motion/Notice]	21 days	6007(b)	D, DA, T, UST, All
Avoid Lien under 522(f) [Motion]	reasonable	4003(d) and 9014	UST, T, AP
Compromise	21 days	9019, 2002(a)(3), and 9034(b)	D, DA, T, UST, AP, All
Convert from Chapter 7 to 13	14 days	1017(f)(2), 2002(a)(4), and 9034(c)	T, UST, All
Determine Secured Status and Strip Lien	30 days	4003-2; TPA-2009-10	T, AP, person who filed proof of claim for mortgagee
Determine Secured Status [Motion]	30 days	3012	T, AP, person who filed proof of claim
Dismiss Chapter 7-Creditor	21 days	1017(f)(2), 2002(a)(4), and 9034(c)	D, DA, T, UST, All
Dismiss Chapter 7-Voluntary	21 days	1017(f)(2), 2002(a)(4), and 9034(c)	T, UST, All
Examination Under Rule 2004 [Motion]	reasonable	2004 and 9013	D, DA, UST, T, AP

*Rule 9006(f) provides three additional days for mailing

Pleading	Time	Code/Rule	Parties to Serve
Extend Deadline to File a Complaint Under 523 and/or 727 [Motion]	reasonable	4004, 4006, 9013	D, DA, T, UST
Plan Modifications, post confirmation	21 days	2002(a)(5)	T, All
Reconsider or Vacate Order [Motion]	varies	3008 and 9013	D, DA, T, UST, AP
Redeem [Motion]	varies	2002-4 and 6008	T, AP
Relief From Co-Debtor Stay [Motion]	14 days	§ 1301 and Rule 9014	D, DA, T, Co-Debtor
Relief From the Automatic Stay	14 days	4001(a)	D, DA, T, UST, AP
Re-Open Case [Motion]	varies, usually 14 days	5010 and 9024	D, T, UST, AP, All (unless creditor not affected)
Sale of Real Property	21 days	6004, 2002(a)(2), and 9034(a)	D, T, UST, AP, All
Withdraw as Counsel [Motion]	varies	Local Rules, State Law	D, DA, T, UST, AP
Objection to Claim	30 days	3007 and LBR 3007-1	D, T, AP, person who signed proof of claim
Objection to Claim of Exemption		4003	D, DA, T, UST, AP

*Rule 9006(f) provides three additional days for mailing