

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA

IN RE:)
)
CHAPTER 13 PROCEDURE CHANGES) GENERAL ORDER 20-0008
RESULTING FROM CARES ACT)
)

ORDER

The Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) gives debtors new tools to address their changed circumstances. Section 4022 provides that a borrower experiencing a financial hardship due, directly or indirectly, to the COVID-19 pandemic may request forbearance on a Federally backed mortgage loan, regardless of delinquency status, by (a) submitting a request to the borrower’s servicer and (b) affirming that the financial hardship is COVID-19 related. Such forbearance shall be granted for up to 180 days and shall be extended for an additional period of up to 180 days at the request of the borrower, provided that, at the borrower’s request, either the initial or extended period of forbearance may be shortened (the “Forbearance Period”).

The CARES Act also added a new §1329(d) to the Bankruptcy Code. That section provides in part that a borrower experiencing a material financial hardship due, directly or indirectly, to the COVID-19 pandemic may request plan modifications, including an extension of time, not to exceed seven years after the first plan payment was due, within which to make plan payments. The new section applies only to cases with a plan confirmed on or before the effective date of the CARES Act – March 27, 2020.

To bring consistency to Chapter 13 cases in which a debtor seeks to use the tools made available by the CARES Act, the Court now ORDERS as follows:

1. A mortgage creditor shall file a Notice of Mortgage Forbearance (the “Notice”) as confirmation of the forbearance. The Notice shall state the length, including the beginning and end dates, of the Forbearance Period, and the amount of the current post-petition mortgage payments. The Notice is not effective as to a debtor who makes mortgage payments through the Trustee until the Court enters an order granting a debtor’s Motion to Modify Chapter 13 Plan (“Motion to Modify”) that reduces the monthly plan payments by the amount of the post-petition mortgage payments that would otherwise come due during the Forbearance Period. A Motion to Modify related to a Notice shall be served only on the Trustee, who shall have 7 days to object to the Motion to Modify. The Motion to Modify shall not include any proposed modification unrelated to the Notice. Any unrelated modification shall be sought by a separate Motion to Modify that complies with the

service and notice requirements under Fed.R.Bankr.P. 2002(a)(5) and Local Rules B-2002-1(d) and 3015-2.

2. The Trustee shall not make any disbursements of the current post-petition mortgage payments to a mortgage creditor upon receipt of a Motion to Modify. However, if the Trustee has disbursed a mortgage payment prior to entry of a Court order granting a Motion to Modify, the Trustee shall have no obligation to recover that payment from the mortgage creditor. Additionally, the payment so disbursed shall be deemed to be the first payment due to the mortgage creditor after the termination of the Forbearance Period.

3. If the Trustee receives a payment in excess of the modified plan payment during the Forbearance Period, the Trustee may refund the overpayment to the debtor. The Trustee may retain the overpayment until the trustee's applicable hold time for a payment of the type received has passed.

4. The debtor may, at the conclusion of the Forbearance Period, file an additional Motion to Modify to address any payments that came due during the Forbearance Period but were not paid. Any such additional Motion to Modify shall provide that all payments due on the mortgage following the expiration of the Forbearance Period, including those addressed in a Motion to Modify or Motion for Relief from Stay, shall be made through the Trustee, regardless of whether mortgage payments were made directly by the debtor or through the Trustee prior to the Forbearance Period.

5. Payments deferred as the result of a mortgage forbearance occurring prior to case filing do not create a "pre-petition arrearage claim" under Local Rule B-3015-1(d).

6. A Motion to Modify a confirmed plan to extend the term of the plan to no more than seven years (a "§1329(d) Motion") shall include:


- a) Reference to §1329(d) in the title of the motion;
- b) The date of the last confirmed plan in the case;
- c) Information to support the requested relief under §1329(d)(1)(A) including the reasons the debtor is experiencing or has experienced a material financial hardship and the relationship of that hardship to the coronavirus disease 2019; and
- d) An affidavit of the debtor verifying such information.

7. The deadline to object to a §1329(d) Motion shall be 21 days from the date of service.

8. This Order is applicable to cases pending as of March 27, 2020 and ending on the sooner of the (A) termination date of the national emergency concerning

the COVID-19 outbreak declared by the President on March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 et seq.); or (B) December 31, 2020.

Date: June 15, 2020



ROBYN L. MOBERLY
CHIEF BANKRUPTCY JUDGE