

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

**IN RE: CASES UNDER CHAPTER 13
OF THE BANKRUPTCY CODE**

**GENERAL ORDER ADOPTING
SUPPLEMENTAL CHAPTER 13 PLAN PROVISIONS REQUIRING:
(1) SUPPORTING INFORMATION CONCERNING PROOF OF CLAIM AND
(2) DISCLOSURE AND ADJUDICATION OF POSTPETITION MORTGAGE
CHARGES PENDING AMENDMENT OF THE FEDERAL RULES OF BANKRUPTCY
PROCEDURE**

WHEREAS the Board of Judges of the United States Bankruptcy Court for the District of New Jersey recognizes the need to address the problem of accurate and detailed disclosure of the amounts that must be paid to cure prepetition mortgage defaults and to maintain mortgage payments during the course of a Chapter 13 case;

WHEREAS the Board of Judges seeks to adopt procedures that would require itemization of amounts noted on proofs of claim, that would provide for the disclosure of postpetition mortgage fees and charges in Chapter 13 cases, that would establish a procedure for adjudicating disputes regarding such fees and charges, and that would require the proper application of payments received by mortgagees through the Chapter 13 Trustee and directly from the debtor;

WHEREAS the Board of Judges further recognizes that uniform national procedures (1) prescribing with greater specificity the supporting information required to accompany a proof of claim and (2) requiring the disclosure of postpetition mortgage fees, expenses, and charges and other amounts required to be paid to cure arrearages and maintain mortgage payments pursuant to 11 U.S.C. § 1322(b)(5) are currently pending pursuant to proposals to amend Fed. R. Bankr.P. 3001(c) and to adopt a new Fed. R. Bankr. P. 3002.1 respectively;

WHEREAS the proposal to amend Fed. R. Bankr.P. 3001(c) represents a comprehensive approach to address the information that must be provided in a proof of claim regarding amounts claimed in addition to principal, amounts required to cure prepetition defaults, and the status of escrow accounts;

WHEREAS the proposal for new Fed. R. Bankr.P. 3002.1 represents a comprehensive approach to implement disclosure and adjudication requirements to aid in the implementation of § 1322(b)(5) permitting a chapter 13 debtor to cure a default and maintain payments of a home mortgage over the course of the debtor's plan;

WHEREAS, pending adoption of uniform national procedures, the Board of Judges seeks to implement local procedures through their incorporation into the mandatory form Chapter 13 Plan;

IT IS ORDERED that the Supplemental Provisions to the mandatory Chapter 13 Plan annexed hereto as Exhibit A, shall be adopted by the Bankruptcy Court for the District of New Jersey, pending amendment of the Federal Rules of Bankruptcy Procedure and further Order of this Court. The Supplemental Provisions regarding Part 1, "Proof of Claim, Supporting Information, Additional Statements," shall be effective as to all Chapter 13 cases filed on or after July 1, 2009. The Supplemental Provisions regarding Part 2, "Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence," shall be effective July 1, 2009, for all pending Chapter 13 cases;

IT IS FURTHER ORDERED that notice to the Bar and Public of the adoption of these procedures through their incorporation into the form Chapter 13 Plan shall be prominently posted to the Court's Website: www.njb.uscourts.gov.

Dated: May 21, 2009

/s/ JUDGE JUDITH H. WIZMUR
JUDITH H. WIZMUR
CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

IN RE: _____ CASE NO.: _____
JUDGE: _____
(Debtor) CHAPTER: 13

CHAPTER 13 PLAN AND MOTIONS

____ Original ____ Modified/Notice Required ____ Modified/No Notice Required

- Discharge Sought
 No Discharge Sought

Date: _____

THE DEBTOR HAS FILED FOR RELIEF UNDER CHAPTER 13
OF THE BANKRUPTCY CODE.

YOUR RIGHTS WILL BE AFFECTED.

You should have received from the court a separate Notice of the Hearing on Confirmation of Plan, which contains the date of the confirmation hearing on the Plan proposed by the Debtor. This document is the actual Plan proposed by the Debtor to adjust debts. It contains an important supplement to section 3 regarding secured claims. The supplement sets out filing requirements for proofs of claim for secured claims, and requirements regarding claims secured by a security interest in the debtor's principal residence, including notice of payment changes and notice of fees, expenses and charges incurred in connection with the claim after the bankruptcy case was filed. You should read these papers carefully and discuss them with your attorney. Anyone who wishes to oppose any provision of this Plan or any motion included in it must file a written objection within the time frame stated in the Notice. **This Plan may be confirmed and become binding, and included motions may be granted without further notice or hearing, unless written objection is filed before the deadline stated in the Notice.**

**YOU SHOULD FILE A PROOF OF CLAIM BY THE DEADLINE STATED
IN THE NOTICE TO RECEIVE DISTRIBUTIONS UNDER ANY PLAN
THAT MAY BE CONFIRMED, EVEN IF THE PLAN REFERS TO YOUR CLAIM**

1. **PAYMENT AND LENGTH OF PLAN**

a. The Debtor shall pay \$_____ per _____ to the Chapter 13 Trustee, starting on _____ for approximately _____ months.

b. The Debtor shall make plan payments to the Trustee from the following sources:

_____ Future Earnings

_____ Other sources of funding (describe source, amount and date when funds are available) _____

_____ Sale or refinance of the following assets on or before _____.

c. Adequate protection payments will be made in the amount of \$_____ to be paid to the Chapter 13 Trustee and disbursed pre-confirmation to _____ (creditor).

d. Adequate protection payments will be made in the amount of \$_____ to be paid directly by the Debtor(s) outside of the Plan, pre-confirmation to _____ [creditor].

2. PRIORITY CLAIMS (INCLUDING ADMINISTRATIVE EXPENSES)

All allowed priority claims will be paid in full unless the creditor agrees otherwise:

<u>Creditor</u>	<u>Type of Priority</u>	<u>Amount to be Paid</u>

3. SECURED CLAIMS

Please see the Supplemental Provisions regarding secured claims located at the end of the Plan.

a. Curing Default and Maintaining Payments

The Debtor shall pay to the Trustee (as part of the Plan) allowed claims for arrearages on monthly obligations and the Debtor shall pay directly to the creditor (outside the Plan) monthly obligations due after the bankruptcy filing as follows:

<u>Creditor</u>	<u>Collateral or Type of Debt</u>	<u>Arrearage</u>	<u>Interest Rate on Arrearage</u>	<u>Amount to be Paid to Creditor (In Plan)</u>	<u>Regular Monthly Payment (Outside Plan)</u>

b. Modification

1.) The Debtor values collateral as indicated below. If the claim may be modified under Section 1322(b)(2), the secured creditor shall be paid the amount listed as the "Value of the Creditor Interest in Collateral," plus interest as stated. The portion of any allowed claim that exceeds that value shall be treated as an unsecured claim. If a secured claim is identified as having "NO VALUE" it shall be treated as an unsecured claim.

<u>Creditor</u>	<u>Collateral</u>	<u>Scheduled Debt</u>	<u>Total Collateral Value</u>	<u>Superior Liens</u>	<u>Value of Creditor Interest in Collateral</u>	<u>Annual Interest Rate</u>	<u>Total Amount to Be Paid</u>

2.) Where the Debtor retains collateral and completes the Plan, payment of the full amount of the allowed secured claim shall discharge the corresponding lien.

c. Surrender

Upon confirmation, the stay is terminated as to surrendered collateral. The Debtor surrenders the following collateral:

<u>Creditor</u>	<u>Collateral to be Surrendered</u>	<u>Value of Surrendered Collateral</u>	<u>Remaining Unsecured Debt</u>

d. Secured Claims Unaffected by the Plan

The following secured claims are unaffected by the Plan: _____

e. Secured Claims to be paid in full through the Plan

<u>Creditor</u>	<u>Collateral</u>	<u>Total Amount to be Paid through the Plan</u>

4. **UNSECURED CLAIMS**

a. **Not separately classified** Allowed non-priority unsecured claims shall be paid:

- _____ Not less than \$_____ to be distributed *pro rata*
- _____ Not less than _____ percent
- _____ Pro rata distribution from any remaining funds

b. **Separately Classified Unsecured Claims** shall be treated as follows:

<u>Creditor</u>	<u>Basis for Separate Classification</u>	<u>Treatment</u>	<u>Amount to be Paid</u>

5. **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

All executory contracts and unexpired leases are rejected, **except** the following, which are **assumed**:

<u>Creditor</u>	<u>Nature of Contract or Lease</u>	<u>Treatment by Debtor</u>

6. **MOTIONS**

NOTE: All plans including motions must be served separately in accordance with D.N.J. LBR 3015-1. Proof of Service of compliance with this requirement must be filed with the Clerk of Court.

Where a motion to avoid liens or partially avoid liens has been filed in the plan, a proof of claim filed that asserts a secured claim that is greater than the amount to be paid in the plan serves as opposition to the motion, and serves as an objection to confirmation. The proof of claim shall be served in accordance with D.N.J. LBR 3015-6(a). The creditor shall file a proof of service prior to the scheduled confirmation hearing. In order to prosecute the objection, the creditor must appear at the confirmation hearing, which shall be the hearing on the motion. Failure to appear to prosecute the objection may result in the motion being granted and the plan being confirmed pursuant to the terms as set forth in the plan.

a. **Motion to Avoid Liens under 11 U.S.C. Section 522(f).** The Debtor moves to avoid the following liens that impair exemptions:

<u>Creditor</u>	<u>Nature of Collateral</u>	<u>Type of Lien</u>	<u>Amount of Lien</u>	<u>Value of Collateral</u>	<u>Amount of Claimed Exemption</u>	<u>Sum of All Other Liens Against the Property</u>	<u>Amount of Lien to be Avoided</u>

b. **Motion to Void Liens and Reclassify Claim from Secured to Completely Unsecured.** The Debtor moves to reclassify the following claims as unsecured and to void liens on collateral consistent with Part 3 above:

<u>Creditor</u>	<u>Collateral</u>	<u>Amount of Lien to be Reclassified</u>

c. **Motion to Partially Void Liens and Reclassify Underlying Claims as Partially Secured and Partially Unsecured.** The Debtor moves to reclassify the following claims as partially secured and partially unsecured, and to void liens on collateral consistent with Part 3 above:

<u>Creditor</u>	<u>Collateral</u>	<u>Amount to be Deemed Secured</u>	<u>Amount to be Reclassified as Unsecured</u>

7. **OTHER PLAN PROVISIONS**

a. **Vesting of Property of the Estate** Property of the Estate shall revert in the Debtor:

_____ Upon Confirmation

_____ Upon Discharge

b. **Payment Notices** Creditors and Lessors provided for in Sections 3, 5 or 6 may continue to mail customary notices or coupons to the Debtor notwithstanding the automatic stay.

c. **Order of Distribution** The Trustee shall pay allowed claims in the following order:

1) Trustee Commissions

2) _____

3) _____

4) _____

d. **Post-petition claims** The Trustee is, is not authorized to pay post-petition claims filed pursuant to 11 U.S.C. Section 1305(a) in the amount filed by the post-petition claimant.

Date _____

Attorney for the Debtor

I certify under penalty of perjury that the foregoing is true and correct.

Date _____

Debtor

Date _____

Joint Debtor

SUPPLEMENTAL PROVISIONS OF CHAPTER 13 PLAN & MOTIONS

1. Proof of Claim, Supporting Information, Additional Statements

(a) Itemized Statement of Interest Fees and Expenses. If, in addition to its principal amount, a claim includes interest, fees, expenses or other charges incurred before the petition was filed, an itemized statement of the interest, fees, expenses, or charges shall be filed with the proof of claim. The claim may also include charges pursuant to D.N.J. LBR 2016-1(j)(3).

(b) Statement of Cure Amount. If a security interest is claimed in property of the debtor, the proof of claim shall include a statement of the amount necessary to cure any default as of the date of the petition and any charges permitted under D.N.J. LBR 2016-1(j)(3).

(c) Escrow Account. If a security interest is claimed in property that is the debtor's principal residence and an escrow account has been established in connection with the claim, the proof of claim shall be accompanied by an escrow account statement prepared as of the date the petition was filed, in a form consistent with applicable nonbankruptcy law.

(d) Failure to Provide Supporting Information. If the holder of a claim fails to provide any information required in subdivisions (a), (b) and (c) above, the holder shall be precluded from presenting or relying on the omitted information, in any form, as evidence in any hearing or submission in any contested matter or adversary proceeding in the case, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court may, after notice and hearing, award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

2. Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence

(a) Notice of Payment Changes. In a Chapter 13 case, if a claim secured by a security interest in the debtor's principal residence is provided for under the debtor's plan pursuant to § 1322(b)(5) of the Code, the holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee notice of any change in the payment amount, including any change that results from an interest rate or escrow account adjustment no later than 30 days before a payment at a new amount is due. If a creditor has a claim that is secured by real property and is based on an open-ended credit agreement, such as a home equity line of credit (heloc) or other loan type that may have frequent interest or payment adjustments that makes compliance with the notice of payment change impracticable or burdensome, the secured creditor shall provide notice of the loan type with its proof of claim. The filing of the notice shall constitute the claimant's compliance with the notice of payment change requirement of this section.

(b) Form and Content. The Local Form designated as *Notice of Payment Change* may be filed and served.

(c) Notice of Fees, Expenses and Charges. In a Chapter 13 case, if a claim secured by a security interest in the debtor's principal residence is provided for under the debtor's plan pursuant to § 1322(b)(5) of the Code, the holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice that itemizes all fees, expenses, or charges, except charges approved and ordered by the court, incurred in connection with the claim after the bankruptcy case was filed, and that the holder asserts are recoverable against the debtor or against the debtor's principal residence. The notice shall be filed and sent no later than 180 days after the date when such fees, expenses, or charges are incurred. On objection of the debtor or trustee filed no later than 180 days after service of the notice, the court shall, after notice and hearing, determine whether payment of the fees, expenses, or charges are required by the underlying agreement and applicable nonbankruptcy law to cure the default or maintain payments in accordance with § 1322(b)(5) of the Code. The Local Form designated as *Notice of Fees, Expenses and Charges* shall be filed and served.

(d) Response to Notice of Fees, Expenses and Charges. If the debtor does not object to the Notice of Fees, Expenses and Charges, or if the debtor's objection is overruled, the debtor shall either 1) pay all post petition amounts included in the Notice of Fees, Expenses and Charges; 2) enter into an agreed order allowing the claim (to be paid by the Trustee); or 3) take no action and the amounts claimed shall be deemed allowed, but will not be paid by the Trustee and will not be discharged upon closure or conversion of the case.

(e) Application of Payments. The holder of a claim secured by a security interest in the debtor's principal residence shall apply payments from the Trustee to arrears being cured and payments from the debtor to maintain post-petition monthly payments.

(f) Notice of Final Cure Payment. No later than 45 days after making the final payment of any cure amount on a claim secured by a security interest in the debtor's principal residence, the trustee in a chapter 13 case shall file and serve upon the holder of the claim, the debtor, and debtor's counsel a notice stating that the amount required to cure the default and/or approved post petition payments due to be paid through the chapter 13 plan has been paid in full. If the debtor contends that final cure payment has been made and the trustee does not timely file and serve the notice required by this subdivision, the debtor may file and serve upon the holder of the claim and the trustee a notice stating that the amount required to cure the default has been paid in full.

(g) Response to Notice of Final Cure Payment. Within 60 days after service of the notice under subdivision (f) of this rule, the holder of a claim secured by a security interest in the debtor's principal residence shall file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default and (2) whether, consistent with § 1322(b)(5) of the Code the debtor is otherwise current on all payments. If applicable, the statement shall itemize any required cure or postpetition amounts that the holder contends remain as of the date of the statement.

(h) Objection and Hearing. On objection of the debtor or trustee filed no later than 21 days after service of the statement given under subdivision (g) above, the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts in full.

(i) Order Deeming Mortgage Current. If the holder of the secured claim fails to respond to the Trustee's Notice of Final Cure Payment given pursuant to subdivision (f) above, the debtor may submit an order which deems the mortgage current. The order shall be served on the holder of the secured claim and the trustee. The parties served with the order shall have 5 days to file and serve an objection. A hearing may be conducted on the objection in the court's discretion.

(j) Failure to Notify. If the holder of a claim secured by a security interest in the debtor's principal residence fails to provide information required by subdivision (a), (c), or (g) above, the holder shall be precluded from presenting or relying on the omitted information, in any form, as evidence in any hearing or submission in any contested matter or adversary proceeding in the case, or otherwise, unless the court determines that the failure was substantially justified or is harmless. In addition to or in lieu of this sanction, the court may, after notice and hearing, award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.