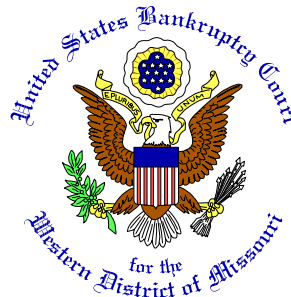


IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MISSOURI



**GENERAL ORDER AMENDING LOCAL RULES 2016-1.F.1.b., 3070-1., 3083-1.C., and 3086.1.E and CREATING LOCAL RULES 3084.1.L. and 3094-1 RELATED TO MORTGAGES PAID THROUGH THE CHAPTER 13 PLAN**

For good cause shown, and pending revision to this Court's local rules, it is hereby ORDERED that Local Rules 2016-1.F.1.b., 3070-1., 3083-1.C., and 3086.1.E. are amended to read and Local Rules 3084.1.L. and 3094-1. are created to read:

**Rule 2016-1.F Payment of Attorney Fees Through Chapter 13 Plan**

**1.b.** In the event that the proposed plan payment is not sufficient to cover the Equal Monthly Amount proposed for the payment of attorney fees and the Chapter 13 trustee's statutory maximum fee, the filing of the plan on behalf of the debtor shall be deemed a waiver of the right to receive that Equal Monthly Amount and the Chapter 13 trustee shall set an Equal Monthly Amount which will resolve any §1322(a)(1) issues. If the debtor makes her plan payments weekly or bi-weekly, the trustee may adjust the Equal Monthly Amount paid to the debtor's attorney based on the amount projected to be received eight (8) months of each year in the instance of weekly payments and ten (10) months of each year in the instance of bi-weekly payments.

**Rule 3070-1. Chapter 13 Direct Payments**

All payments to claimants shall ~~must~~ be through the Chapter 13 trustee unless the Court orders or the trustee agrees otherwise, except debtors may pay directly: 1) unmodified payments on a note secured by real property when the debtor has no past due payments or charges due to the mortgagee other than the regular payment due in the month of filing or conversion; 2) on-going support obligations pursuant to a court decree; 3) payments under a lease which the debtor has assumed or intends to assume; and 4) payments under a contract for deed which the debtor has assumed or intends to assume.

**Rule 3083-1. Chapter 13 Plan; Objections to Plan**

**C. Plan Percentages.** For plans or amended plans filed on or after October 1, 2008, the debtor must ~~may~~ use 8.0% ~~10%~~ of receipts rather than the statutory maximum of 10%.

for trustee fees when calculating plans. The actual percentage, set by the United States Attorney General pursuant to statute, may vary during the life of the plan and may require the plan payment to be increased during the life of the plan to accommodate the percentage then in effect in order for the plan to comply with §§1322(a)(1) and 1322(d).

#### **Rule 3084-1. Chapter 13 Proofs of Claim; Objections to Claims**

**L. Equal Monthly Payments.** For cases filed or converted on or after October 1, 2008, the trustee shall only distribute, as funds are available, a full Equal Monthly Amount, or a multiple thereof, unless it is the final payment to be paid as a result of the dismissal or conversion of the case, or it is the final payment which satisfies the claim. This includes payments to attorneys who are being paid through the Chapter 13 trustee. However, if disbursements to payees receiving Equal Monthly Amounts are past due and additional funds are available for disbursement over and above the amounts needed to pay a multiple of the Equal Monthly Amount, the trustee may distribute more than a multiple of the Equal Monthly Amount to the attorney until the attorney's monthly payments are current.

#### **Rule 3086-1. E. Adequate Protection – Claim Secured by Real Property.**

1. For cases filed or converted on or before September 30, 2008, unless the court orders otherwise, the Chapter 13 trustee shall not distribute adequate protection payments to a ~~real property~~ claimant **secured by real property**. Payments remitted by the trustee pursuant to an adequate protection order will be disbursed after the order becomes final. If the payments on the claim are for a long-term debt the amount remitted to the ~~adequate protection~~ claimant shall be credited against the claimant's post-petition equal monthly payments.

2. For cases filed or converted on or after October 1, 2008, unless the court orders otherwise, the Chapter 13 trustee shall distribute adequate protection payments to a real property claimant which the plan proposes to be paid by the Chapter 13 trustee from the Chapter 13 plan payments. If the payments on the claim are for a long-term debt the amount remitted to the claimant shall be credited against the claimant's post-petition equal monthly payments.

a. The debtor shall list the creditor's name, address, account number and monthly payment, including any amounts escrowed for taxes or insurance, for each real property claimant being paid by the Chapter 13 trustee from the Chapter 13 plan payments.

b. Unless the plan specifically provides in the remarks section that the creditor is not entitled to adequate protection payments, it is presumed that secured creditors listed in the section of the Chapter 13 plan dealing with real estate payments being paid by the Chapter 13 trustee from the Chapter 13 plan payments shall be entitled to adequate protection payments.

i. Adequate protection payments shall not be paid on pre-petition arrearage claims.

ii. Adequate protection payments shall not be paid on initial post-petition arrearage “claims.” See Local Rule 3094-1.C.2.c.

iii. Adequate protection payments shall not be paid on any claim for which the plan does not provide an Equal Monthly Amount.

c. Unless the Court orders otherwise, the Chapter 13 trustee shall not remit any adequate protection payment unless the real property claimant has been listed in the section of the Chapter 13 plan dealing with real estate payments being paid by the Chapter 13 trustee from the Chapter 13 plan payments.

d. All adequate protection payments shall be made in the Equal Monthly Amount provided for the claimant in the Chapter 13 plan unless the plan provides otherwise in the remarks section of the plan. The trustee shall not release partial monthly payments. See Local Rules 3084-1 L and 3094-1 C.2.f.

e. Claimants may file objections to the adequate protection treatment provided in these local rules or in the proposed Chapter 13 plan. Until the court orders otherwise the Chapter 13 trustee shall continue to make payments to the claimant in the Equal Monthly Amount provided in the plan if a proof of claim is filed.

f. Upon the dismissal or conversion to another chapter of a case prior to confirmation of a Chapter 13 plan, the Chapter 13 trustee shall make the pre-confirmation adequate protection payments, or a portion thereof, to creditors that have filed proofs of claim prior to the date of the dismissal or conversion. Such payments shall be made from any funds available for that purpose received by the trustee on or before the date of the entry of the order of dismissal or conversion.

### **Rule 3094-1. Payments on Real Property**

**A. Assumed Leases.** The debtor shall pay directly to the lessor all payments scheduled in a lease for that portion of the obligation which comes due after the order for relief. The debtor shall pay directly to the lessor all payments required to cure a pre-petition arrearage.

**B. Assumed Contracts for Deed.** The debtor shall pay directly to the holder of the contract for deed all payments scheduled in the contract for that portion of the obligation which comes due after the order for relief. The debtor shall pay directly to the holder of

the contract for deed all payments required to cure a pre-petition arrearage.

### **C. 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 mortgagee other than the regular payment due in the month of filing or conversion, the debtor may make the post-petition payments directly to the mortgagee. If a debtor who has no past due payments or charges due to the mortgagee 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.C.2 applies.

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

a. For cases filed or converted on or after October 1, 2008, 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 mortgagee 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 mortgagee 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 to Proof of Claim for Real Estate Claim has a different Total Current Monthly Payment from the figure provided for it in the plan, the Total Current Monthly Payment listed in the addendum will be loaded into the trustee's database. See Rule 3094-1.C.2.e.

ii. If the mortgagee asserts that the post-petition mortgage payment set out in the plan is incorrect and it does not provide its asserted figure in its Addendum 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 C. 3.b.

iii. If the debtor asserts that the figure for the Total Current Monthly Payment provided in the Addendum 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; the mortgagee shall not file a separate proof of claim for the Initial Post-petition Arrearage .

(I). The trustee shall not populate the payee record for the Initial Post-petition Arrearage for distribution until the proof of claim is filed.

(II). This Initial Post-petition Arrearage claim 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 mortgagee disagrees with the payee record set by the trustee for the Initial Post-petition Arrearage and asserts that it inaccurately reflects the amount due to the mortgagee including appropriate late fee, they must file an objection to this "claim" 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 mortgagee shall include that delinquency in the pre-petition arrearage portion of its proof of claim.

(I). If the presumption is incorrect and the monthly payment has not yet come due on the date of filing or date of conversion, the mortgagee or the debtor must object to the Initial Post-petition Arrearage claim record as set by the trustee.

(II). If the objection is sustained, the court shall enter an order directing the trustee to add another month plus late fee to the Initial Post-petition Arrearage claim record.

d. The debtor shall cure the pre-petition arrearage owed to the mortgagee 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 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 mortgagee is entitled to interest only on part of the pre-petition arrearage claim, the mortgagee 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 mortgagee's proof of claim shall have an addendum which conforms to the "Addendum to Proof of Claim For Real Estate Claims" on the court's website.

f. The Chapter 13 trustee shall release full monthly payments to mortgagees for their on-going post-petition mortgage payments and shall not release a partial payment to a mortgagee unless it is the final payment disbursed because of a conversion or 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 mortgagee, that month's mortgage payment shall be deemed current and the mortgagee 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. Absent a timely objection to that notice and an order otherwise, the debtor's real

estate mortgages shall be deemed current, including all fees and costs, as of the date the last payment was made from the Chapter 13 trustee. If there are additional fees and costs due, the mortgagee shall also file a "Notice of Fees and Costs Incurred" at the same time it files an objection to the "Notice of Completion."

### **3. Changes and charges.**

a Rule 3094-1.C.3 applies to all cases on or after October 1, 2008, regardless of when the initial Chapter 13 plan is filed.

b. If the loan documents provide for payment changes, including those due to interest rate adjustments or escrow account adjustments:

i. No later than 60 days prior to any payment change the mortgagee or the mortgagee's 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 Change."

ii. The "Notice of Payment Change" 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 30 days after service of the "Notice of Payment Change," the debtor, the Chapter 13 trustee, the United States Trustee, or any party in interest may file a response to the "Notice of Payment Change." 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 Change."

iv. The Chapter 13 trustee shall not change the payment amount in the trustee's database unless such "Notice of Payment Change" is filed with the court unless otherwise ordered by the court.

v. If the "Notice of Payment Change" is filed less than 60 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 mortgagee shall file a separate 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.

c. If the mortgagee or the mortgagee's authorized agent 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:

i. The mortgagee or the mortgagee's authorized agent shall file with the court and serve the debtor, the debtor's counsel, and the Chapter 13 trustee a "Notice of Fees and Costs Incurred" no later than one year after such fees or costs are incurred on a form which conforms to the form on the court's website. (It is unnecessary for the mortgagee or the mortgagee's authorized agent to serve the Chapter 13 trustee with a paper copy as the trustee shall receive a copy electronically. If the debtor's attorney receives service electronically, it is unnecessary for her to be served with a paper copy as well.)

(I). The mortgagee or the mortgagee's authorized agent shall not file more than one such notice per year.

(II). Failure of the mortgagee or the mortgagee's authorized agent to file and serve the "Notice of Fees and Costs Incurred" within one year after such fees or costs are incurred shall be deemed a waiver of such fees or costs.

ii. The Chapter 13 trustee shall load the total amount requested in the "Notice of Fees and Costs Incurred" into the Chapter 13 trustee's database for payment and, absent other order of the court, it shall be paid pro rata as funds are available with secured and priority claims for whom no Equal Monthly Amount is provided.

d. No later than 30 days after service of the "Notice of Fees and Costs Incurred," the debtor, the Chapter 13 trustee, the United States Trustee, or any party in interest may file a response to the "Notice of Fees and Costs Incurred." If no such response is filed, the debtor shall be deemed to have accepted that the charge is owed, reasonable and non-dischargeable and the Chapter 13 trustee shall release the claim for payment as funds are available for that class of claimant.

e. If authorized pursuant to the applicable debtor's response to a "Notice of Payment Change" or to a "Notice of Fees and Costs Incurred" 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). The 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.



**4. Unmodified Payments on a note secured by real estate when the debtor originally paid the mortgagee 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. On or after October 1, 2008, 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 mortgagee 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 name, address and account number of the creditor to whom the payments are to be paid; the date on which the Chapter 13 trustee is to commence making the on-going post-petition payments; 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 file a separate proof of claim for 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.

**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 mortgagee directly, but the on-going postpetition payments are delinquent at the time of conversion to Chapter 13.**

a. For cases converted on or after October 1, 2008, 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 mortgagee 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 name, address and account number of the creditor to whom the payments are to be paid; 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 must file a separate proof of claim for 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.

**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 mortgagee through the Chapter 13 trustee as part of the Chapter 13 plan payment. The Chapter 13 trustee shall distribute payment to the mortgagee pursuant to the terms of the confirmed plan. The Chapter 13 trustee shall not distribute payments to the mortgagee until a proof of claim is filed.

**7. Chapter 13 Trustee Payments to Mortgagees.**

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.

This General Order is effective on October 1, 2008 and shall remain in effect until further order or notice of this court.

/s/ Dennis R. Dow

Dennis R. Dow, Chief Bankruptcy Judge

/s/ Arthur B. Federman

Arthur B. Federman, Bankruptcy Judge

/s/ Jerry W. Venters

Jerry W. Venters, Bankruptcy Judge

Kansas City, Missouri  
Dated: September 30, 2008