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CHAPTER 13 TRUSTEE'S POSITION STATEMENT REGARDING NOTICE OF FINAL CURE PAYMENT 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).

The Trustee will file a Notice of Final Cure Payment ("NOFCP") pursuant to FRBP 3002.1(f), within 30 days of the last plan payment being received, only in cases where the Trustee disbursed funds to a claimant who holds a mortgage on the debtor's residence. Disbursements may have been made toward any combination of the following: a pre-petition arrearage claim, a post-petition arrearage claim, or conduit payments. The NOFCP will reflect only those disbursements that were made by the Trustee.

The Trustee will not file a NOFCP (1) with respect to claims secured by a mortgage on real property that is not the debtor's residence, (2) with respect to surrendered property, (3) where relief is granted, or (4) where the mortgage lien is crammed down, avoided or paid as unsecured.

Where the mortgage holder *responds* to the NOFCP pursuant to FRBP 3002.1(g) *and agrees* the amount required to cure the default on the claim has been paid in full *and agrees* the debtor is otherwise current on all payments consistent with 11 U.S.C. §1322(b)(5), the Trustee will send to debtor's counsel and mortgage holder's counsel, an agreed order indicating the loan is current. If the agreed order is not fully executed and returned within 21 days, the Trustee will proceed with closing the case.

Where the mortgage holder *responds* to the NOFCP pursuant to FRBP 3002.1(g) *and disagrees* the amount required to cure the default on the claim has been paid in full *or disagrees* the debtor is otherwise current on all payments consistent with 11 U.S.C. §1322(b)(5), the Trustee will file a Motion to Determine pursuant to FRBP 3002.1(h). In cases where the delinquency stems from debtor's failure to make payments directly to the mortgage holder, the Trustee expects debtor's counsel to be actively involved in resolving the Motion to Determine.

Where the mortgage holder *fails to respond* to the NOFCP pursuant to FRBP 3002.1(g), the Trustee will file a Motion to Deem Current. It is the Trustee's position that a mortgage holder who fails to respond to the NOFCP is precluded from opposing the Motion to Deem Current. Consistent with the Trustee's position, and pursuant to FRBP 3002.1(i), the Motion to Deem Current will request a finding which precludes the mortgage holder from presenting the omitted information, in any form, as evidence in any contested matter.