

United States
Bankruptcy Court

Southern District of Texas
All Divisions

Uniform Chapter 13 Plan

Revised December 1, 2022

Uniform Modification

Revised September 15, 2022

**“Chapter 13 Trustee Procedures For Administration Of
Claims Secured By Real Property”**

“Revised, modernized and renamed effective June 22, 2022

Summary of changes

- **The New Plan:**

- Contains 9 revised Paragraphs (4, 8, 9, 10, 12, 13, 15, 22, and 25)
- Adds 2 new subparagraphs (8(D), and 11(F)).

- **The New Mod:**

- Contains 7 revised Paragraphs (8, 9, 10, 12, 13, 22, and 25)
- Adds 2 new subparagraphs (8(D), and 11(F)).

- **Both the Plan and Mod:**

- Incorporate some Rule 3002.1 procedures to Claims secured by Tax Liens
- Replace “Home Mortgage Payment Procedures” with “Chapter 13 Trustee Procedures for Administration of Claims Secured by Real Property” throughout the Plan and Mod.
- Replace “A claim secured only by a security interest in real property” with “Claim secured by real property that will be retained” throughout the Plan and Mod.

Question

- ❖ **Are both the Old Home Mortgage Payment Procedures and the New Chapter 13 Trustee Procedures for Administration of Claims Secured by Real Property (the “New Procedures”) in place or did the latter replace the former? Paragraphs 4.A; 8.D.(ii),(iv); 11.D.,F(ii),(v); 25.A, and B. contain references to both.**
- ❖ **And when and how do they apply to cases?**
 - ❖ The old Home Mortgage Payment Procedures remain in effect for plans that were confirmed without the new provisions.
 - ❖ These New Procedures are implemented only in plans and modifications that contain them in their text.
 - ❖ The New Procedures do NOT apply to previously confirmed plans or modifications.

Application of Fed. R. Bank. P. 3002.1 to holders of Tax Claims

- Because tax lenders hold “*statutory liens*” and not “*security interests*” in debtors’ principal residence, the tax lenders are not required to give timely notice of such fees and expenses under Rule 3002.1(c).
- The new Plan now requires holders of claims secured by any type of lien:
 - to comply with Rule 3002.1 (including Rule 3002.1(b) and (c)’s noticing requirements) regardless of whether Claimant holds a security interest, lien, or other encumbrance to secure payment of its claim, (and as modified by 1322(b)(2)), on debtor’s principal residence and real property **other than** the debtor’s primary residence for the life of debtor’s Plan.

Fed. R. Bank. P. 3002.1 and Total Debt Claims

- **Paragraph 1:** of the New Procedures state that: “These Procedures apply to **all claims** secured by real property that are treated in a chapter 13 plan.”
- Although Rule 3002.1 does not apply to Total Debt Claims, The New Procedures make Rule 3002.1 applicable to Cure and Maintain (§1322(b)(5)), and Total Debt Claims (§ 1322 (c)(2)) provided in a Plan.

Question

- ❖ **Are these New Procedures, in fact, applicable to all claims related to any real property as suggested by paragraphs 1 and 7 (including HOA, ad valorem taxes, total debt mortgages, pool loans, etc.)?**
 - Although it is rare for a lien holder that does not hold a mortgage or tax lien to seek to recover post-petition fees and charges, the New Procedures applies to all holders of liens secured by the Debtor's real estate including:
 - taxing authorities
 - homeowners' association dues
 - pool loans and all other types of secured claims against real estate
 - total debt claims, claims paid directly by a Debtor and not through a Trustee.
 - The application is very broad.

Question

- ❖ **If these New Procedures apply to all claims related to any real property as suggested by paragraphs 1 and 7 (including HOA, ad valorem taxes, total debt mortgages, pool loans, etc.) how are those creditors put on notice that these procedures apply to them?**
 - ❖ There is no change in the manner in which Payment Change Notices are filed. The plan does not impose any additional requirements on parties filing Mortgage Payment Change Notices.

Questions

- ❖ **If the New Procedures extend to all claims, is the definition of “Ongoing Payment” in paragraph 2 of the New Procedures meant to include any payment that is made by Trustee or Debtor after the petition is filed?**
- ❖ **If so could the term be changed as it is easily confused with the previous understanding of ongoing payment meaning: the monthly mortgage payments that are due during the life of the plan?**
- ❖ **If it is still intended to refer only to the conduit or monthly ongoing contractual payment that is due separate from the arrearage claim, etc., could we have a defined term for the remaining types of claims covered by these rules?**
 - ❖ **“Ongoing Payment” is defined in the New Procedures to mean “Principal, Interest and Escrow payments” paid through the Chapter 13 Trustee.**

Questions

- ❖ **If the New Procedures extend to all claims, is the Trustee required and are the Debtors allowed to file a motion to deem current even for total debt claims, HOA, ad valorem, etc.?**
- ❖ **If so, will the Court provide Exhibits 3 and 4 for such situations? Currently Exhibits 1 and 2 require continued payments after plan completions per paragraphs 4 of the motions and 3 of the orders?**
- ❖ “Deemed Current” motions may be filed as to any secured real estate claim.
- ❖ Any party in interest may file a Rule 3002.1(f) Notice of Final Cure Payment or “Deemed Current” motion.
- ❖ The Trustees are requested to submit proposed forms to the Court to allow for those to be filed.

Paragraph 8 of the New Plan

- Paragraph 8 was revised to accommodate Rule 3002.1 as to all real property regardless of any homestead designation.

8. ~~Secured Claim for Claim Secured Only by a Security Interest in~~ Real Property that ~~is the Debtor(s)' Principal Residence (Property to be Retained)~~ will be Retained and Paid in Full with Interest in Accordance with Applicable Non-Bankruptcy Law. For each such claim, utilize either A, B, or C, below:

A. This table sets forth the treatment of ~~certain classes of~~ holders of claims secured ~~by creditors holding a claim secured only by a security interest in~~ by real property located at (street address, city, state).

New Paragraph 8(D) of the New Plan

D. This subparagraph D applies to any claim that is secured in whole or in part by a Tax Lien held by a transferee (as defined in Section 32.06 of the Texas Tax Code), or its assigns (collectively, a “Transferee”).

Paragraph 8 has been amended to also govern the repayment of a Tax Lien Transferee’s claim.

Questions

- ❖ **Paragraph 8 of the Plan is titled “Claim secured by Real Property that will be Retained and Paid in Full.” Does this mean “total debt” only or does it still include “cure and maintain” claims?**
- ❖ **Did the Court intend to remove 1322(b)(5) claims from paragraph 8? Paragraph 8 seems like the most logical place for those claims given the language within the paragraph and subsections B and C however the title limits it to “Paid in Full” claims.**
- ❖ **Would it be possible to change the title to something like “Claims Secured by Real Property that will be Retained and paid pursuant to § 1322(b)(5) or Paid in Full with Interest.....”?**
- ❖ The use of the term “Paid in Full” in paragraph 8 does not imply “Paid in Full During the Term of the Plan. If a loan is cured and maintained, full payment may occur years into the future.
- ❖ There is no need to make a change. Paragraph 8 already provisions for both §1322(b)(5) cure and maintain and §1322(c)(2) Total Debt Claims.

Question

- ❖ **Can paragraphs 8 and 11 of the Plan be used interchangeably for real property claims and principal residence claims? Only Paragraph 8.A.(ii) of the plan references “Debtor(s)’ principal residence” and “principal residence” is only referenced in paragraph 11(F) as it relates to tax lien transferee claims?**
 - ❖ The specificity under Paragraph 11 as it applies to tax liens does not override any general requirements in Paragraph 8 applying to all secured claims including tax lien claims.
 - ❖ Nevertheless, Paragraph 8(A)(ii) will be amended as follows: “A claim secured by real property, including Debtor’s principal residence, . . .”

Question

- ❖ **Can the same property have claims in both paragraphs 8 and 11 (i.e., a tax claim under 8 but the HOA claim under 11)?**
 - ❖ The same real estate may have one lien paid under paragraph 8 and another under paragraph 11.

Questions

- ❖ **Is there a reason the term “Trustee” is defined in Paragraph 8(A)(iii) of the Plan, footnote #7 when it was previously defined in paragraph 2? Could you please clarify the intended difference?**
 - ❖ Trustee is only defined in Paragraph 2

- ❖ **As there are several versions of the plan in the last few years, is it possible for the plans to contain a footer with “Revised DD/MM/YYYY”?**
 - ❖ Already done

Questions

- ❖ **If the New Procedures extend to all claims, does the Court expect total debt mortgages to comply with 3002.1(b) per paragraph 7 to file Notices of Mortgage Payment Changes under the original contract terms despite Debtor opting to pay the claim as a total debt?**
 - ❖ Notices of Mortgage Payment Changes on Total Debt Claims should be filed only if they reflect escrow payment changes.
- ❖ **Does this allow or require a continued escrow right/obligation?**
 - ❖ They are allowed but not required
- ❖ **Does this allow continued adjustable rates when the plan is confirmed at a fixed rate?**
 - ❖ No.
- ❖ **Does Trustee need to honor those adjustable rate changes or payment adjustments?**
 - ❖ Adjustable rate changes do not apply to Total Debt Claims. Payment changes arising out of escrow changes should be implemented by the Trustees.

Questions

- ❖ **If paragraph 8 of the Plan is intended to cover all real property regardless of the principal residence status, would the Court expect a different subparagraph A box per property? This would seem the most appropriate given the required address at the beginning of subparagraph A.**
 - ❖ Each real estate lien **must** be separately listed in paragraph 8.

- ❖ **Does the court intend to limit loan modifications to principal residence claims? Most loan mods are on principal residence claims, but the language does seem to preclude its use on non-principal residence properties.**
 - ❖ Table 8(B) provisions for loan modifications which may be used on any loan secured by Debtor's real property.

Question

- ❖ **Is there any reason the Court removed the following columns from paragraphs 8 and 11 of the New Mod? These are helpful (especially when including post-petition mortgage arrears, which is relatively common) and are still included in paragraphs 5, 6 and 9. However, we appreciate that collateral value was added to paragraph 11.**

Remaining Claim

Post-Confirmation

**Total Remaining
Claims and Post
Confirmation Claims**

**Claims not
Included in**

Remaining Claim

- ❖ **These columns remain part of the New Mod.**

New Paragraph 11(A) of the New Mod

11. Other Claims Secured by Real/Personal Property that is Retained.

- A. The amount of secured claim to be paid under this Modified Plan is the lesser of the amount listed above as the “Collateral Value” and the allowed amount of the claim. If a timely proof of claim is filed, the amount of the claim will be determined through the claims allowance process. Otherwise, the amount scheduled in this Modified Plan will control. If the Court orders a different amount than is shown above as “Collateral Value,” this Modified Plan shall be deemed amended to reflect that Collateral Value without the requirement of the filing of an amendment.

This provision was added to be consistent with Paragraph 11A of the New Plan.

Paragraph 11(D) of the New Plan

Paragraph 11(D) of the New Plan was updated with the new name for the New Trustee Procedures.

- D. If the pre-petition loan documents include a provision for an escrow account, the actual monthly payment is adjustable only in accordance with this Paragraph. ~~The Home Mortgage~~ The Chapter 13 Trustee Procedures for Administration of Claims Secured by Real Property must be followed ~~even though the claims treated in this Paragraph are not secured by the Debtor(s)' principal residence.~~

New Paragraph 11(F) of the New Plan

- Paragraph 11(f) of the New Plan: “Other Claims Secured by Real/Personal Property that is Retained”
 - provisions for the repayment of Tax Liens held by a transferee
- F.** This subparagraph F applies to any claim that is secured in whole or in part by a Tax Lien held by a transferee (as defined in Section 32.06 of the Texas Tax Code), or its assigns (collectively, a “Transferee”).

Questions

- ❖ **Paragraph 8(a)(iii) of the Plan states that the trustee shall file a Notice of Plan Payment Adjustment for a shortage caused by a 3002.1 claim. Paragraph 8(D)(iii) *does not* mention the requirement for the trustee to file a Notice of Plan Payment Adjustment for a tax lien held by a Transferee.**
- ❖ **Paragraph 11(F)(iii) of the Plan *does* state the requirement that the Trustee shall file a notice of plan adjustment for a 3002.1 deficiency in the plan for a tax lien transferee.**
- ❖ **Why is Trustee required to adjust for a 3002.1 claim under 11(F), but not under 8(D) when they both discuss tax liens by a transferee?**
 - ❖ Paragraph 8(D)(iii) of the New Plan will be amended to provide for the Trustee to file a notice of plan adjustment for a 3002.1 deficiency in the plan for a tax lien transferee.

Question

- ❖ Paragraph 11(F)(vi) of the Plan states that “the Tax Lien will secure only (i) *contractual payments* first payable after the completion of all payments under this plan...”. Paragraph 8(D)(vi) states that the “Tax Lien will secure only (i) *payments* first payable after the completion of all payments under this plan.” Is there a difference between “contractual payments” and “payments”?
- ❖ No. The New Plan will be amended to reflect “contractual payments” in Paragraph 8(D)(vi).

Paragraph 12 of the New Plan

- Paragraph 12 of the New Plan now provisions for:
 - Modification of the stay to permit Notice of Payment Changes and Notice of Fees, Expenses and Charges notices per Rule 3002.1(b) and (c).
 - Secured Creditors, including Tax Claims, to retain their liens until:
 - payment of the underlying debt as determined under non-bankruptcy law; or
 - completion of all payments provided by this Plan
 - addresses any concerns that “the Plan fails to provide that if this case is dismissed or converted without completion of the plan, Creditor shall retain its liens and its lien priority to the extent recognized by applicable nonbankruptcy law, as required by 11 U.S.C. § 1325(a)(5)(B)(i)(II).

Paragraph 13 of the New Plan

- Paragraph 13 of the New Plan now provisions for
 - maintenance of insurance on all real property including those secured by Tax Liens held by a transferee:
 - modified the provision now requiring Debtors to provide proof of compliance (proof of insurance and payment of post-petition taxes) within **14** (not 30) days of a written request.

Question

- ❖ **Paragraph 13 of the New Trustee Procedures is dependent on the question as to the meaning of “Ongoing Payment”. If limited to monthly ongoing mortgage installments, this leaves no mechanism to pay the other type of creditors on their 3002.1(c) notices. However, Trustee should not be disbursing any payments pre-confirmation to those other types of claims, so it may not be that problematic.**
- ❖ There is no change in the manner in which Mortgage Payment Change Notices are filed.
- ❖ The New plan does not impose any additional requirements on parties filing Mortgage Payment Change Notices.

Paragraph 22 of the New Plan

- Paragraph 22 of the New Plan and New Mod: “Emergency Savings Fund” was also renamed simply as Savings Fund.

22. ~~Emergency~~ Savings Fund.

Paragraph 25 of the New Plan

- Paragraph 25G of the New Plan now provisions for collection of any payments on any claims that first became payable after the completion of all payments under the Plan and resolves any concerns that Tax Lien claimants need to file separate fee applications prior to confirmation of a plan and 3002.1 notices post confirmation.
- Paragraph 25G of the New Mod does not include similar language because the language in Paragraph 25G of the New Plan controls once a Plan is confirmed.

25. Presence or absence of a Proof of Claim.

- G. No creditor, before or after completion of the Plan, shall be allowed to collect any payments, costs, fees, or expenses, from the Debtor(s), the estate, or their property, that are not provided for in this Plan, **unless such amounts first became payable after the completion of all payments under the Plan. Notwithstanding any provision in this plan to the contrary, a Rule 3002.1(c) notice filed with respect to a claim secured solely by a Tax Lien will be timely if it is filed before the later of (i) 60 days of entry of the order confirming this plan; and (ii) 180 days after the date on which the fees, expenses, or charges are incurred.**

Questions

- ❖ **Will the local rules be amended to make the New Procedures applicable?**
 - ❖ Yes, the Bankruptcy Local Rules will be amended to make conforming changes.
- ❖ **Will the Plan and Mod forms be revised to make these procedures applicable? Currently it appears to only apply to claims treated under 8.A.(ii) of the plan (i.e., principal residence mortgage claims), 11(D) of the plan (i.e., claims with an escrow component), or related to tax lien transferees per 8(D)/11(F).**
 - ❖ No. Paragraph 1 of the New Procedures already make it applicable to “all claims secured by real property that are treated in a chapter 13 plan”.
- ❖ **Currently the Plan and Mod forms refer to both the Home Mortgage Payment Procedures and these new procedures.**
 - ❖ Plan and Mod only refer to the New Procedures