

North Carolina Federal Court Rules

Local Bankruptcy Rules of the United States Bankruptcy Court for the Western District of North Carolina

Administrative Orders

U.S.Bankr.Ct.Rules W.D.N.C., Order 739

Administrative Order 739. In re: Procedures in Aid of the Administration of Chapter 13 Plans^{*}

Currentness

ESTABLISHING PROCEDURE FOR THE DISBURSEMENT OF POSTPETITION
CONDUIT MORTGAGE PAYMENTS TO BE EFFECTIVE JULY 1, 2009

The Court has considered this matter and it appears that a standard procedure for the disbursement of regular, conduit mortgage payments to those creditors whose claims are secured by a mortgage, deed of trust, or other consensual lien on the principal residence of a Chapter 13 Debtor should be adopted at this time and should apply to all Chapter 13 cases filed or converted to a Chapter 13 case from another chapter in the Western District of North Carolina on or after July 1, 2009; 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 case file date.
- b. "Administrative Arrearage" is the total amount of two full post-petition mortgage payments (plus the applicable late charges, if any) computed at the pre-petition mortgage payment amount.
- 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 the Debtor to the 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, a loan upon which the final contractual payment shall become due before the stated completion date for the Chapter 13 plan, or a loan that is classified as a home equity line of credit with variable monthly payments of principal and interest.
- h. "Post-Petition Claim Payments" shall mean those monthly payments disbursed by the Bankruptcy Trustee on claims of the Real Property Creditor that have been added to the case post-confirmation or pursuant to Orders entered by the Bankruptcy Court that modify the monthly payment.
- i. "Real Property Creditor" is the entity holding or owning an allowed secured claim by virtue of a mortgage, note, deed of trust or other consensual lien on the real property that is the principal residence of the Debtor.

2. Disbursement of Required Conduit Payments.

a. 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 unless the Debtor files a motion to be excused from making such Conduit Payments. The procedures for filing such a motion are set forth in Section 3(a). The first such Conduit Payment and the first full regular plan payment must be made within fifteen (15) days after the petition date and the second Conduit Payment and the second full regular plan payment must be made within forty-five (45) days after the petition date.

b. Any order excusing the Debtor from making Conduit Payments (as allowed in Section 3(a) of this Order) may be deemed revoked if the Debtor subsequently files a post-confirmation motion to modify the plan by adding to the plan any Mortgage Payment to the Real Property Creditor, or if the Real Property Creditor files an amended proof of claim that includes any Mortgage Payment, or if a motion for relief from stay based in part on a default in post-confirmation Mortgage Payments is resolved by an order that preserves the residential real estate for the Debtor and the estate and conditionally maintains the automatic stay.

3. Duties of the Debtor.

a. The Debtor may be excused from complying with any of the provisions of this order only upon the showing of good cause and extraordinary circumstances sufficient to warrant such an exception, and the entry of an order of the Court allowing the same. The burden of proof shall be on the Debtor to establish such good cause. The Debtor must file a motion and notice of hearing, with service on all parties in interest, within five (5) days after the petition is filed. The 341(a) meeting of creditors shall be continued if an Order allowing or disallowing the motion has not been entered by the first scheduled 341 meeting date. The additional cost associated with the Bankruptcy Trustee's statutory commission charged for disbursing the Conduit Payments shall not, by itself, constitute good and sufficient cause or extraordinary circumstances for seeking an exception from the mandatory mortgage payment rules.

b. The Debtor must complete a Local Form 13--"Authorization to Release Information to the Trustee Regarding Mortgage Claim Being Paid by the Trustee" for each Real Property Creditor's claim for which the Conduit Payments are to be disbursed by the Bankruptcy Trustee as provided for herein, and must file such document with the Court together with the Schedules and Statements.

c. 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-confirmation 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 file notice of any required plan payment increase with the Court and serve a copy of such notice on the Debtor and the attorney for the Debtor.

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 Section 1(b) of this Order for each Real Property Creditor for which he shall disburse Conduit Payments. The Administrative Arrearage claim shall bear interest at the contract rate as it existed as of the case file date, and shall be paid on a pro-rata basis with non-conduit secured claims.

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.

c. Should any required increase in a Conduit Payment affect the feasibility of the confirmed plan, then the Bankruptcy Trustee may file a motion to amend the plan or seek the conversion or dismissal of the Debtor's case, whichever is deemed appropriate.

In the alternative, the Bankruptcy Trustee is authorized to increase the monthly plan payment to cover any increase in the Conduit Payment.

d. Unless otherwise ordered by the Court, should the Debtor 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 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 such monthly disbursements on their claims.

e. The Bankruptcy Trustee shall have at least 30 days following the effective date of the formal transfer of a real property creditor's claim(s), such transfer of claim being made either pursuant to [Federal Rule of Bankruptcy Procedure 3001\(e\)\(2\)](#) or by the filing of a notice of consent to transfer, to begin making disbursements to the new, substituted claimant of record.

f. The Bankruptcy Trustee shall provide the Debtor, the attorney for the Debtor, the Real Property Creditor and its attorney of record, if any, with a notice of completion of Conduit Payments under the plan.

5. Duties of the Real Property Creditor.

a. The Real Property Creditor shall file a proof of claim to which it shall attach a fully executed Local Form 14--“Addendum to Chapter 13 Proof of Claim for Real Property Creditor”. The proof of claim must clearly separate the pre-petition arrearage from the Administrative Arrearage with applicable late charges, if any.

b. Unless otherwise ordered by the Court, the Real Property Creditor shall file with the Court and serve on the Debtor and the attorney for the Debtor a copy of Local Form 15--“Notice of Payment and/or Escrow Change; Notice of Cost Advance” at least thirty (30) days prior to the effective date of any resulting change in the Conduit Payment amount.

c. At least thirty (30) days prior to the effective date of any change in the name of the Real Property Creditor or the servicer and/or the Real Property Creditor's disbursement mailing address, the Real Property Creditor or the servicer shall file with the Court as required by Local Rule 2002-1(b) a fully-executed Local Form 12 or an amended proof of claim setting forth the requested changes and attaching Local Form 14.

d. If the Real Property Creditor or the servicer is entitled to advance or incur expenses for legal fees or other services in connection with the servicing of the note or mortgage/deed of trust, it shall file with the Court and serve on the Debtor and the attorney for the Debtor a fully-executed Local Bankruptcy Form 15--“Notice of Payment and/or Escrow Change; Notice of Cost Advance” (or reasonably equivalent notice) within thirty (30) days after the advance or expense was incurred.

e. 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 [11 U.S.C. § 524\(i\)](#).

6. Effect of Plan Completion.

a. *For Conduit Payments.* If the Debtor's plan pays all the required Conduit Payments, Pre-Petition Arrearage, and other mortgage-related claims, as specified in the 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.

b. 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 no-protest notice and a motion seeking an order of the Court that the mortgage(s) are deemed current. Any affected party shall have 35 days to respond to such motion and to request a hearing on the same.

c. *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 may file a no-protest notice and a motion seeking an order of the court determining that all pre-petition and post-petition defaults on the Debtor's residential mortgage debt are deemed cured and that all direct monthly Mortgage Payments made on such debt through the case completion date are current, with no arrearage, escrow balance, late charges, costs, expenses or attorneys' fees owing, except to the extent that the Court orders otherwise. The Debtor must verify in the motion that all such direct payments have in fact been made and may include any proof of such payments as the Debtor deems appropriate. Any affected party shall have 35 days to respond to such motion and to request a hearing on the same.

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 Western 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 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.

a. This Administrative Order is effective for all Chapter 13 cases filed on or after July 1, 2009, subject, however, to the Debtor's motion to modify for this treatment to apply to existing cases.

b. Sections 5, 6 and 7 of this Order shall apply to all pending cases as of the effective date of this Order.

Credits

[Effective July 1, 2009.]

* **Publisher's Note:** Administrative Order 739 has been amended by Administrative Order 749, effective March 1, 2010.

Current with amendments received through 6/1/2010

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