

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**In re:** §  
**Chapter 13 Trustee Procedures for** §  
**Administration of Home Mortgage** §  
**Payments** §

**Chapter 13 Trustee Procedures for  
Administration of Home Mortgage Payments  
Adopted by the Court on September 29, 2005  
(Last Amended Effective March 1, 2012)**

1. If there is a default as of (i) the petition date, (ii) the date of plan confirmation, or (iii) the date of the filing of a plan modification on a claim secured by a security interest in real property that is the debtor's principal residence pursuant to the terms of 11 U.S.C. § 1322(b)(5) (the "Ongoing Mortgage"), then the chapter 13 plan must provide for regular monthly payments of the Ongoing Mortgage, including applicable escrow amounts, through the chapter 13 trustee. This paragraph does not preclude the use of paragraph 4(B) of the Uniform Plan and Motion for Valuation of Collateral adopted by this Court if a default on the Ongoing Mortgage has been cured by a consensual loan modification.

2. If there is no default as of (i) the petition date, (ii) the date of plan confirmation, or (iii) the date of the filing of a plan modification on an Ongoing Mortgage, then the chapter 13 plan shall provide for either (a) regular monthly payments of the Ongoing Mortgage, including applicable escrow amounts, to be made through the chapter 13 trustee, or (b) direct payments by the Debtor of the regular monthly mortgage payment due under the Ongoing Mortgage, including applicable escrow amounts.

3. In all cases in which the chapter 13 plan provides for payment of the Ongoing Mortgage through the chapter 13 trustee:

A. Not later than 3 business days following the date a case is filed, the Debtor shall provide the chapter 13 trustee with the following information in writing concerning all claims to which these procedures apply:

- i. The complete name and payment address of the creditor.
- ii. The account number assigned to the claim.
- iii. The exact amount of the contractual installment payment and the date each payment is due.
- iv. A telephone number for the creditor.

v. A copy of the current payment coupon.

B. The chapter 13 trustee is not required to disburse funds hereunder to a claimant unless the chapter 13 trustee is satisfied that good funds have been received from the Debtor.

C. Subject to these procedures, the chapter 13 trustee is authorized to disburse funds in payment of all regular contractual installment payments due under the Ongoing Mortgage and all post-petition charges, each in the amounts as provided by FED. R. BANKR. P. 3002.1 and these procedures. Disbursements should commence as soon as is practicable. If the chapter 13 trustee has available funds, the initial disbursement should precede the hearing on plan confirmation.

4. Changes to payments on an Ongoing Mortgage are governed by FED. R. BANKR. P. 3002.1, which rule is incorporated into these procedures.

A. A **Notice of Payment Change** filed in accordance with FED. R. BANKR. P. 3002.1 shall be served on the Debtor and Debtor's counsel not later than the first business day after the **Notice of Payment Change** is filed. The claimant must file a certificate of service with the Clerk, with a copy of the **Notice of Payment Change** attached, within 5 days of service.

B. Subject to paragraph 4C hereof, if a **Notice of Payment Change** is filed in accordance with FED. R. BANKR. P. 3002.1 and if there has been compliance with paragraph 4A hereof, the chapter 13 trustee shall commence payments on the Ongoing Mortgage in the changed amount beginning with the next payment due under the Ongoing Mortgage at least 21 days after the filing of the notice.

C. The chapter 13 trustee shall not make payments on the Ongoing Mortgage at the changed amount if:

- i. A timely objection to the **Notice of Payment Change** is filed, and the chapter 13 trustee has filed a motion seeking a stay of the **Notice of Payment Change**; or
- ii. The Debtor has sought and obtained a stay of the **Notice of Payment Change**.

D. If a **Notice of Payment Change** is stayed, but later determined to have been correct, then the Debtor 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.

E. If a **Notice of Payment Change** is implemented, but later determined to have been incorrect, then the Debtor shall be allowed to recoup any excess payment that was made plus interest on such amounts at the contract rate under the Ongoing Mortgage.

5. If a chapter 13 plan is made deficient or not feasible as a result of a payment change or an expense reimbursement requirement, then the chapter 13 trustee or the Debtor 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. In each case in which the chapter 13 trustee alleges that all payments required to be made to the chapter 13 trustee under the plan have been received:

A. For claims secured by a mortgage on a debtor's principal residence that were paid through the chapter 13 trustee pursuant to the confirmed plan, the chapter 13 trustee shall file a Notice of Final Cure Payment and Motion to Deem Mortgage Current pursuant to FED. R. BANKR. P. 3002.1(f) which motion and proposed form of order shall be in the form of **Exhibit 1**.

B. A response to a Notice of Final Cure Payment that is filed in accordance with FED. R. BANKR. P. 3002.1(g) must:

- i. Attach a mortgage loan history form, current through the date of the chapter 13 trustee's notice, in the form required on the Court's website by Bankruptcy Local Rule 3001-1.
- ii. Be served on the Debtor and Debtor's counsel with a notice stating that the amount set forth in the response will be allowed unless an objection is filed within 21 days.
- iii. Be set for hearing on the last hearing date allowed for motions filed under § 362 that is within 21 days after the filing of the response.

C. If an entity filing a response to a Notice of Final Cure Payment fails to attach the required mortgage loan history form or fails to set the hearing required by paragraph 6B(iii) hereof, then the entity shall have irrevocably waived the 21-day limit for the filing of a motion under FED. R. BANKR. P. 3002.1(h).

7. In a case where a claim secured by a mortgage on a debtor's principal residence is paid direct by the Debtor under the confirmed plan and in which the Debtor alleges that all payments required to be made to such claimant have been made, the Debtor may file a Motion to Deem Mortgage Current which motion and proposed form of order shall be in the form of **Exhibit 2**.

8. The recovery of fees and expenses by the holder of a claim secured solely by a security interest in the Debtor's principal residence is governed by FED. R. BANKR. P. 3002.1. If the payments on such a claim are paid through the chapter 13 trustee, then the chapter 13 trustee

shall pay the fees, expenses or other charges that are governed by FED. R. BANKR. P. 3002.1 in compliance with this paragraph 8. If the payments on such a claim are paid directly by the Debtor, then the Debtor shall directly pay the fees, expenses or other charges that are governed by FED. R. BANKR. P. 3002.1 in compliance with this paragraph 8.

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 chapter 13 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 8(A) hereof, then the fee, expense or other charge shall be paid beginning on the date of the chapter 13 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 8(B), but the fees, expenses or charges are later not allowed, then the Debtor 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 8 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.

9. Amounts received by the holder of the Ongoing Mortgage prior to confirmation must be applied by the holder to the next payment due without penalty under the terms of the note; or the holder must notify the chapter 13 trustee in writing within 30 days of the date that a plan is confirmed that it waives all late charges that accrue after the order for relief in this case. Amounts received by the holder of the Ongoing Mortgage after confirmation must be applied in accordance with the plan.

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

# **EXHIBIT 1**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**IN RE:** §  
§  
**SOME DEBTOR,** § **Case No. 11-99999**  
§ **(Chapter \_\_\_\_)**  
**Debtor.** § **JUDGE [NAME OF JUDGE]**

**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 has 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 has 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, the Debtor’s counsel, and the trustee a statement indicating (1) whether the holder agrees that the Debtor has paid in full the amount required to cure any default on its claim, and (2) whether the Debtor is 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 to Begin Making Direct Payments**

2. Based on the Trustee's records, the Debtor has 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 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 &amp; 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

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**IN RE:** §  
§  
**SOME DEBTOR,** § **Case No. 11-99999**  
§ **(Chapter \_\_\_\_)**  
**Debtor.** § **JUDGE [NAME OF JUDGE]**

**ORDER DEEMING MORTGAGE CURRENT  
AND DIRECTING DEBTOR 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 has 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 the entry date of this Order. All escrow deficiencies, if any, are deemed cured. All legal fees, inspection fees and other charges imposed by the creditor, if any, are deemed satisfied in full. The creditor shall be solely responsible for any shortfall or failure to respond to the Trustee’s notice and motion.

3. The Debtor 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 &amp; 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**

## **EXHIBIT 2**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**IN RE:** §  
§  
SOME DEBTOR, § Case No. 11-99999  
§ (Chapter \_\_\_)  
Debtor. § JUDGE [NAME OF JUDGE]

**DEBTOR’S 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:**

\_\_\_\_\_ (the “Debtor”), files this Motion to Deem Mortgage Current.

**Motion to Deem Mortgage Current**

1. As set forth in the attached certification, the Debtor has completed all payments required under the confirmed plan to be paid directly to the following creditors whose claims are secured by a security interest in the Debtor’s principal residence:

[List specific creditor(s)]

2. The Debtor 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.

Accordingly, the Debtor requests that the Court grant relief consistent with the foregoing and such other relief as is just.

Dated: \_\_\_\_\_.

Respectfully submitted,

\_\_\_\_\_  
[Name]  
[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]

**DEBTOR'S CERTIFICATION**  
[to be completed by each debtor]

Pursuant to 28 U.S.C. § 1746, I hereby declare, certify, verify and state under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct. I further certify that I have completed all payments required under the confirmed plan in this case to be paid directly to the creditors identified above whose claims are secured by a security interest in my principal residence, that all escrow deficiencies have been cured and all legal fees, inspection fees and other charges have been paid.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
[Name]

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**IN RE:** §  
§  
**SOME DEBTOR,** § **Case No. 11-99999**  
§ **(Chapter \_\_\_\_)**  
**Debtor.** § **JUDGE [NAME OF JUDGE]**

**ORDER DEEMING MORTGAGE CURRENT**  
**(Docket No. \_\_\_\_)**

The Court has considered the Debtor’s 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 Debtor’s certification, the Debtor has completed all payments to be made directly 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 the entry date of this Order. All escrow deficiencies, if any, are deemed cured. All legal fees, inspection fees and other charges imposed by the creditor, if any, are deemed satisfied in full. The creditor shall be solely responsible for any shortfall or failure to respond to the Debtor’s motion.

SIGNED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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