

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

**GENERAL ORDER REGARDING
FORBEARANCE AGREEMENTS IN RELATION TO THE
CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT**

WHEREAS, on March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law; and

WHEREAS, in numerous chapter 13 cases, 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

WHEREAS, §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

WHEREAS, 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

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

WHEREAS, 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 hereby on this 1st day of May 2020 **ORDERED**:

- 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 Mortgage

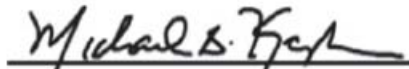
Forbearance (“the Forbearance Notice”) pursuant to Fed. R. Bankr. P. 3002.1(b).

- 2) Any secured creditor that files a Forbearance Notice shall comply with the following provisions:
 - a) A secured creditor must use mandatory Local Form *Notice of Mortgage Forbearance*.¹
 - b) To the extent a proof of claim has been filed, the secured creditor shall file the Forbearance Notice (i) on the claims register as a supplement to the applicable proof of claim, and (ii) on the main case docket. If no proof of claim has been filed, the secured creditor shall file the Forbearance Notice on the main case docket.
 - c) All Forbearance Notices must be served on debtor(s), debtors’ counsel and the Trustee.
 - d) 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.
- 3) A party may file an objection to the Forbearance Notice and request a hearing within 14 days of the date that the Forbearance Notice is filed.
- 4) 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.
- 5) 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.
- 6) 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

¹ In consideration of the exigent circumstances created by Coronavirus (COVID-19), including the rapid implementation of the CARES Act, the Court enters this Order prior to finalization of Local Form *Notice of Mortgage Forbearance* in order to offer immediate guidance with respect to Forbearance Agreements. Pending adoption of Local Form *Notice of Mortgage Forbearance*, a secured creditor may submit an alternative Forbearance Notice. Upon adoption, Local Form *Notice of Mortgage Forbearance* will be posted on the Court’s website, www.njb.uscourts.gov.

of the post-petition monthly installments or reasons other than non-payment of the post-petition monthly installments.

- 7) Nothing in this Order waives any rights of the debtor(s) upon expiration of the forbearance period. Prior to or following the expiration of the forbearance period, however, the burden is on the debtor(s) to take affirmative steps to address the status of the mortgage account by, e.g., (i) bringing the post-petition account current; (ii) obtaining an extension of the forbearance period; (iii) obtaining other loss mitigation relief; or (iv) amending the chapter 13 plan.
- 8) In the event the debtors' case is dismissed during the forbearance period, the provisions of this Order are deemed terminated.
- 9) This Order shall remain in effect until further notice and is subject to interim revision as conditions may occur.



MICHAEL B. KAPLAN
CHIEF U.S. BANKRUPTCY JUDGE
DISTRICT OF NEW JERSEY