

the U.S. Trustee by separate written notice. The Court will consider the trustee's request at the hearing on the Trustee's Final Report and Account.

**VT. LBR 3071-1. SECURED CREDITORS' OBLIGATION TO PROVIDE ACCOUNT INFORMATION & STATEMENTS TO DEBTORS POST-PETITION**

- (a) **Purpose; Protection Assured to Secured Creditors.** This Rule has been implemented to ensure the post-petition, routine flow of information from secured creditors to debtors with respect to secured loans in each bankruptcy case where a debtor retains possession of the collateral and is required to make regular installment payments directly to the secured creditor; to ensure that secured creditors provide specific contact information to debtors so that debtors may obtain accurate, up-to-date information on the status of the secured loans as needed; and to clarify that a secured creditor who complies with or makes a good faith attempt to comply with this Rule shall not be found to have violated the automatic stay, provided that the secured creditor's communication with a debtor is not an attempt to collect pre-petition debt.
- (b) **Applicability of Rule Generally.** This Rule applies: (1) in cases filed under Chapters 7, 12, and 13; (2) to consumer loan relationships; and (3) as long as the debtor is protected by the automatic stay. It does not apply to debts evidenced by non-consensual liens (e.g., tax liens, restitution liens).
- (c) **Possible Further Applicability.** For cause shown and after proper notice and a hearing, the Court may direct parties to comply with this Rule with regard to commercial loans or in a Chapter 11 case.
- (d) **Applicability to Debt Secured by a Mortgage on Real Property.** For purposes of this Rule, the term "Mortgage Creditor" shall include any creditor who has a claim secured by a mortgage on real property. The Mortgage Creditor shall provide monthly statements to each Chapter 12 and Chapter 13 debtor who has expressed an intent in his/her plan to retain the Mortgage Creditor's collateral and has expressed an intent to pay the Mortgage Creditor directly (i.e., "outside the plan"), and to each Chapter 7 debtor who has expressed his/her intent in his/her statement of intent (which has been served on the Mortgage Creditor) to retain the Mortgage Creditor's collateral. The monthly statements shall contain at least the following information concerning post-petition mortgage payments to be made directly from the debtor to the Mortgage Creditor:
- (1) the date of the statement and the date the next payment is due;
  - (2) the amount of the current monthly payment and of the next payment due;
  - (3) the amount of the payment attributable to escrow, if any;
  - (4) the amount due for any post-petition arrears, and from what date;
  - (5) the amount of any outstanding post-petition late charges;
  - (6) the amount, date of receipt, and application of all payments received since the date of the last statement;

- (7) any other amount(s) due (*e.g.*, for payment of taxes, insurance, attorney's fees, and/or other expenses), *together with an explanation* of the "other amount due" and, if the Mortgage Creditor has already made a payment on this "other amount due", the date of the payment;
- (8) a telephone number and contact information that the debtor or the debtor's attorney may use to obtain reasonably prompt information regarding the secured loan and recent transactions; and
- (9) the address to which the next payment shall be sent and, if the address has changed since the last statement, a conspicuous statement notifying the debtor of the changed address.

Further, upon reasonable written request of the debtor, the Mortgage Creditor shall provide the following additional information to the debtor:

- (10) the principal balance of the secured loan;
- (11) the original maturity date;
- (12) the current interest rate;
- (13) the current escrow balance, if any;
- (14) the interest paid year-to-date;
- (15) the property taxes paid year-to-date, if any; and/or
- (16) any other amount(s) due (*e.g.*, for payment of taxes, insurance, attorney's fees, and/or other expenses), *together with an explanation* of the "other amount due" and, if the Mortgage Creditor has already made a payment on this "other amount due", the date of the payment.

Mortgage Creditors are not required to send monthly statements to Chapter 12 and Chapter 13 debtors who make their post-petition mortgage payments via the case trustee (*i.e.*, "through the plan"). However, to the extent they choose to do so, and such monthly statements comply with this paragraph, Mortgage Creditors shall be entitled to the protection articulated in paragraph (a), above.

- (e) **Applicability to Other Secured Debts.** For the purposes of this Rule, (1) the term "Creditor" shall include any creditor who holds a claim secured by personal property and any lessor of assumed leases on personal property; (2) "other secured debt" shall include all debts secured by property other than as provided for by paragraph (d) above, and assumed leases on personal property. The Creditor shall provide monthly statements or other forms of invoicing (*e.g.*, a coupon book) to each Chapter 12 and Chapter 13 debtor who has expressed an intent in his/her plan to retain the Creditor's collateral and/or assume the lease, and has expressed an intent to pay the Creditor directly (*i.e.*, "outside the plan"), and to each Chapter 7 debtor who has expressed his/her intent in his/her statement of intent (and served a copy of that statement on the Creditor) to retain the Creditor's collateral and/or assume the lease. The monthly statements or other forms of invoicing shall contain the same or substantially similar information as that provided pre-petition.

Creditors are not required to send monthly statements or other forms of invoicing to Chapter 12 and Chapter 13 debtors who make their post-petition mortgage payments via the case trustee (i.e., “through the plan”). However, to the extent they choose to do so, and such monthly statements or other forms of invoicing contain the same or substantially similar information as that provided pre-petition, the Creditors shall be entitled to the protection articulated in paragraph (a), above.

- (f) **Additional Communication a Secured Creditor May Have With a Debtor Without Violating the Automatic Stay.** A secured creditor contacting a debtor to inquire or request proof as to the status of insurance coverage on property that is collateral for the secured creditor’s claim does not violate the automatic stay, unless, in its communication with the debtor, the secured creditor also seeks to collect a debt.
- (g) **Forms of Communication Generally.** A secured creditor is considered to have complied with this Rule when it has transmitted the requisite monthly statements, other forms of invoicing, or additional requested information to the debtor in the manner normally utilized by the secured creditor. However, the secured creditor and debtor may agree to a form of communication not routinely used by the secured creditor (e.g., e-mail versus U.S. mail) to transmit documents to the debtor. See also, e.g., Bankruptcy Rule 9036. It is the debtor’s duty to provide the secured creditor with his/her current address and such contact information as is necessary to facilitate receipt of any document(s) transmitted by the secured creditor.
- (h) **Waiver of Strict Compliance.** If a Mortgage Creditor’s, or Creditor’s, billing system provides monthly statements or other forms of invoicing that substantially comply with this Rule, but does not fully conform to all of its requirements, the Mortgage Creditor, or Creditor, may request that the debtor accept such monthly statements or other forms of invoicing, and the debtor may do so. If the debtor declines to accept the non-conforming monthly statements or other forms of invoicing, a Mortgage Creditor, or Creditor, may file a motion, on notice to the debtor and the debtor’s attorney, if any, requesting a determination from the Court that cause exists to allow such non-conforming monthly statements or other forms of invoicing to satisfy the Mortgage Creditor’s, or Creditor’s, obligations under this Rule. For cause shown, the Court may grant a waiver for an individual case or for multiple cases, and for either a limited or unlimited time period. However, no waiver will be granted unless the proffered monthly statements or other forms of invoicing substantially comply with this Rule and the Mortgage Creditor, or Creditor, has demonstrated that it would be an undue hardship for it to strictly comply with the Rule.
- (i) **Motion to Compel Compliance.** A debtor may file a motion to compel a secured creditor’s compliance with this Rule where the debtor has evidence that a secured creditor has not complied with the Rule for at least 30 days. However, the debtor must first make a good faith effort to contact the offending secured creditor to determine the cause for non-compliance, including inquiring on the status of the secured creditor’s efforts to provide statements in compliance with this Rule. Debtor’s motion to compel must include a description of (1) the debtor’s pre-motion good faith effort(s), (2) any response by the secured creditor, and (3) any harm the debtor has suffered as a result of the secured creditor’s non-compliance.

#### PART IV

**Vt. LBR 4001-1. AUTOMATIC STAY – RELIEF FROM**

**(a) Motion Contents Generally.** A motion for relief from stay shall include the following information to the extent applicable:

- (1) the description of the property (e.g., the vehicle identification number (“VIN”), make, model, serial number of a vehicle; the street address, clerk’s office, and volume/page number where ownership of, and liens against, real property are recorded; name and docket number of a pending court action);
- (2) the names and purported interests of all parties known, or discovered after reasonable investigation, who claim to have an interest in the property;
- (3) the amount of the outstanding indebtedness on each lien, the fair market value of the property, and the basis for the valuation;
- (4) legible and complete copies of all relevant liens and security agreements, or initial and signature pages of these documents if voluminous;
- (5) evidence of perfection of the movant’s lien or interest; and
- (6) copies of any prior orders of the Court upon which the motion relies.

**(b) Additional Requirements for Motions Alleging Post-Petition Payment Default and for Objections Thereto.**

- (1) **Requirement of Pre-Motion Default Notification.** If a secured creditor believes the debtor has defaulted on any post-petition payment obligation, the secured creditor shall send the debtor and the debtor’s attorney, if any, a default notification setting forth with specificity the alleged post-petition default. This notification is a prerequisite to a secured creditor seeking relief from the automatic stay.
- (2) **Motions.** Where a secured creditor moves for relief from the automatic stay based upon allegations of a post-petition payment default, in addition to complying with the requirements of Vt. LBR 4001-1(a), the secured creditor’s motion shall also include the following: (A) in all cases: (i) a statement that the motion is based upon the debtor’s default, and (ii) an affidavit specifically identifying, by date and amount, the payment(s) alleged to be in default; (B) in a Chapter 7 case, a statement that the secured creditor has responded promptly and thoroughly to the trustee’s or to the debtor’s reasonable request for account information; and (C) in a Chapter 13 case, a statement that the secured creditor has provided the debtor with the required account information and statements in a timely fashion. See Vt. LBR 3071-1(d) and (e).
- (3) **Objections.** A debtor objecting to the secured creditor’s motion shall: (A) state with specificity those allegations of the secured creditor that the debtor disputes; (B) articulate the debtor’s legal and factual basis for asserting that the secured creditor is not entitled to relief from stay; and (C) append to the objection an affidavit of the debtor. The debtor’s affidavit must state: (i) each payment amount made; (ii) the date of each payment; (iii) the form of