

DRAFT STANDING ORDER

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF ARIZONA JUDGE HOLLOWELL'S STANDING ORDER ON CONDUIT MORTGAGE PAYMENTS IN CHAPTER 13

This Standing Order is effective for all Chapter 13 cases assigned to Judge Hollowell in cases where venue is in Tucson filed on or after _____, 2008.

- I. **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 is (i) in default under the terms of the secured claims as of the petition date, or (ii) becomes in default under the terms of the secured claims after the Chapter 13 filing. Such payments are referred to herein as "conduit payments."
- II. **DEFINITIONS:** As used in this Standing Order, the following capitalized terms shall mean:
 - A. "Debtor" or "Debtors" are hereafter referred to as "Debtor."
 - B. The Chapter 13 Trustee is referred to as "Trustee."
 - C. The entity claiming a mortgage or servicer of the mortgage on the real property that is the principal residence of the Debtor is hereafter referred to as "Real Property Creditor."
 - D. The term "Arrearage" is the total amount past due as of the date of filing or, if applicable, as of the date of the filing of an amended Chapter 13 Plan.
 - E. "Plan" shall refer to a confirmed Chapter 13 Plan or confirmed amended Chapter 13 Plan.
 - F. "Mail" shall mean regular mail, email or fax.
- III. **OTHER RULES APPLICABLE:** Nothing in this Standing Order 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 Arizona, or any applicable Standing Orders. These procedures shall not be modified by any plan language without express order from the Court.
- IV. **DEBTOR'S DUTIES**

- A. Debtor may be excused from complying with the Standing Order only upon the entry of a Court order upon a showing of circumstances justifying the same.¹
- B. Debtor must complete the checklist and release of information form (Exhibits A and B) and forward those documents to Trustee (not to the Court) within 5 days of the filing of the bankruptcy petition.
- C. Debtor or Debtor's attorney shall mail or email 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 or creation of the same.
- D. Debtor shall include the regular payment amount owing to the Real Property Creditor, inclusive of Trustee's fees, in the regular plan payment to be paid by Debtor to the Trustee.
- E. Pursuant to provisions of Paragraph V.(D) 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.

V. TRUSTEE'S DUTIES

- A. Provided that the Debtor has complied with the obligation set forth in Section IV above, the Trustee is authorized to deduct from any payments collected, pursuant to 11 U.S.C. § 1326, the authorized percentage fee (10%) on the funds distributed as necessary costs and expenses, together with any fee, charge or amount required under § 1326.
- B. The Trustee shall allow as an administrative expense an amount equal to two full regular monthly payments inclusive of escrow deposits and two associated late fees. This allowance shall reimburse Real Property Creditor for prepetition delinquencies that may accrue until the Trustee begins payments to that creditor. This added amount shall bear interest at the contract rate in effect at confirmation.
- C. Postpetition contract installment payments to Real Property Creditors shall be made by the Trustee whether or not the Plan has been confirmed and whether or not the holder of the claim has filed a proof of claim. The Trustee is required to make a full mortgage payment for each full plan payment made by the Debtor. The Trustee is not required to make partial payments to Real Property Creditors.

¹ See e.g., *In re Perez*, 339 B.R. 385 (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.

- D. A late charge may not be imposed on a postpetition contract installment payment paid or tendered to the Real Property Creditor during the contractual grace period even though an earlier installment, or any late charge thereon, may not have been paid when due. For purposes of determining whether a late charge may be imposed, any postpetition contract installment payment tendered by the Trustee shall be applied by the Real Property Creditor to the most recent postpetition contract installment payment to fall due.
- E. Within 30 days after the Trustee has received any notice of a change in the conduit payment, the Trustee shall file a notice of the terms of the change with the Court and provide notice of that change to Debtor, Debtor's attorney, and Real Property Creditor. Such change shall be treated as an amendment to the creditor's claim and Debtor's Plan and a party in interest shall have an opportunity to object to the amendment within 20 days of the filing of the notice. After the filing of the notice, the Trustee shall be authorized to disburse the new conduit payment without seeking formal modification of the Plan.
- F. Should the new conduit payment jeopardize the feasibility of the Plan, the Trustee may file a motion to amend the Plan or seek dismissal of the case, whichever the Trustee deems appropriate.

VI. REAL PROPERTY CREDITOR'S DUTIES

- A. The Real Property Creditor shall timely file a Proof of Claim, which shall include an accounting of the arrearages as of the Petition Date.
- B. Unless otherwise ordered by the court, the Real Property Creditor shall notify the Trustee, Debtor and the attorney for the Debtor, 60 days prior to the effective date of any change of payment amount (inclusive of escrow changes) and/or interest rate in a document that conforms with Exhibits C or D or by electronically filing a "Notice of Payment Change" which accurately describes the reason for the change in payment in the ECF docket.
- C. At least 60 days prior to a 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 or by filing an assignment/transfer of claim in the ECF docket.
- D. If Real Property Creditor is entitled to advance or incur expenses in connection with the servicing of the note or mortgage, it shall notify the Trustee, Debtor and Debtor's attorney of any such advances or expenses within 30 days after the advance or expense was paid in a document that conforms to Exhibit F.
- E. The Real Property Creditor shall mail a copy to the Trustee of all copies of correspondence, notices, statements, payment coupons, escrow notices and default

notices concerning any change to the monthly payment or interest rate immediately upon receipt or creation of the same.

- F. Confirmation of the Plan shall impose an affirmative duty and legal obligation on the Real Property Creditor, to do all of the following:
1. Apply the payments received from the Trustee for payment on the Arrearage pursuant to the Plan. The arrearage shall be deemed paid in full upon the entry of the Discharge Order in this case, unless otherwise ordered by the Court.
 2. Deem the prepetition Arrearage (and postpetition Arrearage, if treated in the Plan or any Amended Plan) contractually current upon confirmation of the Plan, thereby precluding the imposition, directly, or indirectly, of late payment charges or other default-related fees based solely on any prepetition default or the payments referred to above.
 3. Apply the postpetition 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 into a suspense, forbearance or similar account, they will be deemed to have been applied to the note pursuant to this subsection.

VII. EFFECT OF PLAN COMPLETION

- A. If the Debtor pays the Arrearage, together with interest, if any, as specified in the Plan, all prepetition defaults will be cured and the note and other loan documents will be deemed current as of the date of filing, extinguishing any right of the mortgagee to recover any amount alleged to have arisen prior to the filing of the petition or to declare a default of the note, mortgage, or other loan documents based upon prepetition events.
- B. If Debtor has made all payments required under the Plan, the Trustee shall file a motion seeking an order of the Court determining that all prepetition and, if applicable, postpetition defaults on Debtor's residential home mortgage debt are deemed cured and all payments made on such debt through the date of Plan completion are current, with no arrearage, no escrow balance, late charges, costs or attorney fees owing, except to the extent that the Court orders otherwise.