

**Chapter 13 Trustee Procedures for
Administration of Home Mortgage Payments
Adopted by the Court on September 29, 2005
(Last Amended Effective December 1, 2017)**

1. For the purpose of these procedures, an “Ongoing Mortgage” is a claim secured by a security interest in real property that is the Debtor(s)’ principal residence. “Ongoing Mortgage Payments” are all payments due to the holder of the Ongoing Mortgage, including payments of principal, interest, escrow and other amounts authorized by FED. R. BANKR. P. 3002.1. “Trustee” refers to the chapter 13 trustee. “Uniform Plan” refers to the Uniform Plan and Motion for Valuation of Collateral confirmed in a case and as modified from time to time.

2. Uniform Plans must provide for the payment through the chapter 13 trustee of Ongoing Mortgage Payments if the Ongoing Mortgage was in default on (i) the petition date, (ii) the date of plan confirmation, or (iii) the date of the filing of a plan modification pursuant to the terms of 11 U.S.C. § 1322(b)(5). This paragraph does not preclude the use of paragraph 8(B) of the Uniform Plan.

3. In all cases in which the Uniform Plan provides for Ongoing Mortgage Payments through the Trustee:

A. Not later than 5 days after a case is filed, the Debtor(s) shall provide the Trustee with the following information in writing regarding the Ongoing Mortgage:

- i. The complete payee name and payment address for payments on the Ongoing Mortgage.
- ii. The account number assigned to the Ongoing Mortgage.
- iii. A copy of the most recent statement reflecting the amount and due date of contractual payments on the Ongoing Mortgage.
- iv. A telephone number for the servicer of the Ongoing Mortgage.
- v. An electronic mail address if available.

B. If the Trustee has available funds, Ongoing Mortgage Payments should begin before a plan is confirmed. The Trustee is not required to make Ongoing Mortgage Payments until the Trustee is satisfied that good funds have been received from the Debtor(s).

4. Changes to Ongoing Mortgage Payments are governed by FED. R. BANKR. P. 3002.1.

A. Subject to paragraph 4B hereof, if a **Notice of Payment Change** is filed in accordance with FED. R. BANKR. P. 3002.1, the Trustee shall commence Ongoing Mortgage Payments in the changed amount beginning with the next payment due at least 21 days after the filing of the notice.

B. The Trustee shall not pay the Ongoing Mortgage Payment at the changed amount if:

- i. An objection to the Notice of Payment Change has been filed; and
- ii. A stay of the Notice of Payment Change has been ordered.

C. If a Notice of Payment Change is stayed, but later determined to have been correct, then the Debtor(s) shall be required to make all additional payments that accrued during the period of the stay within 30 days of the date the stay is terminated with interest on such amounts at the non-default contract rate under the Ongoing Mortgage.

5. If a Uniform Plan is made deficient or not feasible as a result of a payment change or an expense reimbursement requirement, then the Trustee or the Debtor(s) may seek a modification of the plan pursuant to 11 U.S.C. § 1329, or file a motion to dismiss or convert the case.

6. Upon the completion of a plan providing for Ongoing Mortgage Payments through the Trustee, the Trustee shall file a Notice of Final Cure Payment and Motion to Deem Mortgage Current pursuant to FED. R. BANKR. P. 3002.1(f) and 3002.1(h) which motion and proposed form of order shall be in the form of **Exhibit 1**.

7. If Ongoing Mortgage Payments are paid by the Trustee, then the Trustee shall pay the fees, expenses or other charges that are governed by FED. R. BANKR. P. 3002.1 in compliance with this paragraph. If the payments on such a claim are paid directly by the Debtor(s), then the Debtor(s) shall directly pay the fees, expenses or other charges that are governed by FED. R. BANKR. P. 3002.1 in compliance with this paragraph.

A. If an objection challenging a fee, expense or other charge is filed within 30 days of a notice filed pursuant to FED. R. BANKR. P. 3002.1(c), then the fee, expense or other charge shall be paid only after the entry of an order allowing such fee, expense or other charge. Any allowed amounts shall be paid commencing with the Trustee's next scheduled distribution, with equal monthly installments paid over the shorter of (i) twelve months; or (ii) the remainder of the plan term.

B. If no objection is filed pursuant to paragraph 7(A) hereof, then the fee, expense or other charge shall be paid beginning on the date of the Trustee's next scheduled distribution, with equal monthly installments paid over the shorter of (i) twelve months; or (ii) the remainder of the plan term.

C. If payments are made under Paragraph 7(B), but the fees, expenses or charges are later not allowed, then the Debtor(s) shall be allowed to recoup any excess payment that was made plus interest on such amounts at the contract rate under the Ongoing Mortgage.

D. Nothing in this Paragraph 7 governs the period over which fees, expenses or other charges that are governed by FED. R. BANKR. P. 3002.1 may be paid under a modified plan.

8. Ongoing Mortgage Payments must be applied by the holder to the next payment due without penalty under the terms of the note unless the holder notifies the Trustee in writing within 30 days of the date that a Uniform Plan is confirmed that it waives all late charges that accrue after the order for relief in this case.

9. These procedures may be varied in a particular case only by order of the Court.

EXHIBIT 1

**TRUSTEE'S NOTICE OF FINAL CURE PAYMENT
AND MOTION TO DEEM MORTGAGE CURRENT**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

To the Honorable United States Bankruptcy Judge:

_____, chapter 13 trustee (the "Trustee"), files this Notice of Final Cure Payment and Motion to Deem Mortgage Current.

NOTICE OF FINAL CURE PAYMENT

1. Based on the Trustee's records, the Debtor(s) have completed all payments to the Trustee due under the confirmed plan in this case. Pursuant to FED. R. BANKR. P. 3002.1(f), you are hereby notified that the Debtor(s) have paid in full the amounts required to cure any default (both pre- and post-petition) on all claims secured by a security interest in the Debtor(s)' principal residence. You are further notified pursuant to FED. R. BANKR. P. 3002.1(f), that within twenty-one (21) days after service of this notice, each holder of a claim secured by a security interest in the Debtor(s)' principal residence is required to file and serve on the Debtor(s), the Debtor(s)' counsel, and the trustee a statement indicating (1) whether the holder agrees that the Debtor(s) have paid in full the amount required to cure any default on its claim, and (2) whether the Debtor(s) are otherwise current on all payments consistent with 11 U.S.C. § 1322(b)(5). The statement must itemize the required cure or post-petition amounts, if any, that the holder contends remain unpaid as of the date of the statement. The statement shall be filed as a supplement to the holder's proof of claim and is not subject to FED. R. BANKR. P. 3001(f).

Motion to Deem Mortgage Current and Direct Debtor(s) to Begin Making Direct Payments

2. Based on the Trustee's records, the Debtor(s) have completed all payments to the Trustee required under the confirmed plan in this case to the following creditors whose claims are secured by a security interest in the Debtor(s)' principal residence:

[List specific creditor(s)]

3. The Trustee requests an order determining that (i) that the claim(s) of the above-identified creditor(s) are current; (ii) all escrow deficiencies, if any, have been cured; and (iii) all legal fees, inspection fees and other charges imposed by the creditor, if any, have been satisfied in full.

4. The Debtor(s) should begin making direct payments to the following creditors whose claims are secured by a security interest in the Debtor(s)' principal residence:

<u>Creditor Name & Address</u>	<u>Amount</u>	<u>Next Payment Due Date</u>
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Accordingly, the Trustee requests that the Court grant relief consistent with the foregoing and such other relief as is just.

Dated: _____.

Respectfully submitted,

/s/ [Trustee]
[Name], Trustee
[Address 1]
[City, State Zip]
[Telephone Number] Telephone
[Facsimile Number] Facsimile

CERTIFICATE OF SERVICE

I hereby certify that this instrument was served by United States first class mail, with proper postage affixed, addressed to the parties set forth on the attached Service List on this _____ day of _____, 20__.

[Name of Trustee]
Chapter 13 Trustee

**ORDER DEEMING MORTGAGE CURRENT
AND DIRECTING DEBTOR(S) TO RESUME PAYMENTS**
(Docket No. __)

The Court has considered the Trustee's Notice of Final Cure Payment and Motion to Deem Mortgage Current. The Court finds that notice is proper and that the requested relief is proper. Accordingly, it is

ORDERED THAT:

1. Based on the Trustee's records, the Debtor(s) have completed all payments to the Trustee required under the confirmed plan in this case to the following creditors whose claims are secured by a security interest in the Debtor(s)' principal residence:

[List specific creditor(s)]

2. The claims of the above-listed creditor(s) are deemed current as of [DATE]. All escrow deficiencies, if any, are deemed cured. All fees, expenses and other charges imposed by the creditor, if any, are deemed satisfied in full. The creditor shall be solely responsible for any shortfall.

3. The Debtor(s) should begin making direct payments to the following creditors whose claims are secured by a security interest in the Debtor(s)' principal residence. The next payment due after receipt of the last payment made by the Trustee under the Plan is:

<u>Creditor Name & Address</u>	<u>Amount</u>	<u>Next Payment Due Date</u>
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SIGNED this ____ day of _____, 20__.

**THE HONORABLE [NAME OF JUDGE],
UNITED STATES BANKRUPTCY JUDGE**