

## NOTICE NEW CHAPTER 13 PROCEDURE

The following procedure has been developed to protect Chapter 13 debtors in cases in which a post-petition mortgage payment is to be made by the Trustee and the creditor fails to file a proof of claim. In such cases, the funds paid to the Trustee which the debtor anticipated would be paid to the mortgage creditor must be disbursed to other creditors. This can adversely affect the debtor's ability to retain the real estate. The procedure is:

A. If the debtor has provided a copy of the mortgage note and recorded deed of trust, and the mortgage creditor has failed to file a proof of claim by the claims bar date, debtors' counsel are strongly encouraged to file a proof of claim on behalf of the creditor during the 30 day period after the claims bar date expires. To encourage the debtors' counsel to file claims in this 30 day period, the Court will allow debtors' counsel an additional \$125 in fees if counsel files such a claim. The additional \$125 is payable regardless of the fee option elected. To obtain the additional \$125 in fees, the debtor's counsel must first file the proof of claim and must then submit the verification and order using the attached form.

B. After the claims bar date and the expiration of the 30 day period following the claims bar date, the debtor's counsel will no longer be eligible for the additional \$125 in fees mentioned above. However, if the Trustee identifies a case in which the plan calls for the Trustee to make a mortgage payment but no claim has been filed by the creditor, the Trustee will file a motion regarding the filing of the claim by the debtor. The Court will enter an order granting the motion without a hearing, as is the current procedure for motions to change the plan payment date. The important things to know about this motion are:

1. Once the motion is filed, all funds on hand will be disbursed to other creditors with filed and allowed claims during the next monthly disbursement, unless the debtor files a proof of claim by the deadline set in the order.
2. The deadline for the debtor to file the claim will be approximately 20 days after the date the motion is filed.
3. When filing a claim to comply with the order, the debtor will NOT be required to attach a copy of the mortgage note or deed of trust to the proof of claim, although the debtor may do so. If the debtor does not attach a copy of the mortgage note and deed of trust, the debtor MUST attach a copy of a recent payment voucher issued by the mortgage creditor.
4. The motions will be filed after the debtor's additional 30 day period to file claims has expired, but the order will grant debtor permission to file a late claim.