

THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

In re:

GENERAL ORDER NO. 08-08

GENERAL ORDER REQUIRING MOTIONS FOR STAY RELIEF THAT  
INVOLVE RESIDENTIAL PROPERTY TO CONTAIN UNIFORM  
INFORMATION TO PERMIT PROMPT CONSIDERATION BY THE  
COURT AND PROVIDING CHAPTER 7 DEFAULT PROCEDURE IN THE  
EVENT THE DEBTOR ELECTS SURRENDER

WHEREAS the Court has seen a sharp increase in Motions for Stay Relief which are a result of home loan foreclosures and deficiencies caused by late payments, difficulty in getting mortgage lenders to accept payments when tendered, and/or difficulty in getting mortgage lenders to discuss arrangements for curing arrearages, and

WHEREAS the Court takes notice of the public announcement of many mortgage creditors of the intention they have to explore ways of mitigating losses on home loans, permitting borrowers to become current over time or modify loan terms, and

WHEREAS the insurers of mortgage obligations, including Freddie Mac and Fannie Mae, have encouraged and announced various initiatives to reduce foreclosures and mitigate loan losses, and

WHEREAS the Court has observed in cases that a lack of information about the extent of a mortgage arrearage, the component charges that make up the arrearage, and scheduled future increases in interest rates makes it difficult for Debtors and Trustees to have the information needed to propose a cure, it is hereby

ORDERED that, in Chapter 7, 11, 12 and 13 proceedings, all motions for stay relief involving loans secured by the principal residence of the debtor(s), shall include an exhibit that contains the following information which the Court finds essential in balancing the equities, calculating the required adequate protection payments and considering stay relief:

1. Specific details in a clear and understandable format of the payment history of the loan in question and how those payments have been applied. The payment history shall be through the present date and, at a minimum, shall begin from the earlier of either: a) the date of the first missed, late and/or short payment; or b) the first date of the addition of charges which caused the debtor to be behind;

2. A clear and understandable itemization, including but not limited to an explanation of any codes or abbreviations, of all the components of the arrearage including but not limited to late charges, force placed insurance paid, taxes paid, legal fees and any other charges imposed by the lender. (West Virginia state law does not permit recovery of legal fees and restricts recovery of appraisal fees from consumer debtors);
3. Counsel for the movant shall verify that they have the name, office, position and telephone number of an individual or officer of the lender who has authority to approve terms to cure an arrearage, modification or other action that may permit settlement of the motion for stay relief and/or cure of the default. This person should be knowledgeable of payment changes that can occur with interest rate adjustments. A person disclosed pursuant to this paragraph shall be available for direct access by counsel for the moving party. If requested by the debtor or his counsel the Court may order negotiations by conference call with counsel for the movant and said officer at the preliminary hearing stage;
4. Statement of the most current information available to the movant as to the value of its collateral and the methodology used to determine such value; and
5. A copy of the security perfection instrument on file and book and page numbers.

In the absence of such information, the Clerk shall issue a deficiency notice informing the movant that the information must be filed and served upon all parties who were served with the original motion within twenty (20) days. If the above information is not filed and exception to these requirements is not sought by motion, the motion may be denied without a hearing. The notice shall further state that all time periods under 11 U.S.C. § 362(e) will be tolled or stayed until the deficiency is corrected.

Motions filed with complete information shall be scheduled for preliminary hearing, except that, in a Chapter 7 proceeding where the Statement of Intention filed by the Debtor(s) indicates the intent to surrender the residential real property, a creditor may file a motion for stay relief which asserts the intention to surrender, the value of the collateral, and the total unpaid claim. The motion shall be served upon the Debtor(s), counsel for the Debtor(s), and the Trustee along with a notice allowing parties fifteen (15) days to file any objection. Absent written objection from the Debtor(s) or Trustee, the Court may, without hearing, enter an order granting stay relief fifteen (15) days following service of the motion.

In a Chapter 7 proceeding where the Statement of Intention with respect to the residential property has not been filed by the Debtor(s), the motion will be scheduled for preliminary hearing, at which the Debtor(s) must appear in person, and by counsel if

any, to inform the Court and the movant of the intent with regard to the property. Absent personal appearance by the Debtor(s), and counsel for the Debtor(s) if any, the motion may be granted by default.

It is so ORDERED.

ENTERED: **AUG 04 2008**

  
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RONALD G. PEARSON, JUDGE