



## Proposed key changes to Bankruptcy Rule 3001 and the new Rule 3002.1

Bob Haeger o Rules\_Comments

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I have been practicing bankruptcy law since 1984 and my primary reaction to the subject rules is, "it's about time!" For too long, mortgage servicer and debt-buyer creditors have been filing completely bogus claims in bankruptcy court with impunity. Professor Porter did a great service by collecting the data and showing that a large percentage of bogus and inaccurate claims are filed, and deemed allowed, since debtors cannot afford to object without compensation. Creditors just cynically do the math and file unfounded and inaccurate claims because it pays, and there is almost no downside. Creditors also put the burden on the debtor to object to claims that lack the necessary supporting documents to perform an adequate review in the first instance. The proposed changes to Rule 3001 are necessary to prevent creditors from taking advantage of debtors, and each other, by spelling out the minimum evidence necessary to deserve *prima facie* treatment. Sanctions are necessary to make the changes self-effectuating, and to provide disincentives for those creditors who would continue to flout the rules. If a claim is properly founded, it will not impose an undue burden to require the claimant to establish that proper foundation at the time the claim is filed. If it is not properly founded, then it should not be filed. And it is entirely proper to sanction the filing of unfounded claims, since, without sanctions, the current miserable state of affairs will continue.

The proposed new Rule 3002.1 also is long overdue. The casebooks are heavy with evidence that it is industry practice for mortgage servicers to lie in wait and mug the debtor, once she successfully emerges from chapter 13 with her hard-earned discharge, with a bill for thousands of dollars in bogus and unauthorized fees. The proposed rule will help put that cynical practice to an end. If we have learned anything from the Great Recession, it is that Wall Street, and the mortgage industry in particular, do not deserve our trust and must be kept on a very short leash!

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