

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA

FILED

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IN RE:

CONDUIT PLANS IN CHAPTER 13  
CASES

OPERATING ORDER 22-03

**I. CONDUIT PLAN**

- A. **Form.** A “Conduit Plan” is a Chapter 13 plan that provides for payment of post-petition contractual installment payments secured by a properly perfected mortgage on the debtor’s principal residence (“Mortgage Payments”) to be made by the debtor to the Chapter 13 Trustee (“Trustee”) through the plan. A Conduit Plan is proposed by checking the appropriate box in the form plan provided in SC LBR 3015-1 and 3015-2, as applicable, and including *Approved Non-Standard Language for Conduit Mortgage Plans* in Part 8, and through compliance with the terms herein.
- B. **Mortgage Payment Classification.** The Conduit Plan may include up to five (5) Mortgage Payment classes:
1. **Pre-Petition Arrears.** This class includes any pre-petition Mortgage Payments and the Mortgage Payment due during the month of filing the petition or the date of an order converting the case to Chapter 13 (“Conversion Date”).
  2. **Conduit Mortgage Payments.** This class includes:
    - a. post-petition Mortgage Payments, beginning with the payment due in the third calendar month following the month of filing the petition or the 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 Mortgage Payments through a Conduit Plan.
  3. **Gap Payments.** This class includes post-petition Mortgage Payments due the two (2) months:
    - a. immediately after the month of filing the petition or the Conversion Date; or
    - b. immediately after the occurrence of any other event requiring the debtor to make Mortgage Payments through a Conduit Plan.
  4. **Post-Petition Charges.** This class includes fees, expenses, or charges itemized in the Notice of Fees, Expenses, and Charges pursuant to

Bankruptcy Rule 3002.1 (“3002.1(c) Notice”).

**5. Post-Petition Arrears.** This class includes:

- a. a delinquency in Mortgage Payments resulting from a moratorium granted for a prior Conduit Plan, or a post-petition delinquency on the gross monthly payment by the debtor to the Trustee under a Conduit Plan; and
- b. with the consent of the Trustee, Mortgage Payments to be paid pursuant to 11 U.S.C. § 362 settlement orders.

**C. Plan Payments Due from the Debtor.**

1. **Trustee Percentage Fees.** The proposed Conduit Plan shall provide sufficient funding to cover the Trustee fee fixed pursuant to 28 U.S.C. §586(c).
2. **Conduit Mortgage Payments.** The sums included in the plan payment required by the Trustee for disbursement to the Conduit Mortgage Payment class (Section I.B.2) shall be in the amount:
  - a. initially as estimated by the debtor in the Conduit Plan;
  - b. set forth in the mortgage creditor’s Compliant Proof of Claim (a proof of claim filed in full compliance with the Official Forms and Bankruptcy Rules 3001 and 3002) or any 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; or
  - c. set forth in a proof of claim filed for the mortgage creditor pursuant to 11 U.S.C. § 501(c) if no Compliant Proof of Claim is filed.
3. **Increases in Plan Payments.** See SC LBR 3015-2.
4. **Moratoriums.** Requests for moratoriums filed in cases with Conduit Plans may be in the form of a motion for moratorium or a modified plan. The Local Form *Motion to Modify Plan to Allow a Moratorium of Payments (Conduit Plan)* must be filed and served on all interested parties.
5. **Insufficient Funds.** Plan payments from the debtor to the Trustee that are not honored due to insufficient funds or for any other reason by the Trustee’s financial institution will be deemed “not received.”

**II. DISBURSEMENT BY THE TRUSTEE**

- A. **Timing.** Unless otherwise ordered by the Court, Mortgage Payments paid through a Conduit Plan will be retained by the Trustee until entry of an Order pursuant to 11 U.S.C. § 1325 (“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 the Trustee can ensure funds are available. All disbursements will be made in accordance with the Trustee’s established office policies and procedures and, therefore, may not coincide with the payment due date set forth in the agreement or documents governing the loan terms

between the debtor and mortgage creditor. If funds are available, payments by the Trustee to mortgage creditor shall continue through the final month of the confirmed Plan term, with the debtor to resume direct payments to the mortgage creditor the month following or as directed by the Trustee.

**B. Confirmed Plan.**

1. **Partial Payment Disbursement.** If the debtor pays the Trustee less than the full plan payment, the Trustee is authorized to apply the funds received and make disbursements in the following order: (1) Trustee Percentage Fees; (2) Mortgage Payments provided in the Conduit Plan; (3) all other secured claims (including but not limited to Pre-Petition Arrears, Gap Payments, Post-Petition Charges, and Post-Petition Delinquencies) included in the Conduit Plan and the balance of the debtor's attorney's fees on a *pro rata* basis; (4) priority unsecured claims on a *pro rata* basis; and (5) general unsecured claims on a *pro rata* basis.
2. **Mortgage Creditor Claims.**
  - a. **Compliant Proof of Claim.** Until such time as the mortgage creditor files a Compliant Proof of Claim or a proof of claim for the mortgage creditor is filed pursuant to § 501(c), the Trustee will not disburse funds to the mortgage creditor for the Mortgage Payment paid through the Conduit Plan. If the Mortgage Payments paid through a Conduit Plan are placed into a suspense, forbearance, or similar account, they will be deemed to have been timely applied pursuant to this subsection.
  - b. **Request for Mortgage Creditor Report.** If the mortgage creditor has not filed a Compliant Proof of Claim but the plan is otherwise ready for confirmation, the Trustee may file a Request for Mortgage Creditor Report (the "Request") requiring the mortgage creditor to file either a Compliant Proof of Claim or a Mortgage Creditor Report, providing: an estimate of Pre-Petition Arrears, the ongoing monthly payment amount, and the status of escrow. The Request shall contain notice to the mortgage creditor that a hearing on the Request has been scheduled. Any hearing on the matter shall be attended by a representative of the mortgage creditor sufficiently knowledgeable to testify about the specific amounts due, and counsel for the mortgage creditor.
  - c. **Notice of Payment Change.** No Notice of Payment Change filed by the mortgage creditor pursuant to Bankruptcy Rule 3002.1 is effective to change the amount of the Mortgage Payment paid through a Conduit Plan unless and until a Compliant Proof of Claim 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 Bankruptcy Rule 3002.1(b), to reflect any changes in the monthly mortgage payments or escrow amounts that occur during the term of the plan.

- C. **Plan Not Confirmed.** See SC LBR 3070-1 and Local Forms (*Consent Allowing Payment of Funds to Creditor(s) and Debtor(s) Attorney* and *Order Allowing Payment of Funds to Creditor(s) and Debtor(s) Attorney*).

### III. DUTIES OF MORTGAGE CREDITORS

- A. **Post-Petition Charges.** Regardless of the disbursement date of the Mortgage Payment paid through a Conduit Plan, the mortgage creditor shall not: (1) declare the loan in default; (2) impose any Post-Petition Charges incurred on account of any delay in the mortgage creditor's receipt of any payment paid pursuant to the 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 the Conduit Plan. The debtor should timely review all 3002.1(c) Notices. If the debtor advises the Trustee of an agreement to pay the Post-Petition Charges or fails to file a timely objection to the 3002.1(c) Notice, the Trustee may pay the Post-Petition Charges. The debtor's advice to the Trustee of an agreement to pay or the debtor's failure to timely object will be deemed a waiver of any claim against the Trustee for payment of the Post-Petition Charges.
- 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 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.
- C. **Notices of Mortgage Servicing Transfers.** Notices pursuant to 12 CFR § 1024.33 ("hello" and "goodbye" letters) shall be provided to the Trustee within the deadlines provided in that authority, as may be amended from time to time, by the filing of the notice with the bankruptcy court with privacy information redacted. The Trustee may then hold disbursements pending compliance with III.B.

### IV. USE OF CONDUIT PLANS

- A. In cases assigned to the Hon. David R. Duncan and the Hon. Elisabetta G.M. Gasparini:
1. the debtor is required to propose Mortgage Payments through a Conduit Plan for claims secured by a first priority security interest in the debtor's principal residence (including real property and/or manufactured homes);
  2. notwithstanding Section IV.A.1, a Conduit Plan is not required if:
    - a. the debtor files a plan that proposes to pay a mortgage creditor in full over the life of the plan pursuant to 11 U.S.C. §§ 1322(b)(2) or (c)(2);
    - b. the real property and/or manufactured home securing the mortgage creditor's debt is the subject of a motion to value or surrender;
    - c. the Mortgage Payment is being paid in full directly to the mortgage creditor by a co-debtor;

- d. at the time of filing the petition or the Conversion Date, the debtor is current on the Mortgage Payments or any delinquency is less than one Mortgage Payment (without consideration of escrow shortages, advances for taxes and/or insurance, or allowed pre-petition fees, expenses, and charges);
  - e. the plan provides for loss mitigation/mortgage modification;
  - f. the claim is for a home equity line of credit (HELOC); or
  - g. the debtor is granted an exception by Court order pursuant to a motion for good cause filed with the plan.
- B. In cases assigned to the Hon. Helen E. Burris, Conduit Plans are not required but may be proposed.
- C. In cases assigned to any Judge, the debtor may propose a Conduit Plan to address:
- 1. claims provided in Section I.B.5.a;
  - 2. with the consent of the Trustee,
    - a. claims provided in Section I.B.5.b;
    - b. Mortgage Payments for claims secured by a junior priority security interest (but not for home equity line of credit mortgage loans); and/or
    - c. post-petition contractual installment payments secured by a properly perfected mortgage on real property other than the debtor's principal residence.

**This Order is effective for all plans filed on or after July 15, 2022.**

**AND IT IS SO ORDERED.**

/s/ Helen E. Burris  
Chief United States Bankruptcy Judge

/s/ David R. Duncan  
United States Bankruptcy Judge

/s/ Elisabetta G.M. Gasparini  
United States Bankruptcy Judge

