

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MISSOURI**



**2014 GENERAL ORDER CREATING LOCAL RULE 3082-1
RELATED TO HOME MORTGAGE MODIFICATIONS
IN CHAPTER 13 CASES**

For good cause shown, and pending revision to this Court's local rules, it is hereby ORDERED that Local Rule 3082-1 is created to read:

Rule 3082-1. Home Mortgage Modifications in Chapter 13 Cases

- A. **Local Forms Required.** Unless otherwise ordered in advance by the Court, motions to enter into trial home mortgage modifications and motions to approve permanent home mortgage modifications shall use the approved Local Forms. This replaces the prior practice of plan amendments to address loan modifications. **(See Local Forms - MOW 3082-1.1 and MOW 3082-1.2).**
- B. **Objections.** Objections are due 7 days after a trial or permanent home mortgage modification motion is filed. If no response is filed within 7 days, the court will enter an order granting the motion.
- C. **Trial Home Mortgage Modification.** If the debtor successfully negotiates a trial home mortgage modification, a motion shall be filed in accordance with subsection A.
1. **Pay mortgage directly, or through trustee.** During the trial home mortgage modification period, the debtor may elect to either pay the mortgage directly to the creditor, or pay the mortgage through the Chapter 13 trustee from plan payments.
 - i. **Mortgage paid directly.**
 1. **Trustee to cease disbursement on arrearage records.** If the debtor elects to pay the mortgage directly, the Chapter 13 trustee shall cease all disbursement on any pre-petition mortgage arrearage claim, any post-petition mortgage arrearages, and the initial post-petition amount (IPA) claim upon entry of the order granting the motion.
 2. **Plan payment change.** If the debtor elects to pay the mortgage directly, the debtor may request a Chapter 13 plan payment change, which, once approved, will continue until further order of the Court.
 - ii. **Mortgage paid through trustee.**
 1. **Trustee to cease disbursement on arrearage records.** If the debtor elects to pay the mortgage through the Chapter 13 trustee from the plan payments during the trial period, the Chapter 13 trustee shall cease all disbursement on any pre-petition mortgage arrearage claim, any post-

petition mortgage arrearages, and the initial post-petition amount (IPA) claim during the trial period or until the expiration of the 6 month period set forth in Paragraph 2 below. The trustee shall continue making the on-going mortgage payments at the amount specified in the trial loan modification motion until further order of court.

2. **Plan payment change.** If the debtor elects to pay the mortgage through the Chapter 13 trustee from the plan payments during the trial period, the debtor may request a Chapter 13 plan payment change, which, once approved, will continue until further order of the Court.
2. **Six months to finalize modification.** Absent Court order to the contrary, the debtor shall have 6 months to finalize the home mortgage modification.
 - i. **If agreement reached.** If a permanent home mortgage modification agreement is reached, the debtor shall file a motion set forth in subsection D.
 - ii. **If agreement not reached.** If a permanent home mortgage modification agreement is not reached at the end of the 6 month period, or a motion set forth in subsection D is not filed, the Chapter 13 trustee shall file a motion, pursuant to Local Rule 3094-1C, to amend the Chapter 13 plan to pay the mortgage through the Chapter 13 trustee from the plan payments and increase the plan payment if merited.

D. Permanent Home Mortgage Modification. If the debtor successfully negotiates a permanent home mortgage modification, a motion shall be filed in accordance with subsection A.

1. **Pay modified mortgage directly, or through trustee.** If a permanent home mortgage modification agreement is reached, the debtor may elect to either pay the modified mortgage directly to the creditor, or pay the modified mortgage through the Chapter 13 trustee from plan payments.
 - i. **Modified mortgage paid directly.**
 1. **Plan payment change.** If the debtor elects to pay the modified mortgage directly, the debtor may request a Chapter 13 plan payment change, which, once approved, will continue until further order of the Court.
 2. **Trustee to cease disbursement.** If the debtor elects to pay the modified mortgage directly, the Chapter 13 trustee shall cease all disbursement on any pre-petition mortgage arrearage claim, any post-petition mortgage arrearages, and the initial post-petition amount (IPA) claim upon entry of the order granting the motion.
 - ii. **Modified mortgage paid through trustee.**
 1. **Plan payment change.** If the debtor elects to pay the modified mortgage through the Chapter 13 trustee from the plan payments, the debtor may request a Chapter 13 plan payment change, which, once approved, will continue until further order of the Court.
 2. **Post Loan Modification Amount.** If the debtor elects to pay the modified mortgage through the Chapter 13 trustee from the plan payments, the trustee will set up a Post Loan Modification Amount (PLMA) as a separate claim record and will provide for the first modified mortgage payment to be paid on a pro rata basis, as funds are available, until the modified mortgage payment is brought current. The PLMA will include a 5% increase to cover any late fees.
2. **Upon motion approval, trustee to reset mortgage claims.** Upon Court approval of the motion to approve permanent home mortgage modification, the Chapter 13 trustee shall reset the mortgage claim records in his case management database accordingly.

- E. **Effects of Plan Payment Change.** Any order changing the plan payment shall not prohibit the Chapter 13 trustee from requesting amended schedules to support a lower plan payment or filing a motion to amend plan if merited.
- F. **Continuing Payment of Additional Fees, Expenses and Charges.** This rule does not affect the payment of additional fees, expenses and charges filed in connection with a mortgage claim. Once allowed, these fees are set up by the Chapter 13 trustee as separate claim records that will continue to be paid absent objection and further order of the court pursuant to Local Rule 3094-1C(3)(e).

This General Order is effective immediately for all pending and new cases and shall remain in effect until further order or notice of this court.

/s/ Arthur B. Federman
Arthur B. Federman, Chief Bankruptcy Judge

/s/ Dennis R. Dow
Dennis R. Dow, Bankruptcy Judge

/s/ Cynthia A. Norton
Cynthia A. Norton, Bankruptcy Judge

Kansas City, Missouri
Dated: October 2, 2014