

## **.12 BANKRUPTCY PROCEEDINGS**

The objective of the bankruptcy management effort is to convert a non-performing loan into a performing loan by collecting at least one month's payment each month while the loan is in bankruptcy or promptly removing the loan from bankruptcy.

### **A. Notification**

If a borrower(s) files for bankruptcy, the Servicer must notify AHFC **immediately** with the submission of a [Form SER-71](#). The notification should include the circumstances of the bankruptcy (including the type of bankruptcy, the name(s) of the debtor(s), the borrowers' intentions with the property, the date the proof of claim was filed, the date of the creditor's hearing and the name of the debtor's attorney) and the Servicer's recommendation concerning further action.

If updating AHFC after the initial bankruptcy notification, the Servicer can send an email with status update information unless there is a recommendation to obtain Relief from Stay or a change in the bankruptcy status.

The Servicer is to provide AHFC updates of material events in the bankruptcy case as events occur, such as:

1. Proof of Claim filing date
2. dismissal date
3. discharged date
4. Ch. 13 plan filed and any amendments thereafter
5. Ch. 13 plan confirmation date
6. any objections filed
7. relief from stay obtained
8. hearing dates (postponements and continuations)
9. case closed date

Servicer is to provide status updates to AHFC at least every 60 days until the case is closed, unless borrower is paying post-petition payments as agreed or otherwise instructed by AHFC.

## B. Servicer's Responsibility

The Servicer is to act in an aggressive manner to protect AHFC's interest and collect one payment per month or petition to lift the stay order. AHFC will look to the Servicer for reimbursement if failure to perform in this area in a timely manner results in a loss to AHFC.

Reimbursable legal expenses related to a bankruptcy clearance are outlined in the Reimbursable Fees and Costs form ([Form SER-86](#)). Expenses in excess of this amount require prior written approval from AHFC.

**It is critical that the Servicer make every effort to obtain a reaffirmation in every Chapter 7 bankruptcy in which the borrower(s) wishes to retain their property.**

It is the Servicer's responsibility to review all documents to ensure that the specific circumstances of the loan are addressed and that they contain all the necessary provisions to protect AHFC's interest.

## C. Monitoring Procedures

The Servicer must have written procedures to control and monitor bankruptcy proceedings effectively. These procedures should cover all bankruptcy types filed. At a minimum, these procedures should address:

1. requirements for filing a proof of claim
2. methods for determining acceptability of proposed repayment plans. Repayment plans under a Chapter 13 are generally acceptable if AHFC's rights under the loan documents are not being modified (refer to [Section 13000.12](#) for guidelines on Chapter 13 stripdowns)
3. time limits for clearing the bankruptcy or receiving the first payment under a repayment plan and the action to be taken if the time limits are not met
4. conditions under which an order of abandonment should be obtained or a petition for lifting the stay order should be filed
5. requirements and timing for referring the case to an attorney for foreclosure once the stay order has been lifted
6. action to be taken if post-petition payments are not made in a timely manner

In addition, the Servicer must maintain in its file a copy of any notice of creditor meetings, proof of claim, the debtor's plan, pleadings, notices, etc.