
CHAPTER 6 - BANKRUPTCY

- 6-1. GENERAL. Bankruptcy provides a legal avenue for persons to obtain relief from their debts based on statutes administered through Federal Bankruptcy Courts.
- A. When the field office receives a Notice of Bankruptcy, there must be no further contact with the mortgagor except as provided in paragraphs B and I below. All collection efforts under the mortgage or forbearance agreement must stop, and neither the notice of intent to foreclose nor the occupancy notice may be sent to the mortgagor. This "stay" continues until the Bankruptcy Court dismisses the bankruptcy case, discharges the mortgagor or lifts the "stay".
 - B. If the mortgagor initiates communications, the field office can provide strictly factual information regarding the regular mortgage payment BUT MUST NOT ENTER INTO ANY DISCUSSION REGARDING THE DELINQUENCY COVERED BY THE BANKRUPTCY. The mortgagor may be informed of the amount of the regular mortgage payment only and where it should be sent and that HUD will not send bills for it. More detailed discussions may be entered into with the mortgagor's attorney and the trustee.
 - C. To prevent billing by the SFMNS, the field office must:
 - 1) file-maintain Loan Screen One (LNS1) and change the Pay Option Code from 4 to 9;
 - 2) enter 46 in the status codes, which indicates Bankruptcy;
 - 3) enter 38 in the Condition Code, which instructs the System to "send no mail"; and,
 - 4) deactivate the Loan Monitoring and Forbearance trailers.
 - D. If the field office receives a notice that the mortgagor has filed a petition in bankruptcy after the field office has referred the case for foreclosure, the field office should call OGC immediately. If the mortgage has not been assigned to the foreclosing agent, it will be returned to the field office for servicing, including filing the proof of claim. If the mortgage has been assigned to the foreclosing agent, OGC will advise the foreclosing agent of the bankruptcy and the foreclosing agent will file the proof of claim and take such further actions as are required.

- 1) A copy of the note, mortgage and Form [HUD-698](#) should be attached to the Proof of Claim.
 - 2) If foreclosure has been requested notify OGC that a petition in Bankruptcy has been filed and Proof of Claim made so that the foreclosing agent may be advised of the Bankruptcy "stay".
 - 3) OGC should notify the field office and OFA if a payment plan is accepted and in force.
 - 4) If the case in bankruptcy is also in foreclosure remove the Condition Code 21 from LNS1.
- E. A notice of a petition filed under Chapter 13 of the Bankruptcy Act (most mortgagor's petitions are under Chapter 13) will propose a payment plan. The responding Proof of Claim may provide for acceptance or rejection of the plan.

The plan should not be accepted unless it contains:

- 1) an accurate statement of all arrearages,
 - 2) the total amount owed under the mortgage;
 - 3) provision for payment of all arrearages; and,
 - 4) includes interest.
- F. A payment plan usually requires the mortgagor to pay the arrearages to the trustee who will transmit the payments to HUD. These are payments "under" the plan.

The mortgagor is also required to make the current monthly payments whether or not specified in the plan. These are payments "outside" the plan, and are usually made directly to HUD.

- G. If the payment plan does not contain the correct amount owed or does not provide for payment of all arrearages under the plan, a correction may be obtained by notifying the mortgagor's attorney or trustee.

If the attorney or trustee does not make the correction, the case should be referred to Chief or Regional Counsel.

- H. If the mortgage has been assigned to a foreclosing agent for foreclosure, the payments from both the trustee and the mortgagor

will go to the foreclosing agent for three consecutive months. At that point, the foreclosure agent will terminate the foreclosure and return the case to HUD for servicing.

If, on the other hand, the mortgage has not been assigned to a foreclosure agent, and after a payment plan has been approved by the Bankruptcy Court, the field office must:

- 1) Instruct the mortgagor's attorney or trustee to send the court ordered payments to the local office.
- 2) The local office must then forward the payments to the lock box.
- 3) Instruct the mortgagor's attorney that the mortgagor's payments are to be sent to the lock box with the Thrift account number written on the check or money order.

All payments must be closely monitored to determine that the mortgagor is in compliance with the plan.

- I. Payments under the plan should be received each month from the trustee and payments outside the plan should be received each month from the mortgagor.

If either payment is not received initially the trustee and/or the mortgagor's attorney should be contacted to determine that they have the proper address for remittances or to determine whether the plan has been approved.

The mortgagor must not be contacted.

- J. The field office may request foreclosure if no payments are received in 90 days, or if payments are received only "under" or "outside" the plan, or if both payments are not continued for 90 days.
 - 1) A Notice must not be sent to the mortgagor.
 - 2) OGC will assign the case to a foreclosing agent and request that a petition to lift the "stay" be filed.

- 3) OGC will need:
 - a. copies of all documents relating to the Bankruptcy;
 - b. the dates and the amounts of all payments received, "under" or "outside" the plan; and,
 - c. the "as-is" value of the property. (For this purpose, a formal appraisal will not be necessary.)

- K. If the bankruptcy case has been dismissed or the mortgagor discharged by the Bankruptcy Court, the Field Office must remove Status Code 46 and Condition Code 38 from the SFMNS. Also:
- 1) If the account is current or is being placed under a forbearance agreement, the Field Office must also change the Pay Option from 9 to 4 to permit billing to begin.
 - 2) If the account is to be recommended for foreclosure, the Field Office should not change the Pay Option and should treat the account like a non-bankruptcy case and follow the procedures in Chapter 5. A copy of the dismiss or discharge order must be sent to OGC with the request for foreclosure.