

Consumer Workshop IV: Cross-Country Skiing: Slogging through the Changing Landscape of the Mortgage Industry and Ethical Implications

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QUESTIONS FOR PANEL ON MORTGAGE ISSUES
(WITH REFERENCES)

1. Is a secured creditor who is provided for in the plan required to file a proof of claim?
 - n Secured creditors are not required to file a claim. Mortgage creditors who file proofs of claim in individual cases are subject to specific filing and documentation requirements. 11 U.S.C. § 501, Fed. R. Bankr. P. 3002; 3002.1

2. If a proof of claim is not filed by a secured creditor and there's a post-filing foreclosure, is the creditor entitled to an unsecured claim?
 - n Unsecured creditors are required to file a proof of claim. Fed.R.Bankr. P. 3002.

 - n To the extent the claim is liquidated post-filing, as in a deficiency arising out of a foreclosure, there is no clear rule as to when that proof of claim should or must be filed to entitle the creditor to an allowed unsecured claim.

 - n Query: does it fall under Rule 3002(3) even though in Colorado, the deficiency post foreclosure in a public trustee foreclosure is not a judgment?

3. Are there proposed Bankruptcy Rule changes that will deal with claims issues? What are they?

The following proposals are being considered in conjunction with a new national form plan:

 - n Bifurcated proof of claim process requiring the official form POC be filed by 60 days post-petition and the documentation be filed within 120 days post-petition.

 - n Requiring secured creditors to file a proof of claim.

 - n Allowing cram down and strip off of secured claims via the plan process rather than a motion or adversary proceeding.

Is a modified plan required after a mortgage is modified? Is a court order required? Is court order or motion to modify the plan required before a mortgage modification?

- n Utah: Utah Judges view a mortgage modification as incurring debt and require the Debtors to file a Motion for Approval to Enter Financial Transaction; as a result our office does not issue the no objection letters lenders often seek from Trustee's offices. Also loan modification to remove a mortgage arrears debt from the plan would be a modification of the confirmation order which provides for payment – absent court order or amended proof of claim telling the Trustee's office to stop disbursements, the Utah Trustee's office would not be able to cease payments.

- n Colorado: Colorado courts have not required a modified plan after a loan modification.

The Trustees require an Amended Proof of Claim be filed with the notice of loan modification. The Trustees then can cease payments based on the Amended POC.

Under Rule 3002.1, how should counsel proceed when there's a dispute about post-petition payments after the Trustee filed a notice of final cure and there is a lender response?

- n Rule 3002.1 does not provide clear guidance on this issue.
- n Debtor request for hearing?
- n Does Trustee need to request hearing before discharge can enter?
- n Should Discharge Enter?

What are the changes in mortgage billing instituted by the Consumer Financial Protection Bureau?

- n See attached CFPB Interim Rule 1024.39(d)(1): Borrowers in Bankruptcy

What is dual tracking and why is it prohibited?

- n Dual tracking is the policy of pursuing loss mitigation efforts while keeping foreclosure or relief from stay proceedings moving forward. Dual tracking allowed the lenders to meet investor timelines for moving defaulted loans forward while simultaneously reviewing loss mitigation options.
- n Dual tracking will not be permitted under the new CFPB requirements. Foreclosure or relief from stay proceedings cannot be pursued until after loss mitigation efforts are complete.

If unbundling of services by Debtors' counsel services moves forward with a local rule, how will loan modifications be treated? What about "Notice of Final Cure"?

- n Is non-payment of post-petition mortgage arrears a cause for dismissal per §1307(c)(6) (Garcia v. Estes 42 BR 33 (Bankr.D.Colo.1984)). Is it a cause for denial of confirmation under 1325(a)(6)? If mortgage arrears treated under par 6(d) of Utah model plan, states Debtors shall make regular post petition payments directly – if not complying with plan, can case be confirmed? (Also in National Model Plan – Part 2, 6. Cure of Default and Maintenance of Payments). Combination of relief under §1329(a)(3) and §1305.

What is the impact of In re Miller, 666 F.3d 1255 (10th Cir.2012)?

- n *In re Miller* (*Miller v. Deutsche Bank Nat'l Trust Co.*), 665 F.3d 1255 (10th Cir. 2012). The Tenth Circuit held that the Rooker-Feldman doctrine did not prevent the Bankruptcy Court from conducting its own independent investigation into standing for purposes of relief from stay. In that case, the foreclosure sale was not complete. However, the state court had found sufficient evidence of standing to grant an order authorizing foreclosure

sale. Shortly thereafter, the Millers filed bankruptcy.

- n *In re Miller*, 2012 WL 6041639 (10-25453-MER) (Bankr. D. Colo. 2012). On remand from the 10th Circuit, the Court considered the evidence necessary to establish that a creditor was the real party in interest to file a motion for relief from stay. In the initial hearing, the creditor had made an offer of proof that it held the original note, but the court had not received the original note in evidence. The Court held that the note which was payable to bearer and freely negotiable by transfer of possession was sufficient evidence that creditor was the real party in interest. Colo. Rev. Stat. § 4-3-109, 205. Creditor also submitted proof that it was in possession of the note. Colo. Rev. Stat. § 4-3-203. Relief from stay granted as there was no equity and no post-petition payments. Debtor's only defense had been real party in interest.
- n In *Dillard v. Bank of New York*, 2012 WL 1094833 (10th Cir. 2012). The Tenth Circuit used the reasoning from the *Miller* case to hold that the Rooker-Feldman doctrine does bar a party from raising standing or any other issue in an attempt to “undo the foreclosure and eviction proceedings” in a later bankruptcy court adversary.

On the issue of standing, what are the developments in the bifurcation of note and deed of trust issues?

- n *Commonwealth Property Advocates, LLC v. Mortgage Electronic Registration Systems, Inc.*, 680 F.3d 1194 (10th Cir. 2011) (the mortgage rights follow the note; bifurcation does not happen by the sale of the note without contemporaneous assignment of mortgage. “Even assuming Plaintiff is correct that securitization deprives Defendants of their implicit power to foreclose as holders of the trust deeds, the trust deeds explicitly granted Defendants the authority to foreclose.”).

Are there ethical limitations in the filing of responses to motions for relief from stay when payments are delinquent?

- n Fed.R.Bankr. P. 9011

- n Pending requests for loss mitigation?

- Are there ethical limitations in the filing of objections to proofs of claim filed by Debtors?

- n *In re Reynolds*, 470 BR 178 (Bankr.D.Colo., 2012) (It is not appropriate for a debtor to schedule a debt for substantially the same amount as is later submitted on a proof of claim and then object to the proof of claim in its entirety based on a technical violation of Rule 3002.1).

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- Are mortgage lenders required to credit report following a discharge?
- n Credit reporting is voluntary. 15 U.S.C. § 1681 *et seq.*
- n *In re Mahoney*, 368 B.R. 579 (Bankr. W.D. Texas 2007); citing, *In re Vogt*, 257 B.R. 65 (Bankr. D. Colo. 2000) and *In re Irby*, 337 B.R. 293, 297 (N.D. Ohio 2005). Bankruptcy discharge does not eliminate the debt; it simply removes personal liability. Reporting a debt “whose existence was never extinguished by the bankruptcy discharge” does not violate the discharge injunction.

Would allowing/encouraging reaffirmation agreements on home mortgages assist debtors in getting their fresh start, or alternatively, is it a recipe for later financial hardship?

- n Although the bankruptcy code allows debtors to reaffirm a secured debt, redeem, or surrender, Debtors often do none of these. Instead, they “ride through” without a reaffirmation agreement. As long as the mortgage is paid current, or brought current during the bankruptcy, the lender will continue to accept payments. However, the Debtor is discharged of personal liability on the mortgage. But see, 11 U.S.C. § 1328(a)(1): debts provided for under 1322(b)(5) are not discharged.

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- n Without a reaffirmation agreement, most creditors will not report the activity on the loan to credit reporting agencies. Credit reporting is voluntary under the fair credit reporting act. 15 U.S.C. § 1681 *et seq.*

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- n If the debtor applies to the same lender for a refinance of their not-reaffirmed loan, the creditor will usually refuse to refinance the debtor because it is viewed as a potential violation of the discharge injunction or circumventing the reaffirmation/bankruptcy process. In other words, they do not want to be viewed as re-imposing personal liability on the debtor without a reaffirmation agreement. 11 U.S.C. § 524.

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- n If the debtor seeks a new loan post-bankruptcy and they reaffirmed, the FHA regulations would requires 2 years to pass after bankruptcy before you can qualify for a new loan. In the event they did not reaffirm, the FHA regulations would require at least a 3 year period (same as a surrender).

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- n If the debtor reaffirms, creditors typically will credit report. However, it is not required. If the debtor reaffirms, the debtor is personally liable under the note. Thus, if they fall into financial hardship, they have lost the benefit of the discharge with regard to any later deficiency action.

Ramifications of loan modification and principal reductions on Motion to Value/lien strip of second mortgages/liquidation analysis.

- n *Nature's Sunshine Products, Inc. v. Watson*, 174 P.3d 647, 652-3 (Ut. Ct. App. 2007)(the mere extension of the time of payment will not impair the priority if [an] extended mortgage. The benefit of this doctrine is watered down somewhat if the so-called extension agreement is made a vehicle for more than the mere extension of the time of payment.... [F]or example,... an increase in the interest rate or additional principal indebtedness ... in the extension agreement will result in some loss of priority. Generally, [a modification resulting in] an increase in the mortgage interest rate or principal amount results in pro tanto loss of priority to any intervening liens. On the other hand, courts sometimes suggest that the modification can be so prejudicial that complete rather than pro tanto loss in priority is appropriate.

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- n *Joondeph v. Hicks*, 235 P.3d 303 (Colo. 2010). Discussion of equitable subrogation in Colorado.

Subpart C—Mortgage Servicing

2. Section 1024.39, as added by 78 FR 10695 (Feb. 14, 2013) and amended by 78 FR 60382 (Oct. 1, 2013), is amended by adding paragraphs (d)(1) and (d)(2) to read as follows:

§ 1024.39 Early intervention requirements for certain borrowers.

* * * * *

(d) *Exemptions.* (1) *Borrowers in bankruptcy.* A servicer is exempt from the requirements of this section for a mortgage loan while the borrower is a debtor in bankruptcy under Title 11 of the United States Code.

(2) *Fair Debt Collections Practices Act.* A servicer subject to the Fair Debt Collections Practices Act (FDCPA) (15 U.S.C. 1692 *et seq.*) with respect to a borrower is exempt from the requirements of this section with regard to a mortgage loan for which the borrower has sent a notification pursuant to FDCPA section 805(c) (15 U.S.C. 1692c(c)).

3. In Supplement I to Part 1024, as added February 14, 2013, at 78 FR 10695:

a. Under *Section 1024.39—Early intervention requirements for certain borrowers*:

i. The heading *Paragraph 39(c)* and paragraph 1 is removed.

ii. The heading *39(d)(1) Borrowers in bankruptcy* and paragraphs 1, 2, and 3 are added.

Supplement I to Part 1024—Official Interpretations

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SUBPART C—MORTGAGE SERVICING

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Section 1024.39— Early intervention requirements for certain borrowers

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39(d)(1) Borrowers in bankruptcy.

1. *Commencing a case.* The requirements of § 1024.39 do not apply once a petition is filed under Title 11 of the United States Code, commencing a case in which the borrower is a debtor.

2. *Obligation to resume early intervention requirements.* With respect to any portion of the mortgage debt that is not discharged, a servicer must resume compliance with § 1024.39 after the first delinquency that follows the earliest of any of three potential outcomes in the borrower’s bankruptcy case: (i) the case is dismissed, (ii) the case is closed, or (iii) the borrower receives a discharge under 11 U.S.C. §§ 727, 1141, 1228, or 1328. However, this requirement to resume compliance with § 1024.39 does not

require a servicer to communicate with a borrower in a manner that would be inconsistent with applicable bankruptcy law or a court order in a bankruptcy case. To the extent permitted by such law or court order, a servicer may adapt the requirements of § 1024.39 in any manner believed necessary.

Compliance with § 1024.39 is not required for any portion of the mortgage debt that is discharged under applicable provisions of the U.S. Bankruptcy Code. If the borrower's bankruptcy case is revived—for example if the court reinstates a previously dismissed case, reopens the case, or revokes a discharge—the servicer is again exempt from the requirement in § 1024.39.

3. Joint obligors. When two or more borrowers are joint obligors with primary liability on a mortgage loan subject to § 1024.39, the exemption in § 1024.39(d)(1) applies if any of the borrowers is in bankruptcy. For example, if a husband and wife jointly own a home, and the husband files for bankruptcy, the servicer is exempt from complying with § 1024.39 as to both the husband and the wife.

* * * * *

Section 1026.41 Periodic Statements for Residential Mortgage Loans

41(e) Exemptions

41(e)(5) Consumers in bankruptcy

Dodd-Frank Act section 1420 established TILA section 128(f) requiring periodic statements for mortgage loans. On January 17, 2013, the Bureau issued the 2013 TILA Servicing Final Rule implementing the periodic statement requirements and exemptions in § 1026.41. The periodic statements required in § 1026.41 are intended to provide consumers with useful information about the amounts they have paid as well as the amounts they owe and other information. In this interim final rule, the Bureau is adding new § 1026.41(e)(5), exempting a servicer [30] from the periodic statement requirements in § 1026.41 for a mortgage loan while the consumer is a debtor in bankruptcy.

On August 10, 2012, the Bureau proposed implementing the periodic statement requirements and exemptions in § 1026.41. The proposed rule and preamble did not specifically address any relationship between the periodic statement requirements and consumers in bankruptcy. The Bureau received several comments on the proposed rule that presented opposing views about the issue. Some consumer advocates felt it was essential that statements be provided to consumers in bankruptcy to ensure they are kept informed on the status of their loans and have a record of the account, while industry commenters insisted that providing statements for loans in bankruptcy might cause confusion or violate court orders or the FDCPA. [31] One commenter added that if statements must be provided to consumers in bankruptcy, the statements should be allowed to contain any information, disclosures or messaging required under bankruptcy rules or court orders.

In the preamble to the 2013 TILA Servicing Final Rule, the Bureau acknowledged that the Bankruptcy Code might prevent attempts to collect a debt from a consumer in bankruptcy, but stated that it did not believe the Bankruptcy Code would prevent a servicer from sending a consumer a statement on the status of the mortgage loan. The Bureau further specified that the final rule allows servicers to make changes to the periodic statement they believe are necessary when a consumer is in bankruptcy. Specifically, servicers may include a message about the bankruptcy and alternatively present the amount due to reflect payment obligations determined by the individual bankruptcy proceeding.

After publication of the final rule, industry stakeholders expressed more detailed concerns to the Bureau about providing periodic statements to consumers under bankruptcy protection. The Bureau received comments on this issue in response to its proposed rules published on May 2, 2013, and July 2, 2013, even though those proposed rules did not address periodic statements provided to consumers in bankruptcy. One commenter expressed support for the Bureau's suggested message language as a way to satisfy the requirements of § 1026.41 and bankruptcy law. Most of the commenters, however, expressed continued concerns about potential conflicts with bankruptcy law and indicated that the periodic statement would need to be redesigned for consumers in bankruptcy.

In addition, the Bureau has received numerous specific guidance questions and requests for clarification about how to reconcile the periodic statement requirements in the final rule with various

bankruptcy law requirements. Industry stakeholders have expressed concerns that bankruptcy courts, under certain circumstances, may find servicers in violation of an automatic stay [32] or discharge injunction [33] if servicers provide a periodic statement, whether or not it includes a disclaimer. [34] They have asked for guidance on whether and how servicers would be able to permit consumers to request that they receive no more statements. Bankruptcy trustees raised similar concerns that sending a periodic statement designed to communicate information that does not recognize the unique character of the Chapter 13 treatment of mortgages in default may arguably violate the automatic stay.

Industry stakeholders have also asked how to comply with several disclosure requirements in the periodic statement under specific circumstances that can arise depending on the type of bankruptcy proceeding. For example, the Bureau received questions from industry and bankruptcy trustees about possible consumer confusion depending on what “amount due” and “payment due date” servicers would disclose in a Chapter 13 case that has different pre-petition arrearage cure payments and post-petition monthly payments, which may be due on different dates. Servicers also expressed concern about how to fulfill the servicing rules’ requirements in a way that did not confuse consumers with regard to their status in bankruptcy and the fact that servicers were not attempting to collect on accounts. Bankruptcy trustees also raised concerns about the likelihood of servicers providing information that will be confusing to borrowers/debtors, debtor attorneys, and even courts and trustees. In addition, the Bureau received requests to delay the effective date of the periodic statement requirement with respect to consumers in bankruptcy and to exclude those consumers from the periodic statement requirements.

Based on the detailed questions received, the Bureau believes that the potential interactions between the § 1026.41 periodic statement requirements and bankruptcy law requirements can be highly varied and complex. The Bankruptcy Code itself provides a robust set of consumer protections for debtors, including oversight of debt repayment plans, where applicable. However, whether any periodic statement provided may violate an automatic stay or discharge injunction are fact-specific inquiries and can vary depending on the Chapter of the Bankruptcy Code at issue, the intention of the debtor to retain the property, and the frequency and detailed contents of the periodic statement provided. [35]

In addition, when a consumer is under bankruptcy protections, the benefits of periodic statements may depend on the context. The Bureau has indicated that servicers may take a flexible approach in complying with § 1026.41 for consumers in bankruptcy. However, without providing additional guidance about how servicers can tailor their periodic statements to communicate effectively the status of a consumer’s loan in light of the bankruptcy, it is not clear whether a servicer’s tailored periodic statements would provide a meaningful benefit for that consumer in the form of useful information. Indeed, the statements could provide that consumer with information that may be confusing.

The Bureau believes that further study of these issues is warranted but cannot be concluded quickly enough to provide further calibration of the requirements before January 2014. Therefore, the interim final rule exempts servicers from the requirements of § 1026.41 for a mortgage loan while the consumer is a debtor in bankruptcy. However, the Bureau is not taking any position on whether periodic statements generally may violate an automatic stay or discharge injunction and does not discourage servicers who send tailored periodic statements or communications to con-

sumers in bankruptcy from continuing such communications so far as bankruptcy law permits. The Bureau still believes that some consumers facing the complexities of bankruptcy could benefit from receiving information in some tailored form of a periodic statement that is appropriate to their circumstances.

The interim final rule also adds new commentary to § 1026.41(e)(5). Comment 41(e)(5)-1 clarifies that the exemption begins once a petition has been filed commencing a case under Title 11 of the United States Code in which the consumer is a debtor. Comment 41(e)(5)-2 clarifies that with respect to any portion of the mortgage debt that is not discharged, a servicer must resume sending periodic statements in compliance with § 1026.41 within a reasonably prompt time after the next payment due date that follows the earliest of any of three potential outcomes in the consumer's bankruptcy case: (i) the case is dismissed, (ii) the case is closed, or (iii) the consumer receives a discharge under 11 U.S.C. 727, 1141, 1228, or 1328. However, this requirement to resume sending periodic statements does not require a servicer to communicate with a consumer in a manner that would be inconsistent with applicable bankruptcy law or a court order in a bankruptcy case. To the extent permitted by such law or court order, a servicer may adapt the requirements of § 1026.41 in any manner believed necessary. The periodic statement is not required for any portion of the mortgage debt that is discharged under applicable provisions of the U.S. Bankruptcy Code. If the consumer's bankruptcy case is revived—for example if the court reinstates a previously dismissed case, reopens the case, or revokes a discharge—the servicer is again exempt from the requirement in § 1026.41. Comment 41(e)(5)-3 clarifies that the exemption applies when any consumer who is among the joint obligors with primary liability on the transaction is a debtor in bankruptcy.

For the reasons discussed, the Bureau is providing this exemption at this time, particularly because of the complex compliance concerns and the impending effective date of the 2013 TILA Servicing Final Rule. The Bureau will continue to examine this issue and may reinstate a periodic statement requirement with respect to consumers in bankruptcy, but it will not reinstate any such requirement without notice and comment rulemaking and an appropriate implementation period. The Bureau solicits comment on the scope of the exemption, the triggers for meeting the exemption and having to resume sending periodic statements, and how the content of the periodic statement might be tailored to meet the particular needs of consumers in bankruptcy. The Bureau also seeks comment on other factors it should take into consideration in determining whether to reinstate any type of periodic statement requirement with respect to consumers in bankruptcy.

Legal Authority. The Bureau uses its authority under TILA sections 105(a) and (f) and Dodd-Frank Act section 1405(b) to exempt servicers from the requirement in TILA section 128(f) to provide periodic statements for a mortgage loan while the consumer is a debtor in bankruptcy and to adopt related official Bureau interpretations in Supplement I to Part 1026. For the reasons discussed above, the Bureau believes this exemption is necessary and proper under TILA section 105(a) to facilitate compliance. In addition, consistent with TILA section 105(f) and in light of the factors in that provision, the Bureau believes that imposing the periodic statement requirement for consumers in bankruptcy may not currently provide a meaningful benefit to those consumers in the form of useful information. Consistent with Dodd-Frank Act section 1405(b), the Bureau also believes that the modification of the requirements in TILA section 128(f) to provide this exemption is in the interest of consumers and in the public interest.

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Utah Chapter 13 Plan—Effective Date of July 1, 2012

UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH, _____ DIVISION

In re _____
SSN: xxx-xx-1234

CASE NO. 12-00000
CHAPTER 13

CHAPTER 13 PLAN

(for cases filed on or after July 1, 2012)

MOTION TO VALUE COLLATERAL AND AVOID LIENS UNDER 11 U.S.C. § 506

MOTION TO AVOID LIENS UNDER 11 U.S.C. § 522(f)

[Delete reference to motion(s) if you are not valuing collateral or avoiding liens]

Original Plan [] Amended Plan [] Modified Plan [] Dated: _____ 2012

CREDITORS, YOUR RIGHTS WILL BE AFFECTED. You should review this Plan and any motion herein and discuss it with your attorney. If you disagree with the terms herein, you must file with the bankruptcy court a written objection before the deadline stated in the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors and Deadlines. In the absence of a timely written objection, the court may grant the requested relief and confirm the Plan without further notice or hearing.

1. PLAN PAYMENTS.

- (a) Fixed Monthly Payment: Debtors shall pay \$_____ per month to the Chapter 13 Trustee until completion of the Plan. Such payments are due on the 25th day of each month.
(b) Step Payments: Debtors shall pay \$_____ per month to the Chapter 13 Trustee for _____ months with payments changing thereafter to \$_____ until completion of the Plan [add additional step payments if applicable]. Such payments are due on the 25th day of each month.
(c) Contribution of Tax Refunds: For the next three tax years of _____, _____, and _____, the Debtors shall pay into the Plan yearly state and federal tax refunds that, when combined, exceed \$1,000 or \$2,000 if allowed under applicable law (see section 10).
(d) [Delete if not applicable] Other Payments:

2. APPLICABLE COMMITMENT PERIOD. Pursuant to § 1325(b)(4), as calculated under Part II of Form 22C, the Applicable Commitment Period for this case is [] 3 years or [] 5 years [check one box]. Therefore, Plan payments shall be made for the following period [select only one option and delete the others]:

____ Not less than 36 months but extended as necessary for no more than 60 months to complete the required Trustee distributions under the Plan;

____ Not less than 60 months;

3. RETURN TO ALLOWED NONPRIORITY UNSECURED CLAIMS. Unless this is a 100% Plan, the amount to be distributed on such claims shall be the greater of the amount set forth below, or

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Utah Chapter 13 Plan— Effective Date of July 1, 2012

the pro rata distribution, if any, resulting from the Plan Payment multiplied by the Applicable Commitment Period of section 2 plus all tax refunds required under subsection 1(b).*[select one option and delete the others]*.

100% Plan: Not less than the full payment of allowed unsecured claims *[add if applicable]* plus simple interest on the unpaid balance of such claims at the rate of ___% per annum.

Pot Plan: Not less than \$ _____ to be distributed pro rata among allowed nonpriority unsecured claims.

Percentage Plan: Not less than ___ percent of the amount of allowed nonpriority unsecured claims.

Base Plan: The Debtors shall make monthly Plan Payments for not less than the Applicable Commitment Period of section 2. After payment in full of all other disbursements provided for herein, the balance, if any, will be distributed pro rata among allowed nonpriority unsecured creditors.

The following nonpriority unsecured claims are separately classified and will receive the following treatment: *[Delete if not applicable]*

Creditor	Claim Amount	Proposed Treatment	Reason for Separate Classification
	\$		

4. TRUSTEE’S PERCENTAGE FEE. The Trustee shall collect the statutory fee of 28 U.S.C. § 586(e) for any disbursements actually or constructively made by the Trustee under the Plan or pursuant to the Bankruptcy Code, the Local Rules, or a court order.

5. ATTORNEY FEES. Counsel for Debtors requests an award of attorney fees and costs in the amount of \$3,000, \$3,250, \$3,500 *[select only one]*. Counsel may request additional fees by complying with the notice and hearing requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules. The unpaid balance of attorney’s fees shall be paid as follows *[select only one option]*:

Monthly pro rata distributions from available plan payments until paid in full (see subsection 9(b)).

Fixed monthly payments of \$ _____, accruing with the first payment under the Plan until paid in full (see subsection 9(b)).

6. TREATMENT OF SECURED CLAIMS.

(a) Motion To Value Collateral And To Void Liens Under 11 U.S.C. § 506: The Debtors move the court to value the collateral in the amount stated in the Debtors’ proffered value below. Unless a timely objection is filed to this motion to value, the court will fix the value of the collateral consistent with the Debtors’ proffer without further notice or hearing. A creditor’s

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filing of a proof of claim asserting a value different than the Debtors’ proffered value does not constitute an objection to confirmation. If this case is dismissed or converted before the entry of a discharge, creditors impacted by this subsection shall retain their lien to the extent allowed by § 1325(a)(5)(B). The resulting allowed secured claim of such creditor shall be paid *the lesser of* (1) the value as fixed by an order of the court or (3) the secured amount asserted in the allowed proof of claim, including any subsequent amendments or modifications by court order. The portion of any such allowed claim that exceeds the amount of the allowed secured claim shall be treated as a nonpriority unsecured claim under section 3.

Creditor	Description of Collateral	Debt Amount Listed on Schedule D	Debtors’ Proffer of Collateral Value	Interest Rate	Interest Accrual Date (see ¶6(h)(3))	Adequate Protection Payment	No. of Monthly Adequate Protection Payments	Equal Monthly Payment thereafter
		\$	\$	%		\$		\$

(b) Secured Claims Not Subject To 11 U.S.C. § 506: Pursuant to § 1325(a)(9), the following claims are not subject to “cramdown” under § 506. The allowed secured claim of such creditor shall be the secured amount listed in the allowed proof of claim, unless modified by an amended claim or court order.

Creditor	Description of Collateral	Estimated Secured Claim (proof of claim controls)	Interest Rate	Interest Accrual Date (see ¶6(h)(3))	Adequate Protection Payment	No. of Monthly Adequate Protection Payments	Equal Monthly Payment thereafter
		\$	%		\$		\$

(c) Secured Tax Claims: Any allowed secured tax claim filed by a governmental unit shall be paid the secured amount set forth on the proof of claim, unless the Plan specifically modifies the amount of the secured tax claim by setting forth different treatment of the claim in the table below. Secured claims of governmental entities will be paid at the interest rate stated in the proof of claim; or, if no interest rate is stated in the proof of claim, at the estimated statutory rate ___%. Nothing in this subsection shall prohibit the Debtors from filing a timely objection to a deemed-allowed secured tax claim, or prohibit a governmental unit from amending its secured tax claim.

Governmental Unit	Estimated Secured Claim (proof of claim controls)	Estimated Statutory Interest Rate	Interest Accrual Date (see ¶6(h)(3))	Adequate Protection Payment	No. of Adequate Protection Payments	Equal Monthly Payment thereafter
	\$	%		\$		\$

(d) Curing Prepetition Defaults And Making Postpetition Payments: The Trustee shall disburse on allowed arrearage claims, and the Debtors shall make regular postpetition payments directly to these creditors pursuant to the terms of the original contract beginning with the next payment due after the petition date. Postpetition payments made directly by the Debtors to such creditors may change due to an adjustable rate note, escrow requirements, etc., and notices of such payment changes shall be

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provided to the Debtors. The arrearage claim will be in the amount in the allowed proof of claim, unless modified by an amended claim or court order.

Creditor	Description of Collateral	Estimated Arrearage (proof of claim controls)	Interest Rate (enter "0%" if no interest is to be paid)	Equal Monthly Payment (if no equal monthly payment, leave blank)	Equal Monthly Payment Start Date
		\$	%	\$	

(e) **Surrender Of Collateral:** The Debtors surrender the following collateral to the secured creditor. Upon entry of the confirmation order, the automatic stay of § 362 and the co-debtor stay of § 1301 are terminated as to such collateral, and the Debtors will immediately make the collateral available for repossession by the creditor. If the surrender is in full satisfaction of the claim, no unsecured deficiency claim will be allowed, and the Trustee shall not disburse on such claim. If the surrender is in partial satisfaction, the creditor will have 180 days from the confirmation hearing date to file an amended claim for an unsecured deficiency or such creditor's claim will be deemed paid in full. If neither full nor partial satisfaction is designated, surrender is deemed in partial satisfaction of the claim.

Creditor	Collateral to be Surrendered	Effect of Surrender

(f) **Direct Payments By Debtors On Claims Secured by Personal Property :** The Debtors will directly make payments to the creditors listed below pursuant to the following conditions: (1) the Debtors will pay the claim without any modifications to the terms of the contract; (2) upon entry of the confirmation order, the automatic stay of § 362 and the co-debtor stay of § 1301 are terminated as to such collateral and claims; (3) the claim will not be discharged; and (4) neither the court nor the Trustee will monitor the Debtors' performance on direct payments to such creditor.

Creditor	Collateral

(g) **Motion To Void Liens Under § 522(f):** The Debtors move to avoid the following liens because they impair the Debtors' exemption asserted on Schedule C in that there is no non-exempt equity to which any part of the lien may attach. Unless a timely objection is filed as to this motion, such liens shall be avoided upon entry of the confirmation order. The filing of a proof of claim asserting a secured claim with respect to such lien does not constitute an objection.

Creditor	Identification of Collateral	Estimated Claim Amount
		\$

(h) **Administrative Provisions Regarding Trustee Disbursements on Secured Claims:**

(1) **Disbursements On Secured Claims.** The Trustee shall disburse on secured claims only if all of the following conditions are met: (a) the Plan specifically provides that the Trustee shall disburse on the secured claim; (b) the secured claim is allowed under 11 U.S.C. §§ 502(a) and 506(a),

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meaning a secured proof of claim has been timely filed, or the claim has been allowed by court order; and (c) there is no pending objection or motion with respect to such proof of claim under Bankruptcy Rules 3007 (objection to claim) or 3012 (motion to value collateral). All disbursements are subject to the Trustee having received payments under the Plan.

(2) Adequate Protection Payments. The Adequate Protection columns in subsections 6(a), 6(b) and 6(c) fix the amount of monthly adequate protection and such payments shall accrue commencing with the first scheduled meeting of creditors under § 341 and continuing on the first day of each month thereafter for the number of months specified in such column. After this time, secured creditors will receive the Equal Monthly Payments set forth in such paragraphs. Pursuant to LBR 2083-1(c), the Trustee may make preconfirmation disbursements of Adequate Protection payments; however, such payments will only be made if a secured proof of claim is filed in compliance with the applicable provisions of Bankruptcy Rules 3001, 3002 and 3004 before the earlier of the entry of an order dismissing or converting the case or the applicable claims bar date. Adequate Protection payments made during the period before interest begins to accrue on such claims shall be applied to reduce the principal balance of such claim, and adequate protection payments made or attributable to the period after interest begins to accrue shall be applied to unpaid principal and interest.

(3) Interest Accrual Date. In the Interest Accrual Date Column above, the designation “C” or “Conf.” shall mean interest shall accrue and be paid from the effective date of the confirmation order and the designation “P” or “Pet.” shall mean interest shall accrue and be paid from the petition date. If the Interest Accrual Date Column is left blank, interest shall accrue from the effective date of the confirmation order.

(4) Default Interest Rate. If the interest rate column is left blank in subsections 6(a), 6(b) or 6(c), interest shall accrue and be paid at the rate set forth in the proof of claim. If the proof of claim does not specify an interest rate, then interest shall accrue and be paid at 6% per annum for subsections 6(a) and 6(b). If the interest rate column is left blank in subsection 6(d), no interest shall be paid on the arrearage claim.

7. EXECUTORY CONTRACTS AND UNEXPIRED LEASES: All executory contracts and unexpired leases are rejected unless specifically listed below, in which case such are assumed under § 365, and the Debtors will directly make postpetition lease or contract payments to the creditors listed below pursuant to the following conditions: (1) the Debtors will make such payments without any modifications to the terms of the contract or lease; (2) upon entry of the confirmation order, the automatic stay of § 362 and the co-debtor stay of § 1301 are terminated as to such leased property and indebtedness; (3) claims arising under the contract or lease will not be discharged; and (4) neither the court nor the Trustee will monitor the Debtors’ performance on direct payments to such creditor(s).

Creditor	Description of Contract or Leased Property

8. PRIORITY CLAIMS. Claims entitled to priority under 11 U.S.C. § 507(a), including domestic support obligations and unsecured taxes, will be paid in full. The allowed amount of any priority claim will be the amount in the proof of claim, unless modified by an amended claim or court order. If the Plan provides for interest on nonpriority unsecured claims, such interest shall also be paid on priority

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claims. The Debtors shall remain current on all postpetition domestic support obligations during the Plan term.

9. PLAN DISTRIBUTIONS.

(a) Allowance Of Claims. Except as otherwise specified in subsection 6(a) of the Plan, the amount of all allowed claims to be paid through the Plan shall be determined using the applicable provisions of the Bankruptcy Code and the Bankruptcy Rules. A proof of claim must be timely filed or specifically allowed by an order of the court to receive any disbursements from the Trustee under the Plan.

(b) Order Of Distribution. The Trustee shall collect the percentage fee under section 4 and then pay allowed claims in the following order:

- Class 1: Adequate Protection Payments and Equal Monthly Payments under section 6 pursuant to the amounts and timing provided in such section 1;
- Class 2: Attorney's fees as provided for in section 5 until paid in full;
- Class 3: Priority Domestic Support Obligations under § 507(a)(1) until paid in full;
- Class 4: Secured Claims paid by the Trustee that are not entitled to Adequate Protection Payments or Equal Monthly Payments until paid in full;
- Class 5: Other priority claims until paid in full; then
- Class 6: Nonpriority unsecured claims until paid the return required by section 3.

(c) Administrative Provisions Regarding Adequate Protection And Equal Monthly Payments

(i) If monthly Adequate Protection Payments or Equal Monthly Payments are specified on a claim, such monthly payments must be current in that all monthly payments due through the date of distribution shall be paid, but such claim need not be paid in full before distributions can be made to lower-level Classes. After the full payment of allowed attorney's fees, the Trustee may, but is not required to, disburse to creditors with designated Adequate Protection or Equal Monthly Payments amounts greater than such designated payments to facilitate the prompt administration of the case. To the extent there are insufficient funds to make the required Adequate Protection or Equal Monthly Payments to all creditors in a particular class, the Trustee shall make a pro-rata distribution to such class. Unpaid portions of Adequate Protection or Equal Monthly Payments from a prior month will first be brought current before disbursements are made to lower classes, and Adequate Protection Payments will be brought current before disbursements are made on Equal Monthly Payments.

(ii) If no monthly payments are specified on a claim, payments will be paid pro rata within the designated class, and a higher-level Class will be paid in full pursuant to the Plan before distributions will be made to a lower-level Class.

10. CONTRIBUTION OF TAX REFUNDS. If section 1 of the Plan so requires, the Debtors shall pay into the Plan the net total amount of yearly state and federal tax refunds that exceed \$1,000 for each

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of the tax years identified in such section. If in an applicable tax year the Debtors receive an Earned Income Tax Credit (“EIC”) and/or an Additional Child Tax Credit (“ACTC”) on their federal tax return, the Debtors may retain up to a maximum of \$2,000 in tax refunds for such year based on a combination of the \$1,000 allowed above plus the amount of the EIC and/or ACTC credits up to an additional \$1,000. On or before April 30 of each applicable tax year, the Debtors shall provide the Trustee with a copy of the first two pages of filed state and federal tax returns. The Debtors shall pay required tax refunds to the Trustee no later than June 30 of each such year. However, the Debtors are not obligated to pay tax overpayments that have been properly offset by a taxing authority. Tax refunds paid into the Plan may reduce the overall Plan term to no less than the Applicable Commitment Period, but in no event shall the amount paid into the Plan be less than thirty-six (36) Plan Payments plus all annual tax refunds required to be paid into the plan.

11. PLAN MODIFICATIONS POSTCONFIRMATION. With the affirmative consent of the Trustee, and unless a party-in-interest objects, the Debtors may modify the Plan postconfirmation under § 1329, without further notice to creditors, to conform the Plan to the class, status, amount, value or interest rate set forth in a proof of claim (or otherwise asserted by a creditor) so long as such modification does not have a negative impact on any creditor not receiving notice, other than the delay in receiving the first distribution.

12. OTHER PLAN PROVISIONS:

- (a)
- (b)
- (c)

13. CERTIFICATION. By signing this plan, counsel certifies that this plan does not alter the provisions of this Model Plan Form, except as set forth in section 12 above. Any revisions to the Model Plan Form not set forth in section 12 shall not be effective.

END OF PLAN

Attorney: _____

Dated this ____ day of _____, 20__

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re

Case No.

Chapter 7

Debtor(s).

**DEBTOR’S MOTION FOR AN ORDER DIRECTING THE BANKRUPTCY COURT CLERK
TO ACCEPT FOR FILING AND DOCKETING A POST-DISCHARGE / POST-CASE CLOSING
REAFFIRMATION AGREEMENT**

Movant, the above-named debtor (“Debtor”), by and through undersigned counsel, seeks an order directing the Bankruptcy Court Clerk to accept for filing and docketing a post-discharge, post-case closing reaffirmation agreement between the debtor and _____, a creditor (“Creditor”), without the necessity of a formal reopening of this case. Accordingly,.

Movant respectfully requests that:

1. The Court enter an order directing the Bankruptcy Court Clerk to accept for filing and docketing a post-discharge / post-case closing reaffirmation agreement between the debtor and creditor;
2. The filing of such reaffirmation agreement have a nunc pro tunc effect prior to the entry of the § 524(a) discharge order previously entered in this case; and
3. These requests of the debtor be done without the necessity for a formal reopening of the case in accordance with 11 U.S.C. § 350(b) and Fed. R. Bankr. P. 5010 and its accompanying Advisory Committee Note.

ROCKY MOUNTAIN BANKRUPTCY CONFERENCE 2014

Dated:

Respectfully submitted.

(name)

Attorney for Movant

(address)

(city, state, zip)

(telephone no.)

(fax no.)

(email address)

(bar disciplinary number)

CERTIFICATE OF SERVICE

I hereby certify that on _____, service of a true and exact copy of the foregoing motion was sent by electronic means and/or via regular United States Postal Service, first class postage prepaid, to the following persons: the above-referenced creditor, the United States Trustee for Region 8, and the Chapter 7 Trustee.

Attorney for Movant

Date: _____

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re

Case No.

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ROCKY MOUNTAIN BANKRUPTCY CONFERENCE 2014

Dated:

Respectfully submitted.

(name)

Attorney for Movant

(address)

(city, state, zip)

(telephone no.)

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(bar disciplinary number)

CERTIFICATE OF SERVICE

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Attorney for Movant

Date: _____