

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA

FILED

2018 JUL -2 PM 1:33

IN RE:

CONDUIT MORTGAGE PAYMENTS IN  
CHAPTER 13 CASES ASSIGNED TO  
JUDGE WAITES AND JUDGE  
DUNCAN.

OPERATING ORDER 18-03

US BANKRUPTCY  
DISTRICT OF SOUTH CAROLINA

Effective August 1, 2018, the following procedures are binding upon all parties and counsel appearing in Chapter 13 cases assigned to Judge John E. Waites and Chief Judge David R. Duncan:

- I. **Requirement for the Debtor to make Mortgage Payments to the Trustee.** Post-petition Mortgage Payments made on claims secured by a security interest in the Debtor's principal residence (including real property and/or manufactured homes) shall be made by the Debtor to the Chapter 13 Trustee ("Trustee") for payment through the Chapter 13 Plan ("Conduit Mortgage Payments").
- II. **Exception from Conduit Mortgage Payment Requirement.**
  - A. **Exceptions.** The Debtor is not required to make Conduit Mortgage Payments if:
    1. the real property and/or the mobile home securing the Mortgage Creditor's debt ("Collateral") is the subject of a motion to value or surrender;
    2. the Debtor files a plan that proposes to pay the Mortgage Creditor in full over the life of the plan pursuant to either 11 U.S.C. §§ 1322(b)(2) or (c)(2);
    3. the Mortgage Payment is being paid in full and directly to the Mortgage Creditor by a co-debtor;
    4. in cases assigned to Judge Waites, when the initial plan provides for Loss Mitigation/Mortgage Modification according to Chambers Guidelines;
    5. in cases assigned to Judge Duncan, when the initial plan provides for Loss Mitigation/Mortgage Modification according to Chambers Guidelines and the Debtor is not making on-going mortgage payments while awaiting a determination on the Loss Mitigation/Mortgage Modification request;
    6. the Debtor is current on Mortgage Payments at the time of filing the petition or Conversion Date;
    7. the Mortgage Payment is in a technical delinquency in an amount of no more than one Mortgage Payment at the time of the filing of the petition or Conversion Date, and the Debtor will cure this delinquency no later than 30 days after the filing of the petition or Conversion Date. The Trustee must consent to this exception to the Conduit Mortgage Payment requirement.
    8. the Debtor is granted an exception by court order pursuant to a motion for good cause

<sup>1</sup> This Operating Order replaces Amended Operating Order 16-02, In re: Mortgage Payments to Trustee, Conduit Plan and Plan Disbursements (Judge Duncan and Judge Waites) entered on December 5, 2016.

filed with the proposed Plan.<sup>2</sup>

### 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,<sup>3</sup> in an amount no greater than 10% of the 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. For cases assigned to Judge Duncan, the proposed plan shall include the non-standard language set forth in **Exhibit A** to this Order. For cases assigned to Judge Waites, please consult the assigned Case Trustee for the appropriate non-standard language. This language is subject to the 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.

---

<sup>2</sup> Some possible grounds for the good cause exception include, but are not limited to: (a) occasions where the Trustee's increased commission from the conduit procedure would be economically unfeasible for the Debtor or will prohibit payment for property that is essential to the Debtor's reorganization, and (b) when the Debtor consents to the dismissal of a case with prejudice for one year upon the Debtor's failure to make a timely post-petition payment directly to the Mortgage Creditor.

<sup>3</sup> "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.

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 Procedure<sup>4</sup> 3002.1(c) ("3002.1(c) Notice") filed with the Court. The Debtor will be responsible for 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.<sup>5</sup> 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.<sup>6</sup>

#### IV. Plan Disbursements.

A. **Request for Mortgage Creditor Report.** If the Mortgage Creditor has not filed a Compliant POC,<sup>7</sup> 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 shall 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, 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

---

<sup>4</sup> Hereinafter all references to the Federal Rules of Bankruptcy Procedure shall be referred to as "Bankruptcy Rule."

<sup>5</sup> The Debtor's failure to object will be deemed as a waiver of any claim against the Trustee for payment of the noticed amounts.

<sup>6</sup> "Plan Payments" are defined as the gross monthly payment amount paid by the Debtor to the Trustee.

<sup>7</sup> "Compliant POC" is defined as a Proof of Claim filed in full compliance with the Official Forms and Bankruptcy Rule 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.

(10) days after posting to ensure funds are available.

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 Conduit 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.**

1. **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

2. **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*).
3. **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.
4. **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.
5. **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.
6. **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.
7. **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."
8. **Payments Arising out of a § 362 Settlement Order.** In cases assigned to Judge Duncan, the terms and timing of disbursements of Post-petition Arrearages as a result of a § 362 Settlement Order referenced in I.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.
9. **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 Fees<sup>8</sup> included in the Plan, on *apro rata*

---

<sup>8</sup> Nothing in this section is intended to alter chamber's guidelines' provisions regarding Trustee's distribution of fees from initial disbursement to debtor's attorney.

- basis;
- d. Priority unsecured claims on *apro rata* basis;
- e. General unsecured claims on *apro rata* basis.

10. **Requests for moratoriums.** Requests for moratoriums filed in cases with Conduit Plans<sup>9</sup> must be in the form of a modified Plan that:

- a. states the new Plan terms, including the moratorium;<sup>10</sup> 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.**

  
David R. Duncan, Chief Judge

  
John E. Waites, Judge

Columbia, South Carolina

July 2, 2018

<sup>9</sup> 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 18-03.

<sup>10</sup> The modified Plan cannot retroactively change past Plan payments.

**EXHIBIT A TO  
OPERATING ORDER 18-03**

**APPROVED NON-STANDARD LANGUAGE FOR CONDUIT MORTGAGE PLANS**

**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):**

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

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

\* 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.

**EXHIBIT B TO OPERATING ORDER 18-03**  
**NOTICE OF PLAN PAYMENT CHANGE**

UNITED STATES BANKRUPTCY COURT  
FOR THE 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 of 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