

## Rule 3094-1. Payments on Real Property

### A. Residential and Non-residential Mortgages.

**1. Unmodified Payments on a note secured by real estate when the debtor is current on the date of petition.** When the debtor has no past due payments or charges due to the holder of the claim other than the regular payment due in the month of filing or conversion, the debtor may make the post-petition payments directly to the holder of the claim. If a debtor who has no past due payments or charges due to the holder of the claim other than the regular payment due in the month of filing or conversion nevertheless decides to pay the post-petition payments to the claimant through the Chapter 13 trustee as part of the plan payment, Rule 3094-1.A.2 applies.

**2. Unmodified Payments on a note secured by real estate when the debtor is delinquent on the date of petition.**

- a. If a debtor is delinquent on the date of the petition on a note secured by real estate, the debtor shall make the post-petition payments to the holder of the claim through the Chapter 13 trustee as part of the Chapter 13 plan payment unless the court orders otherwise. For purposes of Rule 3094-1, delinquent (or not current) means there are past due payments or charges due to the holder of the claim other than the regular contractual payment due in the month of filing or conversion.
- b. The trustee shall load into the trustee's database the monthly payment set out in the plan for the post-petition monthly payments.
  - i. The post-petition monthly payment set out in the plan shall include all amounts which the debtor is required to pay for the escrow of taxes, insurance and any other charges allowed to be escrowed under the terms of the note and/or the deed of trust. If the Addendum Official Form 410A attachment to a Proof of Claim for a Real Estate Claim has a different Monthly Mortgage Payment from the figure provided for it in the plan, the Monthly Mortgage Payment listed in the Official Form 410A attachment will be loaded into the trustee's database. See Rule 3094-1(A)(2)(e) and the Committee Note to Fed. R. Bankr. P 3015(g).
  - ii. If the holder of the claim asserts that the post-petition mortgage payment set out in the plan is incorrect and it does not provide its asserted figure in its Official Form 410A attachment to Proof of Claim, it either shall

(I). Object to the confirmation of the plan; or

(II). File a "Notice of Payment Change." See Local Rule 3094-1(A)(3)(b) and Fed. R. Bankr. P. 3002.1(b).

iii. If the debtor asserts that the figure for the Post-Petition Payment, or Monthly Mortgage Payment provided in the Form 410A attachment to Proof of Claim is incorrect, the debtor shall object to the proof of claim.

c. In order to synchronize the debtor's Chapter 13 plan payments with the post-petition, on-going mortgage payments and not adversely affect other claimants who are being paid Equal Monthly Amounts through the Chapter 13 trustee,

i. The Chapter 13 trustee shall set the trustee's database so that the first post-petition mortgage payment to be paid by the trustee comes due in the second month following the month in which the petition is filed (or in the case of a conversion from another chapter, the second month following the month in which the order of conversion is entered).

ii. In addition, the Chapter 13 trustee shall set up a separate payee record for the mortgage payment, as set out in the plan, which came due in the month following the month in which the petition is filed or in which the order of conversion is entered, plus a late fee equal to 5% of the monthly mortgage payment listed in the plan, unless otherwise ordered by the court. This payee record shall be known as the Initial Post-petition Arrearage ("IPA"); the holder of the claim shall not file a separate proof of claim for the IPA.

(I). The trustee shall not populate the payee record for the IPA for distribution until the proof of claim is filed.

(II). This IPA payee record shall be paid pro rata as funds are available with secured and priority claims for which the plan provides no Equal Monthly Amount.

(III). If the debtor or holder of the claim disagrees with the payee record set by the trustee for the IPA and asserts that it inaccurately reflects the amount due to the holder of the claim including appropriate late fee, they must file an objection to this payee record within 30 days of the initial date of confirmation of the plan.

iii. It is presumed for purposes of administering real estate mortgages through the Chapter 13 trustee that the mortgage payment for the month in which the petition is filed is delinquent on the date of filing the

Chapter 13 petition (or the date of conversion from another chapter) and, if in fact, that payment is delinquent, the holder of the claim shall include that delinquency in the pre-petition arrearage portion of its proof of claim. If the presumption is incorrect and it is clear from the 410A attachment to the mortgage proof of claim, the trustee may add the monthly payment from the date of filing or the date of conversion of the IPA payee record. If any party believes the IPA payee record has been set up incorrectly, an objection should be filed with Court.

- d. The debtor shall cure the pre-petition arrearage owed to the holder of the claim through the Chapter 13 trustee as part of the plan payment. The trustee shall populate the pre-petition arrearage payee record with the amount listed on the Official Form 410A attachment to Proof of Claim, if any. If the plan provides for no interest on the pre-petition arrearage, or if the plan provides for interest on the entire amount, but the holder of the claim is entitled to interest only on part of the pre-petition arrearage claim, the holder of the claim or the debtor shall obtain a court order which directs the trustee what portion, if any, is to receive interest and what portion is to receive no interest. The order also shall specify the rate of interest to be paid on any portion being paid interest.
- e. The proof of claim shall have Mortgage Proof of Claim attachment (Official Form 410A) filed with the proof of claim, or an attachment which conforms to the Official Federal Form.
- f. The Chapter 13 trustee shall release full monthly payments to the holder of the claim for its on-going post-petition mortgage payments and shall not release a partial payment to a holder of the claim unless it is the final payment disbursed because of a dismissal. Local Rule 3084-1L.
- g. If the Chapter 13 debtor's plan payments are current and the Chapter 13 trustee holds a plan payment in the ordinary course of the trustee's business which results in the trustee not releasing a post-petition mortgage payment to the holder of the claim, that month's mortgage payment shall be deemed current and the holder of the claim shall not charge a late fee for that "missed" payment. For purposes of this rule, the debtor's plan payment is current if the trustee posts it to his database on or before the last business day of the month in which it is due.
- h. Upon the completion of the Chapter 13 plan, the Chapter 13 trustee shall file a "Notice of Completion" with the bankruptcy court and, if applicable, a "Notice of Final Cure Payment" (Fed. R. Bankr. P. 3002.1(f)). Absent a timely objection to either notice and an order otherwise, the debtor's real estate mortgages shall be deemed current, including all fees and costs but excluding

any pending yearly escrow charges which were incurred or assessed during the year of debtor's discharge, as of the date the last payment was made from the Chapter 13 trustee. If there are additional fees and costs due, the holder of the claim shall also file a "Notice of Fees, Expenses and Charges (Fed. R. Bankr. P. 3002.1(c))" at the same time it files an objection to the "Notice of Completion and/or "Notice of Final Cure Payment."

- i. **Rule 3002-1.1 Claims** – see Rule 3002.1-1 for filing exceptions.

### **3. Changes, fees, expenses and charges.**

- a. Rule 3094-1(A)(3) applies to all Chapter 13 cases.
- b. If the loan documents provide for payment changes, including those due to interest rate adjustments or escrow account adjustments:
  - i. No later than 21 days prior to any payment change the holder of the claim or its authorized agent shall file with the court and serve on the debtor, the debtor's counsel, and the Chapter 13 trustee a "Notice of Payment Changes (Fed. R. Bankr. P. 3002.1(b)).
  - ii. The "Notice of Payment Changes" shall include the new payment amount, the date the new payment takes effect, and a brief description of the reason for the payment change.
  - iii. No later than 21 days after service of the "Notice of Payment Changes," the debtor, the Chapter 13 trustee, the United States Trustee, or any party in interest may file a response to the "Notice of Payment Changes." If no such response is filed, the debtor is deemed to have accepted the payment change and the payment change will go into effect on the date provided in the "Notice of Payment Changes."
  - iv. The Chapter 13 trustee shall not change the payment amount in the trustee's database unless such "Notice of Payment Changes" is filed with the court unless otherwise ordered by the court.
  - v. If the "Notice of Payment Changes" is filed less than 21 days prior to the date of the change and requires the monthly payment to increase, the trustee shall set the new payment to commence as soon as is practicable and the holder of the claim shall file a separate supplement, e.g., a Notice of Fees, Expenses and Charges, to its proof of claim for the difference between the old payment amount and the new payment amount for any months in which the old payment amount was remitted

and shall not charge a late fee due to the late notification. (See Fed. R. Bankr. P 3002.1(c)).

- c. If the holder of the claim whose collateral has been retained by the debtor incurs post-petition attorney's fees, costs, or other charges such as property inspection fees, post-petition late charges or other items payable by the debtor under the terms of the loan documents, the holder of the claim shall file with the court and serve the debtor, the debtor's counsel, and the Chapter 13 trustee a "Notice of Fees, Expenses and Charges" no later than 180 days after such fees or costs are incurred on a form which conforms to the Official Federal Form or Local Form as applicable. The notice shall be filed as a supplement to the proof of claim. See Fed. R. Bankr. P. 3002.1(c).
  - i. On motion of the debtor or the trustee filed within one year after service of a "Notice of Fees, Expenses and Charges", the court shall, after notice and hearing, determine whether payment of any claimed fee, expense, or charge is required by the underlying agreement and applicable non-bankruptcy law to cure a default or maintain payments in accordance with § 1322(b)(5). See Fed. R. Bankr. P. 3002.1(e).
- d. If the holder of the claim fails to file a "Notice of Payment Changes", a "Notice of Fees, Expenses and Charges", or a statement as discussed in subsection (A)(8)(b), the Court may, after notice and hearing, take either or both of the following actions:
  - i. Preclude the holder of the 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.
  - ii. Award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure. See Fed. R. Bankr. P. 3002.1(i).
- e. Once the fees, costs or charges have been deemed as accepted, owed, reasonable and non-dischargeable by the debtor or otherwise ordered by the Court, the Chapter 13 trustee shall load the total amount allowed in the Chapter 13 trustee's database for payment and, unless the court orders otherwise, it shall be paid pro rata as funds are available with secured and priority claims for which no EMA, e.g., a fixed monthly payment, is provided, unless payments are otherwise provided for by Order of the Court.
- f. If authorized pursuant to the applicable debtor's response to a "Notice of Payment Changes," order of the Court, or to a "Notice of Fees, Expenses and

Charges” or if the debtor does not respond timely to any such notice, the Chapter 13 trustee is authorized to increase the Chapter 13 plan payment without the necessity of the debtor filing a modified plan in order for the plan to comply with §§1322(a)(1) and 1322(d). If the trustee increases the debtor’s Chapter 13 plan payment, the Chapter 13 trustee shall send a notice to the debtor of such payment change and shall provide the court with a proposed wage order reflecting such change in plan payment. However, rather than increasing the Chapter 13 plan payment, the Chapter 13 trustee may choose to file a notice advising the debtor of the issue or may file a motion to dismiss setting out the issue.

**4. Unmodified Payments** on a note secured by real estate when the debtor originally paid the holder of the claim directly and modifies a previously confirmed plan to have the Chapter 13 trustee pay on-going post-petition payments from the Chapter 13 plan payments.

- a. If the debtor modifies a previously confirmed Chapter 13 plan which provided for the Chapter 13 debtor to pay the on-going post-petition payments directly to a holder of the claim to have the Chapter 13 trustee pay all or some part of the on-going post-petition payments from the Chapter 13 plan payments, the amended Chapter 13 plan must spell out with specificity the date on which the Chapter 13 trustee is to commence making the on-going post-petition payments, and the treatment of the post-petition delinquency, including the gap between the date when the debtor modified the plan and the date on which the Chapter 13 trustee is to commence making the mortgage payment, if any.
- b. The claimant must either amend its proof of claim to include any post-petition delinquency, including the gap between the date when the Chapter 13 debtor modified the Chapter 13 plan and the date on which the Chapter 13 trustee is to commence making the mortgage payment, if any; or, file a “Notice of Fees, Expenses and Charges” for those delinquencies.
- c. Unless otherwise ordered by the Court, the Chapter 13 trustee shall not distribute any funds to the holder of the claim until a proof of claim is filed.

**5. Unmodified Payments** on a note secured by real estate when the debtor originally filed the case under another chapter of Title 11 and paid the holder of the claim directly, but the on-going, post-petition payments are delinquent at the time of conversion to Chapter 13.

- a. If the debtor originally filed the case under another chapter and at the time of conversion to Chapter 13 the post-petition payments are delinquent, the

debtor shall make the post-petition payments to the holder of the claim through the Chapter 13 trustee as part of the Chapter 13 plan payment., unless the court orders otherwise.

- b. The Chapter 13 plan must spell out with specificity the date on which the Chapter 13 trustee is to commence making the on-going post-conversion payments, the treatment of the post-petition delinquency, including the gap between the date when the debtor filed the petition and converted to Chapter 13, and the treatment of the pre-petition arrearage.
- c. The claimant either must file an amended proof of claim, including any post-petition, pre-conversion delinquency, including the gap between the date when the Chapter 13 debtor filed for protection under Title 11 and converted to Chapter 13 and the date upon which the Chapter 13 trustee is to commence making the post-conversion mortgage payment, if any; or, file a “Notice of Fees, Expenses and Charges” for those delinquencies.

**6. Modified Payment on a note secured by real estate.** If the debtor proposes to modify a note secured by real estate, the debtor shall make all payments to the holder of the claim through the Chapter 13 trustee as part of the Chapter 13 plan payment. The Chapter 13 trustee shall distribute payment to the holder of the claim pursuant to the terms of the confirmed plan. The Chapter 13 trustee shall not distribute payments to the holder of the claim until a proof of claim is filed.

**7. Chapter 13 Trustee Payments to Holder of the Claim.**

- a. The Chapter 13 trustee shall release payments to the entity specified in the filed and allowed proof of claim.
- b. Unless the court orders otherwise, the Chapter 13 trustee shall not change the payee unless an assignment or transfer of claim is filed with the court.

**8. Notice of Final Cure Payment.**

- a. Within 30 days after the debtor completes all payments under the plan, the Chapter 13 trustee shall file and serve on the holder of the claim, the debtor, and debtor’s counsel a notice stating that the debtor has paid in full the amount required to cure any default on the claim. If the debtor contends that the final cure payment has been made and all plan payments have been completed, and the Chapter 13 trustee does not timely file and serve the “Notice of Final Cure Payment”, the debtor may file and serve the notice. (See Fed. R. Bankr. P 3002.1(f)).

- b. Within 21 days of the service of the “Notice of Final Cure Payment”, the holder of the claim shall file and serve on the debtor, debtor’s counsel, and the Chapter 13 trustee a “Response to Notice of Final Cure Payment” statement indicating:
  - i. Whether the holder of the claim agrees that the debtor had paid in full the amount required to cure the default on the claim, and
  - ii. Whether the debtor is otherwise current on all payments consistent with § 1322(b)(5).
  - iii. The statement shall itemize the required cure or post-petition amounts, if any, that the holder of the claim contends remain unpaid as of the date of the statement. The statement shall be filed as a supplement to the proof of claim and is not subject to Fed. R. Bankr. P. 3001(f). (See Fed. R. Bankr. P. 3002.1(g)).
- c. On motion of the debtor or Chapter 13 trustee filed within 21 days after service of the statement discussed in subsection (A)(8)(b), the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required post-petition amounts. (See Fed. R. Bankr. P. 3002.1(h)).