

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE: PROCEDURES IMPLEMENTING
FORBEARANCE AGREEMENTS**

: **MISC. NO. 20-3007**
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O R D E R

AND NOW WHEREAS, in numerous chapter 13 cases, the debtors have filed chapter 13 plans in which they propose, pursuant to 11 U.S.C. §1322(b)(5), to cure a prepetition default on a secured claim;

AND, §1322(b)(5) requiring that, in addition to providing for payments to cure the prepetition default, the debtors also must provide for the “maintenance of payments while the case is pending,” i.e., post-petition, the debtors must continue to perform their contractual obligations under the subject loan agreements;

AND, as a result of the current national emergency created by the COVID-19 coronavirus, many chapter 13 debtors who have filed (and in many cases obtained confirmation of) chapter 13 plans providing for secured claims pursuant to 11 U.S.C. §1322(b)(5), having been unable to pay the post-petition monthly installment payments falling due under their loan agreements;

AND, many such debtors having requested and obtained forbearance agreements from their respective lenders;

AND, it being in the best interest of all interested parties for the court to clarify the procedures by which the parties provide transparency and effectively implement forbearance agreements in pending chapter 13 cases (both unconfirmed and confirmed);

IT IS THEREFORE ORDERED as follows:

1. In a chapter 13 case, a secured creditor may notify the court, the trustee and all interested parties of the existence of a forbearance agreement (“the Forbearance Agreement”) between the creditor and the debtor(s), whether written or unwritten, by filing a Notice of Payment Change/Forbearance (“the Forbearance Notice”) pursuant to Fed. R. Bankr. P. 3002.1(b).
2. Any secured creditor that files a Forbearance Notice shall comply with Paragraphs 3, 4, and 5 of this Order.
3. In addition to filing the Forbearance Notice on the Claims Register, the secured creditor shall file the Forbearance Notice on the main case docket.
4. All Forbearance Notices must be served on debtor(s), debtors’ counsel and the Trustee.
5. The Forbearance Notice shall state the terms of the forbearance and the starting date and termination date of the forbearance period and any other material terms and conditions of the Forbearance Agreement.
6. Except as expressly provided in the Forbearance Agreement, nothing in the Forbearance Agreement or this Order shall constitute a waiver of the secured creditors’ rights under the terms of the note and mortgage, the Bankruptcy Code or applicable non-bankruptcy laws and regulations, including, but not limited to, the Real Estate Settlement Procedures Act.
7. Any communications in connection with an attempt, successful or unsuccessful, to enter into a Forbearance Agreement shall not constitute a violation of the automatic stay.
8. Nothing in this Order waives any rights of the secured creditor upon expiration of the forbearance period, including the right to seek relief from the automatic stay for non-payment of the post-petition monthly installments or reasons other than non-payment of the post-petition monthly installments.
9. Prior to or following the expiration of the forbearance period, the burden is on the debtor(s) to take affirmative steps to address the status of the mortgage account by, e.g., (a) bringing the post-petition account current; (b) obtaining an extension of the forbearance period; (c) obtaining other loss mitigation relief; or (d) amending the chapter 13 plan.
10. This Order shall remain in effect until further Order of the court.



Date: 04/22/20

MAGDELINE D. COLEMAN
CHIEF U.S. BANKRUPTCY JUDGE