

NOTICE
NEW CHAPTER 13 PROCEDURE

The following procedure has been developed to protect Chapter 13 debtors in cases in which a post-petition mortgage payment is to be made by the Trustee and the creditor fails to file a proof of claim. In such cases, the funds paid to the Trustee which the debtor anticipated would be paid to the mortgage creditor must be disbursed to other creditors. This can adversely affect the debtor's ability to retain the real estate. The procedure is:

A. If the debtor has provided a copy of the mortgage note and recorded deed of trust, and the mortgage creditor has failed to file a proof of claim by the claims bar date, debtors' counsel are strongly encouraged to file a proof of claim on behalf of the creditor during the 30 day period after the claims bar date expires. To encourage the debtors' counsel to file claims in this 30 day period, the Court will allow debtors' counsel an additional \$125 in fees if counsel files such a claim. The additional \$125 is payable regardless of the fee option elected. To obtain the additional \$125 in fees, the debtor's counsel must first file the proof of claim and must then submit the verification and order using the attached form.

B. After the claims bar date and the expiration of the 30 day period following the claims bar date, the debtor's counsel will no longer be eligible for the additional \$125 in fees mentioned above. However, if the Trustee identifies a case in which the plan calls for the Trustee to make a mortgage payment but no claim has been filed by the creditor, the Trustee will file a motion regarding the filing of the claim by the debtor. The Court will enter an order granting the motion without a hearing, as is the current procedure for motions to change the plan payment date. The important things to know about this motion are:

1. Once the motion is filed, all funds on hand will be disbursed to other creditors with filed and allowed claims during the next monthly disbursement, unless the debtor files a proof of claim by the deadline set in the order.
2. The deadline for the debtor to file the claim will be approximately 20 days after the date the motion is filed.
3. When filing a claim to comply with the order, the debtor will NOT be required to attach a copy of the mortgage note or deed of trust to the proof of claim, although the debtor may do so. If the debtor does not attach a copy of the mortgage note and deed of trust, the debtor MUST attach a copy of a recent payment voucher issued by the mortgage creditor.
4. The motions will be filed after the debtor's additional 30 day period to file claims has expired, but the order will grant debtor permission to file a late claim.

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

IN RE: _____,
Debtor.

) Case No.
)
) CHAPTER 13
)
)

CHAPTER 13 TRUSTEE'S MOTION TO COMPEL DEBTOR TO FILE PROOF OF CLAIM AND FOR ORDER ALLOWING DEBTOR TO FILE A CLAIM OUT OF TIME AND TO PROVIDE ALTERNATIVE DOCUMENTATION FOR A SECURED CLAIM

Comes now, John V. LaBarge, Jr., Standing Chapter 13 Trustee, and states as follows:

1. Debtor has scheduled a debt to CREDITOR secured by Debtor's principal residence located at ADDRESS.
2. Debtor's confirmed Chapter 13 plan calls for the Trustee to make payments to CREDITOR, either for pre-petition arrearages or for both pre-petition arrearages and mortgage payments due post-petition.
3. Pursuant to the terms of the Chapter 13 plan and local practice, a proof of claim must be filed for a creditor to participate in disbursements under the plan.
4. The deadline to file claims has passed and a proof of claim has not yet been filed for this debt.
5. The Trustee is currently holding funds which could be disbursed to CREDITOR if a proof of claim were filed in this case.
6. The Trustee submits that he has been holding funds for CREDITOR as an accommodation to Debtor, but that the Bankruptcy Code, Bankruptcy Rules, and Local Rules do not contain justification for holding such funds for an extended period.

7. The Trustee submits that unless Debtor or CREDITOR files a proof of claim by a reasonable date certain, the Trustee should disburse the funds on hand to other creditors.

8. The Trustee submits that Debtor may not have reasonable access to all the appropriate documentation required to support a secured claim pursuant to Federal Rule of Bankruptcy Procedure 3001(c) and (d).

Wherefore the Trustee prays that the Court issue an order directing Debtor to file a proof of claim for CREDITOR by DATE, directing that Debtor may file a recent payment voucher from CREDITOR in lieu of the documentation required by Federal Rule of Bankruptcy Procedure 3001 (c) and (d), granting Debtor permission to file a late claim for CREDITOR, directing the Trustee to release funds and refrain from holding any funds for CREDITOR if the claim is not filed by DATE, and for such other relief as the Court deems appropriate.

SIGNATURE BLOCK

CERTIFICATE OF SERVICE

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

IN RE:

Debtor.

) Case No.
)
) CHAPTER 13
)
)

ORDER

On DATE, the Chapter 13 Trustee filed his Motion to Compel Debtor to File Proof of Claim and for Order Allowing Debtor to File a Claim Out of Time and the Provide Alternative Documentation for a Secured Claim (the "Motion"). Upon consideration and a review of the record, it is hereby

ORDERED that the Motion is **GRANTED** in that Debtor shall file a proof of claim for CREDITOR no later than ___ 15, 20___. It is further

ORDERED that if Debtor files the claim for CREDITOR on or before __, 15, 20___, the claim shall be deemed to be timely filed. It is further

ORDERED that Debtor shall be allowed to file with the claim, in lieu of the documents identified in Federal Rule of Bankruptcy Procedure 3001(c) and (d), a copy of a recent payment voucher provided by CREDITOR to Debtor. It is further

ORDERED that if Debtor does not file a claim for the CREDITOR on or before ___ 15, 20___, the Chapter 13 Trustee shall refrain from holding any funds for the CREDITOR and shall release any funds it has been holding for CREDITOR.

Copy mailed to:

Debtor
ADDRESS

Attorney for Debtor
ADDRESS

CREDITOR
ADDRESS

John V. LaBarge, Jr.
Chapter 13 Trustee
PO BOX 430908
St. Louis, MO 63143

Office of U.S. Trustee
111 South Tenth Street
Suite 6353
St. Louis, MO 63102

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN RE:

Debtor.

) Case No.
)
) CHAPTER 13
)
)

VERIFICATION

The last day for non-governmental creditors to file claims in this case was DATE. CREDITOR, a creditor secured by Debtor's real estate, failed to file a proof of claim by this date. I filed a proof of claim on behalf of CREDITOR on DATE, a date no more than 30 days after the last date for non-governmental creditors to file claims in this case.

Date

Debtor's attorney

ORDER

Based on the recitations in the above verification, Debtor's attorney of record is hereby awarded an additional \$125 in fees, to be paid by the Trustee under the terms of the confirmed Chapter 13 plan.

Date

United States Bankruptcy Judge

cc:

John V. LaBarge, Jr.
Standing Chapter 13 Trustee
PO Box 430908
St. Louis, MO 63143

DEBTOR