

**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**

The debtor's plan payments to the chapter 13 trustee shall 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. The following requirements will apply to all cases in which the Chapter 13 Plan deals with an arrearage:

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.

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

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

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 give written notice of the “adjusted amount” to the 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 served on the debtor, debtor’s attorney, and the chapter 13 trustee, 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 either object to the claim, or disburse the adjusted amount, without seeking a formal modification of the plan.

7. Upon receipt of a notice of an “adjusted amount”, the trustee shall file with the Court, a notice of disbursement of the “adjusted amount”, and shall serve the notice on the debtor and the debtor’s attorney. The debtor shall have 20 days from the date of service of such notice to file an appropriate motion seeking Court review of the proposed adjustment. Disbursements of the adjusted amount are subject to refund/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. Prior to the completion of the case, 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, pursuant to an appropriate motion or other pleading, an order granting the debtor a discharge in this case shall serve as a conclusive determination that all defaults with respect to any claim dealt with in the plan pursuant to these provisions are “cured,” within the meaning of § 1322(b)(5), 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.