

FILED

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

2019 OCT -2 PM 2: 26

US BANKRUPTCY
DISTRICT OF SOUTH CAROLINA

IN RE:

CONDUIT MORTGAGE PAYMENTS IN
CHAPTER 13 CASES ASSIGNED TO
JUDGE BURRIS—COLUMBIA AND
SPARTANBURG DIVISIONS.

OPERATING ORDER 16-03
(revised October 2, 2019)

I. Scope. The following procedures are binding upon all parties and counsel appearing in Chapter 13 cases assigned to Judge Helen Elizabeth Burris in the Columbia and Spartanburg divisions:

II. Mortgage Payments¹ paid to the Trustee. Post-petition Mortgage Payments made on claims secured by liens on real property and/or mobile homes may be made by the Debtor to the Chapter 13 Trustee (“Trustee”) for payment through the Chapter 13 Plan² (“Conduit Mortgage Payments”) under the following conditions:

- A. When, as of the Petition Date, or the Conversion Date,³ the Debtor is delinquent in Mortgage Payments owed to a Mortgage Creditor;⁴ or
- B. As part of a 11 U.S.C. § 362⁵ Settlement Order involving a Mortgage Payment delinquency that proposes a cure of a post-petition default in Mortgage Payments; or
- C. If requested by the Debtor and without objection from or with the agreement of the Mortgage Creditor and Trustee; or
- D. As otherwise ordered by the Court.

¹ “**Mortgage Payments**” are defined as the regular, ongoing monthly payments made on claims secured by liens on real property and/or mobile homes.

² When used herein, the term “Plan” shall include any applicable modifications to the Plan, including but not limited to Stipulations to Increase Plan Payments and Trustee’s Notices of Plan Payment Change.

³ “**Conversion Date**” is defined as the day that a case is converted to one under Chapter 13 of the Bankruptcy Code.

⁴ “**Mortgage Creditor**” is defined as the holder of a note secured by a lien on real property and/or a mobile home, and any entity acting on its behalf, including, but not limited to, any subsequent holder, servicer, transferee, or trustee.

⁵ Hereinafter, all references to provisions under the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, shall be by section number only.

III. Conduit Plan.

A. **Trustee Percentage Fees.** The proposed Plan shall include that payments by the Debtor to the Trustee shall provide sufficient funding to cover the Trustee Percentage Fees,⁶ in an amount no greater than 10% of receipts for all claims, including the amounts needed for payment of the Conduit Mortgage Payments.

B. **Chapter 13 Plan Language.** Conduit Mortgage Payments shall be proposed by checking the appropriate box in the form plan and through the inclusion of approved non-standard language in Section 8.1 of the proposed Plan, as set forth in **Exhibit A** to this Order. This language is subject to objection by any affected parties.

C. **Classification.** If Conduit Mortgage Payments are provided for in a proposed Plan, the Plan may include up to five (5) classes of mortgage claims, as follows:

1. **Pre-petition Arrears.** This class shall include any pre-petition Mortgage Payments (including principal and interest, escrow(s), mortgage insurance, fees, charges, and other obligations provided for in the loan documents between the Debtor and Mortgage Creditor (hereinafter the “Loan Documents”)), and shall include the Mortgage Payment that comes due during the month of the Petition Date or Conversion Date.

2. **Conduit Mortgage Payments.** This class shall include:

- a. Post-petition Mortgage Payments, beginning with the payment due in the third calendar month following the filing of the petition or Conversion Date; or
- b. Post-petition Mortgage Payments, beginning with the payment due in the third calendar month following the occurrence of any other event requiring the Debtor to make Conduit Mortgage Payments.

3. **Gap Payments.** This class shall include the post-petition Mortgage Payments due in the two (2) months:

- a. immediately after the petition is filed or the case is converted (but shall not include the Mortgage Payment due in the month of filing or conversion); or
- b. immediately after the occurrence of any other event requiring the Debtor to make Conduit Mortgage Payments.

4. **Post-petition Charges.** This class shall include all payments due to the Mortgage Creditor as described in any Notice of Post-petition Mortgage Fees, Expenses, and Charges under Federal Rule of Bankruptcy Procedure⁷ 3002.1(c) (“3002.1(c) Notice”), filed with the Court. The Debtor will be responsible for

⁶ “**Trustee Percentage Fees**” are the fees for the Trustee, fixed annually under 28 U.S.C. § 586(e) by the Executive Office of the United States Trustee. The applicable percentage fee shall be periodically published by the Trustee, made available on the Trustee’s website, or provided upon request.

⁷ Hereinafter all references to the Federal Rules of Bankruptcy Procedure shall be referred to as “Bankruptcy Rule.”

reviewing all 3002.1(c) Notices within sixty (60) days of the date of filing of such notice. If the Debtor fails to file a timely objection, then the Trustee may pay the amounts claimed in the 3002.1(c) Notice.⁸ Any request for a refund for overpayment or obligation for underpayment will be the sole responsibility of the Debtor. Once the Trustee has filed a Notice of Final Cure under Bankruptcy Rule 3002.1(f), the Debtor shall be directly responsible for any further Post-petition Charges.

5. **Post-petition Arrears.** This class shall include payments resulting from:
- a. any delinquency in the Conduit Mortgage Payment arising as a result of a moratorium; or
 - b. the Debtor's post-petition delinquency in either Conduit Mortgage Payments or Plan Payments.⁹

IV. **Plan Disbursements.**

A. **Request for Mortgage Creditor Report.** If the Mortgage Creditor has not filed a Compliant POC,¹⁰ the Trustee may file a Request for Mortgage Creditor Report and Notice of Possible Hearing (collectively "Request") requiring the Mortgage Creditor to file, within twenty-one (21) days of the filing of the Request, either a Compliant POC or a Mortgage Creditor Report containing the following information on the loan: an estimate of Pre-petition Arrears, the ongoing Monthly Payment amount, and a short description of the status of escrow. The Request will contain notice to the Mortgage Creditor that a hearing on the Request has been scheduled.

If the requested information is provided to the satisfaction of the Trustee, the Court may remove the hearing upon notice by the Trustee to the Court. If the requested information is not provided, or not provided to the satisfaction of the Trustee, the hearing will be held as noticed and shall be attended by a representative of the Mortgage Creditor and counsel for the Mortgage Creditor.

B. **Timing of Payments.**

1. Unless otherwise ordered by the Court, Conduit Mortgage Payments will be retained by the Trustee until the entry of an Order Confirming Plan,¹¹ after which time the Trustee shall commence disbursements as soon as is practicable. Thereafter, disbursements by the Trustee will be made after receipt and posting of payments from the Debtor, but no disbursements will be made until at least ten (10) days after posting to ensure funds are available.

⁸ The Debtor's failure to object will be deemed as a waiver of any claim against the Trustee for payment of the noticed amounts.

⁹ "Plan Payments" are defined as the gross monthly payment amount paid by the Debtor to the Trustee.

¹⁰ "Compliant POC" is defined as a Proof of Claim filed in full compliance with the Official Forms and Bankruptcy Rules 3002 and including: (a) all relevant Loan Documents; and (b) a detailed breakdown of any escrow, mortgage insurance, or other monthly obligation as provided for in the terms of the Loan Documents.

¹¹ If there is no confirmed plan, *see* SC LBR 3070-1 and **Exhibits C.1 and C.2.**

2. All disbursements made by the Trustee will be made in accordance with the Trustee's established office policies and procedures and may not coincide with the payment due date set forth in the Loan Documents.

C. **Amount of Plan Payments.** The sums required by the Trustee for disbursement to the Conduit Mortgage Payment class shall be in the amount:

1. initially as estimated by the Debtor in the Plan;
2. set forth in the Mortgage Creditor's Compliant POC or allowed Notice of Mortgage Payment Change filed in compliance with the deadlines and service requirements set forth in Bankruptcy Rule 3002.1(b), and using the applicable Official Forms; and
3. if no Compliant POC is filed, as set forth in a proof of claim filed by the Debtor for the Mortgage Creditor pursuant to § 501(c).

D. **Failure of Mortgage Creditor to file Compliant POC.** In a confirmed case, until such time as:

1. the Mortgage Creditor files a Compliant POC; or
2. the Debtor files a Proof of Claim for the Mortgage Creditor pursuant to § 501(c);

the Trustee will not disburse funds to the Mortgage Creditor for the Conduit Mortgage Payment. In the event the Mortgage Creditor files a Compliant POC after the Debtor files a Proof of Claim on behalf of the Mortgage Creditor, the Trustee will disburse pursuant to the Mortgage Creditor's Compliant POC.

If the Mortgage Creditor does not file its Compliant POC until after the Trustee has commenced disbursements pursuant to the confirmed Plan, then any Conduit Mortgage Payments already made will be deemed to have been disbursed in the proper amount and these payments shall be accepted by the Mortgage Creditor without delay, and without assertion of default, late charges, or other fees assessed. Any resulting shortage in Mortgage Payments will be classified and paid as Post-petition Charges (*see* III.C.4). If the Conduit Mortgage Payments are placed into a suspense, forbearance, or similar account, they will be deemed to have been timely applied pursuant to this subsection.

E. **Notice of Payment Change.** No Notice of Payment Change filed by the Mortgage Creditor pursuant to Bankruptcy Rule 3002.1 shall be effective to change the amount of the Conduit Mortgage Payment unless and until a Compliant POC is filed. Mortgage Creditors shall file and serve a Notice of Mortgage Payment Change in accordance with the applicable Official Form, within the deadline and in compliance with the service requirements set forth in F.R.B.P. 3002.1(b), to reflect any changes in the monthly mortgage payments or escrow amounts that occur during the term of the plan.

F. **Plan Payments.**

Payments From the Debtor to the Chapter 13 Trustee. The Debtor submits to the supervision and control of the Trustee all or such portion of future earnings or other future income as is necessary for the execution of the plan.

1. **Changes in Plan Payments.** After confirmation, unless provided for in a modified Plan, the Trustee is authorized to increase monthly Plan payments by the amount necessary to fund the Plan if the Plan becomes no longer mathematically viable due to the filing of any of the following:
 - a. Notice of Mortgage Payment Change;
 - b. The filing of a Compliant POC, or any amendments thereto; or
 - c. Notice of Post-petition Fees, Expenses, and Charges (subject to **III.C.4**, *supra*).
2. **Increases in Plan Payments.** The Trustee may increase the monthly Plan payment by filing a Trustee's Notice of Plan Payment Change in the form attached hereto as **Exhibit B**, and providing notice to the Debtor and Debtor's attorney.
3. **Failure to Make Plan Payments.** Nothing in this plan should be interpreted to impair the right of any party in interest to seek the appropriate relief from the Court as a result of the Debtor's failure to make Conduit Mortgage Payments or Plan Payments to the Trustee.
4. **Specific Dollar Amounts.** Unless the Debtor's plan requires payment of specific dollar amounts to priority and/or general unsecured creditors under § 1325(a) or (b), the Trustee is not required to seek an increase in Plan payments in order to achieve or maintain a certain dividend to general unsecured creditors.
5. **Reduction in Plan Payments.** Nothing herein shall prevent the Debtor from seeking a reduction in Plan payments in the event the Conduit Mortgage Payment decreases for any of the reasons listed in this Section IV.F.
6. **Returned Payments.** Payments from the Debtor to the Trustee that are returned for insufficient funds or for any other reason by the Trustee's financial institution will be deemed "not received."
7. **Payments Arising out of a § 362 Settlement Order.** The terms and timing of disbursements of Post-petition Arrearages as a result of a § 362 Settlement Order referenced in II.B, *supra*, may be:
 - a. set forth in a § 362 Settlement Order containing the consent of the Trustee; or
 - b. set forth in the Post-petition Arrears class in a modified Plan proposed by the Debtor.
8. **Insufficient Payments.** If the Debtor pays the Trustee less than the amounts needed to fund the Plan, the Trustee is authorized to apply the funds received and make disbursements in the following order:
 - a. Trustee percentage fees;
 - b. Conduit Mortgage Payments;
 - c. All other secured claims (including but not limited to Pre-petition Arrears, Gap Payments, Post-petition Charges and Post-petition Arrears) and

the balance of the Debtor's Attorney's Fees¹² included in the Plan, on a *pro rata* basis;

d. Priority unsecured claims on a *pro rata* basis;

e. General unsecured claims on a *pro rata* basis.

9. **Requests for moratoriums.** Requests for moratoriums filed in cases with Conduit Plans¹³ must be in the form of a modified Plan that:

a. states the new Plan terms, including the moratorium;¹⁴ and

b. treats any delinquency in the Conduit Mortgage Payment arising as a result of the moratorium as Post-petition Arrears, with a proposed monthly payment amount.

The modified Plan must be filed and served as required by the Bankruptcy Rules.

V. Mortgage Creditors.

A. **Limitations on Post-petition Charges.** For so long as the Debtor remains current in payments pursuant to the Plan, and regardless of the date of disbursement of the Conduit Mortgage Payment by the Trustee, the Mortgage Creditor shall not: (1) declare the loan in default; (2) impose any Post-petition Charge incurred on account of any delay in the Mortgage Creditor's receipt of any payment paid pursuant to a Conduit Plan; or (3) seek to recover or assess late fees or penalties incurred on account of any delay in the Mortgage Creditor's receipt of any payment paid pursuant to a Conduit Plan.

B. **Change by Mortgage Creditor of Name, Address, Servicer, or Trustee, or transfer or sale of Loan Documents.** For the purpose of disbursing payments, the Trustee will not acknowledge any change of the name or address of the Mortgage Creditor or Servicer, or any Transfer or Assignment of Claim, until a reasonable time after the filing of a notice that complies with Bankruptcy Rule 3001(e) and/or other applicable Rules.

AND IT IS SO ORDERED.

/s/ Helen Elizabeth Burris

United States Bankruptcy Judge

Spartanburg, SC

October 2, 2019

¹² See SC LBR 3015-1 and the exhibits thereto, and Chambers Guidelines which provide that, following confirmation of the Plan, the Trustee shall disburse \$1,500 to the attorney for the Debtor from the initial disbursement.

¹³ A "Conduit Plan" is defined as a Chapter 13 plan that provides for payment of Conduit Mortgage Payments pursuant to the terms of this Operating Order 16-03.

¹⁴ [Footnote deleted pursuant to October 2019 revisions to Operating Order 16-03].

**EXHIBIT A TO
OPERATING ORDER 16-03
APPROVED NON-STANDARD LANGUAGE FOR CONDUIT MORTGAGE PLANS**

Select one of the following:

OPTION 1:

Approved non-standard language for Conduit Mortgage Plans to be included in Section 8.1 of the form plan (required by SC LBR 3015-1):¹⁵

To treat prepetition arrears, ongoing payments, and Gap months, use language below. Add or delete rows as applicable. Change numbering if necessary:

8.1 (a) Mortgage payments to be disbursed by the Trustee ("Conduit"):

In addition to the below, the provisions of the assigned Judge's Operating Order In re: Conduit Mortgage Payment in Chapter 13 Cases are incorporated herein.

Mortgage payments, including pre-petition arrears, will be paid and cured by the Trustee as follows:

Name of Creditor	Description of Collateral (note if principal residence; include county tax map number and complete street address)	Current installment payment (ongoing payment amount) *	Monthly payment to cure GAP ** (post- petition mortgage payments for the two (2) months immediately following the event beginning conduit)	Estimated amount of PRE-PETITION ARREARAGE** (including the month of filing or conversion)*	Monthly payment on pre-petition arrearage
		\$ Escrow for taxes: <input type="checkbox"/> Yes <input type="checkbox"/> No Escrow for insurance: <input type="checkbox"/> Yes <input type="checkbox"/> No	\$ Or more	\$	\$ Or more
		\$ Escrow for taxes: <input type="checkbox"/> Yes <input type="checkbox"/> No Escrow for insurance: <input type="checkbox"/> Yes <input type="checkbox"/> No	\$ Or more	\$	\$ Or more

¹⁵ Any conduit plan MUST check boxes 1.3, 1.4, and 3.1(c) to be effective, with conduit language in 8.1.

* Unless otherwise ordered by the court, the amounts listed on a compliant proof of claim or a Notice filed under FRBP 3002(c) control over any contrary amounts above, and any Notice of Payment Change that might be filed to amend the ongoing monthly payment amount.

** The Gap will be calculated from the payment amounts reflected in the Official Form 410A Mortgage Proof of Claim Attachment and any Notice of Payment Change that might be filed to amend the monthly payment amount, but should not be included in the prepetition arrears amount.

All payments due to the Mortgage Creditor as described in any allowed Notice of Post-petition Mortgage Fees, Expenses, and Charges under F.R.B.P. 3002.1, filed with the Court, will be paid by the Trustee, on a pro rata basis as funds are available. See the Operating Order of the Judge assigned to this case.

Once the trustee has filed a Notice of Final Cure under F.R.B.P. 3002.1(f), the debtor shall be directly responsible for ongoing mortgage payments and any further post-petition fees and charges.

To treat post-petition arrears, use language below. Add or delete rows as applicable Change numbering if necessary:

8.1(b) Cure of post-petition mortgage delinquency.

The debtor's post-petition mortgage arrearage will be paid in full through disbursements by the trustee.

Name of Creditor	Description of Collateral (note if principal residence; include county tax map number and complete street address)	Estimated amount of post- petition arrearage	Months being paid as post- petition arrearage	Monthly plan payment on post- petition arrearage
		\$ Or more		\$ Or more
		\$ Or more		\$ Or more

* Unless otherwise ordered by the court, the arrearage will be calculated from the months listed above, with payment amounts reflected in the Official Form 410A Mortgage Proof of Claim Attachment and any Notice of Mortgage Payment Change.

OPTION 2:

As an alternative, at the recommendation of the Chapter 13 trustee assigned to the case, debtors may utilize conduit plan language hereafter approved by the undersigned.

EXHIBIT B TO OPERATING ORDER 16-03
NOTICE OF PLAN PAYMENT CHANGE

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

CASE NO:
CHAPTER 13

**TRUSTEE'S NOTICE OF PLAN
PAYMENT CHANGE**

DEBTOR(S)

TAKE NOTICE THAT, as the result of escrow adjustment, mortgage modification, post-petition mortgage fees and charges, or a Notice of Mortgage Payment Change filed in compliance with the deadlines and service requirements set forth in Bankruptcy Rule 3002.1, the Trustee deems it necessary for the Chapter 13 plan payment to change.

TAKE NOTICE THAT, if no written objection is filed within ten (10) days of the filing of this Notice, the new Chapter 13 plan payment amount will change to \$_____, effective on the eleventh (11th) day following the filing of this Notice. This change in amount does not change the date payments are due to the Trustee.

TAKE NOTICE THAT no hearing will be held on this motion, except at the direction of the Court, unless a response, return, and/or objection is timely filed and served, in which case the Court will conduct a hearing on _____, 20____, at _____ m. at _____, _____, South Carolina. No further notice of this hearing will be given.

Date: _____

Chapter 13 Trustee

EXHIBIT C TO OPERATING ORDER 16-03

Revised December 1, 2017

Exhibit C.1-Consent Allowing Payment of Funds to Creditor(s) and Debtor(s) Attorney

Exhibit C.2-Order Allowing Payment of Funds to Creditor(s) and Debtor(s)' Attorney

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

[Debtor's Name]

Case No. _____

Chapter 13

Debtor(s)

**CONSENT ALLOWING PAYMENT OF
FUNDS TO CREDITOR(S) AND
DEBTOR(S) ATTORNEY**

The above referenced Debtor(s), as indicated by my/our signature(s) below, hereby consent to distribution of some or all funds held by the Chapter 13 Trustee ("Trustee") or received after this date from any source, as set out herein.

In the event of dismissal of my/our case, the Debtor(s) hereby authorize the Trustee to disburse and pay funds on hand pursuant to SC LBR 3070-1(b).

In the event of conversion of my/our case to Chapter 7, the Debtor(s) hereby authorize the Trustee to disburse and pay funds on hand as follows:

First, full monthly Conduit Mortgage Payments received from the Debtor(s) as conduit payments may be paid to the affected mortgage creditor(s). No payment shall be made for partial payments received. No payment shall be made unless a compliant proof of claim has been filed on behalf of the affected mortgage creditor(s).

Second, if there are any funds remaining after payment to the affected mortgage creditor(s) (if any), the Trustee is authorized to pay the Chapter 13 attorney, for outstanding attorneys' fees and costs, the lesser of the amount due to the Debtor(s)' attorney or the remaining balance of funds received by the Trustee prior to conversion.

Third, if the Trustee has any funds left after making the payments described above, the balance remaining will be refunded to me/us at the same time or as funds are available.

Debtor

Debtor

Date: _____

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

[Debtor's Name]

Debtor(s)

Case No. _____

Chapter 13

**ORDER ALLOWING PAYMENT OF
FUNDS TO CREDITOR(S) AND
DEBTOR(S)' ATTORNEY**

Based upon the Debtor(s)' consent submitted to the Chapter 13 Trustee ("Trustee") and filed with the Court, and upon good cause shown,

IT IS HEREBY ORDERED that, in connection with the conversion of the Chapter 13 case to Chapter 7, the Trustee is hereby authorized to disburse funds on hand as follows:

First, in a conduit case, the affected mortgage creditor(s) shall be paid a mortgage payment for each full conduit monthly payment received from the Debtor. No payment shall be made for partial payments received. No payment shall be made unless a compliant proof of claim has been filed on behalf of the affected mortgage creditor(s).

Next, if there are any funds remaining after payment to the affected mortgage creditor(s) (if any), the Trustee is authorized to pay the Chapter 13 attorney, for outstanding attorneys' fees and costs, the lesser of the amount due to the Debtor(s)' attorney or the remaining balance of funds received by the Trustee prior to conversion.

Thereafter, if there is any balance remaining, it will be refunded to the Debtor(s) at the same time as payments to the Debtor(s)' counsel, or as funds are available.

IT IS SO ORDERED.