

The NACTT Mortgage Committee is comprised of Chapter 13 trustees, mortgage servicers, mortgagees and creditors' counsel. The committee's mission is to foster communication between the parties, resolve differences and to recommend best practices of conduct for all stakeholders. Our goal is to improve the bankruptcy system. Although the committee recommends the practices set forth below, we recognize that there may be other acceptable procedures. Therefore, we remain open to further discussion and review.

BEST PRACTICES FOR TRUSTEES and MORTGAGE SERVICERS IN CHAPTER 13

If servicers/mortgagees include a flat fee cost in the proof of claim for review of the Chapter 13 plan prior to confirmation and for the preparation of the proof of claim, it should be reasonable and fairly reflect the attorney's fee incurred.

If Servicers/mortgagees include attorney fees for pursuing relief from stay, such fees should be clearly identified as well as how such fees are to be paid in any agreed order resolving a Motion for Relief from Stay or any other matter before the court.

Servicers/mortgagees should analyze the loan for escrow changes upon the filing of a bankruptcy case and each year thereafter. A copy of the escrow analysis should be provided to the debtor and filed with the Bankruptcy Court by the servicers/mortgagee or their representative each year. ** see note below

Servicers/mortgagees should not include any pre petition cost or fees or pre petition negative escrow in any post petition escrow analysis. These amounts should be included in the prepetition claim amount unless the payment of such fee or cost was actually made by the servicer.

Servicers/mortgagees should attach a statement to a formal notice of payment change outlining all post petition contractual costs and fees not previously approved by the court and due and owing since the prior escrow analysis or date of filing whichever is later. This statement need not contain fees, costs, charges and expenses that are awarded or approved by the Bankruptcy Court order. In absence of any objection or challenge to such fees, the trustee should take appropriate steps to cause such fees to be paid as part of Debtor's Chapter 13 plan.¹

Servicers/mortgagees should supply and maintain a contact for debtor's counsel and trustee's for the purpose of restructuring, modifying a mortgage, or other loss mitigation assistance including a short sale or deed in lieu of foreclosure. The contact should be an individual or group with the ability to implement or assess with objective criteria a loss mitigation modification after filing of a chapter 13 petition with the goal of keeping the Debtor in the house and the success of the bankruptcy.

Mortgage servicers should provide a dedicated phone line and contact for Chapter 13 Trustee inquiry use only.

Mortgage servicers should monitor post petition payments. If the mortgage is paid post petition current then the servicers/mortgagees should not seek to recover late fees. No late fees should be recovered or demanded for systemic delay but should be limited to actual debtor default.

Pre petition payments should be tracked as applied to pre petition arrears, post petition payments should be tracked as applied to post petition ongoing mortgage payments

¹ In some jurisdictions, trustees would simply treat this fee as a separate or amended arrearage claim to be paid accordingly. In others, a formal plan modification may be required.

Servicers/mortgagees should file a notice and reason of any payment change with the court and provide same to the Debtor.

Servicers are required to file a notice of any protective advances made in reference to a mortgage claim, such as non escrow insurance premiums or taxes. Such notice should be provided to the debtors and filed with the court.

Servicers/mortgagees should modify interest charged on the mortgage loan from a daily simple interest loan to a monthly accrual interest loan upon confirmation of the plan. The customer should be notified of the change and should be provided the opportunity to opt-out of the conversion to a monthly accrual loan.

Servicers/mortgagees should clearly identify if the loan is an escrowed or escrowed loan and break out the monthly payment consisting of Principal, Interest, Escrow and PMI components.

Servicers/mortgagees should identify nontraditional mortgage loans in their proof of claims. Loans with options should identify on the proof of claim the type of loan as well as the various contractual payment options available during the bankruptcy to the borrower/Debtor.

Trustees should initiate a communication with mortgage servicers when questions arise in a review of a post petition escrow analysis.

United States Trustees and Trustee Education Network should modify the requirements of the financial management class regarding adjustable rate mortgages, the calculation of mortgage escrows and, in particular, the potential of increased mortgage payments resulting from increased taxes, interest rate hikes and/or mortgage premiums.

Trustee voucher checks, check stubs or vouchers provided with any other form of payment contain the following information, except to the extent prevented from doing so by local rule:

1. The Name of the debtor and case number
2. The trustee's claim number
3. The mortgagee's account number (to the extent provided on the proof of claim)
4. If the mortgagee account number is not available, e.g. not contained on the proof of claim, at least one other piece of identifying information e.g., property address
5. The amount of the payment
6. Whether the payment is for the ongoing mortgage payment or the mortgage arrearage
7. If for the mortgage arrears, the balance owing on the arrears claim after application of the payment
8. If the trustee has set up a separate claim for post-petition charges of the mortgagee, that the voucher clearly identify that fact
9. If any portion of the payment on arrears is intended to pay interest on the mortgage arrears, the amount of that interest portion of the payment
10. If the mortgage is to be paid off during the bankruptcy under the confirmed plan through payments by the trustee, e.g., a total debt claim, the portions of each payment which represent principal and interest, and the balance owing on the claim after application of the payment

There is a movement among servicers to redact all but the last four numbers of the mortgagors' loan numbers on proofs of claim, because those claims are public records. While mortgage servicers in general want as much information as possible on the vouchers, the mortgage servicers on the Working Group felt that if the voucher had the bankruptcy case number, the name of the debtor and the redacted loan number from their filed claim, they would be able to post the payment. Using the account number to the extent provided in a filed proof of claim also insures that trustees are not disclosing information on their website that is not already disclosed in the public record.

Voucher Narrative re Payments: The Working Group places particular emphasis on No. 6 above. The voucher should identify if a payment is for the regular mortgage payment or for the mortgage arrearage in consistent language. While Chapter 13 trustee disbursement applications focus on the claims to be paid, mortgage servicer computer systems focus on their mortgagor account number. Posting of receipts, whether or not the account is in bankruptcy, is typically handled by a Cash Processing group or department of the mortgage servicer. Those departments focus on the account number on the voucher and the narrative on the voucher for that account number to determine if the payment is for the regular mortgage payment or the mortgage arrearage.

Mortgage Arrearage Claims: When filing their initial proofs of claim, mortgage servicers should state their mortgage arrearage up to the date of the filing date of the bankruptcy petition, unless the plan or trustee indicates otherwise, or local rule provides otherwise. The Chapter 13 Trustee will use the mortgage arrearage claim to set up the arrearage balance on the claim, which in turn will show up as the "balance" on the voucher check, absent objection to the claim.

Note: The best practices which require the servicers or their representative is practicable only if the local CM/ECF courts allow limited access password with batch filing capabilities to allow the servicers to file these documents with little cost or time. It is our understanding that this limited access password system was implemented by the AO in June 2007 and would require the adding of a batch filing document type of "Mortgage Escrow Change" or "Mortgage Payment Change" to the local CM/ECF systems. Trustees should work with their local rules committees and courts to expedite this type of filing to allow a nationwide implementation of these best practices.