

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re: §
Chapter 13 Trustee Procedures for §
Administration of Home Mortgage §
Payments §

**Chapter 13 Trustee Procedures for
Administration of Home Mortgage Payments
Adopted by the Court on September 29, 2005
(Last Amended January 7, 2010)**

The debtor's plan payments to the chapter 13 trustee must include the amount due on the debtor's regular monthly mortgage installments for a claim secured by a security interest in real property that is the debtor's principal residence pursuant to the terms of 11 U.S.C. § 1322(b)(5)¹ ("the ongoing mortgage") unless there is no default on the mortgage as of the petition date, the date of plan confirmation and the date of the filing of a plan modification. If there is no default on the mortgage, the plan may include the ongoing mortgage payment.

The following requirements will apply to all cases in which the Chapter 13 Plan provides for payment of the ongoing mortgage:

1. Not later than 3 business days following the date a case is filed, the debtor shall provide the trustee with the following information concerning all claims to which these procedures apply:

- (a) The complete name and payment address of the creditor.
- (b) The account number assigned to the claim.
- (c) The exact amount of the contractual installment payment and the date each payment is due.
- (d) A telephone number for the creditor.
- (e) A copy of the current payment coupon.

2. The debtor shall make payments to the trustee with the payments to be received by the trustee by a date that complies with the provisions of the security agreement concerning payment due dates. The trustee is not required to disburse funds to a claimant unless the trustee is satisfied that the payment received by the trustee from the debtor will not be dishonored by the financial institution upon which it is drawn.

¹ Hereafter, all statutory references are to sections of Title 11, United States Code.

3. Subject to these procedures, the trustee is authorized to disburse funds in payment of all regular contractual installment payments and other charges arising pursuant to the claim of a creditor that become due following the commencement of a case pursuant to the terms of the note and security agreement applicable to the claim. Disbursements should commence as soon as is practicable. If the trustee has available funds, the initial disbursement should precede the hearing on plan confirmation.

4. If the holder of a claim proposes to adjust the amount of the regular contractual installment payment due to a change in the interest rate, or for an escrow for payment of insurance and taxes, the claimant shall file a notice in the form adopted by the Court and attached as Exhibit "A". The clerk will establish a CM/ECF Code entitled "Notice by Mortgage Holder of Adjusted Payment Amount" that should be utilized for the filing of the notice. The claimant is responsible for assuring that the notice is sent to debtor, debtor's counsel and the trustee. The debtor shall promptly provide the trustee with a copy of any notice of an "adjusted amount" that the debtor receives from a creditor while the case is pending.

5. No post petition adjustment to the contractual installment payments due on a claim dealt with pursuant to § 1322(b)(5) shall be valid unless authorized by the agreement upon which the claim is based, and unless notice of the proposed adjustment is filed not later than 45 days prior to the date the adjusted amount is due.

6. Upon receipt of a notice pursuant to the preceding paragraph, the trustee shall be authorized to disburse the adjusted amount, without seeking a formal modification of the plan.

7. . A party in interest may object to the proposed adjustment by filing an appropriate motion within 21 days from the date of the filing of the notice or proposed adjustment. Disbursements of the adjusted amount are subject to refund or disgorgement upon ruling by the Court.

8. If the disbursement of an "adjusted amount" causes the plan to fail to meet the minimum standards for confirmation described in § 1325, then the trustee or the debtor may seek a modification of the plan pursuant to § 1329, or file a motion to dismiss or convert the case.

9. A party in interest may seek a determination by the Court concerning the sufficiency of the payments made to a creditor pursuant to these provisions. Unless the Court determines otherwise, an order granting the debtor a discharge in this case shall serve as a conclusive determination that all defaults with respect to any secured claim dealt with in the plan pursuant to these provisions are "cured," and that all post-petition payments have been made in accordance with the confirmed plan, each as of the date of the final payment to the claimant by the trustee.

10. The chapter 13 trustee shall periodically, at least annually, file a report which sets forth the date and amount of each payment made by the trustee to a creditor whose claim is subject to these provisions. The report shall specify the period covered by the report, and identify the months for which each contractual payment is applied according to the records of the trustee. The report shall be served on the debtor, debtor's counsel and each creditor holding a claim described on the report. If a creditor seeks to make a claim against the estate or the debtor that arose within the period covered by the report (i.e. a claim for late charges or attorneys fees or any other charge authorized by the agreement with the debtor), such claim will be barred unless it is (i) filed within 60 days after receipt of this report; and (ii) is allowed pursuant to the terms of the confirmed plan.

11. Amounts received by the holder of the ongoing mortgage prior to confirmation must be applied by the holder to the next payment due without penalty under the terms of the note; or the holder must notify the trustee in writing that it waives all late charges that accrue after the order for relief in this case. Amounts received by the holder of the ongoing mortgage after confirmation must be applied in accordance with the plan.

12. These procedures may be varied in a particular case only by order of the Court.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
_____ DIVISION**

In re: §
John Doe, § **Case 10-99999**
Debtor. §

**UNLESS AN OBJECTION IS FILED IN WRITING WITH THE CLERK OF THE COURT
WITHIN 21 DAYS OF THE DATE ON WHICH THIS DOCUMENT WAS FILED AND SERVED,
THE CHANGE PROPOSED IN THIS NOTICE WILL BECOME EFFECTIVE WITHOUT A HEARING
AND WITHOUT FURTHER NOTICE. THE MONTHLY PAYMENT TO THE CHAPTER 13 TRUSTEE
WILL BE ADJUSTED TO ACCOUNT FOR THE CHANGE CONTAINED IN THIS NOTICE.**

**Notice to Debtor, Trustee and Debtor's Counsel
Of Mortgage Payment Adjustment**

Creditor Name: _____

This is a notice of mortgage payment adjustment in a Chapter 13 proceeding. **If this notice becomes effective, the new monthly payment to be made to creditor by the chapter 13 trustee, including principal, interest and escrow will be \$ _____, effective on _____.** This new amount results from:

[] Escrow Adjustment

Required. An escrow analysis is attached. The analysis states all costs to be escrowed, escrow period, and escrow calculation. No codes are used. The escrow analysis should not attempt to recover any pre-petition shortages.

The Effective Date of the payment adjustment is: _____

The Effective Date must be at least 45 days after the date of this notice.

Monthly escrow payments after the Effective Date are: \$ _____

This adjustment does not adjust principal and interest of the mortgage payment. The adjusted total mortgage payment at the Effective Date will be the current principal and interest amount plus the monthly escrow payment above.

[] Interest Rate Change

Required. An analysis showing the basis for the adjustment is attached. The analysis includes a description of any rate setting formula, a calculation of the new rate and the corresponding new payment amount.

The Effective Date of the payment adjustment is: _____

Note: The Effective Date must be at least 45 days after the date of this notice.

Monthly principal and interest payments after adjustment are: \$ _____

This adjustment does not adjust the escrow portion, if any, of the mortgage payment. The adjusted total mortgage payment at the Effective Date will be the above principal and interest amount plus the existing escrow payment amount.

The next projected interest rate adjustment will be in approximately __ months.

Date

Signature and Title
As agent for the above named creditors

Certificate of Service:

I certify that the foregoing notice has been served electronically on Debtor's counsel and the Chapter 13 Trustee, and has been mailed to Debtor at the following address:

Signed: _____ Title: _____ Date: _____
Direct Telephone No. _____ Mail, fax or email address: _____