

Rule 3023-1 **Special Procedures in Chapter 13 Matters.** This Local Rule shall govern all cases filed under chapter 13 of the Code.

(a) Section 1326 Payments.

- (i) The debtor shall, after commencing timely payments as required by 11 U.S.C. § 1326(a)(1), continue to make subsequent payments to the trustee in accordance with the proposed plan until the trustee or Court directs otherwise.

- (ii) If the proposed plan provides for payment of secured debt through the plan and the debtor is making timely pre-confirmation payments to the trustee, the debtor need not continue to make regular payments directly on such secured debt. If the proposed plan provides for direct payments to a secured creditor or if no proposed plan is filed on the petition date, the debtor shall continue to make regular payments to such secured creditor(s) as and when due.

(b) Chapter 13 Plan and Plan Analysis.

(i) Filing of Plan and Nonstandard Plan Provisions.

- (A) Filing of Plan. On the petition date, or within fourteen (14) days of conversion to chapter 13, the debtor shall file a proposed plan in the form of Local Form 103, together with a plan analysis in the form of Local Form 103A. If a plan or plan analysis is filed after such time, the debtor shall serve the plan and plan analysis upon all creditors in accordance with Fed. R. Bankr. P. 2002 and file a certificate of service with the Court.

- (B) Nonstandard Plan Provisions. Should the proposed plan contain any nonstandard provisions, the plan shall disclose that fact in the notice section in the first paragraph of the plan. Examples of nonstandard provisions include, but are not limited to, the following:
 - (1) Debtor is self-employed and operating a business and therefore has additional duties and reporting requirements

including timely submission of tax returns and employee tax withholdings;

- (2) Debtor holds a personal injury, worker's compensation, or social security claim and debtor's duty to report and disclose;
- (3) Debtor's current or future intent to sell or refinance real estate, court approval required and if sold or refinanced how liens and mortgage arrears claims will be addressed;
- (4) Debtor to seek a mortgage modification and pending any modification whether ongoing payments will continue;
- (5) Plan includes the cramdown of a secured vehicle claim and specific provisions as to lien and title release;
- (6) Plan includes avoidance of junior liens on real estate, adversary to be filed, and treatment if any as to the unsecured claim of an avoided lienholder;
- (7) Provision as to the treatment of claims and any unsecured deficiency of creditors where collateral is surrendered under the plan;
- (8) Any matter relating to a domestic support obligation, divorce or property division; or
- (9) Plan seeks to avoid a lien pursuant to 11 U.S.C. § 522(f).

(ii) Mortgage Claims and Procedures.

- (A) If servicers/mortgagees include a flat fee cost in the proof of claim for review of the chapter 13 plan prior to confirmation and for the preparation of the proof of claim, it shall be reasonable and fairly reflect the attorney's fee included. A postpetition charge for the review of a chapter 13 plan and/or the preparation of a proof of claim may be asserted

in the servicer/mortgagee's proof of claim that asserts prepetition claims;

- (B) If servicers/mortgagees include attorney fees for pursuing relief from stay, such fees shall be clearly identified as well as how such fees are to be paid in any agreed order resolving a Motion for Relief from Stay or any other matter before the court;
- (C) Servicers/mortgagees shall analyze the loan for escrow changes upon the filing of a bankruptcy case and each year thereafter. A copy of the escrow analysis shall be provided to the debtor and filed with the Court by the servicers/mortgagees or their representative each year;
- (D) Servicers/mortgagees shall not include any prepetition cost or fees or prepetition negative escrow in any postpetition escrow analysis. These amounts shall be included in the prepetition claim amount unless the payment of such fee or cost was actually made by the servicer;
- (E) Servicers/mortgagees shall attach a statement to a formal notice of payment change outlining all postpetition contractual costs and fees not previously approved by the court and due and owing since the prior escrow analysis or date of filing, whichever is later. This statement need not contain fees, costs, charges and expenses that are awarded or approved by the Bankruptcy Court order. In absence of any objection or challenge to such fees, the Debtor shall take appropriate steps to cause such fees to be paid as authorized by mortgage holder's note, security agreement and state law;
- (F) Servicers/mortgagees shall monitor postpetition payments. If the mortgage is paid postpetition current, then the servicers/mortgagees shall not seek to recover late fees. No late fees shall be recovered or demanded for systemic delay but shall be limited to actual debtor default;

- (G) Prepetition payments shall be tracked as applied to prepetition arrears and postpetition payments shall be tracked as applied to postpetition ongoing mortgage payments;
- (H) Servicers/mortgagees shall file a notice and reason of any payment change with the court and provide same to the debtor;
- (I) Servicers/mortgagees are required, at least annually, to file with the Court a notice of any protective advances made in reference to a mortgage claim, such as non-escrow insurance premiums or taxes. Such notice shall be provided to the debtors and filed with the Court;
- (J) If appropriate, servicers/mortgagees should review the Trustee's website or NDC (National Data Center) to reconcile any payment discrepancies with their system prior to the filing of a Motion for Relief from Stay;
- (K) Servicers/mortgagees shall clearly identify, in their proofs of claim, if the loan is an escrowed or non-escrowed loan and break out the monthly payment consisting of principal, interest, escrow and PMI components;
- (L) Servicers/mortgagees shall attach to their proofs of claim or otherwise identify non-traditional or non-conforming mortgage loans in their proof of claim. Servicers/mortgagee's holding loans with options should identify on the proof of claim the type of loan as well as the various contractual payment options available during the bankruptcy to the borrower/debtor;
- (M) Mortgage Arrearage Claims. When filing their initial proofs of claims, servicers/mortgagees should state their mortgage arrearage up to the date of the filing date of the bankruptcy petition, unless the plan or Trustee indicates otherwise, or local rule provides otherwise. The Chapter 13 Trustee will use the mortgage arrearage claim to set up the arrearage balance on the claim, which in turn will show up as the

"balance" on the voucher check, absent objection to the claim;

- (N) Within thirty (30) days after the debtor completes all payments under the plan, the Trustee will file and serve on the Servicer/mortgagee, debtor and debtor's counsel a Notice of Final Cure and Completion of Plan Payments. Within twenty-one (21) days of service of this Notice the debtor shall file an executed Local Form 104, and the servicer/mortgagee shall file and serve on the debtor, debtor's counsel and the Trustee an itemized statement as required under Fed. Bankr. Rule 3002.1(g) indicating whether it agrees that the debtor has paid in full the amount required to cure any default and whether the debtor is otherwise current on all payments. Absence of the filing of the servicer/mortgagee statement shall be deemed consent to the contents of the Notice of Final Cure and Completion of Plan Payments.

Should the servicer/mortgagee file a response under Fed. Bankr. Rule 3002.1(g) alleging unpaid cure amounts due, within twenty-one (21) days of the filing of the response, and if the response asserts unpaid plan arrears amounts, the Trustee shall submit to the servicer/mortgagee evidence of payments made for any allowed arrears claim paid under the plan and file a certification with the court. If the response asserts unpaid postpetition amounts not paid under the plan, the debtor shall submit to the servicer/mortgagee evidence of payments for all required postpetition amounts due and file a certification with the court. If a party fails to timely comply with the requirements of this Local Rule, the court may, after notice and hearing, take such action as appropriate including the actions set forth in Fed. Bankr. Rule 3002.1(i). The submissions shall be considered by the Court along with the Notice of Final Cure, the response and itemized statement, upon Notice and Hearing scheduled pursuant to Fed. Bankr. Rule 3002.1(h). The date of the Notice of Final Cure shall be the

operative date for determination of the amount due for any default.

Thereafter, upon issuance of a Discharge, a servicer/mortgagee shall adjust its permanent records to reflect the current nature of Debtor(s) account. Servicers/mortgagees should review the Trustee's website or NDC at the close or discharge of the bankruptcy to reconcile any payment discrepancies with their system. Provided, however, that if Debtor elected to defer the payment of approved postpetition charges until the conclusion of the case's administration, then a servicer/mortgagee shall be authorized to collect said sums in accordance with the provisions of its note, security agreement and state law. Otherwise, the mortgage shall be reinstated according to its original terms, extinguishing any right of the servicer/mortgagee or its assignee(s) to recover any amounts alleged to have arisen prior to the date of the Trustee's filing of a Request for Discharge of Debtor(s) and entry of Order deeming any mortgage current;

- (O) Prior to filing a motion (other than a Motion for Relief from Stay) to enforce any mortgage claim, the notice requirements hereunder or plan provisions governing mortgage claims, the moving party shall attempt to confer in good faith with the affected parties in an effort to resolve the dispute without court actions. All such motions shall include a certification of counsel by Delaware Counsel that a good faith attempt to confer was so made; and
- (P) All statements, notices, escrow analysis or similar documents required under this Local Rule to be filed with the Court by servicers/mortgagees need not be signed or filed by an attorney or an attorney of record.

(c) Amended Plans.

- (i) If an amended plan is filed before the scheduled confirmation hearing on the previously filed plan, it shall be accompanied by a certificate of service.

The certificate of service should evidence that a copy of the amended plan has been served upon each of the creditors listed in the chapter 13 Schedules and Statement of Financial Affairs, the Chapter 13 Trustee and the United States Trustee, in such a manner so as to ensure that such parties receive the amended plan no less than seven (7) days prior to the confirmation hearing. When a plan is confirmed on an interim basis, any subsequent plan filed prior to the final confirmation should be filed and titled an "Amended Plan" and should be noticed by the debtor or debtor's counsel. A certificate of service therefor should be filed with the Court.

- (ii) Any motion to modify a plan after confirmation shall be noticed by the Court.

- (d) Distribution. Before commencing distribution of the debtor's funds under a confirmed plan, the trustee shall mail to the debtor a copy of the debtor's master report reflecting those creditors that have or have not filed proofs of claim. The trustee shall not distribute funds to any creditor unless a proof of claim has been filed and deemed allowed or allowed by Court order.

- (e) Plan Funding. In all plans, funding shall be by payroll deduction unless otherwise agreed by the trustee or ordered by the Court upon a demonstration of cause shown by the debtor. A wage order must be submitted by the debtor at the time the plan is confirmed by the Court in conformity with Local Form 135.

- (f) Confirmation. If timely pre-confirmation payments are made to the trustee and no objections are received, the plan may be confirmed without further notice or hearing upon the filing of a certificate by the trustee recommending that the Court confirm the plan.

- (g) Discharge. Debtor and debtor's counsel shall file with the Court a Certification substantially in the form of Local Form 104 in order to comply with 11 U.S.C. § 1328 and obtain a discharge upon completion of all plan payments. Failure to file the Certification may be a basis for dismissal of the case.