

Proposed Amendment to D.N.J. LBR 2016-1

Amend D.N.J. LBR 2016-1(a). “Except as set forth in (j)(3) below. . . .”

(j) Special Requirements in Chapter 13 Cases.

(3) Residential Mortgagee’s Post-Petition Preconfirmation Attorney’s Fees in Proof of Claim; Waiver of and Bar to Fee-Based Claims;

- A) A residential mortgagee’s proof of claim, as initially filed or as amended, may include a claim for properly reimbursable attorney’s fees and costs for post-petition preconfirmation attorney’s services, in an amount not to exceed \$400.00 in lieu of the attorney filing an application for compensation under D.N.J. LBR 2016-1.
- B) Reimbursement hereunder is permitted *only* if the following conditions are met:
- (1) The residential mortgagee has actually incurred post-petition preconfirmation attorney’s fees and costs for properly reimbursable services of at least the amount sought in the proof of claim, and the services performed are separately enumerated therein;
 - (2) The claim is for services of an attorney admitted to practice before this Court pursuant to D.N.J. LBR 2090-1, who shall be identified in the proof of claim;
 - (3) The attorney’s fees will not be split or shared with any other entity; and
 - (4) The underlying mortgage documents provide for payment of attorney’s fees by the debtor under the circumstances of the debtor’s Chapter 13 case, and such fee is not contrary to 11 U.S.C. § 506(b) or applicable non-bankruptcy law.
- C) That portion of a residential mortgagee’s proof of claim seeking reimbursement of attorney’s fees hereunder shall be considered *prima facie* evidence of the validity and amount thereof in accordance with Fed. R. Bankr.P. 3001(f). Any party in interest may object to the allowance of the claim pursuant to 11 U.S.C. section 502(a), Fed. R. Bankr.P. 3007 and D.N.J. LBR 3007-1.
- D) The proof of claim must include the following statement in conjunction

with any request for reimbursement of attorney's fees: "This reimbursement is requested pursuant to D.N.J. LBR 2016-1(j)(3) and the claimant certifies that all the requirements for allowance of this fee have been met."

E) Any other D.N.J. LBR 2016-1 fee application for post-petition preconfirmation attorney's services and costs on behalf of the residential mortgagee in a Chapter 13 case shall not include those services and costs allowed pursuant to this subsection (j)(3).

F) Any and all post-petition preconfirmation claims based upon the attorney's fees and costs incurred in a Chapter 13 case by the residential mortgagee which are not applied for pursuant to this subsection (j)(3) or more generally pursuant to D.N.J. LBR 2016-1, shall be deemed waived, and the residential mortgagees shall be estopped and barred from claiming such fees and costs at any time, whether in the Chapter 13 case or otherwise.

2008 Comment: Subsection (j)(3) is added for Chapter 13 cases to allow a residential mortgagee to include in a proof of claim, attorney's fees in the amount of \$400.00 or less, for standard post-petition preconfirmation legal services rendered in the Chapter 13 case such as legal work relating to the filing of a proof of claim, reviewing the Chapter 13 plan, and filing an objection to the plan, without the need to file an application for allowance in accordance with D.N.J. LBR 2016-1. The amendment requires the residential mortgagee to specify the services performed in connection with the attorney's fees requested.

This subsection pertains to the procedural requirements for including in the proof of claim, a claim for post-petition preconfirmation attorney's fees and costs, which are deemed to have *prima facie* validity pursuant to Fed. R. Bankr.P. 3001(f) subject to the right of a party in interest to file an objection to the claim in the normal course pursuant to 11 U.S.C. section 502(a), Fed. R. Bankr.P. 3007 and D.N.J. LBR 3007-1.

The residential mortgagee's attorney's fees may be, absent objection, added to the arrears to be cured through the plan pursuant to 11 U.S.C. § 1322(e). In cases in which it is proposed in a plan to cure a default with respect to a residential mortgage in which a foreclosure judgment has been obtained, the amount of attorney's fees that may be sought may be limited by New Jersey Court Rule 4:42-9. In cases in which the plan does not propose to cure a default, a residential mortgagee's proof of claim may include post-petition preconfirmation attorney's fees pursuant to 11 U.S.C. section 506(b), to the extent that the creditor is oversecured. In such cases, absent objection, the secured claim may be increased by the amount of the attorney's fees.