

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

In Re: :
: Administrative Order Supplementing
ADMINISTRATIVE ORDER : Chapter 13 Procedure #9 Concerning Notice
: of Monthly Payment Changes
#2009-2 :
:

ORDER

WHEREAS, for many Debtors, the most important reason for seeking Chapter 13 bankruptcy protection is the opportunity it provides to avoid a mortgage foreclosure and cure the default that led to the foreclosure through the vehicle of a confirmed plan;

WHEREAS, to assure that Debtors cure prepetition delinquencies and maintain current monthly payment obligations this Court requires all payments to mortgage lenders to be made through the Chapter 13 Trustee;

WHEREAS, unnoticed, or insufficiently noticed, postpetition changes in loan interest rates, charges or escrow obligations which result in an increased monthly payment amount can interfere with a Debtor's ability to properly address postconfirmation debt service increases through plan modification or otherwise, thereby jeopardizing the Debtor's emergence from a successful Chapter 13 plan with a true "fresh start", *In re Armstrong*, 394 B.R. 794, 799 (Bankr. W.D. Pa. 2008);

WHEREAS, this Court has previously expressed its interest in requiring full and complete notice of any such postpetition loan obligation changes by implementation of its *Court Procedures Manual, Part III, Chapter 13 Procedure #9* ("Procedure #9") which requires service of all notices of postpetition monthly loan obligation changes on the Debtor, Debtor's Counsel, and the Chapter 13 Trustee;

WHEREAS, the standard Order in this Court used for confirming Chapter 13 plans includes a provision requiring any Creditor to notify the Chapter 13 Trustee, the Debtor, and the Debtor's Counsel of any change in the Debtor's loan repayment obligation due to variable interest rates, change in escrow or other change in monthly payment obligations during the plan, at least 20 days prior to the change taking effect;

WHEREAS, it has become apparent that *Procedure #9* and the relevant standard confirmation order language, alone, have not adequately addressed all of the various issues implicated by such postpetition changes; and

WHEREAS, the Court believes that to expeditiously achieve clarity, and to insure uniformity of practice and consistency in the court's treatment of the mortgage change notice process, an Administrative Order in that regard is appropriate at this time, including provisions affecting the calculation of any alleged claim upon failure by a Creditor to timely and properly comply with the notice process, *In re Watson*, 384 B.R. 697 (Bankr. E.D. Pa. 2008).

NOW THEREFORE, this *5th* day of *November, 2009*, it is ***ORDERED*** as follows:

(A) Notice of Mortgage Payment Change:

(1) Notification of any post-petition changes to on-going (continuing) mortgage payments ("Notice of Mortgage Payment Change") for which the Chapter 13 Trustee is acting as disbursing agent on behalf of the Debtor(s) shall be filed with the Court at least twenty-one (21) days prior to the date that the change is to become effective. A copy of any "Notice of Mortgage Payment Change" filed with this Court shall be simultaneously served on the Debtor(s), Debtor's Counsel and the Chapter 13 Trustee. The "Notice of Mortgage Payment Change" shall be completed in the form and content required by *ATTACHMENT "A"* to this Order.

(2) The "Notice of Mortgage Payment Change" shall contain sufficient identification of the Creditor filing the Notice, including full name, address, fax information, telephone number and email address. The identity of the individual signing the Notice on behalf of the Creditor shall contain similar information and be legibly set forth on the Notice.

(3) If the Creditor is not currently a Creditor "of record," a copy of any applicable lien assignment(s) evidencing the Creditor's alleged right to payment shall be attached to the "Notice of Mortgage Payment Change" along with, on a separate page, a narrative summary of the chain of title evidencing the Creditor's authority to act and be paid. Pursuant to *Fed.R.Bankr.P. 3001* and *Chapter 13 Procedure #10* of the *Court Procedures Manual* of this Court, a copy of the original assignment(s) or other appropriate evidence of the Creditor's authority to act and right to payment shall be contemporaneously filed with the Court along with the filing of the Notice.

(4) The required "analysis" accompanying the Notice shall contain: (a) a complete and accurate loan payment history; (b) a computation of the payment change in a format which is readily understandable by the Court and the Parties-in-Interest; and, (c) a declaration under penalty of perjury by a competent official of the Creditor substantiating the veracity and accuracy of the requested "Notice of Mortgage Payment Change."

(5) To the extent permitted by the loan documents, allowed attorney fees and/or other charges claimed to be due by the Creditor, shall be itemized on a separate page attached to the "Notice of Mortgage Payment Change" identifying the amount of the alleged charge, the date the charge was incurred and the basis for the same.

(6) Failure of the Creditor to timely file the "Notice of Mortgage Payment Change" in proper form with the Court will *not* trigger a payment change for purposes of the Chapter

13 case. This rule adopts the relief accorded in *In Re Armstrong* (394 B.R. 794, 799 (Bankr. W.D. Pa. 2008)) and applies it to all notices of payment change filed on or after January 1, 2009, as follows: (a) the Court deems noncompliance and inadequate compliance with this Order to be a waiver by the Creditor of any right to additional charges including interest; (b) any additional charges when and if permitted shall not include charges accrued while the Creditor was not in compliance; and, (c) no Creditor who was not in compliance with this rule may access or collect additional charges until the 21st calendar day after the appropriate notice is filed.

(7) After a “Notice of Mortgage Payment Change” is filed, the Court will issue a standard order requiring certain action to be taken by the Debtor(s) within twenty-one (21) days from the date the “Notice of Mortgage Payment Change” was docketed. The standard order will be in substantially the form set forth in *ATTACHMENT “B”* to this Order.

(8) Assuming a ***Declaration*** is timely filed by the Debtor(s) certifying that, after review of the existing Chapter 13 Plan, plan funding has been re-computed and the existing Plan is sufficient to pay the modified monthly mortgage payment pursuant to the Notice, the Chapter 13 Trustee shall commence disbursement of the modified mortgage payment amount set forth in the Notice without the necessity of an Amended Plan being filed.

(9)(a) In the event the Debtor(s) files an ***Objection*** to the “Notice of Mortgage Payment Change,” the Chapter 13 Trustee shall limit disbursements of the mortgage obligation to the then - current authorized monthly mortgage payment until the *Objection* is finally disposed of by the Court. To the extent the Trustee has funds available to do so, until further Order of Court, the Chapter 13 Trustee shall reserve payment on the increased portion of the modified mortgage payment in an amount set forth in the “Notice of Mortgage Payment Change.” The foregoing applies notwithstanding any Plan provision to the contrary; and (b) Any *Objection* must be filed within 21 days after the date on which the “Notice of Mortgage Payment Change” is docketed.

(10) If a “Notice of Mortgage Payment Change” is filed and the Debtor fails to file an *Amended Plan*, *Declaration* or an *Objection*, the Chapter 13 Trustee is not obligated to disburse monthly mortgage payments to the Creditor in an amount other than as specified in the then - current Plan.

(11) Any “Notice of Mortgage Payment Change” filed and served pursuant to this notice procedure shall not be construed as a violation of the Automatic Stay provisions of the Bankruptcy Code.

(B) Notice of Post-petition Fees, Expenses and Charges:

(1) The holder of a claim secured by a security interest in the Debtor’s assets shall file a separate ***NOTICE OF POST-PETITION FEES, EXPENSES AND CHARGES*** resulting in payment change that itemizes all fees, expenses, or charges incurred in connection with the claim after the bankruptcy case was filed, and that the holder asserts are recoverable against the Debtor

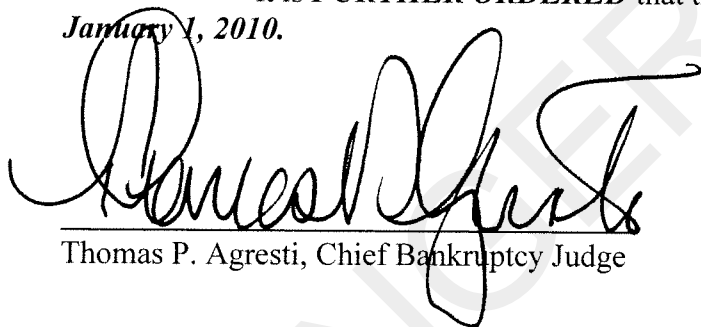
and/or against the Debtor's assets. The separate Notice required by this Paragraph shall be filed as a supplement to the holder's proof of claim and served no later than 180 days after the date when the fees, expenses, or charges are incurred. The Notice required by this Paragraph shall not be subject to *Rule 3001(f)*, and shall be served on the Debtor(s), counsel to the Debtor(s), and the Chapter 13 Trustee. The failure to timely file the Notice required by this Paragraph will result in disallowance of any additional sums claimed by the Creditor for the period in question.

(2) After a "Notice of Post-Petition Fees, Expenses and Charges" is filed, the Court will issue a standard order requiring certain action to be taken by the Debtor(s) within twenty-one (21) days from the date the "Notice of Post-petition Fees, Expenses and Charges" was docketed. The standard order will be in substantially the form set forth in *ATTACHMENT "C"* to this Order.

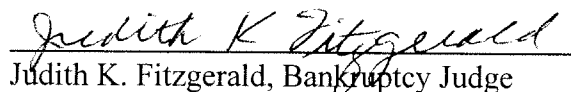
(3) The Notice referred in *Paragraph (B)1*, above, need not be filed if fees, expenses and charges were included in a previous, timely filed "Notice of Mortgage Payment Change."

It is **FURTHER ORDERED** that this Administrative Order only supercedes and abrogates those parts of *Chapter 13 Procedure #9* which affect notices of mortgage payment change and in all other respects, *Chapter 13 Procedure #9* remains in effect.

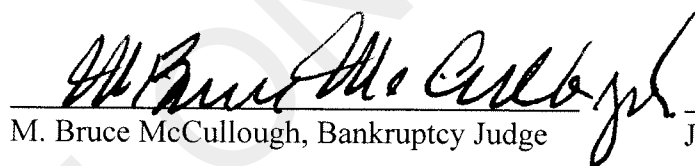
It is **FURTHER ORDERED** that this Administrative Order shall be *effective as of January 1, 2010*.



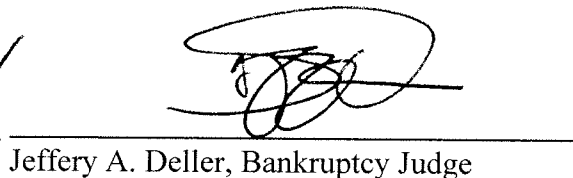
Thomas P. Agresti, Chief Bankruptcy Judge



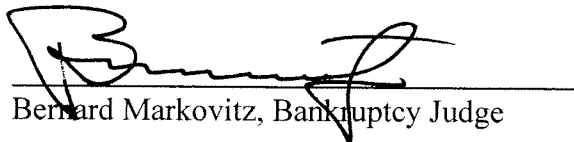
Judith K. Fitzgerald, Bankruptcy Judge



M. Bruce McCullough, Bankruptcy Judge



Jeffery A. Deller, Bankruptcy Judge



Bernard Markovitz, Bankruptcy Judge

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

In Re:

_____ : Case No. _____
Debtor (s) :
_____ :
Creditor : Mortgage Payment Change Notice
vs. : Dated: _____
_____ :
Debtor (s) :

NOTICE OF MORTGAGE PAYMENT CHANGE

Creditor name, address and other contact information: _____

This "Notice of Mortgage Payment Change" in a Chapter 13 proceeding results from adjustments due to one of the following (Creditor to complete applicable section):

(1) Escrow Adjustment or Other Charges

Required. A separate escrow/other charges analysis is attached. The analysis states all costs to be escrowed, escrow period, and escrow calculation. No codes are used. The escrow analysis *does not* attempt to recover any pre-petition shortages.

The "Effective Date" of the payment adjustment is: _____
Effective Date must be at least 21 days after the date this Notice is docketed.
After adjustment, the new monthly escrow payment is \$ _____

After adjustment, the new monthly mortgage payment total is: \$ _____ *

*This above change in payment *does not* adjust principal and interest of the mortgage payment. The adjusted total mortgage payment at the "Effective Date" will be the *current* principal and interest amount *plus* the monthly escrow payment above.

(2) Interest Rate Change

Required. A separate analysis showing the basis for the change is attached. The analysis includes a description of any rate setting formula, a calculation of the new rate and the corresponding new payment amount.

The "Effective Date" of the payment adjustment is: _____
Effective Date must be at least 21 days after the date this Notice is docketed.
After adjustment, the new monthly principal and interest payment is \$ _____

After adjustment, the new monthly mortgage payment total is: \$ _____ *

*This above change in payment *does not* adjust the escrow portion, if any, of the mortgage payment. The adjusted total mortgage payment at the Effective Date will be the *above* principal and interest amount *plus* the existing escrow payment amount, if any.

NOTE: The next projected interest rate adjustment will be in approximately _____ Months.

ATTACHMENT "A"

(3) Escrow Adjustment or Other Charges along with an Interest Rate Change

Required: A separate escrow/other charge(s) analysis is attached. The analysis states all costs to be escrowed, escrow period, and escrow calculation. No codes are used. The escrow analysis **sets** forth the corresponding amount of the new payment that is attributed to the changes in escrow or other charges.

Required: A separate analysis showing the basis for the rate change is attached. The analysis includes a description of any rate setting formula, a calculation of the new rate. The interest rate analysis specifically **sets** forth the corresponding amount of the new payment change that is attributed to change in interest.

The "Effective Date" of the payment adjustment is: _____
Effective Date must be at least 21 days after the date this Notice is docketed.

After adjustment, the new monthly mortgage payment total is: \$ _____ *

*This total monthly mortgage payment includes both an adjustment to the escrow portion of the mortgage payment and the principal and interest portion. The adjusted monthly mortgage payment at the Effective Date includes the *above* principal and interest amount *plus* the adjusted escrow payment amount.

NOTE: The next projected interest rate adjustment will be in approximately _____ months.

Date

Signature, Printed Name and Title

As agent for the above named Creditor and under penalty
of perjury for false swearing
(Identifying information)

Unless a written Objection is timely filed with the Court, the change proposed in this Notice may become effective without hearing and without further notice. Once the change in the Notice becomes effective, the Debtor(s) is (are) responsible for assuring that the monthly payment to the Chapter 13 Trustee will be adjusted to account for the change contained in this Notice.

Certificate of Service

I certify that the foregoing notice has been served electronically on the Debtor's Counsel and the Chapter 13 Trustee and has been mailed to Debtor at the following address: _____

Signed: _____ Title: _____ Date: _____
Direct Telephone No. _____ Mail, fax or email address: _____

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

IN RE:

 Debtor(s)

_____ : Case No. _____
 : Chapter 13
 :

_____ :
 : *Movant,*
 :

v. : Related to Document No. _____
 :
_____ :
 : *Respondent.*
 :

ORDER

AND NOW, this ____ day of _____, 20____, upon consideration of the ***NOTICE OF MORTGAGE PAYMENT CHANGE*** filed by _____ at Document No. ____ in the above-captioned bankruptcy case,

It is hereby ***ORDERED*** that *on or before twenty-one (21) days from the date the Notice of Mortgage Payment Change* was docketed, the Debtor(s) or Debtor's Counsel shall file, either:

- (1) an ***AMENDED CHAPTER 13 PLAN***;
- (2) a ***DECLARATION*** that the existing Chapter 13 Plan is sufficient to fund the Plan with the modified debt; or
- (3) an ***OBJECTION*** to the *Notice of Mortgage Payment Change* as stated, following which time the Court will schedule a hearing on the matter.

The failure to timely file an Objection shall result in the allowance of the payment change without further order, notice or hearing. HOWEVER, no payment change will be implemented by the Chapter 13 Trustee until such time as the Debtor(s) or Debtor(s) Counsel files an Amended Chapter 13 Plan or Declaration, whichever is applicable as required by this Order.

United States Bankruptcy Judge

ATTACHMENT "B"

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

IN RE:

 Debtor(s)

_____ : Case No. _____
 : Chapter 13
 :

_____ :
 : *Movant,*
 :

v. : Related to Document No. _____
 :
_____ :
 : *Respondent.*
 :

ORDER

AND NOW, this ____ day of _____, 20____, upon consideration of the ***NOTICE OF POST-PETITION FEES, EXPENSES AND CHARGES*** filed by _____ at Document No. _____ in the above-captioned bankruptcy case,

It is hereby ***ORDERED*** that *on or before twenty-one (21) days from the date the Notice of Post-Petition Fees, Expenses and Charges* was docketed, the Debtor(s) or Debtor's Counsel shall file, either:

- (1) an ***AMENDED CHAPTER 13 PLAN***;
- (2) a ***DECLARATION*** that the existing Chapter 13 Plan is sufficient to fund the Plan with the modified debt; or
- (3) an ***OBJECTION*** to the *Notice of Post-Petition Fees, Expenses and Charges* as stated, following which time the Court will schedule a hearing on the matter.

The failure to timely file an Objection shall result in the allowance of the payment change without further order, notice or hearing. HOWEVER, no payment change will be implemented by the Chapter 13 Trustee until such time as the Debtor(s) or Debtor(s) Counsel files an Amended Chapter 13 Plan or Declaration, whichever is applicable as required by this Order.

United States Bankruptcy Judge

ATTACHMENT "C"