

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

ORDER OF ADOPTION

Pursuant to the authority vested in this court by Rule and Statute, and following notice and a public comment period;

IT IS ORDERED that the attached Rule 3015(b).2 (Conduit Mortgage Payments in Chapter 13 Cases) and the exhibits attached to that Rule are adopted and become effective on September 15, 2017, and will supersede Standing Order 11-3.

IT IS FURTHER ORDERED that Standing Order 11-3 is abrogated effective September 15, 2017.

IT IS SO ORDERED.

Dated this 22nd day of August, 2017.

s/ Janice Miller Karlin
JANICE MILLER KARLIN
Chief Judge

s/ Robert E. Nugent III
ROBERT E. NUGENT III
Judge

s/ Dale L. Somers
DALE L. SOMERS
Judge

s/ Robert D. Berger
ROBERT D. BERGER
Judge

ATTEST:
s/ David D. Zimmerman
DAVID D. ZIMMERMAN, Clerk

LBR 3015(b).2
CONDUIT MORTGAGE PAYMENTS IN CHAPTER 13 CASES

- (a) **Scope of Rule.** This rule applies to all Chapter 13 cases filed on or after September 15, 2017.
- (b) **Required Conduit Payments.** Regular payments owed by a Debtor to a Creditor holding a claim secured by the Debtor's principal residence shall be made by the Debtor to the Trustee for payment through the Chapter 13 plan if the Debtor (i) is delinquent as of the petition date or (ii) becomes delinquent after the petition date. Such payments are referred to herein as "conduit payments."
- (c) **Definitions.** As used in this rule, the following capitalized terms mean:
 - (1) The "Arrearage" is the total amount past due as of the petition date, as calculated on Official Form 410A, and shall be equal to the amount contained in the creditor's filed and allowed Proof of Claim, unless specifically controverted in the plan or by an objection to the claim as required by D. Kan. LBR 3015(b).1.
 - (2) "Debtor" or "Debtors" are hereafter referred to as Debtor.
 - (3) "Real Property Creditor" is the entity claiming a mortgage or a servicer of the mortgage on the real property that is the principal residence of the Debtor. This rule is intended to cover a loan secured by a security agreement in Debtor's Principal residence (i.e., a promissory note on a manufactured or mobile home), and such lender will be referred to as a "Real Property Creditor" herein for the sake of simplicity, even if some specific references, e.g., to "mortgage" or "escrow analysis," are not strictly applicable.
 - (4) The Standing Chapter 13 Trustee is referred to as "Trustee."
- (d) **Other Rules Applicable.** Nothing in this rule shall relieve any party from complying with any obligation under the United States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules of the District and Bankruptcy Courts of Kansas, or any applicable Standing Orders. These procedures shall not be modified by any plan language without express order from the Court.
- (e) **Debtor's Duties.**
 - (1) Debtor may be excused from complying with this rule only upon entry of a Court order upon a showing of circumstances justifying the same.¹
 - (2) Debtor must complete Exhibit B (Mortgage Creditor Checklist) and Exhibit C (Authorization to Release Information to the Trustee)

¹ See, e.g., *In re Perez*, 339 B.R. 385, 409 (Bankr. S.D. Tex. 2006) (Court lists 21 non-exclusive factors to be examined in determining whether to excuse debtors from conduit payment scheme or employer withholding orders). The additional cost associated with the trustee fee on the conduit payment will not, by itself, constitute good cause.

Regarding Secured Claims Being Paid by the Trustee) and forward those documents to the Trustee (not to the Court) within 14 days of the filing of the bankruptcy petition.

- (3) Debtor or Debtor's attorney shall mail a copy to the Trustee of all correspondence, notices, statements, payment coupons, escrow notices and default notices concerning any adjustment to the monthly payments or interest rate immediately upon receipt of the same.
- (4) Debtor shall include the regular payment amount owing to the Real Property Creditor, inclusive of Trustee's fees, in the plan payment to be paid by Debtor to the Trustee.
- (5) Pursuant to provisions of Paragraph (f)(5) below, in the event the monthly conduit payment changes due to either changed escrow requirements or a change in an adjustable interest rate, Debtor's plan payment to the Trustee shall change by the same amount, plus the Trustee's fee.
- (6) For any Debtor who is employed and required to make mortgage payments through the Trustee, an employer pay order shall be promptly entered by the Clerk of the Bankruptcy Court as provided in Debtor's plan and served upon Debtor's employer. Until the employer begins to withhold bankruptcy plan payments from Debtor's pay, Debtor is required to make plan payments directly to the Trustee. A Debtor may be excused from complying with employer pay orders only upon the entry of a Court order upon a showing of circumstances justifying the same.
- (7) If Debtor modifies a previously confirmed Chapter 13 Plan that originally provided for Debtor to pay the on-going post-petition payments directly to a holder of the claim to bring all or some part of the on-going payments into the Chapter 13 Plan for payments, then any post-confirmation amendment to the Plan must spell out with specificity all of the following:
 - (i) the name, address, and redacted account number of the creditor to whom the payments are to be paid;
 - (ii) the month for which the Trustee is to commence making the on-going post-petition payments;
 - (iii) the amount and treatment of the post-petition delinquency, including the gap between the date when Debtor proposed for modifying the Plan and the month for which the Trustee is to commence making the mortgage payment, if any.

(f) Trustee's Duties:

- (1) The Trustee is authorized to deduct from any payments collected, pursuant to 11 U.S.C. § 1326, the percentage Trustee fees then in effect as necessary costs and expenses, together with any fee, charge, or amount required under § 1326.
- (2) The Trustee shall allow as an administrative expense an amount equal

to 2 full regular monthly payments inclusive of escrow deposits and 2 associated late fees. This allowance shall reimburse Real Property Creditor for post-petition delinquencies that may accrue until the Trustee begins payments to that Creditor. This added amount shall bear interest at 5% unless Debtor's Plan contains a different rate.

- (3) In the event Debtor is granted an abatement of Plan payments, the Trustee is authorized to pay any missed mortgage payments in a separate administrative claim record that includes late fees. This amount shall bear interest at 5% unless Debtor's Plan contains a different rate.
- (4) The Trustee will not make payments to the Real Property Creditor on the pre-petition arrearage until such time as a Proof of Claim is filed with the Court and the Plan is confirmed. The Court is deemed to have granted authority to the Trustee to disburse conduit payments, as if the plan had been confirmed, once the Real Property Creditor has filed a Proof of Claim to which a fully executed Official Form 410A and Exhibit D (Addendum to Chapter 13 Proof of Claim for Residential Home Mortgage Debt Paid Through the Chapter 13 Trustee) has been attached. The Trustee is required to make a full mortgage payment for each full plan payment made. The Trustee is not required to make partial payments to Real Property Creditors.
- (5) Any notice filed pursuant to Fed. R. Bankr. P. 3002.1(b) or (c) shall be treated as an amendment to the creditor's claim and Debtor's plan. The Trustee is authorized to disburse the new conduit payment or fees as soon as practicable and without seeking formal modification of the plan.
- (6) Should the new conduit payment or fees jeopardize the feasibility of the plan, the Trustee may file a motion to amend the plan or seek conversion or dismissal of the case, whichever the Trustee deems appropriate.

(g) Real Property Creditor's Duties:

- (1) The Real Property Creditor shall file a Proof of Claim, to which it shall attach the Official Form 410A and Exhibit D (Addendum to Chapter 13 Proof of Claim for Residential Home Mortgage Debt Paid Through the Chapter 13 Trustee).
- (2) At least 45 days prior to the change of the name of the Real Property Creditor payee, or the address to which payments should be made, Real Property Creditor shall notify the Trustee, Debtor, and the attorney for the Debtor of any such change in a document that conforms to Exhibit E (Notice of Transfer of Servicing and Claim) or Exhibit F (Notice of Transfer of Claim (Other than for Security)).
- (3) Any amount paid or tendered to the Real Property Creditor prior to confirmation shall be applied to the next post-petition payment under the terms of the note due, without penalty. Alternatively, the

mortgage holder may apply the payment as it deems appropriate, but said application shall be deemed to be the Real Property Creditor's waiver of all fees and expenses to which it is entitled under the loan documents.

- (4) The holder of the mortgage claim shall not file a separate proof of claim for the amount of the 2 full regular monthly post-petition payments provided for in paragraph (f)(2) or include such post-petition payments in the pre-petition arrearage claim.
- (5) Confirmation of the plan shall impose an affirmative duty and legal obligation on the Real Property Creditor to do all of the following:
 - (i) Apply the payments received from the Trustee for payment on the Arrearage, if any, only to such Arrearage pursuant to the plan. The Arrearage shall be deemed paid in full upon the entry of the Discharge Order in the case, unless otherwise ordered by the Court..
 - (ii) Deem the pre-petition Arrearage (and post-petition Arrearage, if any) contractually current upon confirmation of the plan so as to preclude the imposition of late payment charges or other default-related fees and services based solely on any pre-petition default or the payments referred to in paragraph (f)(2) above. This obligation will have no force and effect if the case is dismissed or converted.
 - (iii) Apply the post-petition monthly mortgage payments paid by the Trustee or by Debtor to the month in which they were designated to be made under the plan. Even if such payments are placed in suspense, forbearance, or similar account, they will be deemed to have been applied to the note pursuant to this subsection.
- (6) If the modification of a previously confirmed plan provides for mortgage payments to be made by the Trustee rather than the Debtor, and if the Real Property Creditor has not previously filed a proof of claim, the Real Property Creditor must file a proof of claim stating the amounts of the on-going payments as well as any post-petition delinquency that has occurred, including the gap between the date when Debtor modified the Plan and the month for which the Trustee is to commence making the mortgage payment, if any. Subparagraph (g)(1) of this Rule applies to the filing of the proof of claim.
- (h) **No Variance Without Court Order.** The procedures set out in this rule may be varied in a particular case only by Court order.

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