

UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

In re:

GENERAL ORDER 08-10

GENERAL ORDER REQUIRING MOTIONS FOR STAY RELIEF THAT  
INVOLVE RESIDENTIAL PROPERTY TO CONTAIN UNIFORM INFORMATION  
PERMIT PROMPT CONSIDERATION BY THE COURT;  
PROVIDING CHAPTER 7 DEFAULT PROCEDURE  
IN THE EVENT THE DEBTOR ELECTS SURRENDER;  
AND VACATING AND SUPERSEDING GENERAL ORDER 08-08

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 shall begin from the date of the default upon which the motion is based. This shall include a clear and understandable itemization of all charges of any kind or nature; as well as the dates of and changes to the interest rate during the payment history.
2. 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

3. A copy of the security perfection instrument of record and book and page numbers.

In the event the Court directs negotiations between the parties, counsel for the movant shall verify that s/he has access to the name, office, position and telephone number of an individual or officer of the lender who has authority to discuss resolution and terms 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.

Where a motion for stay relief is filed with an agreed order, signed by all parties, or if represented, by their counsel, the above information need not be included. Otherwise, in the absence of such information, the Court shall issue an Order giving notice of the deficiency and directing the movant to correct the deficiency and to file and serve the information upon all parties who were served with the original motion within ten (10) days. If the deficient information is not filed and exception to these requirements is not sought by motion, the motion may be denied without a hearing. The Order 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. An objection filed in response to a motion for stay relief shall specifically state all grounds upon which the objection is based. 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.

This Order shall vacate and supersede the Court's General Order No. 08-08.

It is so ORDERED.

ENTERED: **SEP 17 2008**



RONALD G. PEARSON, JUDGE