

## WHAT ARE YOUR RIGHTS UNDER THE NEW MORTGAGE SERVICING RULES

If you are making direct payments to your mortgage company please keep all of your receipts and keep them in order of payment date. At the end of your case the trustee will send your mortgage company a letter to confirm that you are current with your post filing mortgage payments. Your mortgage company will let the court know if you are current or behind with those payments. If you cannot make your mortgage payments while you are in your case you need to meet with one of the attorneys as soon as possible. In other states debtors have been denied a discharge because they have not made mortgage payments as proposed by their confirmed plans! You want your discharge.

- I. In 2013 the Consumer Financial Protection Bureau changed the mortgage servicing rules. Your mortgage servicer is the company that collects your payments every month. Here are some of your new rights:
  - A. You will receive a billing statement that provides the following information:
    1. Payment due
    2. How that money will be applied (principal reduction, interest, escrow)
    3. When the payment is due to avoid a late fee
    4. A breakdown of past payments and how they were applied
    5. Information telling you what is being done with any partial payment and how much you need to send in for that money to be applied to your account as a payment (Odds are the partial payment will be put into a "suspense account" where they get to hold your money without applying it to your account)
    6. Principal Balance (amount due to pay off the loan)
    7. Your interest rate and when it is scheduled to change
    8. Contact information for the servicer
    9. If you are at least 45 days delinquent then your statement will show the date you became delinquent and give you a transaction history for the last six months
    10. If you are at least 45 days delinquent your statement will tell you how much you need to send in to get current, possible risks of continued delinquency and you will be told if the foreclosure process has started
  - B. Your payments must be applied as of the day they come in unless you do not send in a full payment. Remember, you don't get credit for partial payments! The servicer just "holds" your money for you.
  - C. If you request a payoff statement you will get a response within seven business days.
  - D. You can't be charged for force-placed insurance unless you fail to keep your home insured. Force-placed insurance is really expensive insurance that doesn't benefit you at all. It only insures the lender – but you still have to pay for it! The servicer must give you a 45 day warning that they will be purchasing this insurance for you. Use that time to shop for a cheaper insurance that insures your property too (i.e. household goods). Make sure you send your mortgage company proof of insurance and that the mortgage company is listed as

the loss payee. Don't just rely on your insurance company to do that for you. You will get another reminder from the servicer in about 30 days. Don't ignore these notices.

- E. You have the right to send your servicer an error resolution letter. This is a written notice to them outlining what you think they are doing wrong. Examples include, but are not limited to, not promptly applying your payment, charging you a late fee when your payment was made on time, charging fees you don't think you owe such as inspection fees or other "corporate advances." When you send the letter make sure you include your name, address and account number. You should also come by the office and have me write a quick letter to lender giving them permission to speak directly with you. Your servicer should let you know they got your letter within five business days. They have thirty days to fix the error, fix a different error or let you know why you were wrong. They must let you know what they did (in writing) and why they did it. You can request a copy of documents they relied on to make their determination. If they ask you for documents supporting your position make sure you provide those documents. Check your statement to make sure you send this letter to the correct address. A lot of times there is a special address for these letters located on the back of your periodic statement. "Corporate advances" are miscellaneous fees and expenses. They may or may not be authorized by the contracts you signed with the lender.

Please don't assume the servicer will only charge you fees they are legally entitled to collect. If that were the case then the mortgage servicing rules would not have been changed in 2013. If you have a question then make an appointment to see one of the attorneys here in the office. Don't call your mortgage company with questions or concerns.

- F. Your servicer should be able to promptly provide you with account information and the status of any loss mitigation efforts.
- G. If you have an adjustable rate mortgage then you will be notified in writing when your interest rate will change. They have to give you a seven or eight month warning before the interest rate changes for the first time. If future adjustment result in a payment change then you will be notified sixty to 120 days before the payment changes.

Please remember that our firm is here to help you stay in your home. If you don't feel comfortable sending your lender a letter then come in and we will do it for you. If you send the letter yourself please make sure I have a copy. If you are behind with your mortgage when you file your Chapter 13 then the lender will file a proof of claim. We review that claim and object to any questionable charges. Often we send the lender a list of questions we have about that claim (Interrogatories) or a list of supporting documents we want to review (Notice to Produce). If you get an order from the court after we have filed an objection on your behalf, keep a copy of that order with your mortgage records in case the lender tries to collect fees after your case has been discharged that were disallowed by the bankruptcy court.

- II. What happens if I can't make my mortgage payments? The answer to that question may depend on when you become delinquent and how far behind you are. Ignoring the problem is not the answer!
- A. If you have only missed a couple of payments we may be able to add them to your case. In other words we would modify your Chapter 13 plan to pay those post filing missed

payments through your case. Don't wait until the lender files a Motion For Relief to let me know you are behind!

- B. If you have missed some payments after the date of filing, the lender may file a Motion For Relief in your bankruptcy case. That motion will tell you how far behind the lender thinks you are. Pay attention to the number of months they say you missed and not what months they say you missed. At that time you need to get together all of your mortgage payment receipts since the date you filed your case (not just proof you paid for the months referred to in the motion). Make an appointment with the office and bring those in as soon as you can. There will be a court hearing for the judge to decide if you can afford your house. Generally, if you are just a couple of months behind, the lender may agree to let you bring that payment current over about six months. If you are six or more months behind that may not be feasible. In that case the stay would be "lifted" and the mortgage company would be free to pursue their state law remedies – foreclose. If we work out something so you can bring your mortgage current over a six month period and you don't make those payment you will get an Affidavit Of Default. We can only challenge that affidavit if, in fact, you made all the require payments in a timely manner.

In the event the stay is "lifted" don't lose hope. Odds are your mortgage company doesn't want your home. They do, however, want to get paid. You can contact them directly and try to negotiate a loan modification. Remember, you can also try to get your loan modified if you are current with your payments. If you were really behind when you filed your case, and you get the loan modified, we may be able to reduce your bankruptcy payments. Make an appointment if this happens.

- C. You may be able to have your loan modified. Often this means lower payments. If you have loan modification questions please call the office or schedule an appointment. We can tell you what documents to start gathering up and let you know the typical games mortgage servicers like to play. You can also speak with a HUD-approved housing counselor by calling 1-888-995-HOPE. You will be responsible for sending all of the documents to your lender.

When you get 36 days behind with your mortgage company you may get a call from the lender, since you are in bankruptcy they may harass me and not you. When you are 45 days delinquent you will get a written letter from the lender advising you of your loss mitigation options. This is referred to as "continuity of contact." Keep in mind that some of these options involve you losing your home (i.e. short sale or cash for keys). At that point you will be assigned a person or persons to assist you with mortgage workout options. This person or persons should have access to your payment history and all documents you have submitted in an attempt to have your mortgage modified. They will also give you any advice you need explaining how to submit an error resolution letter or a qualified written request.

When you start the loss mitigation process you will probably be asked to provide the servicer with numerous documents. These will probably include your last three months bank statements, a hardship letter, the last two years tax returns, proof of income and a completed application. Once you have given the servicer a complete loss mitigation application (this includes the documents requested) they have five days to review it. They will confirm your application is complete or advise you what documents they are missing. The servicer has thirty days after you submit your completed application to let

you know what loss mitigation options are available. We cannot force them to rework your loan so you can keep your home!! These dates change the closure you get to a scheduled foreclosure so don't let it get that far.

If your loss mitigation application is denied you can appeal that decision. However, the same company that denies it will be reviewing your appeal (it is all in house) so don't hold your breath at that point. You have to be told what options were considered but not offered. They have thirty days to rule on your appeal.

If you send in a completed application more than 37 days before a sale then the servicer must evaluate the loan for foreclosure alternatives. If you submit your application 90 days or more before any scheduled foreclosure then you have fourteen days to accept or reject any offers. If you submit your application less than 90 days before a foreclosure but more than 37 days then that timeline is reduced to seven days. Failure to accept is considered, generally, as a rejection.

Just a few random thoughts:

1. Don't write your mortgage company and request a payment history. Instead, request a "transaction history." You know what payments you made. A transaction history will tell you what they did with your money. You may see a lot of "corporate advances" and monies going into "suspense accounts."
2. If you can't understand the transaction history make an appointment with Angie and she will explain how to read them.
3. I am not going to challenge a mortgage company's records because they "can't be right". You need to keep records while you are in your case. Keep all correspondence from your mortgage lender – you never know when you will need it.
4. If a loan modification is approved by your lender then I need to have it approved by the court. Please bring in a copy of any loan modification agreement along with your most recent pay stub. Our firm will take it from there.
5. Google the Consumer Financial Protection Bureau for a list of lenders and servicers who have been caught with their arm in the cookie jar. If your lender is one of them then you need to question everything and do it in writing.

Complaints regarding mortgage servicing can be made via the following methods:

Online: [www.consumerfinance.gov/complaint](http://www.consumerfinance.gov/complaint)  
By Telephone: (855)411-2372 (8 a.m. to 8 p.m. ET, Monday – Friday)  
By Mail: Consumer Financial Protection Bureau  
P.O. Box 4503  
Iowa City, Iowa 52244  
By Fax: (855)237-2392