

Trustee's Interpretation of the Mortgage Certification Form (Local Form 3015-c):

Paragraph (1) of the new Mortgage Certification form gives the debtors two options to check off: one, that the debtor(s) have proposed a plan under which certain claims shall be paid directly by the debtor(s) or, two, that the debtor(s) have not proposed a plan under which certain claims shall be paid directly by the debtor(s).

The Trustee interprets the form to require the filing of such in every case coming up for confirmation, whether there are direct payments to be made by the debtors or no direct payments to be made by the debtors. During the 12/19/12 confirmation hearing docket, the Court agreed with the Trustee that the Trustee had interpreted the form correctly. However, since the case in question did not involve a Chapter 13 plan that provided for a direct payment, the Trustee stated that he had no objection to the proposed plan being confirmed without that certification. Accordingly, the Court did not rule upon the issue of whether the Court's Local Rules, by adopting the form, does in fact require such a certification filed in cases involving no direct payments. **The Trustee, however, in interpreting the form, will be requesting the certification filed in every case and will be maintaining this objection in the future until such time as the Court rules upon the objection.**

At the beginning of a prior confirmation docket immediately after the adoption of this new form, the Court noted that one of the two options needs to be checked off in Paragraph (1) of the form. Failure to check off one of the boxes is fatal to the Certification in that the debtors are actually not certifying anything even if the remaining portion of the form is completed. **The Trustee will be rejecting mortgage certifications that do not have one of the boxes (whether there are or are not direct payments) checked.**

The Connection of the Mortgage Certification Form (Local Form 3015-c), Declaration of Debtor Under Penalty of Perjury Regarding Request to Pay Post-Petition Mortgage Obligations through Chapter 13 Plan Modification (Local Form 4001-b), and possibly putting on-going mortgage payments through the Plan:

In May, 2012, Judge Parker made certain comments about the new Mortgage Certifications that I paraphrased in my Memo previously posted on my website at www.ch13tyler.com under the tab under "Trustee's E-Mails" under a document entitled "Comments by Judge Parker re Mortgage Certifications" as follows:

The Judge's primary concern in Chapter 13 cases is the feasibility of the case. Thus, the purpose for the direct pay certification was to ensure that the debtors could afford to make the payments proposed in the Chapter 13 plan as supported by the budget. Judge Parker also indicated that this procedure was the middle ground between his previous policy of not requiring any such certification and the policy implemented by other Court of requiring on-going mortgage payments through the Plan. Judge Parker acknowledged that putting ongoing mortgage payment in the plan would be administratively burdensome both to the Court and my office but did indicate that such an option was not off the table.

At the 12/19/12 Tyler Docket, Judge Parker expressed his concerns about the proposed inclusion of post-petition mortgage arrearage payments through the plan and the use of the new local form Declaration of Debtor Under Penalty of Perjury Regarding Request to Pay Post-Petition Mortgage

Obligations through Chapter 13 Plan Modification (Local Form 4001-b) which I would summarize as follows:

--The Court expressed concerns on what conditions should exist to allow debtors to add post-petition mortgage arrears to be paid through the plan through a modification. The court stated that such an agreement must somehow preserve the rights of the junior class creditors.

The Trustee's interpretation of this statement is that the dividend to the unsecured creditors should not be reduced from the original confirmed plan in order to pay post-petition mortgage arrears through the plan through a future modification.

--One of the options as discussed by the Court is the Modified Plan as proposed through a Motion to Modify include a provision that the post-petition mortgage arrears not be paid until after the dividend to the unsecured creditors is paid.

--The Court adopted new Local Form 4001-b to assist the Court in determining the number of post-petition months the debtors are in arrears, the dates of the period of time that the post-petition mortgage arrears covers, the reason for the post-petition mortgage arrears, and a detailed explanation for the mortgage arrears. The Court expressed a concern for the lack of detail that is currently being given in the form to justify the future inclusion of the payment of post-petition mortgage payments through the plan.

The Trustee's interpretation of these comments is that much attention should be given to the detail included in the form, including not only why the debtors fell behind with their post-petition mortgage payments but how they will stay current in the future. Boilerplate, general statements, or generic language will not be sufficient.

--The Court emphasized that the debtors need to contact their attorneys immediately upon their failure to make post-petition mortgage payments and not wait until a motion to lift stay is filed.

--The Court stated that, if this new procedure fails, on-going mortgage payments being paid through the plan will be implemented. **The Court also stated that, in the event such is in fact implemented, "first funds" to debtors' attorneys' fees will be out.**

In the past, in reviewing motions to modify that are filed for the purpose of adding post-petition mortgage arrears to be paid through the plan, the Trustee reviewed the Court's docket to determine whether the Court had entered an order (normally in connection to a Motion to Lift Stay) thereby authorizing the payment of the post-petition mortgage arrears. If no such order, the Trustee would object to the feasibility of the modified plan in that the debtors appear not able to live within their budget and make their on-going mortgage payments. If there was such an order, the Trustee would not raise such a feasibility objection in that the Trustee was of the opinion that the Court, by virtue of entering such an order, has previously found feasibility.

In light of the Court's comments, the Trustee will now take the additional step in reviewing such motions to modify to confirm that the unsecured creditors are not somehow harmed with the inclusion of post-petition mortgage arrears. Such will, of all probability require that the modification provide for the cure of the post-petition mortgage arrears to be paid after the dividend to the unsecured creditors are paid whatever the dividend they would have been paid under the terms of the confirmed plan. The Trustee would recommend that the form Motion to Modify be modified to include the information of the amount of the dividend to the unsecured creditors as set forth under the terms of the last confirmed plan and confirmation that this dividend is being preserved under the terms of the proposed modification. **Effective immediately, the Trustee will object to a motion to modify that proposes to reduce the dividend to the unsecured creditors while at the same time adding post-petition mortgage**

payments. In the event the debtors feel that they have good cause to reduce this dividend to the unsecured creditors, the debtors must be prepared to submit the issue to the Court for determination if such a reduction of the dividend to the unsecured creditors is justified in this case.