

Local Rules of the United States Bankruptcy Court for the Western District of Missouri

Rule 3086-1. Payment of Claim After Lifting of Stay; Adequate Protection

A. Order Lifting Stay. If an order granting relief from the stay is entered, or if the stay otherwise is not in effect, the trustee shall continue to make payments pursuant to the terms of a confirmed plan, adequate protection order or other order of the court on the claims related to that collateral. Payments shall not cease until one of the following takes place:

1. An objection to that claim is filed and an order is entered directing the trustee to cease making payments on the claim, or
2. The claimant notifies the trustee that no further payments are owed on the claim(s) in which case the trustee shall notify the parties of such action pursuant to Local Rule 3085-1, or
3. An amended plan is filed and confirmed which specifically provides for no further payments to the claimant(s). Such amendment shall state with particularity which claim(s) shall receive no further payments.

When payments on a claim cease, the trustee shall redirect the funds to other creditors with filed and allowed claims in accordance with the confirmed plan. Once the trustee ceases making payment on a claim on which the trustee previously has distributed payments, the trustee shall adjust the claim to the principal amount previously paid.

B. Adequate Protection - General. All adequate protection payments through the Chapter 13 trustee shall be made in the ordinary course of the trustee's business from funds in the case as they become available for distribution to claimants. The Chapter 13 trustee shall make no payments until a proof of claim is filed. All payments through the Chapter 13 trustee shall be subject to the trustee's statutory percentage fee, as set by the designee of the United States Attorney General, and the Chapter 13 trustee shall collect such fee at the time the debtor's payment is received. On all adequate protection payments made by the Chapter 13 trustee, the principal amount of the adequate protection recipient's claim shall be reduced by the amount of the adequate protection payments remitted to the claimant unless the court orders otherwise.

C. Adequate Protection – Leases.

1. Personal Property. The debtor shall pay directly to the lessor all payments scheduled in a lease of personal property for that portion of the obligation that becomes due after the order for relief. Absent a timely objection to confirmation of the proposed plan, the debtor is presumed to have made these payments as required under § 1326(a). As the Chapter 13 plan shall provide that payments to personal property lessors will be paid directly, there shall be no reduction in the Chapter 13 plan payment for these direct payments.

2. Real Property. The debtor shall pay directly to the lessor all payments scheduled in a lease for that portion of the obligation that comes due after the order for relief. As the

statute does not mandate adequate protection payments and as the Chapter 13 plan shall provide for direct payments to real property lessors, there will be no reduction in the Chapter 13 plan payment for these direct payments.

D. Adequate Protection - Claim Secured by Personal Property. Unless the court orders otherwise, the Chapter 13 plan shall provide that §1326(a)(1) pre-confirmation adequate protection payments to a creditor holding an allowed claim secured by personal property (to the extent that the claim is attributable to the purchase of such property by the debtor for that portion of the obligation that becomes due after the order for relief is entered) shall be paid through the Chapter 13 trustee.

1. The debtor shall list the creditor's name, address, account number and payment for each secured creditor receiving a §1326(a)(1) pre-confirmation adequate protection payment in the Chapter 13 plan.
2. 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 retained personal property shall be entitled to adequate protection.
3. Unless the court orders otherwise, the Chapter 13 trustee shall not remit any adequate protection payment unless the personal property secured claimant has been listed in the section of the Chapter 13 plan dealing with retained personal property.
4. All adequate protection payments through the Chapter 13 trustee 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.
5. Pursuant to §1326(a)(3), claimants may file objections to the adequate protection treatment provided by the plan. 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 on file until the court orders otherwise.
6. Upon the dismissal or conversion to another chapter of a case prior to the confirmation of a Chapter 13 plan, the Chapter 13 trustee shall make the pre-confirmation adequate protection payments, or a portion thereof, from any funds available for that purpose received on or before the date of the entry of the order of dismissal or conversion to creditors that have filed proofs of claim prior to the date of the dismissal or conversion.

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 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 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.