

NOV 05 2009

STEPHANIE J. EDMONDSON, CLERK  
U.S. BANKRUPTCY COURT  
EASTERN DISTRICT OF NC

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA

IN RE:

	)	<b>Administrative Order Establishing</b>
<b>Procedures in Aid of the</b>	)	<b>Procedures Governing Post-Petition</b>
<b>Administration of Chapter 13 Plans</b>	)	<b>Conduit Mortgage Payments</b>
	)	<b>Effective January 1, 2010</b>

The Court has considered this matter and it appears that a standard procedure governing regular, conduit mortgage payments made in a Debtor’s case to those creditors whose claims are secured by a mortgage, deed of trust, or other consensual lien on a Chapter 13 Debtor’s principal residence should be adopted at this time and should apply to all Chapter 13 cases filed in the Eastern District of North Carolina on and after January 1, 2010; and,

Based upon the foregoing, **IT IS HEREBY ORDERED** as follows:

1. **Definitions:**

As used in this Administrative Order, the following definitions shall apply:

- a. “Pre-Petition Arrearage” is the total amount past due on the Real Property Creditor’s claim as of the petition date.
- b. “Administrative Arrearage” is the total amount of two full post-petition mortgage payments and shall be added to the Pre-Petition Arrearage claim.
- c. “Bankruptcy Trustee” is the Chapter 13 Standing Trustee.
- d. “Mortgage Payments” are those regular, periodic payments which are owed by the Debtor on a Mortgage Loan to a Real Property Creditor as set forth in the documents evidencing the loan that is the basis of the Real Property Creditor’s claim.
- e. “Conduit Payments” are those Mortgage Payments which are paid by a Debtor to a Real Property Creditor through the Bankruptcy Trustee. Conduit Payments shall be equal to the post-petition monthly contractual payments due pursuant to the note or contract.
- f. “Debtor” is the Chapter 13 Debtor.

g. "Mortgage Loan" means a mortgage, deed of trust or other consensual lien on the real property of the Debtor that is the principal residence of the Debtor but does not include such a loan that is also secured by other property in addition to such residence or a loan upon which the final contractual payment shall become due before the stated completion date for the Chapter 13 plan.

h. "Real Property Creditor" is any entity holding or owning an allowed secured claim by virtue of a mortgage, note, deed of trust, or other consensual lien on real property that constitutes the Debtor's principal residence including but not limited to any assignees, agents or servicers.

**2. Disbursement of Required Conduit Payments:**

All Mortgage Payments owed by a Debtor to a Real Property Creditor on a Mortgage Loan as defined in this Order shall be made by the Debtor to the Bankruptcy Trustee for disbursement to the Real Property Creditor by the Bankruptcy Trustee as Conduit Payments.

**3. Duties of the Debtor:**

In the event that the periodic Conduit Payment changes due to either changed escrow requirements or a change in a variable interest rate, or by the addition of any approved post-petition payments or fees or expenses to the plan, the Debtor shall thereafter make such increased plan payment as is necessitated by such change. The Bankruptcy Trustee shall notify the Debtor and the attorney for the Debtor of the need to modify the Plan to accommodate any required plan payment increase. Such modification may be accomplished by Consent Order prepared by counsel for the Debtor(s) and signed by the Bankruptcy Trustee and counsel for the Debtor(s), provided the only modification is memorializing such necessary plan payment increase and provided no other creditor or party in interest is adversely affected by such modification.

**4. Duties of the Bankruptcy Trustee:**

a. The Bankruptcy Trustee shall include for payment under the Debtor's plan an allowed Administrative Arrearage claim as defined in Paragraph 1b. of this order for each Real Property Creditor for which he shall disburse Conduit Payments. This amount shall be added to the Pre-Petition Arrearage claim and shall be paid on a pro-rata basis with other allowed secured claims being paid through the Debtor's plan, subject to the provisions of Paragraph 4.d., below.

b. The Bankruptcy Trustee will not make payment to the Real Property Creditor on any claim until such time as the Real Property Creditor or the Debtor has filed a Proof of Claim including all necessary documentation with the Court and the Debtor's plan has been confirmed, except as may otherwise be provided by separate order.

c. Should any increase in a Conduit Payment affect the feasibility of the

confirmed plan, then the Bankruptcy Trustee shall notify the Debtor and the attorney for the Debtor of the need for a plan modification. Such modification may be accomplished by Consent Order prepared by counsel for the Debtor(s) and signed by the Bankruptcy Trustee and counsel for the Debtor(s), provided the modification is only memorializing such necessary plan payment increase and provided no other creditor or party in interest is adversely affected by such modification. Otherwise, the filing of a proof of claim by the Real Property Creditor in accordance with the terms of Paragraph 5(b) shall be deemed a modification of the plan for the purposes of this paragraph.

d. Unless otherwise ordered by the Court, should the Debtor(s) during any months of the plan term remit payments to the Bankruptcy Trustee that are not sufficient to provide for all required disbursements to claimants, including the cure of any principal and/or interest payment arrearages that may have accrued on such claims, the Bankruptcy Trustee is directed to disburse all funds received from the Debtor(s) first toward payment of the Conduit Payment(s) due for any current month and the cure of any principal payment arrearages that may have accrued on such conduit payment(s), before making disbursements to any other claimants. Such actions by the Bankruptcy Trustee shall not impair the rights of the "other claimants" to take any lawful action as a result of the failure to make full monthly disbursements on their claims.

e. Nothing herein shall affect adequate protection payments due pending the confirmation of the plan.

**5. Duties of the Real Property Creditor:**

a. The Real Property Creditor shall file a Proof of Claim. The Proof of Claim must clearly state and itemize all components of any Pre-Petition Arrearage, specify the current Conduit Payment amount as of the petition date, and specify both the amount and effective date of any then known and anticipated change of such Conduit Payment.

b. Unless otherwise ordered by the Court, the Real Property Creditor shall notify the Bankruptcy Trustee, the Debtor(s), and the attorney for the Debtor(s) of any change in the Conduit Payment amount at least thirty (30) days prior to the effective date of the resulting change in the Conduit Payment amount by filing a supplemental proof of claim with the Court. A copy of the proof of claim shall be served by first class mail, sufficient postage pre-paid, on the Bankruptcy Trustee, the Debtor(s), and the attorney for the Debtor(s) at their respective mailing addresses of record in the case. Any change in the Conduit Payment amount shall not be effective if it is not filed with the Court and served in accordance with this paragraph.

c. At least thirty (30) days prior to the effective date of any change in the name of the Real Property Creditor or the entity servicing a Real Property Creditor's claim (herein "Servicer") and/or the Real Property Creditor's and/or Servicer's disbursement mailing address, the Real Property Creditor or the Servicer shall file

with the Court a notification setting forth the requested changes with a copy served on the Trustee, the Debtor(s), and the attorney for the Debtor(s). To serve the Trustee, notice must be mailed to the Trustee's address noted in the case file marked "Attn: Mortgage Claim Administrator".

d. Whether or not the plan provides for Conduit Payments, it is the intent of this order that all payments made to the Real Property Creditor or the Servicer shall be applied as provided under and subject to the provisions of 11 U.S.C. §524(i).

**6. Effect of Plan Completion:**

a. For Conduit Mortgage Payments. If the Debtor's plan pays all the required Conduit Payments, Arrearage Payments, and other mortgage-related claims, as specified in the confirmed plan or any amendment thereto, then all pre-confirmation and post-confirmation defaults shall be deemed cured, and the Mortgage Loan, together with the note and any other loan documents or amended loan documents will be deemed at least current as of the date of the disbursement of the final plan payment. Such a completion of the plan shall extinguish any right of the Real Property Creditor or the servicer to recover any amount alleged to have arisen since the date of confirmation, or to declare a default of the note, mortgage, deed of trust, or other loan documents based upon any and all pre-confirmation or post-confirmation events prior to the date of such completion. If the Debtor has made all of the post-petition payments required under a Conduit Payment Chapter 13 plan, then the Bankruptcy Trustee shall file a motion and a notice of motion seeking entry of an order of the Court that the mortgage(s) is (are) deemed current.

b. For Direct Mortgage Payments. If the post-petition payments to the Real Property Creditor have been made directly by the Debtor, then within fifteen (15) days of receipt of the Notice of Completion of the Plan from the Bankruptcy Trustee, the Debtor(s) may file a motion and a notice of motion seeking an order of the court determining that all pre-petition and post-petition defaults on the Debtor's mortgage debt(s) is (are) deemed cured and that all direct monthly mortgage payments made on such debt through the case completion date are current, with no arrearage, no escrow balance, late charges, costs, expenses or attorney fees owing, except to the extent that the Court orders otherwise. The motion must be verified by the Debtor(s) that all such direct payments have in fact been made and may include any proof of such payments as the Debtor deems appropriate.

**7. Service:**

All notices and motions required under this order shall be served on all interested parties at the last mailing address of record filed in the case.

**8. Other Applicable Laws:**

Nothing in this 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 Practice and Procedure of the District and Bankruptcy Courts of the Eastern District of North Carolina, the Real Estate Settlement Procedures Act, the Federal Debt Collection Practices Act, the North Carolina Mortgage Servicing Act, any other applicable standing or administrative orders of the Court, or any other applicable non-bankruptcy law or rule. To the extent that any prior Orders or Decisions of this Court are specifically and directly inconsistent with the terms and conditions of this Order, then such Orders or Decisions are hereby deemed overruled.

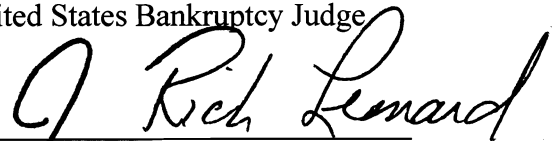
**9. Effective Date:**

This Administrative Order is effective for all Chapter 13 cases filed on or after January 1, 2010.

SO ORDERED, this 5<sup>th</sup> day of November, 2009.



Randy D. Doub, Chief Judge  
United States Bankruptcy Judge



J. Rich Leonard, Judge  
United States Bankruptcy Judge