

**BEST PRACTICES FOR TRUSTEES and
MORTGAGE SERVICERS IN CHAPTER 13**

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 should be reasonable and fairly reflect the attorney's fee incurred.

If Servicers/mortgagees include attorney fees for pursuing relief from stay, such fees should 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.

Servicers/mortgagees should analyze the loan for escrow changes upon the filing of a bankruptcy case and each year thereafter. A copy of the escrow analysis should be provided to the debtor and filed with the Bankruptcy Court by the Servicers/mortgagees or their representative each year.

Servicers/mortgagees should not include any prepetition cost or fees or prepetition negative escrow in any post-petition escrow analysis. These amounts should be included in the prepetition claim amount unless the payment of such fee or cost was actually made by the Servicer.

Servicers/mortgagees should attach a statement to a formal notice of payment change outlining all post-petition 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 Trustee should take appropriate steps to cause such fees to be paid as part of debtor's Chapter 13 plan.

Servicers/mortgagees should supply and maintain a contact for debtors' counsel and Trustees for the purpose of restructuring, modifying a mortgage or other loss mitigation assistance including a short sale or deed-in-lieu of foreclosure. The contact should be an individual or group with the ability to implement or assess, with objective criteria, a loss mitigation modification after filing of a chapter 13 petition with the goal of keeping the debtor in the house and the success of the bankruptcy.

Servicers/mortgagees should provide a dedicated phone line and contact for Chapter 13 Trustees' inquiry use only.

Servicers/mortgagees should monitor post petition payments. If the mortgage is paid post-petition current, then the Servicers/mortgagees should not seek to recover late fees. No late fees should be recovered or demanded for systemic delay but should be limited to actual debtor default.

Prepetition payments should be tracked as applied to prepetition arrears, post-petition payments should be tracked as applied to post-petition ongoing mortgage payments.

Servicers/mortgagees should file a notice and reason of any payment change with the court and provide same to the Debtor.

Servicers/mortgagees are required to file with court a notice of any protective advances made in reference to a mortgage claim, such as non-escrow insurance premiums or taxes. Such notice should be provided to the debtors and filed with the court.

Servicers/mortgagees should review the Trustee's web site or NDC for payment discrepancies with their system prior to the filing of a Motion for Relief from Stay in Trustee pay jurisdictions.

Servicers/mortgagees should review the Trustee's web site or NDC at the close or discharge of the bankruptcy for payment discrepancies with their system in Trustee-pay jurisdictions.

Servicers/mortgagees should clearly identify if the loan is an escrowed or escrowed loan and break out the monthly payment consisting of principal, interest, escrow and PMI components.

Servicers/mortgagees should identify non-traditional mortgage loans in their proof of claims. 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.

Trustees should initiate a communication with Servicers/mortgagees when questions arise in a review of a post-petition escrow analysis.

United States Trustees and Trustee Education Network should modify the requirements of the financial management class regarding adjustable rate mortgages, the calculation of mortgage escrows and, in particular, the potential of increased mortgage payments resulting from increased taxes, interest rate hikes and/or mortgage premiums.

Trustee voucher checks, check stubs or vouchers provided with any other form of payment contain the following information, except to the extent prevented from doing so by local rule:

1. The name of the debtor and case number;
2. The Trustee's claim number;
3. The mortgagee's account number (to the extent provided on the proof of claim);
4. If the mortgagee account number is not available, e.g. not contained on the proof of claim, at least one other piece of identifying information e.g., property address;
5. The amount of the payment;
6. Whether the payment is for the ongoing mortgage payment or the mortgage arrearage;
7. If for the mortgage arrears, the balance owing on the arrears claim after application of the payment;
8. If the Trustee has set up a separate claim for post-petition charges of the mortgage, that the voucher clearly identify that fact;

9. If any portion of the payment on arrears is intended to pay interest on the mortgage arrears, the amount of that interest portion of the payment;
10. If the mortgage is to be paid off during the bankruptcy under the confirmed plan through payments by the Trustee, e.g., a total debt claim, the portions of each payment which represent principal and interest, and the balance owing on the claim after application of the payment. (There is a movement among Servicers to redact all but the last four numbers of the mortgagors' loan numbers on proofs of claim, because those claims are public records. While Servicers in general want as much information as possible on the vouchers, the Servicers on the Working Group felt that if the voucher had the bankruptcy case number, the name of the debtor and the redacted loan number from the filed claim, they would be able to post the payment. Using the account number to the extent provided in a filed proof of claim also ensures that Trustees are not disclosing information on their website that is not already disclosed in the public record.)

Voucher Narrative for Payments: The Working Group places particular emphasis on No. 6 above. The voucher should identify if a payment is for the regular mortgage payment or for the mortgage arrearage in consistent language. While Chapter 13 Trustee disbursement applications focus on the claims to be paid, Servicers' computer systems focus on their mortgagor account number.

Posting of receipts, whether or not the account is in bankruptcy, is typically handled by a Cash Processing group or department of the Servicer. Those departments focus on the account number on the voucher and the narrative on the voucher for that account number to determine if the payment is for the regular mortgage payment or the mortgage arrearage.

Mortgage Arrearage Claims: When filing their initial proofs of claim, Servicers 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.

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF INDIANA

IN RE:

CASE NO:

DEBTOR

CHAPTER 13

NOTICE OF PAYMENT CHANGE

In accordance with the terms of the Adjustable Rate Mortgage, this is notification that the Interest Rate is adjusting as follows:

Payment adjustment Date: _____

Old Interest Rate _____

New Interest Rate _____

New Principal & Interest Payment _____

Old Index _____

New Index _____

Index Name: _____

New Monthly Payment including escrow \$ _____

The total monthly payment can change on a separate date as a result of any increase or decrease in a monthly escrow payment, if applicable. Any questions should be directed to _____.

NAME OF MORTGAGE

Address of Mortgage

CERTIFICATE OF SERVICE

I hereby certify that on _____, I have served a copy of this Notice and all attachments to the following:

By U.S. Mail, postage pre paid

Debtor: John Q. Debtor, 1234 Main St., Anywhere, IN 46601

By CM/ECF

Debtor's Attorney: Mary Counselor m.counselor@gmail.com

Trustee: Tom Trustee ttrustee@trustee.com

Marian the Mortgage Servicer Employee

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF INDIANA

IN RE:

CASE NO:

DEBTOR

CHAPTER 13

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UNITED STATES BANKRUPTCY COURT

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IN RE:

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CHAPTER 13

NOTICE OF PROTECTIVE ADVANCE OR OTHER CONTRACTUAL EXPENSE

In accordance with the terms of the Mortgage, this is notification that the servicer has advanced funds for a non escrowed mortgage loan as indicated below:

Type of Advance or Contractual Expense:

Total funds advanced/expense:

Entity that funds were paid to:

If taxes or forced placed insurance

Dates covered by advance

Any questions should be directed to _____.

NAME OF MORTGAGE

Address of Mortgage Co.

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF INDIANA**

IN RE:

)
) **CASE NO.**
) **CHAPTER 13**
) **JUDGE**
)

NOTICE OF ASSESSED CONTRACTUAL EXPENSE

TOTAL ADVANCES FROM (FILING DATE) (FEES AND COSTS) TO (DATE OF PROVE UP)

- Attorney Fees \$ xxx.xx
Attendance at MFRFS hearing on 3/15/2007

- Filing of Motion xxx.xx
Motion for Relief from Stay filed 3/12/2007

- Late Charges xxx.xx
Late Payment post petition due 2/1/2007, received 3/30/2007
Late Payment post petition due 3/1/2007, received 4/30/2007

- Title Report (if any) xxx.xx

- Appraisals/BPO xxx.xx
Drive by inspection- performed 5/1/2007

Copies of invoices are attached.

TOTAL ADVANCES \$ 27,424.94

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