

VBA BANKRUPTCY LAW SECTION
BENCH-BAR BROWN BAG LUNCH MEETING
with Hon. Colleen A. Brown, U.S. Bankruptcy Judge

United States Bankruptcy Court, Rutland ~ Friday, August 25, 2017 from 12:00 to 1:00 PM

Dial-in number: (888) 398-2342, Access Code: 846 68 72#
If you dial into the meeting, please use your "Mute" function, unless speaking

**SPECIAL BB MEETING TO ADDRESS PROPOSED CHANGES TO LRS RE CMP, CH 13 PLAN AND MEDIATION
AND TRUSTEE'S PROPOSALS FOR CHANGES TO CH 13 PROCEDURES**

AGENDA

1. STATUS OF LOCAL RULES REVISIONS Judge Brown & Tavian Mayer
 • Summary of all proposed local rule changes attached (Att # 1)
 ○ 30-day comment period will be ~10/5/17 – 11/6/17; effective date projected to be 12/1/17
2. PROPOSED NEW CMP / CH 13 PLAN RULE & PROPOSED CH 13 CONFIRMATION ORDER Judge Brown & Jan Sensenich
 • Summary of changes, proposed new documents and redline versions attached (Att # 2, 3)
3. PROPOSED NEW MEDIATION RULE & PROPOSED NEW MEDIATOR'S REPORT FORM Judge Brown & Tavian Mayer
 • Summary of changes, proposed new documents and redline versions attached (Att # 4, 5)
 • Will continue to remain in synch with state's mortgage mediation process.
 • Mediator's Rept can be interim or final; includes a request for continuance of sts hrg, when needed
 ○ Q: Are attys comfortable delegating responsibility for request to mediator?
4. PRESUMED REASONABLE FEES Heather Cooper
 • Possible adjustment of PRF for Ch 13 cases – discussion invited
5. PROPOSED CHANGES TO END OF CASE PROCESSING IN CH 13 CASES Judge Brown & Jan Sensenich
 • T will file a certificate of plan completion in every case, promptly after the D has made the final payment due under plan (new CM/ECF event for this already in use).
 • T will file the TFR as soon as is practicable after D makes the final plan pmt (typically within 60 days), and if D atty wants to have the case kept open thereafter, D (and any party joining the request for that relief) needs to file a motion or stipulation to delay case closing.
 • Discharge will enter promptly after the "§ 1328(h) Findings", *even if TFR not yet filed*.
6. PROPOSED PROCEDURE ALLOWING DEBTOR TO APPLY SURPLUS CMP FUNDS TO CURE PLAN PMT ARREARS, UPON STIPULATION OF DEBTOR & TRUSTEE Judge Brown & Jan Sensenich
 • CMP surplus would only be available if mtge pmt decreases during case and could only be used to cure plan pmt arrears on stip with T and entry of Order (Att # 6)
 • This approach relieves D of obligation to file a MTM and likely reduction of div to GUS caused by add'l atty fees
7. DELAYING DISBURSEMENT OF CMP MTGE PMTS UNTIL AFTER C FILES A POC Jan Sensenich
 • Trustee's proposal attached (Att # 7)
8. INTRODUCTION OF ERIC CONNON – new term law clerk who started August 21 Judge Brown
9. CLERK'S OFFICE ANNOUNCEMENT; CHANGES IN RUTLAND MOTION CALENDARS Jody Kennedy
 • Sept motion calendar will be **9/15** (not 9/8), Oct motion calendar will be **10/13** (not 10/6)

*These Bench-Bar brown bag lunch meetings are coordinated by the Bankruptcy Court
For information about them, contact Maria Dionne @ 802-657-6432 or maria_dionne@vtb.uscourts.gov.
No fee and no pre-registration required. Bottled water will be provided.*

Summary of 2017 Revisions to Vermont's Local Bankruptcy Rules¹

as of 8/18/17

I. OVERALL / GLOBAL CHANGES

- Models the Federal Bankruptcy Code and Rules for grammar, style, and capitalization
- Replaces passive voice with active voice whenever practicable
- Inserts gender neutral language
- Increases clarity and consistency of citations to the local and federal statutes, rules, etc.
- Clarifies certain references used consistently throughout the Local Rules (e.g., CM/ECF, master mailing list, first-class mail, first meeting of creditors)
- Updates references and cross references to Bankruptcy Code & Rules and Local Rules, as needed
- Updates references to local and federal forms, as needed
- Changes references to parts of the Local Rules to be paragraphs and sub-paragraphs rather than to sections and sub-sections
- Clarifies the distinction between filing (which makes something part of the record) and submitting (which does not)
- Makes the most comprehensive substantive changes to LR 3015 (re the chapter 13 plan, use of the mandatory model plan, and the CMP process) and LR 4007 (re the mortgage mediation process)

II. REVISIONS TO PARTICULAR RULES

PART I – Commencement of Case, Proceedings Relating to Petition and Order for Relief

1002-1. PETITION – GENERALLY

- Deletes subparagraph (b), “Original Petition and Schedules to be Brought to §341 meeting”
- Clarifies differences between email and CM/ECF filings as well as non-electronic filings
- Clarifies subparagraph (d) “Corporate Resolution/LLC Authority”

1006-1. FEES – RESTRICTIONS ON DEBTORS; INSTALLMENT PAYMENTS; WAIVER OF FILING FEE

- Specifies the methods available to debtors for paying the petition filing fee

1007-1. LISTS, SCHEDULES, STATEMENTS, & OTHER DOCUMENTS; TIME LIMITS

- Specifies the information a debtor must provide when disclosing assets
- Clarifies the purpose of Form 121 and why it must be submitted rather than filed
- Clarifies that a trustee needs no further authorization/order to modify wage withholding/ACH to comport with an approved plan amendment

1007-2. DISMISSAL FOR FAILURE TO FILE REQUISITE DOCUMENTS - **DELETED**

1007-3. MAILING LIST

- Consistently uses the term “master mailing list” as a global reference to what was often formerly known as the “mailing matrix” and deleted all references to mailing matrix

1007-4. OTHER DOCUMENTS REQUIRED - **DELETED**

¹ This summary only addresses rules that had significant substantive changes; it does not include changes that were substantively *de minimus* or only of a grammatical or stylistic nature.

1009-1. AMENDMENTS TO LISTS AND SCHEDULES

- Deletes references to the procedures explained following the 2015 revisions

1072-1. LOCATION OF COURT HEARINGS AND WHERE TO FILE DOCUMENTS

- Updates the e-mail and physical addresses to which non-electric filings must be delivered

1074-1. CORPORATIONS - **DELETED**

PART II – Officers and Administration; Notices; Meetings; Examinations; Elections, Attorneys and Accountants

2002-1. NOTICE TO CREDITORS AND PARTIES IN INTEREST

- Adds chapter 12 to the types of cases in which the Clerk must give notice of the time fixed for objecting to a plan and the debtor’s attorney must give notice of the time to object to an amended or modified plan
- Explains that a chapter 13 debtor seeking determination of an allowed amount of secured claim must now do so in the plan (on new, mandatory Official Form 113)

2002-2. NOTICE TO UNITED STATES OR A FEDERAL AGENCY - **DELETED**

2003-2. CREDITORS’ COMMITTEE DUTY TO PROVIDE INFORMATION IN CHAPTER 11

- Removes the list of duties of a creditor’s committee; formerly (a)-(d)

2014-1. EMPLOYMENT OF PROFESSIONALS

- Specifies types of “professionals” who can be retained in a bankruptcy case

2015-2. DEBTOR-IN-POSSESSION – CHAPTER 13 BUSINESS DEBTORS’ OPERATING ORDERS

- Simplifies the explanation of a debtor in possession’s duty to file operating reports
- Sets forth the trustee and/or interested parties’ duty to file a proposed order (and the contents thereof) if seeking an order directing a debtor to file operating reports

PART III – Claims and Distribution to Creditors and Equity Interest Holders; Plans

3007-1. CLAIMS – OBJECTIONS

- Clarifies that each claim objection must include the proof of claim to which it objects
- Deletes explanation of distinction between chapter 12 and 13 objections

3008-1. CLAIMS – RECONSIDERATION - **DELETED**

3012-1. VALUATION OF COLLATERAL, ALLOWANCE OF SECURED CLAIMS, AND ESTABLISHMENT OF INTEREST RATE ON CHAPTER 12 AND 13 CASES

- Makes clear that a creditor’s proof of claim controls for purposes of establishing secured claims and interest required to be paid on that claim, with two exceptions
- Explains the process and requirements for having a secured claim allowed in a different amount or with a different interest rate—individually describing the process and requirements in a chapter 13 plan, chapter 13 motion, and chapter 12 motion

3013-1. MOTION TO STRIP LIEN OR MORTGAGE THAT IS WHOLLY UNSECURED IN CHAPTER 12 AND 13

- Expanded to cover chapter 12 cases
- Requires chapter 13 debtors who seek to strip a wholly unsecured lien or mortgage under §506 to do so in plan (Official Form 113)
- Specifies the additional documents and information a debtor must attach to the plan, to obtain this relief
- Requires a debtor to file a proposed order stripping a lien/mortgage, notwithstanding the granting of this relief in the confirmation order

RULE 3015 – OVERALL CHANGES

- New numbering and headings:
 - 3015-1: Plan Requirements in Chapter 13
 - 3015-2: Timing and Location of Confirmation Hearings in Chapter 13
 - 3015-3: Objections to Confirmation in Chapter 13
 - 3015-4: Additional Separate Orders Required for Embedded Motions in Chapter 13
 - 3015-5: Confirmation Orders in Chapter 13
 - 3015-6: Conduit Mortgage Payment Plans in Chapter 13
 - 3015-7: Confirmation Hearings in Chapters 12 and 13
 - 3015-8: Motions to Modify Confirmed Chapter 12 and 13 Plans
- Deleted previous Vt. LBR 3015-2(j)(7)&(8) – “Post-Petition Changes and Additional Charges” and “Motions Relating to Claims Secured by a Security Interest in the Debtor’s Principal Residence, Upon Completion of Chapter 13 Payments.”

3015-1. PLAN REQUIREMENTS IN CHAPTER 13

- Makes clear all chapter 13 plans must now be filed on Official Form 113; deletes all explanatory detail re format and content of plan
- Defines “embedded motions” and instructs debtor to fill out applicable parts of plan
- Makes minimum monthly plan payment and sale plans two separate sections; retains sale plan info
- Sections discussing payment of secured claims, bifurcation of claims, and payment of short-term secured debts deleted (previously Vt. LBR 3015-1(f)-(h))
- Mandatory fee disclosure (previously Vt. LBR 3015-1(a)) now moved down to 3015-1(f) and shortened with a cite to Vt. LBR 2016-2
- Adds new section regarding service of plans (Vt. LBR 3015-1(g))

3015-3. OBJECTIONS TO CONFIRMATION IN CHAPTER 13

- Adds provision for timely objection to amended plans

3015-4. ADDITIONAL SEPARATE ORDERS REQUIRED FOR EMBEDDED MOTIONS IN CHAPTER 13

- Describes new procedure requiring separate proposed order for embedded motions

3015-5. CONFIRMATION ORDERS IN CHAPTER 13

- Previously Vt. LBR 3015-2(h); deletes reference to what trustee must do (since he files proposed confirmation order) and describes what confirmation order (what court issues) includes

3015-6. CONDUIT MORTGAGE PAYMENT PLANS IN CHAPTER 13 [*Previously Vt. LBR 3015-2(j)*]

- Post-petition mortgage payments section [*previously Vt. LBR 3015-2(j)(3)*] dramatically simplified into 2 short paragraphs: when debtor is not delinquent and when the debtor is delinquent
- Duties of debtor [*previously Vt. LBR 3015-2(j)(4), now Vt. LBR 3015-6(c)*]:

- Now specifies only 4 duties: (1) file ww authorization form, (2) promptly modify amount of plan payments when there is a change in amount, (3) promptly object to creditor's POC when there is cause, and (4) immediately file and serve on trustee copy of TPP
- Deletes 4 duties previously listed: (i) to specify CMP terms in plan, (ii) to provide trustee and creditor with Y forms, (iii) to make timely first payment, (iv) to make sufficient plan payments, and also deletes the penalty for a debtor's failure to comply with requirements
- Duties of trustee and creditor likewise shortened and simplified
- Deleted creditor's duty to file POC as soon as practicable [*previously Vt. LBR 3015-2(j)(6)(A)*], duty to disgorge [*previously 3015-2(j)(6)(B)*], and duty to attach information to MFRFS [*previously Vt. LBR 3015-2(j)(6)(G)*].

3015-7. CONFIRMATION HEARINGS IN CHAPTERS 12 AND 13 [*Previously Vt. LBR 3015-2(e)-(g)*]

- Now applies to chapter 12 as well (previously, no rule for ch 12 confirmation hearings)

3015-8. MOTIONS TO MODIFY CONFIRMED CHAPTER 12 AND 13 PLANS [*Previously Vt. LBR 3015-4*]

- Two additional requirements for motion to modify: must explain why plan needs to be modified and factors that show modified plan meets requirements of Bk Code
- Requirement to use local form for proposed order and specification that if modifying chapter 13 plan, must be on Official Form 113
- Now applies to chapter 12 as well (previously, no rule for ch 12 MTM)

3016-1. CHAPTER 11 SMALL BUSINESS CASES PLAN - **DELETED**

3070-1. PLAN PAYMENTS IN CHAPTER 13

- Adds requirement that debtor specify form of automatic payment (ACH or WW) in the plan
- Deletes (c) "Chapter 13 Trustee's Percentage Fee upon Dismissal or Conversion"

3071-1. SECURED CREDITORS' OBLIGATION TO PROVIDE ACCOUNT INFORMATION AND STATEMENTS TO DEBTORS POST-PETITION

- Mortgage creditors monthly statements no longer optional- must to be sent monthly to all chapter 12 and 13 debtors; deletes (j) "Optional Monthly Statements from Non-Mortgage Creditors"

PART IV– The Debtor: Duties and Benefits

4001-1. AUTOMATIC STAY – RELIEF FROM AUTOMATIC STAY.

- Allows chapter 13 debtor to file motion for relief from stay as embedded motion in plan
- Reduces from 10 to 7 days the time a secured creditor must refrain from filing a relief of stay motion following a default
- Allows a printout of payments made on the trustee's website to replace a secured creditor's affidavit of payments alleged to be in default

4001-5. OBTAINING CREDIT

- Increases the borrowing limit for a motor vehicle from \$15,000 to \$18,000
- Increases borrowing limit for extraordinary health/general welfare expense from \$5,000 to \$7,000

4001-7. MORTGAGE MEDIATION PROGRAM

- Makes clear mortgage mediation is available up through the date of the debtor's discharge and adds requirement that mediation is available if it would be available in state court

- Explains required contents for motion for mediation and any objections, and requires further specifications when the U.S. is mortgage holder
- Combines into one list all situations in which mediation will not be granted (unless the creditor consents)
- Provides general rule conferring broad discretion to mediators in mediation process
- Shortens section discussing time frame for mediation process significantly; all references to any internal court timelines (e.g., when Clerk would enter a mediation order or send list of mediators to parties) deleted; requires mediator to file interim or final report based upon results of mediation; new language now included in draft proposed order for mortgage mediation
- Adds provision requiring moving party to forward mediator copy of motion for mediation, all documents in support of that motion, and the promissory note and mortgage that are the subject of the mediation
- Deleted list of specific documents that were required; rule now requires debtor to produce all documents the creditor reasonably requests and provide copies to mediator
- Deleted list of scenarios that constitute cause to change amount or allocation of mediation fee
- Deleted language already included in proposed order for motion to declare mediation closed
- Simplified the directions for service

4002-1. DEBTOR’S DUTIES – GENERALLY

- Simplifies debtor’s duties re the certificate from nonprofit budget and credit counseling agency
- Clarifies the duty to file, content, and format of chapter 11 monthly operating reports

4002-3. DEBTOR’S DUTIES – CONSEQUENCE OF FAILURE TO FILE REQUISITE DOCUMENTS - **DELETED**

4003-2. AVOIDING JUDICIAL LIENS THAT IMPAIR AN EXEMPTION

- Deletes reference to chapter 13 because all motions in chapter 13 are now embedded in national plan form

4004-2. DISCHARGES

- Explains requirement to file Form 423 in every individual chapter 7, 11, and 13 case, unless the financial management course directly filed certificate of completion
- Deleted (a)(3), “Motion to Reopen Case to Enlarge Time for Filing of Official Form 423 and Enter Discharge”
- Deleted (a)(4), “Waiver of Requirement to File Official Form 423”
- Deleted (f), “Sua Sponte Denial of Discharge”

PART V– Courts and Clerk

5001-3. CLERK – PUBLIC ACCESS TO RECORDS

- Deletes (b), “Request for Limiting Access to Sensitive Information”

5003-4. REQUIREMENTS FOR FILING AND SEALING DOCUMENTS

- Adds provision that the movant must serve the US trustee and removes reference to Local Appendix V

5005-1. FILING DOCUMENTS – FORMAT REQUIREMENTS

- Requires electronically filed documents to be in PDF format and searchable whenever possible

5073-1. Devices Prohibited in Courthouse and Broadcasting by the Court

- Changed title to reflect ‘devices’ to include all things one can use in today’s day to record and/or photograph while in court

5081-1. FEES – FORM OF PAYMENT

- Includes pay.gov as an acceptable form of payment and deletes specific listing of credit cards

PART VI – Collection and Liquidation of the Estate

6003-1. FIRST DAY MOTIONS

- Requires debtor to label to label first day motions as emergency motions and contact courtroom deputy to set hearing date if seeking to have hearings held on shortened notice

PART IX – General Provisions

9001-1. DEFINITIONS - **DELETED**

9003-1. *EX PARTE* CONTACT

- Adds estate accountants, debtors, creditors, trustees to the list of those barred from ex parte communications with the Bankruptcy Court

9011-1. ATTORNEYS – DUTIES AND RETENTION OF DOCUMENTS

- Deleted provision that Clerk will retain petitions, statements, and schedules filed by non-electronically
- Moved provisions re unauthorized use of passwords and electronic signatures to 9011-4

9013-5. MEMORANDA OF LAW

- Deleted (b), “Motions Not Requiring Memoranda of Law”

9013-6. SERVICE AND FILING OF CERTIFICATES OF SERVICE.

- Clarifies that a movant must file a notice of motion either before or with the motion and file a certificate of service affirming service of both
- Explains that a movant may attach the certificate of service to the motion or file it separately, and directs that if the certificate of service is filed separately, the movant must either link the certificate of service to the document, or identify the document served and attach a copy

9015-1. JURY TRIALS - **DELETED**

9016-1. SUBPOENAS AND RULE 9014(e) NOTICES OF EVIDENTIARY HEARINGS – **DELETED**

9072-1. ORDERS – PROPOSED.

- Deleted (d), “Settled Orders”

9076-1. STATUS CONFERENCES AND CASE MANAGEMENT CONFERENCES

- Makes clear that the Court may hold a status or case management conference at any time

SUMMARY OF CHANGES TO VT. LBR 3015
AS OF 8.18.17

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Attachments:

1. Clean copy of proposed *Vt. LBR 3015-1 to 3015-8*
2. Redline copy proposed *Vt. LBR 3015-1 to 3015-8*

Vt. LBR 3015-1. PLAN REQUIREMENTS IN CHAPTER 13.

- (a) **Required Form.** All chapter 13 plans must be filed on Official Form 113. Whenever these Rules discuss a chapter 13 plan or specify a “part” of a plan they are referring to Official Form 113.
- (b) **Embedded Motions.**
- (1) Debtors seeking to
 - (A) avoid judicial liens or nonpossessory, nonpurchase money security interests that impair their exemption under § 522 of the Code,
 - (B) determine the value of collateral and fix the amount of the creditor’s claim secured by that collateral,
 - (C) strip one or more liens on their property, or
 - (D) surrender collateral and terminate the automatic stay against that collateralmust check the applicable box in Part 1 of the plan and complete the relevant sections in Part 3 of the plan, *i.e.*, on Official Form 113. These requests for relief are referred to in these Rules as “embedded motions.”
 - (2) Additionally, to obtain relief for any of these embedded motions, debtors must file the plan in CM/ECF a second time, in lieu of filing a separate motion for the specific relief, and attach a notice of motion (specifying the page and part of the plan requesting the relief), certificate of service, and proposed order for that specific relief. See Fed. R. Bankr. P. 7004.
 - (3) The hearing date for an embedded motion must either precede or coincide with the hearing date for confirmation of the plan.
- (c) **Minimum Monthly Payments.** Unless the Court orders otherwise for good cause shown, the minimum monthly plan payment is \$50.
- (d) **Sale Plans.** A plan that is funded in part from the sale of property is called a “sale plan.” Sale plans must (1) provide that the sale will close within 1 year of confirmation of the plan, unless the Court approves a later closing date, and (2) specify details of the sale in Part 2.4 of the plan. When the debtor has a fully executed contract of sale, the debtor must file a separate motion to approve the sale and then file a report of sale within 14 days of closing.
- (e) **Treatment of Pre-Petition Claims.** All allowed pre-petition claims must be paid through the plan, regardless of a creditor’s preference or the dischargeability of the debt.
- (f) **Disclosure and Payment of Attorney’s Fees.** All unpaid pre-petition debtor’s attorney’s fees must be paid through the plan. All post-petition debtor’s attorney’s fees must be approved by the Court and paid through the plan. See Vt. LBR 2016-2.
- (g) **Service of Plans.** The Clerk will serve all plans via CM/ECF or first class mail. The debtor is responsible for any elevated service required under the Federal Rules of Bankruptcy Procedure for the relief sought in embedded motions.
- (h) **Amended Plans.** The debtor may file an amended plan, along with all necessary amended schedules supporting it, no later than 7 days prior to the confirmation hearing date. The debtor

must serve the amended plan on all parties whose treatment is diminished from the treatment set forth in the original plan.

- (i) **Motion to Enlarge Time to File Plan.** If a debtor files a motion to enlarge the time to file the plan and seeks to file the plan fewer than 7 days before the date set for the initial meeting of creditors, the debtor must obtain the trustee's consent.

VT. LBR 3015-2. TIMING AND LOCATION OF CONFIRMATION HEARINGS IN CHAPTER 13.

- (a) **The Court's § 1324(b) Determination is a Rebuttable Presumption.** Based on the geography of Vermont, the travel distances between some towns and the federal courthouses within the state, the success of the prior practice of holding the initial meetings of creditors and confirmation hearings on the same day, and the adverse economic impact that would result otherwise, the Court determines it is in the best interest of all parties to continue the practice of holding meetings of creditors on the same day, and at the same location, as confirmation hearings in chapter 13 cases. This determination is a rebuttable presumption that any party can challenge by written objection on 14 days' notice to all parties in interest.

VT. LBR 3015-3. OBJECTIONS TO CONFIRMATION IN CHAPTER 13.

- (a) **Creditor's Duty to Review and Opportunity to Object to Plans.** Creditors must promptly review all plans and amended plans and present any objections in a timely manner.
- (b) **Timely Objections.** Parties are encouraged to file written objections to the confirmation of a chapter 13 plan at least 7 days before the date set for the initial confirmation hearing, and by 10 am the day before the hearing with respect to amended plans. All objections, whether written or not, must be made no later than the date set for the initial confirmation hearing, unless (1) the trustee and debtor consent to a later objection deadline, or (2) the objecting party shows both good cause for filing the objection at a later date and no party is prejudiced by that filing.

VT. LBR 3015-4. ADDITIONAL SEPARATE ORDERS REQUIRED FOR EMBEDDED MOTIONS IN CHAPTER 13.

The party who prevails on any embedded motion must file a proposed order granting that relief pursuant to Vt. LBR 3015-1(b)(2). The proposed order must make specific reference to the page and part of the plan where the relief was sought.

VT. LBR 3015-5. CONFIRMATION ORDERS IN CHAPTER 13.

Confirmation orders shall set forth the terms of the plan approved at the confirmation hearing, and may include minor adjustments and additions provided all affected parties consent to them. Confirmation orders for sale plans must identify the property to be sold (i.e., the physical address for real property, or vehicle identification number of the vehicle) and the deadline for completing the sale.

VT. LBR 3015-6. CONDUIT MORTGAGE PAYMENT PLANS IN CHAPTER 13.

- (a) **Definitions.** For purposes of this Rule, the following terms have the stated meanings:
 - (1) A "Conduit Mortgage Payment" is the Regular Monthly Mortgage Payment the debtor is obligated to pay to the mortgage creditor post-petition (as defined below), which the trustee disburses pursuant to the terms of this Rule.

- (2) A “Conduit Mortgage Payment Plan” is a plan which states in Part 3.1 of Official Form 113 that the trustee will make ongoing monthly mortgage payments on one or more mortgages.
- (3) The debtor is “Delinquent” when the debtor owes the Mortgage Creditor any past due payments or other charges as of the Filing Date. This term does not include a failure to make Regular monthly Mortgage Payments that came due after the Filing Date.
- (4) The “Filing Date” is the date the case was filed under or converted to chapter 13.
- (5) A “Mortgage Creditor” is an entity entitled to enforce an allowed claim secured by a properly perfected mortgage on the debtor’s residential real property, or the servicer for that entity, as determined by which entity files a proof of claim for the mortgage debt. Whenever this Rule refers to notice on the Mortgage Creditor, or requires the Mortgage Creditor to file a document, those references also include the Mortgage Creditor’s attorney.
- (6) The “Post-Petition Mortgage Arrearage” is the sum of past due Regular Monthly Mortgage Payments the debtor owes to a Mortgage Creditor that first came due after the Filing Date.
- (7) The “Pre-Petition Mortgage Arrearage” is the sum of regular monthly mortgage payments the debtor owes to a Mortgage Creditor that came due prior to the Filing Date without regard to any grace period that expires post-petition.
- (8) A “Regular Monthly Mortgage Payment” is:
 - (A) the sum of the principal, interest, taxes, insurance, administrative fees, and any other charges properly escrowed, charged, or assessed under a note and secured by a properly perfected mortgage on the debtor’s residential real property that is due each month; or
 - (B) a monthly amount of no less than the sum of the taxes, insurance, administrative fees, and anticipated interest and principal, that is proposed in conjunction with the debtor’s participation in this Court’s mortgage mediation program; provided that any plan proposing to use a regular monthly mortgage payment, defined under this Rule, may only be confirmed by the Court if:
 - (i) after notice and opportunity to object, the Mortgage Creditor does not object; and
 - (ii) the debtor’s plan provides that the debtor will promptly modify this figure to match the outcome of mortgage mediation if the mediation yields a different regular monthly mortgage payment.
- (9) A “Waiver Order” is a Court order that waives the requirement to make Conduit Mortgage Payments, which the debtor may obtain upon showing of cause based upon exigent circumstances.

(b) Post-Petition Mortgage Payments.

- (1) **When the Debtor is Not Delinquent.** A debtor who is not Delinquent is not required to make Conduit Mortgage Payments but may elect to do so.
- (2) **When the Debtor is Delinquent.** A debtor who is Delinquent is required to make Conduit Mortgage Payments unless the debtor obtains a Waiver Order.

(c) Duties of the Debtor. In Conduit Mortgage Payment cases, the debtor must:

- (1) file a wage withholding authorization, Vt. LB Form Y-8, within 14 days of the Filing Date, unless the Court grants the debtor’s motion for waiver of the wage withholding requirement;
- (2) promptly modify the amount of plan payments to comport with changes in the Monthly Mortgage Payment;

- (3) promptly object to the Mortgage Creditor's proof of claim if the debtor has cause to believe the figures or computations on the proof of claim are inaccurate; and
- (4) immediately file, and serve on the trustee, a copy of the acceptance of a trial payment plan ("TPP") so the trustee has the information he needs to disburse Conduit Mortgage Payments consistent with the terms of the TPP.

(d) **Duties of the Trustee.** In Conduit Mortgage Payment cases, the trustee must

- (1) disburse payments to the Mortgage Creditor by the earlier of 30 days after the Mortgage Creditor files a proof of claim or 30 days after confirmation of the plan;
- (2) promptly adjust the amount of the plan payment in his records when the Regular Monthly Mortgage Payment increases, either on stipulation of the debtor with Court order;
- (3) disburse only full payments to the Mortgage Creditor and immediately notify (by email) the debtor, the debtor's attorney, if any, and the Mortgage Creditor when there are insufficient funds to make full and timely payment;
- (4) include a statement on the voucher of each payment he sends to a Mortgage Creditor that specifies:
 - (A) the debtor's name, the case number, and the last four digits of the Mortgage Creditor's account number; and
 - (B) the amount allocable to the Conduit Mortgage Payment and the amount allocable to the Pre-Petition Mortgage Arrearage;
- (5) file and serve upon all parties in interest a notice of delinquency (specifying the due date, number of missed payments, and the amount needed to cure the plan payment default) within 14 days of the debtor's first instance of plan payment default;
- (6) file and serve upon all parties in interest a motion to dismiss the case if (A) the debtor does not cure the plan payment default or file a motion to modify the plan within 30 days of the trustee's notice of delinquency, (B) the debtor defaults on plan payments again, or (C) the trustee determines other grounds warrant dismissal of the case.

(e) **Duties of the Mortgage Creditor.** In Conduit Mortgage Payment cases, the Mortgage Creditor must

- (1) apply each Conduit Mortgage Payment disbursed by the trustee to the earliest outstanding post-petition payment due under the plan, as specified on the voucher narrative accompanying the payment,
- (2) forbear from assessing a late fee unless the tardiness of the payment was caused by the debtor's failure to make a full or timely plan payment to the trustee,
- (3) upon request, promptly provide an annual payment history to the trustee or debtor,
- (4) upon request, promptly provide to the trustee or debtor copies of all documents it has sent, and sends, to the debtor post-petition, including correspondence, statements, payment coupons, escrow notices, and default notices, and any other documents, which disclose changes in (A) the name or identity of the Mortgage Creditor, (B) the monthly payment amount, (C) the interest rate or escrow requirements, or (D) the address to which mortgage payments are to be sent.

(f) **Jurisdiction.** This Court retains jurisdiction over all orders entered pursuant to this Rule.

Vt. LBR 3015-7. CONFIRMATION HEARINGS IN CHAPTERS 12 AND 13.

(a) **Filings Considered.** The Court will not consider any document filed after 10:00 am on the last business day preceding the date of the confirmation hearing.

- (b) **Required Attendance.** Absent exigent circumstances and a prior Court order, the debtor and the debtor's attorney, if any, are required to attend the confirmation hearing. The debtor must be in the courtroom promptly at the commencement of the confirmation hearing. A debtor's failure to attend a confirmation hearing may result in dismissal of the case without further notice or hearing.
- (c) **Requests to Postpone the Initial Confirmation Hearing.** Any motion or stipulation to postpone an initial confirmation hearing, along with all necessary consents, must be filed at least 7 days prior to the initial confirmation hearing date. The motion must be served on all creditors. The initial confirmation hearing will proceed unless the Court enters an order granting the continuance and canceling the initial confirmation hearing.
- (d) **Requests to Postpone a Continued Confirmation Hearing.** Any motion or stipulation to postpone a continued confirmation hearing, along with any necessary consents, must be filed by 10:00 am on the last business day preceding the continued confirmation hearing date, and set forth good cause for the continuance. See Vt. LBR 9011-4(e) & (f); see also Vt. LBR 9013-1(f), (j).

Vt. LBR 3015-8. MOTIONS TO MODIFY CONFIRMED CHAPTER 12 AND 13 PLANS.

- (a) **Modification of a Confirmed Chapter 12 or 13 Plan.** A debtor, trustee, or holder of an allowed unsecured claim may file a motion to modify a confirmed plan any time before the completion of payments under the plan.
- (b) **Contents of a Motion to Modify Plan.** A motion to modify plan must clearly set forth (1) the date of plan confirmation, (2) the specific provisions of the plan (identified by part or paragraph) being modified, (3) the differing treatment of the affected parties under the proposed modified plan, (4) the circumstances that created the need to modify the confirmed plan, and (5) the factors demonstrating that the proposed modified plan meets the requirements of the Code.
- (c) **Additional Filing Requirements for a Motion to Modify Plan.** A party who files a motion to modify must also and simultaneously file clean and redlined copies of the proposed modified plan, along with a proposed order using Vt. LB Form F. If the movant seeks to modify a chapter 13 plan, the proposed modified plan must be filed on Official Form 113.

Vt. LBR 3015-1. PLAN REQUIREMENTS IN CHAPTER 13.—~~PLAN~~

(a) Required Form. All chapter 13 plans must be filed on Official Form 113. Whenever these Rules discuss a chapter 13 plan or specify a “part” of a plan they are referring to Official Form 113.

(b) Embedded Motions.

(1) Debtors seeking to

(A) avoid judicial liens or nonpossessory, nonpurchase money security interests that impair their exemption under § 522 of the Code,

(B) determine the value of collateral and fix the amount of the creditor’s claim secured by that collateral,

(C) strip one or more liens on their property, or

(D) surrender collateral and terminate the automatic stay against that collateral

must check the applicable box in Part 1 of the plan and complete the relevant sections in Part 3 of the plan, i.e., on Official Form 113. These requests for relief are referred to in these Rules as “embedded motions.”

(2) Additionally, to obtain relief for any of these embedded motions, debtors must file the plan in CM/ECF a second time, in lieu of filing a separate motion for the specific relief, and attach a notice of motion (specifying the page and part of the plan requesting the relief), certificate of service, and proposed order for that specific relief. See Fed. ~~Mandatory Fee R.~~ Bankr. P. 7004.

(3) The hearing date for an embedded motion must either precede or coincide with the hearing date for confirmation of the plan.

(c) Minimum Monthly Payments. Unless the Court orders otherwise for good cause shown, the minimum monthly plan payment is \$50.

(d) Sale Plans. A plan that is funded in part from the sale of property is called a “sale plan.” Sale plans must (1) provide that the sale will close within 1 year of confirmation of the plan, unless the Court approves a later closing date, and (2) specify details of the sale in Part 2.4 of the plan. When the debtor has a fully executed contract of sale, the debtor must file a separate motion to approve the sale and then file a report of sale within 14 days of closing.

(e) Treatment of Pre-Petition Claims. All allowed pre-petition claims must be paid through the plan, regardless of a creditor’s preference or the dischargeability of the debt.

(a) Disclosure and Payment of Attorney’s Fees. ~~All through the Plan.~~ Any unpaid pre-petition debtor’s attorney’s fees fee must be disclosed and provided for in a Chapter 13 plan or an amendment to the plan, as well as in the Rule 2016(b) disclosure statement, and must be paid through the plan. All post-petition fees incurred by the debtor’s attorney’s fees attorney during the pendency of a Chapter 13 case must be approved by the Court and , disclosed in an amended Rule 2016(b) statement, and paid through the plan. See also Vt. LBR 2016-2.

(f) Service of Plans. The Clerk will serve all plans via CM/ECF or first class mail. The debtor is responsible for any elevated service required under the Federal Rules of Bankruptcy Procedure for

the relief sought in embedded motions.

~~(b) **Amended Plans.** The debtor may file an amended plan, along with all necessary amended schedules supporting it, no later than 7 days prior to the confirmation hearing. **Format of Plan.** Debtors must file Chapter 13 plans using the local model plan. The local model plan is available in both PDF and spreadsheet formats on the Court's website, <http://www.vtb.uscourts.gov>. See also Vt. LB Form E. Plans filed not using the local model plan may be subject to dismissal for failure to comply with the Rules unless the Debtor's attorney obtains prior Court approval waiving the requirement. Moreover, if the Court waives use of the local model plan in a particular case, the plan filed in that case must be in substantial compliance with the model plan and must include the elements enumerated in paragraph (c), below.~~

~~(c) **Content of Plan.** Each plan must clearly and conspicuously specify:~~

- ~~(1) the amount of the monthly payment;~~
- ~~(2) the source of the payment (e.g., wage deduction, automatic withdrawal, direct payment);~~
- ~~(3) the term (in months) of the plan;~~
- ~~(4) the total amount of all plan payments, including any lump sum payments;~~
- ~~(5) if property is to be sold to fund part of the payments to be made under the plan, the nature and location of the property (e.g., the address if real property, the vehicle identification number if a vehicle), the time frame within which the property will be sold (including the projected date of sale);~~
- ~~(6) if the debtor already has a contract for sale, how the property will be sold, and the projected amount and distribution of proceeds from the sale (including to whom the proceeds will be distributed and how much of the proceeds each creditor will be paid), see Vt. LBR 6004-1;~~
- ~~(7) the total to be paid to each secured creditor, including the amount of interest paid and the interest rate applicable to each secured claim;~~
- ~~(8) the total amount to be paid to each priority creditor;~~
- ~~(9) the total amount to be paid *pro rata* to the unsecured creditors and the estimated percentage dividend;~~
- ~~(10) any liens to be avoided (including each lien holder's name, the nature of each lien, and the balance due on each lien as of the Chapter 13 filing date);~~
- ~~(11) when property reverts in the debtor;~~
- ~~(12) any executory contract to be assumed and the terms of the assumption; and~~
- ~~(13) any litigation to be commenced to effectuate the plan, including the name of the defendant(s), date by which the suit or motion will be filed, nature of the suit or motion, projected recovery, and projected disposition of recovery.~~

~~(d) **Other Plan Requirements: Minimum Monthly Payments and Maximum Sale Period.** Unless the Court orders otherwise, the minimum monthly plan payment is \$50, and any sale to occur under the plan must close within one year of confirmation of the plan.~~

~~(e) **Treatment of Pre-Petition Claims.** The All allowed pre-petition claims must be treated in the plan, regardless of the preference of any particular creditor or dischargeability of the debts.~~

- ~~(f) **Payment of Secured Claims.** When required by applicable bankruptcy or non-bankruptcy law, secured claims must be paid with interest unless a creditor affirmatively waives interest. Unless the parties agree otherwise, the trustee will recommend and the Court will set the risk factor to be used in computing interest in each case. The trustee should compute the interest rate to be applied if the debtor must serve the has not properly done so. Treatment of each secured claim, including the interest rate to be paid on the claim, must be clearly specified in both the plan and the confirmation order.~~
- ~~(g) **Bifurcation of Claims.** An undersecured claim will be allowed as a secured claim to the extent of the value of the collateral, as set by Court order, and allowed as an unsecured claim to the extent an allowed proof of claim asserts an amount due in excess of the value of the collateral. See Vt. LBR 3012-1(a) (requiring the filing of a valuation motion). Except to the extent the unsecured portion of the claim qualifies as a priority claim, the balance of the allowed claim will be a general unsecured claim, and will be included in the computation of the dividend to general unsecured creditors. The bifurcated treatment of undersecured claims must be clearly specified in the plan and confirmation order. If the holder of a wholly or partially secured claim that has been the subject of a valuation motion files a proof of claim for an amount that exceeds the amount set forth in the valuation order, the difference between the proof of claim and the allowed secured claim will be allowed as an unsecured claim without need of either an objection to claim or an amended proof of claim.~~
- ~~(h) **Payment of Short-Term Secured Debts.** Short-term secured debts (e.g., automobile loans, equipment loans, rent-to-own “leases,” mortgages that must be paid in full during the term of a plan) may be paid through the plan applying the general rules for payment of secured claims set forth above, provided the holder of the short-term secured claim has notice of the treatment and either has not objected to such treatment or has had its objection overruled.~~
- ~~(i)(b) **Amended Plan.** A debtor seeking to amend a proposed Chapter 13 plan (i.e., a plan that has not been confirmed) is not required to file a motion to do so. Rather, the debtor need only file an amended plan with the Clerk and serve it on all parties whose treatment is diminished from the treatment set forth in the original plan. An amended plan (with all necessary amended schedules) must be filed no later than seven days before the confirmation hearing, unless the debtor can demonstrate the information necessary for the amended plan (and the amended schedules) was not available prior to the date it was filed. See generally Vt. LBR 3015-2.~~

- ~~(j)(c) **Motion to Enlarge Time to File Plan.** If a debtor files a motion to enlarge the time to file the chapter 13 plan and seeks to file the plan fewer than 7 days before the date set requested for the extension is less than one week before the initial § 341 meeting of creditors, the debtor must obtain the trustee’s consent.~~

~~**VT. Vt. LBR 3015-2. CHAPTER 13—LBR 3015-2. TIMING AND LOCATION OF CONFIRMATION HEARINGS IN CHAPTER 13.**~~

- ~~(a) **The Court’s § 1324(b) Determination is a Rebuttable Presumption.** Based upon the local geography of Vermont, the travel distances between some towns and the federal courthouses within the state, and the success of the prior practice economic impact of holding the initial § 341 meetings of creditors and confirmation hearings on different dates, as well as the success of the practice of holding Chapter 13 § 341 meetings and confirmation hearings on the same day, and the adverse economic impact that would result otherwise, the the Court determines it is in the best interest of creditors of all parties Chapter 13 debtors and estates to continue the practice of holding meetings of creditors to hold confirmation hearings on the same day, and at the same location, as confirmation hearings in chapter~~

13 cases. This determination as the initial § 341 meetings of creditors. See also Vt. LBR 4002-1(d)(1).

~~(b)(a) **Court's § 1324(b) Determination is a rebuttable Rebuttable Presumption.** The Court's § 1324(b) determination that it is best to hold the Chapter 13 § 341 meeting and confirmation hearing on the same day is a presumption that any is rebuttable in any case. Any creditor or party can challenge by written objection on 14 days' notice to all parties in interest. in interest may file an objection to the presumptive determination showing it is in the best interest of the creditors and the estate for the confirmation hearing to be held not earlier than 20 days after the § 341 meeting of creditors in that case. Such objection, if in writing, must be filed no later than seven days before the § 341 meeting of creditors. However, where the creditor or party in interest does not have sufficient information to make the objection until after the § 341 meeting, such objection may be made orally at the confirmation hearing.~~

VT. LBR 3015-3. Preference for Written Objections TO CONFIRMATION IN CHAPTER 13.

(a) **Creditor's Duty to Review and Opportunity to Object to Plans.** Creditors must promptly review all plans and amended plans and present any objections in a timely manner.

(b) **Timely Objections to Confirmation.** Parties are encouraged to file written submit objections to the confirmation of a chapter 13 plan at least 7 days before the Chapter 13 plan in writing. Regardless of whether presented in writing or orally, objections must specify the factual and legal grounds for the objection. If in writing, the objection must be filed with the Clerk and served on the Chapter 13 trustee, the debtor, and the debtor's attorney at least three business days prior to the date set for the initial confirmation hearing, and by 10 am the day before the hearing with respect to amended plans. All objections, whether written or not, must be made no later than the date set for the initial confirmation hearing, unless (1) the trustee and debtor consent to a later objection deadline, or (2) the objecting party shows both good cause for filing the objection at a later date and no party is prejudiced by that filing.

VT. LBR 3015-4. ADDITIONAL SEPARATE ORDERS REQUIRED FOR EMBEDDED MOTIONS IN CHAPTER 13.

(e)(b) The party who prevails on any embedded motion must file a on the proposed order granting that relief pursuant to Vt. LBR 3015-1(b)(2). The proposed order must make specific reference to the page and part of the plan where the relief was sought. plan. Any response to a written objection must be filed within two business days of the filing of the objection.

Vt. LBR 3015-5. CONFIRMATION ORDERS IN CHAPTER 13.

(d) **Creditors' Duty to Review, and Opportunity to Object to, Plans and Amended Plans.** Creditors are charged with the duty to promptly review plans and amended plans, and to file any objections prior to the hearing on the plan that first includes the objectionable provision. The Court will only consider an objection to a plan term that is filed after the first hearing on the plan containing that term if the debtor and the Chapter 13 trustee consent to timing of the objection, or the objecting party demonstrates that (1) the import of the objectionable term was not clear until an amended plan was filed, (2) the tardiness of the filing does not prejudice any party, or (3) there is good cause for the Court to enlarge the time for filing of the objection.

(e) **Filings Considered in Connection with the Confirmation Hearing.** No document filed later than 10:00 a.m. on the last business day before the confirmation hearing will be considered by the Court in

~~connection with the confirmation hearing; the confirmation hearing will proceed as if the late filed document had not been filed. See also Vt. LBR 9013-1(j).~~

~~(f) **Attendance at Confirmation Hearing.** Absent exigent circumstances and a prior order of the Court, the debtor and the debtor's attorney, if any, are required to attend the confirmation hearing. The debtor must be in the courtroom promptly at the commencement of the confirmation hearing calendar. A debtor's failure to attend the confirmation hearing is grounds for dismissal of the case.~~

~~(g) **Requests to Postpone Confirmation Hearing.**~~

~~(1) **Request to Postpone the Initial Confirmation Hearing.** Any motion or stipulation to postpone an initial confirmation hearing must be filed at least seven days prior to the initial confirmation hearing date. The motion must set forth good cause for the continuance and must be supported by the consent of the Chapter 13 trustee, which must also be filed at least seven days prior to the initial confirmation hearing date. The motion must be served on all creditors. The initial confirmation hearing will proceed and the debtor's attorney must appear at the hearing unless the Court finds the movant has set forth good cause for the continuance, the granting of the continuance will not prejudice creditors (recognizing that with greater notice there is less likelihood of prejudice), and the Court enters an order granting the continuance and canceling the initial confirmation hearing.~~

~~(2) **Request to Postpone a Continued Confirmation Hearing.** Any motion or stipulation to postpone a continued confirmation hearing must be filed by 10:00 a.m. on the last business day before the continued confirmation hearing, and set forth good cause for the continuance. The motion must be served on the Chapter 13 trustee, any party in interest who appeared at a prior confirmation hearing, and any party who filed an objection or response to the debtor's Chapter 13 plan. It must be supported by the consents of the Chapter 13 trustee, any party in interest who appeared at a prior confirmation hearing, and any party who filed an objection or response to the debtor's Chapter 13 plan. All required consents must also be filed by 10:00 a.m. on the last business day before the continued confirmation hearing. See Vt. LBR 9011-4(e) & (f); see also Vt. LBR 9013-1(f), (j). orders The continued confirmation hearing will proceed unless the Court finds (A) the movant has set forth good cause for the continuance; (B) where the movant is the debtor, the debtor has rebutted the presumption of unreasonable delay (see subparagraph (4), below); (C) the motion and the required consents were timely filed; (D) the granting of the continuance will not prejudice creditors; and (E) the Court enters an order granting the continuance and canceling the previously scheduled confirmation hearing.~~

~~(3) **Untimely Request to Continue Confirmation Hearing; Appearance at Confirmation Hearing Required.** A motion to postpone a confirmation hearing that is filed late will not be approved except under exigent circumstances. Where a party untimely files such a motion, the party must appear at the confirmation hearing to report on the status of the case. The Court will then rule on the request to postpone the confirmation hearing.~~

~~(4) **Rebuttable Presumption of Unreasonable Delay.** If a debtor's Chapter 13 plan is not ready for confirmation or the debtor has not fulfilled all of the pre-requisites for confirmation (e.g., filing of required tax returns, see Vt. LBR 4002-1(d)(1), presenting the Chapter 13 trustee with proof of insurance, see Vt. LBR 4070-1) within 30 days after the initially scheduled confirmation hearing, a rebuttable presumption will arise that the debtor caused unreasonable delay as that term is used in § 1307, and that presumption will be a basis for dismissing the case. In such an instance, it is the debtor's burden to show why the Chapter 13 case should not be dismissed.~~

~~(h) **Confirmation Orders.** Promptly after confirmation of a plan, and after any pre-conditions stated by the Court are satisfied, the Chapter 13 trustee shall set forth the terms of the plan approved at the confirmation hearing, and file a proposed confirmation order. The confirmation order shall show the calculations upon which the plan is based, and verify the debtor's compliance with all requirements of~~

~~§ 521. If the Court grants any other relief at the confirmation hearing or in connection with the debtor's Chapter 13 reorganization (e.g., avoidance or stripping of liens, valuation of collateral, surrender of collateral, relief from the automatic stay), the party who prevailed on the underlying motion for this relief must file a separate proposed order. This tangential relief is not to be included in the confirmation order. However, the confirmation order may include minor adjustments and additions provided all affected parties consent to them. Confirmation orders for additional provisions or revisions to terms of a plan.~~

~~(i)(c) **Sale Plans.** The order confirming a plan that is funded in part from the sale plans must identify the of property to be sold (i.e., must set forth the physical address for of the real property, or the vehicle identification number of the vehicle), being sold, and unless the deadline for completing Court orders otherwise, the sale, must be concluded within one year of confirmation of the plan. Additionally, whenever property is sold through a Chapter 13 case, the debtor must also file a separate motion to approve the sale. See Vt. LBR 6004-1.~~

VT. LBR 3015-6.(j) Conduit Mortgage PAYMENT PLANS IN CHAPTER 13. Payments.

~~(1) **Local Bankruptcy Forms.** Subpart (h) of this Rule requires use of the following local bankruptcy forms: local model plan (Vt. LB Form E); mortgage creditor checklist (Vt. LB Form Y-1); notice of conduit mortgage payment and authorization to release information to the Chapter 13 trustee (Vt. LB Form Y-2); model mortgage payment history (Vt. LB Form Y-5); and notice of transfer of claim (other than for security) (Official Form B2100a). All of these forms are available on the Court's website, <http://www.vtb.uscourts.gov>. Use of these forms is required, with the exception that if a Mortgage Creditor (as defined in subpart (j)(2)(E) of this Rule) is already using forms that substantially conform to these forms and provide all of the information included on the forms, the Mortgage Creditor may use its own forms unless and until the Court orders otherwise.~~

~~(2)(1) **Definitions.** For purposes of this Rule, the following terms have the stated meanings:~~

- ~~(A) A "Conduit Mortgage Payment" is the Regular Monthly Mortgage Payment the debtor is obligated to pay to the mortgage creditor Mortgage Creditor post-petition (as defined below), which the Chapter 13 trustee disburses pursuant to the terms of this Rule.~~
- ~~(B) A "Conduit Mortgage Payment Plan" is a Chapter 13 plan which states in Part 3.1 of Official Form 113 that includes the trustee will make payment of ongoing monthly mortgage payments on one or more mortgages, by the Chapter 13 trustee to the Mortgage Creditor from payments that are included in the debtor's Chapter 13 plan payments to the Chapter 13 trustee.~~
- ~~(C) The debtor is "Delinquent" when the debtor owes the Mortgage Creditor any past due payments or other charges as of the Filing Date. -This term does not include a failure to make Regular mMonthly Mortgage Payments that came due after the Filing Date.~~
- ~~(D) The "Filing Date" is the date the case was filed under, or converted to, cChapter 13.~~
- ~~(E) A "Mortgage Creditor" is an entity entitled to enforce an allowed claim secured by a properly perfected mortgage on the debtor's residential real property, or the servicer for that entity, as determined by which entity files a proof of claim for the mortgage debt. -Whenever this Rule refers to notice on the Mortgage Creditor, or requires the Mortgage Creditor to file a document, those references it also include refers to the Mortgage Creditor's attorney.~~
- ~~(F) The "Mortgage Payment Accounting" is a complete history of the Chapter 13 trustee's receipt of payments from the debtor and disbursement of payments to the Mortgage Creditor, with the~~

~~disbursements showing separate entries for the Conduit Mortgage Payments, and Pre-Petition Mortgage Arrearage components.~~

~~(G)(F)~~ -The “Post-Petition Mortgage Arrearage” is the sum of past due Regular Monthly Mortgage Payments the debtor owes to a Mortgage Creditor that first came due after the Filing Date post-petition.

~~(H)(G)~~ -The “Pre-Petition Mortgage Arrearage” is the sum of regular monthly mortgage payments~~Regular Monthly Mortgage Payments~~ the debtor owes to a Mortgage Creditor that came due prior to the Filing Date, without regard to any grace period that expires post-petition.

~~(H)(H)~~ A “Regular Monthly Mortgage Payment” is:

- (i) the sum of the principal, interest, taxes, insurance, administrative fees, and any other charges properly escrowed, charged, or assessed under a note and secured by a properly perfected mortgage on the debtor’s residential real property ~~that, which~~ is due each month; or
- (ii) a monthly amount of no less than the sum of the taxes, insurance, administrative fees, and anticipated interest and principal, ~~that which~~ is proposed in conjunction with the debtor’s participation in this Court’s mortgage mediation program~~Mortgage Mediation and Loss Mitigation Program~~, provided that any plan proposing to use~~utilize~~ a regular monthly mortgage payment, defined under this Rule, subpart may only be confirmed by the Court if:
 - (aa) (i) after notice and opportunity to object, the Mortgage Creditor~~mortgage creditor~~ does not object; and
 - (bb) (ii) _____ the debtor’s plan provides that the debtor will promptly modify this figure to match the outcome of mortgage mediation if the mediation yields a different regular monthly mortgage payment. -

~~(I)(D)~~ -A “Waiver Order” is a Court order that waives the requirement to make Conduit Mortgage Payments, which the debtor may obtain upon showing of cause based upon exigent circumstances. ~~to the Mortgage Creditor through a Chapter 13 plan.~~

~~(3)(2)~~ **Post-Petition Mortgage Payments.** ~~A debtor is required to make Conduit Mortgage Payments as follows:~~

~~(A)~~ **When the Debtor is Not Delinquent.** A debtor

(i) ~~Except as provided in subparts (A)(iii) and (A)(iv), below, a debtor~~ who is not Delinquent is not required to make Conduit Mortgage Payments but may elect to do so. -

~~(ii)~~ **When the Debtor is Delinquent.** A debtor who is ~~not Delinquent~~ may elect to make Conduit Mortgage Payments as outlined in this Rule, by so specifying in the debtor’s Chapter 13 plan.

~~(iii)~~ If (a) a debtor has been making Regular Monthly Mortgage Payments directly to a Mortgage Creditor post-petition instead of making Conduit Mortgage Payments, (b) the Mortgage Creditor files a motion for relief from stay based at least in part upon the debtor’s post-petition default in Regular Monthly Mortgage Payments, (c) the Court finds the debtor is in default on those payments, but (d) the Court either allows the debtor to retain the real property that secures the Mortgage Creditor’s claim and conditionally maintains the automatic stay or denies the motion based upon the debtor’s election to make

Conduit Mortgage Payments, then the Mortgage Creditor must include in its proposed order provisions directing the debtor to make Conduit Mortgage Payments commencing with the first Regular Monthly Mortgage Payment due date following entry of the order, requiring the debtor to increase the monthly plan payments to an amount sufficient to include the Conduit Mortgage Payment, and directing the debtor to comply with all applicable provisions of this Rule.

~~(iv) If (a) a debtor has been making Regular Monthly Mortgage Payments directly to a Mortgage Creditor post petition instead of making Conduit Mortgage Payments, and (b) the debtor files a motion to modify the Chapter 13 plan based upon a post-petition default in Regular Monthly Mortgage Payments, the motion and corresponding proposed order must require the debtor to make Conduit Mortgage Payments commencing with the first Regular Monthly Mortgage Payment due date following entry of the order granting modification of the plan, and to increase the monthly Chapter 13 plan payment to an amount sufficient to include the Conduit Mortgage Payment.~~

~~(B) When the Debtor is Delinquent:~~

~~(i) Except as provided in subpart (B)(ii), below, a debtor who is Delinquent is required to make Conduit Mortgage Payments:~~

~~(ii) A debtor who is Delinquent may obtain a Waiver Order only upon a showing of cause, based upon exigent circumstances:~~

~~(a) The debtor bears the burden of showing cause in any motion for a Waiver Order. The debtor must file the motion on notice to the Chapter 13 trustee and the Mortgage Creditor within seven days of the Filing Date, and may use the default procedure. See Vt. LBR 9013-4.~~

~~(b)(a) The additional cost associated with the Chapter 13 trustee's fee on the Conduit Mortgage Payment will not constitute cause for entry of a Waiver Order unless the debtor obtains a Waiver Order, shows that the additional cost would cause the Chapter 13 plan to fail.~~

~~(iii) A Mortgage Creditor or the Chapter 13 trustee may file a motion to revoke a Waiver Order if:~~

~~(a) the Mortgage Creditor files a motion for relief from stay based at least in part upon the debtor's post-petition default in Regular Monthly Mortgage Payments;~~

~~(b) the Court finds the debtor is in default of those payments;~~

~~(c) the outcome of the motion for relief from stay is the Court's entry of an order that either (1) allows the debtor to retain the real property that secures the Mortgage Creditor's claim and conditionally maintains the automatic stay, or (2) denies the motion for relief from stay based on the debtor's election to make Conduit Mortgage Payments; and~~

~~(d) the debtor has not filed a motion to modify the Chapter 13 plan to voluntarily commence making Conduit Mortgage Payments pursuant to subpart (j)(3)(A)(iv) of this Rule.~~

~~(4)(3) **Duties of the Debtor.** In A debtor who is Delinquent, is otherwise subject to the Conduit Mortgage Payment cases, the debtor requirement, or voluntarily chooses to make Conduit Mortgage Payments, must: fulfill the following duties:~~

~~(A) **Duty to Specify Components of Mortgage Creditor's Claim in Chapter 13 Plan.**~~

~~(i) In the Chapter 13 plan, the debtor must specify:~~

~~(a) the amount of the Conduit Mortgage Payment;~~

~~(b) the total amount of the Conduit Mortgage Payments to be made through the plan, which shall be calculated by multiplying the Conduit Mortgage Payment by the number of months of the plan, plus two additional months; and~~

~~(c) the amount of the Pre-Petition Mortgage Arrearage with a specification of how many monthly payments that figure represents.~~

~~(ii)(i) The debtor must also file a wage withholding authorization, (Vt. LB Form Y-8, within 14 days of) with the Filing Date Chapter 13 plan, unless the Court grants the debtor's debtor files a motion for waiver of the wage withholding requirement;:~~

~~(1) promptly modify the amount of plan payments to comport with changes in the Monthly Mortgage Payment;~~

~~(2) promptly object to the Mortgage Creditor's proof of claim if the debtor has cause to believe the figures or computations on the proof of claim are inaccurate; and~~

~~(3) immediately file, and serve on the trustee, a copy of the acceptance of a trial payment plan ("TPP") so the trustee has the information he needs to disburse Conduit Mortgage Payments consistent with the terms of the TPP.~~

~~(a) **Duties of the Trustee.** In Conduit Mortgage Payment cases, the trustee must~~

~~(1) disburse payments to the Mortgage Creditor by the earlier of 30 days after the Mortgage Creditor files a proof of claim or 30 days after confirmation of the plan;~~

~~(2) promptly adjust the amount of the plan payment in his records when the Regular Monthly Mortgage Payment increases, either on stipulation of the debtor with Court order;~~

~~(B) disburse only full payments to the Mortgage Creditor and immediately notify (by email) the debtor, the debtor's attorney, if any, and **Duty to Provide Forms to the Chapter 13 Trustee and Mortgage Creditor.** The debtor must complete the mortgage creditor checklist (Vt. LB Form Y-1) and the notice of conduit mortgage payment and authorization to release information to the Chapter 13 trustee (Vt. LB Form Y-2), and must provide both, along with a copy of the three most recent mortgage invoices or monthly payment vouchers (if available), to the Chapter 13 trustee, with a copy to the Mortgage Creditor, no later than seven days after the Filing Date.~~

~~(C) **Duty to Make Timely First Chapter 13 Plan Payment Directly to the Chapter 13 Trustee.** The debtor must make the first Chapter 13 plan payment, in an amount that includes the full Conduit Mortgage Payment, directly to the Chapter 13 trustee within 30 days of the Filing Date.~~

~~(D) **Duty to Make Sufficient Chapter 13 Plan Payments.** If the amount of the Regular Monthly Mortgage Payment increases during the term of the Chapter 13 plan, the debtor must increase the amount of the Chapter 13 plan payment to the Chapter 13 trustee by an amount equal to the increase in the Regular Monthly Mortgage Payment due, plus the Chapter 13 trustee's fee allocable to that additional sum, and the Chapter 13 trustee must effectuate this via notice to~~

~~the entity withholding the Chapter 13 plan payment. The increased Chapter 13 plan payment will be due on the effective date of the increase in the Regular Monthly Mortgage Payment. See subpart (j)(5)(B) of this Rule. If the amount of the Regular Monthly Mortgage Payment decreases during the term of the Chapter 13 plan, the Chapter 13 plan payment will not change, and the Chapter 13 trustee must retain the additional funds and disburse them as set forth in subpart (j)(7)(A)(iv) of this Rule, unless the debtor modifies the Chapter 13 plan to provide otherwise.~~

~~(E) **Penalty for Failure to Comply with Foregoing Requirements.** The debtor's failure to comply with the requirements of the immediately preceding subparts (j)(4)(A)–(D) may result in the Court denying confirmation of the Chapter 13 plan.~~

~~(F) **Additional Duty to Object to Proof of Claim.** If the debtor believes that the Mortgage Creditor's proof of claim is inaccurate, the debtor must promptly file an objection to the proof of claim.~~

~~(i) If the debtor's objection is overruled, within seven days of the Court's ruling, (a) the Chapter 13 trustee must file a notice of increased Chapter 13 plan payment and serve that notice on the debtor's employer to increase wage withholding to reimburse the Mortgage Creditor for any post-petition shortfall and to make correct payments going forward to comport with the allowed proof of claim, and (b) if needed, due to the change in treatment to other claimants under the plan, the debtor shall file a motion to amend or modify the Chapter 13 plan.~~

~~(ii) If the debtor's objection is sustained, the trustee must continue to disburse payments in the amount determined by the Court and file an amended proof of claim on behalf of the Mortgage Creditor when inconsistent with the Court's order.~~

~~(5) **Duties of the Chapter 13 Trustee.**~~

~~(A) **Duty to Disburse Conduit Mortgage Payments.** Upon receipt of a mortgage creditor checklist (Vt. LB Form Y-1), notice of conduit mortgage payment and authorization to release information to the trustee (Vt. LB Form Y-2), and the first Chapter 13 plan payment, the Chapter 13 trustee must commence disbursing Conduit Mortgage Payments to the Mortgage Creditor in the amount specified in the debtor's Chapter 13 plan, unless the debtor has filed a motion requesting that no payments be made to the Mortgage Creditor until some future date (e.g., the filing of a proof of claim by the Mortgage Creditor, resolution of an objection to the Mortgage Creditor's proof of claim), and the Court enters an order granting the debtor's motion. If the Chapter 13 trustee makes payments to the Mortgage Creditor according to the Chapter 13 plan and it later becomes clear, by agreement or Court order, that the amount paid to the Mortgage Creditor was not due, either in whole or in part, the Mortgage Creditor must disgorge any such overpayments. See subpart (j)(6)(B) of this Rule.~~

~~(B) **Duty Regarding Plan Payment Increases.** Upon receipt of a notice of mortgage payment change (Official Form B410S-1), pursuant to subpart (j)(7)(A) of this Rule, the Chapter 13 trustee must:~~

~~(i) file with the Court notice of any required Chapter 13 plan payment increase;~~

~~(ii) serve a copy of such notice on the debtor and the debtor's attorney; and~~

~~(iii) if the proposed increase in plan payment is less than 5% and the debtor does not object, pursuant to subpart (j)(7) of this Rule, within 14 days of service of the notice of mortgage payment change, then the Chapter 13 trustee must file a notice of increased Chapter 13~~

~~plan payment and promptly serve notice of increased wage withholding on the entity withholding the Chapter 13 plan payment, and must commence making Conduit Mortgage Payments in the new amount on the later of the date the Chapter 13 trustee begins receiving increased Chapter 13 plan payments or the effective date of the new payment.~~

~~(iv) If the proposed increase in plan payment is 5% or more, the Chapter 13 trustee shall schedule a status conference so that the court can address feasibility of the proposed payment increase. If, prior to the status conference, the debtor files a motion to modify the Chapter 13 plan, or a Stipulation to Plan Payment Increase, with any necessary amended schedules, the trustee may withdraw the request for status conference, and commence making Conduit Mortgage Payments in the new amount, once an Order has been entered either granting the motion to modify or approving the Stipulation.~~

~~(C)(B) **Duty to Disburse Only Full Payments; Duty When Insufficient Funds Available.** The Chapter 13 trustee must disburse payments only in an amount equal to the Regular Monthly Mortgage Payment to the Mortgage Creditor as Conduit Mortgage Payments unless the Chapter 13 trustee is disbursing a final payment due to satisfaction of claim, conversion, or dismissal. If funds in the debtor's account with the Chapter 13 trustee are not sufficient to make a full Conduit Mortgage Payment and pay the corresponding Chapter 13 trustee's fee, then the Chapter 13 trustee must hold such funds until the Chapter 13 trustee receives from the debtor funds sufficient to do so. In such an event, within seven days of the date the Chapter 13 trustee intended to make the Conduit Mortgage Payment, the Chapter 13 trustee must notify by email the debtor, the debtor's attorney, and the Mortgage Creditor that there are insufficient funds to make full and timely payment; payment and the amount of additional funds needed to make a full payment.~~

~~(D)(C) include a statement on the voucher **Duty to Specify Proper Application of each payment he sends** Payment. The Chapter 13 trustee's payments to a Mortgage Creditor that specifies must include a voucher narrative:~~

- ~~(i) stating the debtor's name, the Chapter 13 case number, and the last four digits of the Mortgage Creditor's account number; and~~
- ~~(ii) the amount allocable to the Conduit Mortgage Payment and indicating the amount allocable to the Conduit Mortgage Payment and the amount allocable to the Pre-Petition Mortgage Arrearage;~~

~~(E) file and serve upon all parties in interest **Duties upon the Debtor's Default.** If the debtor fails to make any timely or full Chapter 13 plan payment, including the first Chapter 13 plan payment, then the Chapter 13 trustee must take the following steps:~~

~~(3) The first time the debtor fails to make a timely or full Chapter 13 plan payment, within 14 days of the default, the Chapter 13 trustee must file and serve upon the debtor, Mortgage Creditor, and their respective attorneys (if any), a notice of delinquency (specifying the due date, number and amount of the missed payments, and the amount needed to cure the plan payment default) within 14 days of the debtor's first instance of plan payment default;~~

~~(i)(iii) _____. If the debtor does not cure the default or file a motion to modify the Chapter 13 plan within 30 days of the filing of the Chapter 13 trustee's notice, the Chapter 13 trustee must file and serve upon all parties in interest a motion to dismiss the case if (A) the debtor does not cure the plan payment default or file a motion to modify the plan within 30 days of the trustee's notice of delinquency, (B) the debtor defaults on plan payments again, or (C) the trustee determines based upon the payment default and any other grounds the Chapter 13 trustee deems warrant dismissal of the case.~~

~~(ii) The second time the debtor fails to make a timely or full Chapter 13 plan payment, within 14 days of the default, the Chapter 13 trustee must file and serve upon all parties in interest a motion to dismiss the case, specifying that it is the second Chapter 13 plan payment default and any other grounds the Chapter 13 trustee deems warrant dismissal of the case.~~

~~(iii) Nothing in this subpart of the Rule precludes a Mortgage Creditor, or any other party in interest, from filing a motion to dismiss the case or a motion for relief from stay based upon a debtor's default in Chapter 13 plan payments or other requirements of this Rule, or other grounds set forth in § 1307.~~

~~(F) **Duty to File Motion to Declare the Debtor Current Upon Completion of Conduit Mortgage Payments.** See subpart (j)(8) of this Rule.~~

~~(6)(4) **Duties of the Mortgage Creditor.** In Conduit Mortgage Payment cases, the Mortgage Creditor must~~

~~(A) **Duty to File a Proof of Claim as Soon as Practicable.** A Mortgage Creditor with a Pre-Petition Mortgage Arrearage claim is encouraged to file a proof of claim as soon as practicable after receipt of notice of the debtor's bankruptcy filing. The Mortgage Creditor should attach to the proof of claim a mortgage proof of claim attachment (Official Form 410A) to facilitate a prompt commencement of post-petition payments in the correct amount, and is further encouraged to provide the mortgage proof of claim attachment to the Chapter 13 trustee in advance of filing the proof of claim.~~

~~(B) **Duty to Disgorge.** If the Court determines that a payment the Chapter 13 trustee made to the Mortgage Creditor included an overpayment or was otherwise improper, the Mortgage Creditor must promptly disgorge that sum to the Chapter 13 trustee.~~

~~(C)(A) **Duty to Apply Payments Properly.** The Mortgage Creditor must apply each Conduit Mortgage Payment disbursed by the Chapter 13 trustee to the earliest outstanding post-petition payment due under the Chapter 13 plan, as specified on the voucher narrative accompanying the payment.~~

~~(D)(B) **forbear from assessing Duty to Limit Late Fees.** The Mortgage Creditor may not charge the debtor a late fee unless the tardiness of the payment was caused by the debtor's failure to make a full or timely Chapter 13 plan payment to the Chapter 13 trustee.~~

~~(1) upon request, promptly provide an annual payment history to the trustee or debtor,~~

~~(E) upon request, promptly **Duty to Provide Annual Payment History.**~~

~~(i) During the pendency of the Chapter 13 case and using the model mortgage payment history form (Vt. LB Form Y-5), on or before March 1st of each year, the Mortgage Creditor must provide to the debtor, the debtor's attorney, and the Chapter 13 trustee, a summary of the 12-month mortgage payment history from January 1st through December 31st of the previous year, on the loan on which Conduit Mortgage Payments have been disbursed. If the case was filed or converted from another chapter on or after January 1st, the first summary must include activity on the account from the Filing Date through December 31st of the previous year.~~

~~(ii) The mortgage payment history summary is not to be filed with the Court unless the Court directs the Mortgage Creditor to do so, or the Mortgage Creditor deems it pertinent to a motion for relief from stay or a motion to dismiss, in which event the summary shall be~~

~~filed as an attachment to the motion.~~

~~(F)(C) **Duty to Provide Documents to the Debtor's Attorney and the Chapter 13 Trustee.**~~

~~The Mortgage Creditor must provide to the debtor's attorney and the Chapter 13 trustee or debtor copies of all documents it has sent, and sends, to the debtor post-petition, including correspondence, statements, payment coupons, escrow notices, and default notices, and any other documents, which disclose changes in (A) the name or identity of the Mortgage Creditor, (B) the monthly payment amount, (C) the interest rate or escrow requirements, or (D) a change in: the address to which mortgage payments are to be sent.~~

- ~~(i) the name or identity of the Mortgage Creditor;~~
- ~~(ii) the monthly payment amount;~~
- ~~(iii) the interest rate or escrow requirements; or~~
- ~~(iv) the address to which mortgage payments are to be sent.~~

~~(G) **Duty to Attach Information to Motion for Relief from Stay.** A motion for relief from stay in a Conduit Mortgage Payment case must be accompanied by either a mortgage payment history summary (Vt. LB Form Y-5) setting forth the post-petition account history, or a print-out from the Chapter 13 trustee's website showing the debtor's Chapter 13 plan payment history, including the portion of the website report showing the date the data was last updated. If the Mortgage Creditor prevails on its motion for relief from stay, demonstrates that payments were not timely made, and a conditional or absolute order for relief is entered, the proposed order may authorize the Mortgage Creditor to collect late fees on past due payments, if the Mortgage Creditor requested that relief in the motion. See also Vt. LBR 4001-1.~~

~~(7) **Post-Petition Changes and Additional Charges.**~~

~~(A) **Changes to Regular Monthly Mortgage Payment Amount.**~~

~~If the mortgage documents authorize the Mortgage Creditor to modify the Regular Monthly Mortgage Payment amount, and the Mortgage Creditor files and serves a notice of mortgage payment change (Official Form B410S-1) pursuant to Fed. R. Bankr. P.~~

- ~~(i) 3002.1(b), then the debtor, Chapter 13 trustee, or any other party in interest shall have 14 days to file a response or objection to the notice of mortgage payment change. If no response in opposition or objection is timely filed, then the debtor is deemed to have accepted the mortgage payment change, and that amount will become the new Regular Monthly Mortgage Payment on the effective date provided in the notice of mortgage payment change.~~
- ~~(ii) If the Mortgage Creditor offers, and the debtor accepts, a Trial Payment Plan (TPP), the debtor shall immediately file a copy of the TPP with the Court and the Chapter 13 trustee shall then disburse Conduit Mortgage Payments consistent with the terms of the TPP.~~
- ~~(iii) If, during the term of the TPP, a Notice of Mortgage Payment Change is filed, the Chapter 13 trustee shall disburse in accordance with the TPP, unless the Mortgage Creditor files a notice of termination of the TPP.~~
- ~~(iv) If the plan payment needs to increase as a result of the increase in the Regular Monthly Mortgage Payment amount, the Chapter 13 trustee may arrange for the modification in withholding or bank account debit to satisfy the increase in the Regular Monthly Mortgage Payment amount, without a Court order. See subpart (j)(5)(C) of this Rule.~~

(v) ~~When a modified Regular Monthly Mortgage Payment amount goes into effect pursuant to subpart (j)(7)(A)(i) of this Rule, the Chapter 13 trustee may disburse the new Conduit Mortgage Payment as of the effective date set forth in the notice of mortgage payment change, without an order of the Court.~~

~~(B) **Post-Petition Changes to the Name, Identity, or Address of the Mortgage Creditor.** When the Mortgage Creditor transfers or assigns its claim to another entity, it shall file with the Court, and serve upon the debtor, the debtor's attorney (if any), and the Chapter 13 trustee, a statement setting forth the name and address of the new holder of the claim, and the address to which the Chapter 13 trustee should send Conduit Mortgage Payments, unless the Mortgage Creditor has filed a notice of transfer of claim (other than for security) (Official Form B2100a). The Mortgage Creditor will be precluded from seeking late fees based upon the Chapter 13 trustee's failure to send payments to the correct party or correct address if that failure is reasonably attributable to the timing or content of the notice by the Mortgage Creditor.~~

~~(8) **Motions Relating to Claims Secured by a Security Interest in the Debtor's Principal Residence, Upon Completion of Chapter 13 Payments.**~~

~~(A) **In Completed Conduit Mortgage Payment Cases.** The Chapter 13 trustee shall file a motion, pursuant to Fed. R. Bankr. P. 3002.1(h) in every Chapter 13 case in which the debtor made Conduit Mortgage Payments.~~

~~(B) **In Completed Non-Conduit Mortgage Payment Cases.** The debtor may make a motion, pursuant to Fed. R. Bankr. P. 3002.1(h), in Chapter 13 cases in which the debtor made mortgage payments directly to the Mortgage Creditor during the Chapter 13 case.~~

~~(9)(5) **Jurisdiction.** This Court retains jurisdiction over all orders~~any order~~ entered pursuant to this Rule.~~

VT. LBR 3015-7. CONFIRMATION HEARINGS IN CHAPTERS 123. CHAPTER 13—REQUESTING EXTENSION OF APPLICABLE COMMITMENT PERIOD

~~Where a Chapter 13 debtor's calculation of commitment period and 13, disposable income directs a plan of no longer than three years, upon a showing of cause, the debtor may request an applicable commitment period of longer than three years, but no more than five years, for the debtor's Chapter 13 plan. The debtor must set forth cause for the requested extension either in a clear and specific provision of the debtor's Chapter 13 plan or in a separate sworn statement filed with the Chapter 13 plan. Approval of the extended applicable commitment period may be included in the proposed confirmation order. See § 1322(d)(2).~~

~~(a) **Filings Considered.** The Court will not consider any document filed after 10:00 am on the last business day preceding the date of the confirmation hearing.~~

~~(b) **Required Attendance.** Absent exigent circumstances and a prior Court order, the debtor and the debtor's attorney, if any, are required to attend the confirmation hearing. The debtor must be in the courtroom promptly at the commencement of the confirmation hearing. A debtor's failure to attend a confirmation hearing may result in dismissal of the case without further notice or hearing.~~

~~(c) **Requests to Postpone the Initial Confirmation Hearing.** Any motion or stipulation to postpone an initial confirmation hearing, along with all necessary consents, must be filed at least 7 days prior to the initial confirmation hearing date. The motion must be served on all creditors. The initial confirmation hearing will proceed unless the Court enters an order granting the continuance and canceling the initial confirmation hearing.~~

(d) Requests to Postpone a Continued Confirmation Hearing. Any motion or stipulation to postpone a continued confirmation hearing, along with any necessary consents, must be filed by 10:00 am on the last business day preceding the continued confirmation hearing date, and set forth good cause for the continuance. See Vt. LBR 9011-4(e) & (f); see also Vt. LBR 9013-1(f), (j).

VT. LBR 3015-~~8.4. CHAPTER 13~~— MOTIONS TO MODIFY CONFIRMED CHAPTER 12 AND 13 PLANS.

(a) Modification of a Confirmed Chapter 12 or 13 Plan. A debtor, ~~the Chapter 13~~ trustee, or a holder of an allowed unsecured claim may file a motion~~move~~ to modify a confirmed plan ~~at any time after confirmation of the plan, but~~ before the completion of payments under the plan. ~~A Court order is required to modify a confirmed plan.~~

(~~b~~) Contents of a Motion to Modify Plan. A motion to modify ~~a confirmed Chapter 13~~ plan must clearly set forth (1) :

~~(1)~~ the date of plan confirmation, (2) :

~~(2)~~ the specific provisions of the plan (identified by part or paragraph) ~~being numbers) to be modified,~~ (3) ; and

~~(3)~~ (1) _____ the differing treatment of the affected parties provisions under the proposed modified plan, (4) the circumstances that created the need to modify both the confirmed plan, and (5) the factors demonstrating that the proposed modified plan meets the requirements of the Code. .-

(~~e~~) Additional Filing Requirements for When Filing a Motion to Modify Plan. A~~The moving~~ party who files a motion to modify must also and:

~~(1)~~ (2) _____ simultaneously file clean and redlined copies of the proposed modified plan, along with and a proposed order using Vt. LB Form F. If modifying the movant seeks to modify a chapter 13 plan, the proposed modified plan must be filed on Official Form 113. ; and

~~(2)~~ serve the motion, proposed modified plan, and proposed order on the Chapter 13 trustee and all affected creditors; the motion may be noticed under the Court's default procedure. See Vt. LBR 9013-4.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re: _____,
Debtor.

Chapter 13
Case # _____

Appearances:

FINDINGS AND ORDER CONFIRMING CHAPTER 13 PLAN

A hearing on confirmation of the debtor’s¹ chapter 13 Plan (the “Plan”) dated ____ was held on _____.

Based upon the record in this case and the evidence presented at the hearing, and after due consideration of the chapter 13 Plan, the chapter 13 trustee’s preliminary report, any objections to the Plan, and the arguments presented at the confirmation hearing both in support of and opposition to the Plan,

THE COURT MAKES THE FOLLOWING FINDINGS:

- i. The Plan complies with the provisions of chapter 13, and all other applicable provisions of the Bankruptcy Code, as well as this Court’s local rules, and judicial rulings.
- ii. All fees, charges, or amounts required to be paid before confirmation of the Plan or by the provisions of Title 28, United States Code, have been paid.
- iii. The Plan has been proposed in good faith and not by any means forbidden by law.
- iv. As of the effective date of the Plan, the value of property to be distributed under the Plan for each allowed unsecured claim is not less than the amount that would be paid on such claim on this date if the estate of the debtor were liquidated under chapter 7 of the Bankruptcy Code.
- v. With respect to each allowed secured claim provided for in the Plan, the treatment complies with 11 U.S.C. §1325(a)(5).
- vi. The debtor will be able to make all plan payments and to comply with the Plan.
- vii. The debtor filed this case in good faith.
- viii. The debtor is current on all domestic support obligations.
- ix. The debtor has filed all required tax returns.
- x. The Plan has been transmitted to all parties in interest and the notice of the confirmation hearing required by Federal Rules of Bankruptcy 2002 and 3015(d) has been given.
- xi. The debtor has appeared at all required meetings and hearings and is in compliance with all court orders issued in this case.
- xii. Any filed objections to the Plan not specifically addressed herein are hereby overruled.
- xiii. Debtor’s attorney’s fees proposed in the Plan and set forth below are reasonable.
- xxiv. The debtor is in full compliance with 11 U.S.C. § 521.

¹ In a joint case, the term “debtor” shall refer to both debtors.

I. DESCRIPTION OF THE PLAN AS CONFIRMED

PART 1: ADDITIONAL RELIEF SOUGHT AND AUTHORIZED BY THE PLAN

___ Reclassification or reduction in amount of secured claim, see Part 3.2 of the Plan, results in a partial payment or no payment at all to the following secured creditor(s): _____.

___ Avoidance of the following judicial liens or nonpossessory, nonpurchase-money security interests, see Part 3.4 of the Plan: _____.

PART 2A: PLAN PAYMENTS AND LENGTH OF THE PLAN

2.1 Debtor will make regular payments to the trustee as follows:
\$ _____ per _____ for _____ months [Plus: \$ _____ from _____ by _____] see Part 2.4 of the Plan.

2.2 Debtor will make payments in the following manner:
___ pursuant to a payroll deduction order.
The debtor's employer shall withhold funds from each of the debtor's paychecks and send the funds, with the debtor's name and case no. (____), addressed to:
Jan M. Sensenich, chapter 13 trustee
P.O. Box 39, Memphis, TN 38101-0039
___ pursuant to an order authorizing an automatic bank account debit.
___ other (specify): _____.

If the debtor is making plan payments through automatic deductions from a bank account, and the debtor fails to remain current on plan payments, the chapter 13 trustee may file a proposed payroll deduction order on notice to the debtor and the debtor's attorney, and if the debtor fails to object to the order within ten (10) days of service of the proposed order, the Court may enter that order without a hearing.

2.3 Income tax refunds:
___ Debtor will retain any income tax refunds during the Plan term;
___ Debtor will supply the trustee with a copy of each income tax return filed during the plan term within 14 days of filing the return and will turn over to the trustee all income tax refunds received during the plan term; or
___ Debtor will treat income tax refunds as follows: _____

The total amount of payments the debtor will make under the Plan: _____.

PART 2B: AMOUNT OF ESTIMATED TRUSTEE DISBURSEMENTS UNDER THE PLAN

The trustee shall disburse funds paid under the Plan as follows:²

- a. Maintenance and cure of payments on secured claims (Part 3, § 3.1 total) \$ _____
- b. Modified undersecured claims (Part 3, § 3.2 total) \$ _____
- c. Secured claims excluded from 11 U.S.C. § 506 (Part 3, § 3.3 total) \$ _____
- d. Judicial liens or security interests partially avoided (Part 3, § 3.4 total) \$ _____
- e. Fees and priority claims (Part 4 total) \$ _____
- f. Nonpriority unsecured claims (Part 5, § 5.1, highest stated amount) \$ _____
- g. Maintenance and cure payments on nonpriority unsecured claims (Part 5, § 5.2 total) \$ _____
- h. Separately classified nonpriority unsecured claims (Part 5, § 5.3 total) \$ _____
- i. Trustee payments on executory contracts and unexpired leases (Part 6, § 6.1 total) \$ _____
- j. Nonstandard Plan payments (Part 8, total) \$ _____

The total amount the trustee shall disburse under the Plan: \$ _____

² If there is any difference between the amounts set out in this Order and the terms of the Plan, the terms of this Order control. The total amounts listed in this section, 2B, do not include any direct payments made by the debtor, which are included in Part 6 of the Plan.

PART 3: TREATMENT OF SECURED CLAIMS

3.1 Maintenance of payments and cure of defaults, if any:

Name of creditor	Collateral	Current installment pmt (inc. escrow)	Amt of arrearage (if any)	Int rate on arrearage	Monthly plan pmt on arrearage	Total pmts by trustee
_____	_____	\$ _____	\$ _____	_____ %	\$ _____	\$ _____
		Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor				
_____	_____	\$ _____	\$ _____	_____ %	\$ _____	\$ _____
		Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor				

3.2 Valuation of security, payment of fully secured claims, modification of undersecured claims.

Name of creditor	Estimated amt of creditor's claim	Collateral	Value of collateral	Amt of claims senior to C's clm.	Amt of secured clm	Interest rate	Monthly payment to creditor	Est. total of mthly pmts
_____	\$ _____	_____	\$ _____	\$ _____	\$ _____	_____ %	\$ _____	\$ _____

3.3 Secured claims excluded from 11 U.S.C. § 506.

Name of creditor	Collateral	Amt of claim	Int rate	Monthly Plan pmt	Estimated total pmts by trustee
_____	_____	\$ _____	_____ %	\$ _____	\$ _____
		Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor			

3.4 Lien avoidance pursuant to 11 U.S.C. § 522(f) and Federal Rule of Bankruptcy 4003(d).

Name of creditor: _____
 Nature of lien or interest: _____
 Lien identification: _____
 Collateral: _____
 Amount of lien: \$ _____
 Amount of lien avoided: \$ _____ OR _____ The entire lien is avoided

3.5 Surrender of collateral:

Name of Creditor	Collateral
_____	_____

PART 4: TREATMENT OF FEES AND PRIORITY CLAIMS

- 4.1 General: The trustee's fee and all allowed priority claims, including domestic support obligations, other than those treated in Part 4.5 in the Plan, will be paid in full without post-petition interest.
- 4.2 Trustee's Fees: The trustee's fees are governed by statute and may change during the course of the case but are estimated to be _____% of plan payments; and during the plan term, they are estimated to total \$_____.
- 4.3 Attorney's fees: The balance of the fees owed to the attorney for the debtor, in the amount of \$_____, shall be paid through the Plan.
- 4.4 Priority claims other than attorney's fees shall be paid as follows:
 Creditor: _____ Amount to be paid: \$_____.
- 4.5 Domestic support obligations that have been assigned to or are owed to a governmental unit and will be paid less than the full amount of the claim under 11 U.S.C. § 1322(a)(4).
 Creditor: _____ Amount to be paid: \$_____.

PART 5: TREATMENT OF NONPRIORITY (GENERAL) UNSECURED CLAIMS

5.1 Allowed nonpriority unsecured claims (not separately classified) will be paid as follows:
 _____% of the total allowed amount of these claims, an estimated payment of \$_____

5.2 Maintenance of payments and cure of any default on nonpriority unsecured claims:

Name of creditor	Current installment payment	Amount of arrearage to be paid	Estimated total payments by trustee
_____	\$ _____	\$ _____	\$ _____
	Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor		

5.3 Separately classified nonpriority (general) unsecured claims:

Name of creditor	Basis for separate classification and treatment	Amount to be paid on the claim	Interest rate (if applicable)	Estimated total amount of payments
_____	_____	\$ _____	_____ %	\$ _____

PART 6: EXECUTORY CONTRACTS AND UNEXPIRED LEASES

6.1 The executory contracts and unexpired leases listed below are assumed and will be treated as specified. All other executory contracts and unexpired leases are rejected.

Name of creditor	Description of lease or contract	Current installment payment	Amount of arrearage to be paid	Treatment of arrearage	Estimated total payment by trustee
_____	_____	\$ _____	_____	_____	\$ _____

PART 7: VESTING OF PROPERTY OF THE ESTATE

7.1 Property of the estate will vest in the debtor upon:
_____ plan confirmation _____ entry of discharge _____ other (specify:_____)

PART 8: NONSTANDARD PLAN PROVISIONS

8.1 Nonstandard provisions in the Plan: _____

8.2 Other requirements applicable to implementation of this Plan: _____

II. RELIEF UNDER EMBEDDED MOTIONS

1. If relief has been sought under Part 3 of the Plan, then, pursuant to Vt. LBR 3015-1(b)(A-D), the debtor has either obtained or been denied a separate Order pertaining to that relief as follows:

Relief sought (avoid lien; value or surrender collateral; strip lien)	Order granted (date)	Order denied (date)	Docket # of Order
_____	_____	_____	_____

ORDER

III. DUTIES OF THE DEBTOR AND TRUSTEE DURING THE PLAN TERM

IT IS HEREBY ORDERED:

- The chapter 13 trustee is authorized to, and shall, commence disbursements immediately, in accordance with the Plan, **except that the trustee shall not begin disbursing mortgage payments until the mortgage creditor files a proof of claim or the Court orders otherwise.**
- The chapter 13 trustee shall not perform the duties specified in 11 U.S.C. § 1302(c) unless this Court orders him to do so.
 - If the debtor is operating a business, as defined in 11 U.S.C. § 1304(a), the debtor shall perform the duties as specified in 11 U.S.C. § 704(a)(8) and file periodic reports on the debtor's operations ("Operating Reports") in the form and frequency as the Court directs, pursuant to § 1304 (c).
 - The debtor shall timely file all required federal and state tax returns, pay all taxes when due, and
 - [] the debtor shall provide copies of all tax returns (including any requests for an extension or filing deadlines) to the chapter 13 trustee within 14 days of filing them with the taxing authorities, or
 - [] upon request of the chapter 13 trustee, at anytime while the case is pending, the debtor shall provide copies of all requested tax returns (including requests for an extension of filing) to the trustee within ten (10) days of the chapter 13 trustee's request.
- The debtor shall remain current on all post-petition domestic support obligations and the debtor's failure to pay post-petition domestic support obligations may constitute cause for conversion to chapter 7, or dismissal of the case under § 1307 (c).
- Nothing in the Plan or in this order shall be construed to limit the chapter 13 trustee's rights in any adversary proceeding filed under §§ 544, 545, 547, 548 or 549.
- If the debtor is operating a business without a tax account, the debtor shall open a separate bank account and promptly deposit into it all sums withheld from employees' wages and all employer payroll taxes, and shall make no disbursements from such account except to pay tax liabilities arising from payment of wages.

6. In the event this case is converted to chapter 7, and the chapter 13 trustee possesses funds aggregating more than \$2,500 at the time of conversion, the chapter 13 trustee shall forward all such funds to the debtor, in care of the debtor's attorney, if any, after ten (10) days from the first scheduled § 341(a) meeting in the chapter 7 case, unless, prior to that date, the chapter 7 trustee files and serves a written objection pursuant to § 348(f)(2). In the event the funds in the chapter 13 trustee's possession at such time aggregate \$2,500 or less, or in the event this case is dismissed, the chapter 13 trustee shall forward all funds in the chapter 13 trustee's possession to the debtor in care of the debtor's attorney, if any. Nothing in this paragraph constitutes a determination of the rights of any particular party in such funds.
7. In the event a proof of claim for a priority claim or secured claim to be paid in the Plan is filed in an amount greater than that provided for under the Plan and, after notice of the filed claims, the debtor neither objects to the claim nor modifies the Plan to pay it in full, the term of the Plan, to the extent it is less than 60 months, shall be extended up to 60 months as necessary to pay that claim in full.
8. In the event a proof of claim for a priority claim or secured claim to be paid in the Plan is filed in an amount less than that provided for under the Plan, the difference between the amount provided for the claim in the Plan and the proof of claim shall be added to the dividend to be paid to unsecured creditors.
9. The debtor is enjoined from incurring any debt in excess of \$7,000.00, other than for a medical emergency and enjoined from selling any asset having a value of greater than \$2,500, without the prior written and filed consent of the chapter 13 trustee or an order of this Court.
10. (a) Unless waived by the chapter 13 trustee in writing, the debtor shall immediately report to the chapter 13 trustee any actual or projected increase in gross annual income of 10% or more above the gross income stated by the debtor in the most recently filed Schedule I.
(b) Except for those amounts listed in the schedules, the debtor shall report immediately to the chapter 13 trustee any right of the debtor or debtor's spouse to a distribution of funds (other than regular monthly income) or of property which exceeds a value of \$2,500. This includes the right to disbursement from any source, including but not limited to bonuses and inheritances. Any such funds to which the debtor or debtor's spouse become entitled shall be held by the debtor and not used without the trustee's consent or order of this Court.
(c) The debtor shall not encumber or otherwise dispose of any interest in
 - (i) real property, or
 - (ii) personal property with a value exceeding \$10,000,outside the ordinary course of business, without notice to all creditors and the chapter 13 trustee, with an opportunity for hearing (unless such property is acquired through the use of credit and the chapter 13 trustee's consent or an order of this Court is obtained pursuant to this order and the Court's Local Rules).
11. (a) If the debtor has recently filed a tax return for a pre-petition tax period (with a federal taxing authority including but not limited to the Internal Revenue Service or any state taxing authority),
 - (i) the taxing authority which received that return may amend its claims after confirmation, and
 - (ii) the amount of any amended claim shall control the amounts to be paid, notwithstanding the amounts reflected in the Plan or this Order, unless the trustee or debtor files an objection to that amended proof of claim within 60 days of the filing date of the post-confirmation proof of claim and that objection is sustained.
(b) To the extent the allowed claim of the taxing authority is higher than the amount of the claim in this Order, the debtor shall move to modify the Plan, within 60 days from the date of the filing of the proof of claim, or after a ruling on any objection to the amended proof of claim, whichever is later, to pay that tax claim in full.

IT IS FURTHER ORDERED that notwithstanding any provision in the Plan to the contrary, the entry of this Order grants no relief that is only available through an adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure 7001(6), including but not limited to an exception from discharge for a student loan debt under 11 U.S.C. § 523(a)(8).

IT IS FURTHER ORDERED that:

1. The debtor shall timely pay the trustee, and the trustee shall timely disburse all payments, required by the Plan and described above.
2. The Plan dated _____, and as described above, is CONFIRMED.
3. All fees the debtor seeks to pay through the Plan are APPROVED.

_____, 2017
Burlington, Vermont

Colleen A. Brown
United States Bankruptcy Judge

DRAFT

SUMMARY OF CHANGES TO VT. LBR 4001-7

AS OF 8.18.17

4001-7. MORTGAGE MEDIATION PROGRAM

- Makes clear mortgage mediation is available up through the date of the debtor's discharge and adds requirement that mediation is available if it would be available in state court
- Explains required contents for motion for mediation and any objections, and requires further specifications when the U.S. is mortgage holder
- Combines into one list all situations in which mediation will not be granted (unless the creditor consents)
- Provides general rule conferring broad discretion to mediators in mediation process
- Shortens section discussing time frame for mediation process significantly; all references to any internal court timelines (e.g., when Clerk would enter a mediation order or send list of mediators to parties) deleted; requires mediator to file interim or final report based upon results of mediation; new language now included in draft proposed order for mortgage mediation
- Adds provision requiring moving party to forward mediator copy of motion for mediation, all documents in support of that motion, and the promissory note and mortgage that are the subject of the mediation
- Deleted list of specific documents that were required; rule now requires debtor to produce all documents the creditor reasonably requests and provide copies to mediator
- Deleted list of scenarios that constitute cause to change amount or allocation of mediation fee
- Deleted language already included in proposed order for motion to declare mediation closed
- Simplified the directions for service

Attachments:

1. Clean copy of proposed Vt. LBR 4001-7
2. Redline copy of proposed Vt. LBR 4001-7

Vt. LBR 4001-7. MORTGAGE MEDIATION PROGRAM.

(a) Availability of Mediation in Bankruptcy Cases.

- (1) At any time prior to discharge, an individual debtor or a creditor holding a claim secured by real property owned by an individual debtor, may file a motion for mortgage mediation/loss mitigation (hereinafter "motion for mediation") in any bankruptcy case filed in this District. See Vt. LB MM Form #1. A party may seek mediation with respect to any mortgage on the debtor's primary residence provided: (A) the property has four units or less, and (B) mediation would be available in a case pending in state court.
- (2) The motion for mediation must state why mediation would be useful to the parties and how it would benefit the estate. If the United States holds the mortgage, the movant must also specify the federal statute and/or regulation authorizing mediation. The movant must serve the motion, notice of motion, and a proposed order using Vt. LB MM Form #3 on all creditors who could claim an interest in the property and the case trustee.
- (3) Any objection to the motion for mediation must state why mediation is not likely to be useful to the parties or of benefit to the estate.
- (4) Unless the creditor consents, mediation will not be permitted if:
 - (A) mediation of the subject mortgage has already been completed or was begun and abandoned by the debtor in the instant bankruptcy case or a pending state foreclosure action;
 - (B) modification of the mortgage is essential to the confirmation of a plan and the debtor failed to file a motion for mediation prior to the confirmation hearing;
 - (C) the parties have filed a stipulation in the bankruptcy case with respect to the debtor's obligations under the subject mortgage;
 - (D) the United States holds the mortgage and the mediation is not authorized under the federal statutes or regulations governing servicing of the loan; or
 - (E) the creditor obtained relief from stay on the subject property.

(b) Mediation Guidelines.

- (1) Mediators shall have broad discretion over mediations conducted pursuant to this Rule and shall be responsible for completing mediations as expeditiously as practicable based on the circumstances of each case.
- (2) The parties engaged in mediation under this Rule shall cooperate in good faith, under the direction of the mediator, and produce all documents and information required by this Rule in a timely manner.
- (3) The creditor must consider all available foreclosure prevention tools and loss mitigation options, including but not limited to reinstatement, loan modification, forbearance, short sale, and surrender.
- (4) Where the creditor claims that a pooling and servicing, or other similar agreement, does not authorize loan modification, the creditor must provide the debtor and mediator with a copy of that agreement. All such agreements are confidential and shall not be filed in the case or included in the mediator's report.
- (5) The following persons must participate in any mediation conducted under this Rule:

- (A) the debtor and the attorney for the debtor, if any,
- (B) the attorney for the creditor, if any, and
- (C) the creditor, or a person designated by the creditor or its servicer who:
 - (i) has authority to agree to a proposed settlement, loan modification, or relief from stay, and
 - (ii) has real-time access during the mediation to the creditor's account information and to the records relating to consideration of the options available.
- (6) Subject to the mediator's approval, the case trustee and any party that holds a lien on the subject property may also participate.
- (7) The mediator may permit any party or attorney to participate in the mediation by telephone or through video conferencing.
- (8) Mediations conducted under this Rule will take place in a mutually convenient location, as determined by the mediator.

(c) Time Frame for the Mediation Process.

- (1) The parties and mediator shall comply with the following pre-mediation timeline:
 - (A) the parties shall stipulate to the selection of a mediator within seven days of the creditor-mortgagee's participation in the case. Such participation is evidenced by the earlier of the creditor-mortgagee's (i) filing of a proof of claim in the case or (ii) appearance in the case (either by counsel or *pro se*);
 - (B) if the parties are unable to stipulate to the selection of a mediator within seven days of the events specified in subparagraph (c)(1)(A) above, the debtor shall file an application requesting that the Court designate a mediator; and
 - (C) the mediator's appointment shall be effective as of the date the mediator is designated on the docket; and
 - (D) upon the mediator's appointment, the moving party shall forward to the mediator a copy of (i) the motion for mediation, (ii) all documents filed in support of that motion, and (iii) the promissory note and the mortgage that are the subject of the mediation. Any other party may provide the mediator with other information pertinent to the mediation.
- (2) The mediator shall make initial contact with the parties to formulate a preliminary schedule for the mediation process within 7 days of the mediator's appointment.
- (3) The mediation shall be completed within 120 days of the mediator's appointment and the mediator shall file a final report of mediation within seven days of completing the mediation. See Vt. LB MM Form #12.

- (A) If the mediation results in a successful loan modification, the parties shall promptly file a motion for approval of a loan modification. See Vt. LB Form W-3 Motion for Approval of Mortgage Modification.
- (B) If, during the course of mediation, the creditor decides not to modify the loan, the creditor must provide a written explanation at the time of denial that includes the input figures used in calculating eligibility for a modification. If the debtor believes the creditor denied the modification in bad faith or reached a conclusion based on erroneous facts or calculations, the debtor may file a motion to compel the creditor to participate in further mediation within 14 days' notice of the creditor's denial.

(4) If the mediation will not be completed within 120 days of the mediator's appointment, the mediator shall file an interim report of mediation no later than seven days after the expiration of that 120-day period. See Vt. LB MM Form #12. The interim report shall describe the status of the mediation, explain why mediation is not yet completed, and state the date by which the mediator expects the mediation will be completed.

(5) If the mediator fails to file a final or interim report of mediation within the time periods specified in subparagraphs (c)(3) and (c)(4) above, the mediator and the parties shall appear at a status hearing to explain why mediation has not been completed and when they expect to complete it.

(6) The entry of the debtor's discharge shall not be delayed due to an open mediation in their case, unless the Court orders otherwise after a motion and a hearing (or stipulation of the parties).

(d) Required Documents. Unless the debtor obtains an order stating otherwise, the debtor must produce all documents the creditor reasonably requests and provide copies of those documents to the mediator.

(e) The Mediation Fee.

- (1) The mediator is entitled to a fee of \$900 per mediation. This fee covers all services of the mediator including, but not limited to, holding pre-mediation telephone conference(s), communicating with the parties, filing interim and final reports, and conducting the mediation session(s).
- (2) The fee for the mediator shall be allocated equally among the parties to the mediation except that the case trustee shall not be required to pay any portion of the mediator's fee even if the trustee participates in the mediation.
- (3) If the mediator or a party seeks to change the amount or allocation of the fee for the mediation, that person must file a motion showing cause for such relief on 14 days' notice to all parties to the mediation and the case trustee.

(f) Post-Final Report Requirements and Obligations.

- (1) Within 14 days of the filing of the final report of mediation, the party who filed the motion for mediation must file (A) a motion to declare mediation closed with a proposed order attached (Vt. LB MM Form #11), or (B) a stipulation requesting that mediation not be closed until a particular date or the occurrence of a particular event (e.g., the approval of a temporary payment plan or

execution of a final modification agreement).

(2) If the party who filed the motion for mediation fails to timely file a motion to close mediation, or if at any time during the mediation process the party who initiated the mediation is not complying with this Rule, the mediator or any party to the mediation may file a motion to close mediation. See Vt. LB MM Form #11.

- (g) Mediator Prohibited from Testifying About the Mediation.** Mediators may not be required to testify in any action relating to any mortgage or debt that was at issue in a mediation conducted pursuant to this Rule.
- (h) Eligibility to Serve as a Mediator in Bankruptcy Court Mediations.** To serve on the panel of Court-approved mediators, an attorney must meet the minimum certification requirements of the Vermont state court mediation program and have significant bankruptcy experience.
- (i) Retention of Jurisdiction.** This Court retains jurisdiction to interpret and enforce any agreement or result obtained through mediation conducted pursuant to this Rule.
- (j) Service.** Whenever a debtor is required to serve a creditor under this Rule, the debtor must serve the creditor at the address set forth on the creditor's proof of claim, if a proof of claim has been filed.

VT. LBR 4001-7. MORTGAGE MEDIATION ~~AND LOSS MITIGATION~~ PROGRAM.

(a) Availability of Mediation in Bankruptcy Cases.

(1) ~~At any time prior to discharge, an individual debtor or a creditor holding a claim secured by real property owned by an individual debtor, may In any case filed under Chapter 7, 11, 12, or 13, a party may~~ file a motion for mortgage mediation/loss mitigation (hereinafter "motion for mediation") in any bankruptcy case filed in this District. See (Vt. LB MM Form #1. A party)-

~~(2) Parties~~ may seek mediation with respect to any mortgage on the debtor's primary residence provided: (A) the property has four units or less, and (B) mediation would be available in a case pending in state court. -(regardless of whether the mortgage is subject to the HAMP guidelines)-

~~(2)~~ The motion for mediation must state why mediation would be useful to the parties and how it would benefit the estate. If the United States holds the mortgage, the movant must also specify the federal statute and/or regulation authorizing mediation. The movant must serve the motion, notice of motion, and a proposed order using Vt. LB MM Form #3 on all creditors who could claim an interest in the property and the case trustee.

~~(3)~~ Any objection to the motion for mediation must state why mediation is not likely to be useful to the parties or of benefit to the estate.

~~(4)~~ Unless the creditor consents, mediation will not be permitted if:

~~(A) mediation(3) With the creditor's consent, mediation will be available at any time during the pendency of any Chapter 7, 11, 12, or 13 bankruptcy case.~~

~~(4)~~ In the absence of the subject mortgage creditor's consent, the Court will not grant a debtor's motion for mediation if the Court has already entered either: (A) a discharge order; or (B) an order granting relief from stay to that creditor on the subject property.

~~(5)~~ Mediation will not be permitted if the creditor objects and:

~~(A) mediation has already~~ been completed; or was begun and abandoned by the debtor in the instant bankruptcy case; or a pending state foreclosure action;

~~(B)~~ modification of the mortgage is essential to the confirmation of a plan and the debtor has failed to file a motion for mediation prior to the confirmation hearing; or

~~(C)~~ the parties have filed a stipulation in the bankruptcy case with respect to the debtor's obligations under the subject mortgage; or

~~(C)~~ the United States holds the mortgage and the mediation is not authorized under the federal statutes or regulations governing servicing of the loan; or

~~(D)~~ the creditor obtained relief from stay on the subject property.

(b) ~~The~~ Mediation Guidelines ~~Process~~.

(1) Mediators shall have broad discretion over mediations conducted pursuant to this Rule and shall be

responsible for completing mediations as expeditiously as practicable based on the circumstances of each case.

(2) The parties engaged in mediation under this Rule shall cooperate in good faith, under the direction of the mediator, and to produce all documents and the information required by this Rule in a timely manner so as to maximize the effectiveness of the mediation.

(32) The creditor must consider all available foreclosure prevention tools and loss mitigation options, including but not limited to reinstatement, loan modification, forbearance, ~~and short sale, and surrendersales.~~

(43) Where the creditor claims that a pooling and servicing, or other similar agreement, does not authorize loan—prohibits modification, the creditor must provide the debtor and mediator with produce a copy of that ~~ate~~ agreement. All such agreements agreement documents are confidential and ~~shall~~ are not ~~to be~~ filed in the case or included in the mediator's report.

(54) The following persons must participate in any mediation conducted under this Rule:

(A) the debtor and the attorney for the debtor, if any,

(B) the attorney for the creditor, if any, and

(C) the creditor, or a person designated by the creditor or its servicer, who:

(i) has authority to agree to a proposed settlement, loan modification, or relief from pursuit of lift stay, relief; and

(ii) has real-time access during the mediation to the creditor's account information ~~Information~~ and to the records relating to consideration of the options ~~available.~~ ;

(6) Subject to (B) counsel for the mediator's approval, creditor, if any;

~~(C) the debtor and counsel for the debtor, if any; and~~

~~(D) the Court appointed mediator;~~

~~(5) The case trustee and any party that holds a lienholders of other liens on the subject property may also participate, subject to the mediator's approval.~~

(76) The mediator, ~~in the exercise of his or her discretion,~~ may permit any party or attorney to participate in the mediation by telephone or through video conferencing.

(8) Mediations (7) All mediations conducted under this Rule will take place in a mutually convenient location, as determined by the mediator. ~~—~~

(c) Time Frame for the Mediation Process.

(1) ~~The A debtor mortgagor or creditor mortgagee may file a motion for mediation (Vt. LB-MM Form #1) that seeks an order directing the parties and mediator shall comply to engage in mediation, in~~

compliance with the following pre-mediation timeline procedures:

- ~~(A)~~ (A) the movant must serve the motion on 14 days' notice to all creditors who would claim an interest in the property and the case trustee, along with a notice of motion regarding the motion for mediation (Vt. LB-MM Form #2), and may use the default procedure;
- ~~(B)~~ in the motion, the movant must specify why mediation would be useful to the parties shall stipulate to the selection of a mediator and how it would benefit the estate;
- ~~(C)~~ any objection to the motion must specify why mediation is not likely to be useful to the parties or likely to be of benefit to the estate;
- ~~(D)~~ if the motion is granted, the Clerk will promptly enter a mediation order (Vt. LB-MM Form #3) and then
- (i) ~~the Clerk will forthwith send the parties a list of all Bankruptcy Court approved mediators;~~
- (ii) within seven days of the creditor-mortgagee's ~~creditor's~~ participation in the case. Such participation is; evidenced by the earlier of:
- (aa) the creditor-mortgagee's ~~(i) mortgagee's~~ filing of a proof of claim in the case or (ii) appearance;
- (bb) ~~the creditor-mortgagee appearing by counsel in the case (;~~ or
- (cc) ~~an individual creditor-mortgagee's appearing either by counsel or pro se);~~
- (B) — the parties may stipulate to the selection of a mediator; and
- ~~(iii) no party shall file a notice of selection of a mediator prior to the creditor-mortgagee's participation in the case (as defined in (ii) above).~~
- ~~(E)~~ if the parties are unable to stipulate to the selection of a mediator within seven days of the events specified in subparagraph (c)(1)(A) part (D) above, the debtor shall file an application requesting that a motion asking the Court to designate a mediator; and
- (C) the mediator's appointment shall be effective as of the date the mediator is designated on the docket; and
- ~~(F)~~ the mediator will be deemed appointed on the date the parties file the list identifying the mediator they have selected, unless the Court orders otherwise.
- (2) ~~Within 14 days of the appointment of the mediator, the parties may file a stipulated proposed scheduling order (on Vt. LB-MM Form #13). If they fail to do so, the parties shall be bound by the deadlines set out below.~~
- (3) — Within 21 days of the
- (D) upon the mediator's appointment, the moving party shall forward to the ~~of the~~ mediator a copy of
- (i):
- ~~(A) the debtor must serve on the motion for mediation, (ii) mediator and the creditor all documents set forth on the mediation document list, with the complete loan number set forth on each page,~~

along with a notice of compliance (Vt. LB MM Form #5) with the mediation order, and file with the Court a copy of the notice (without attachments) and a certificate of service; and

~~(filed in support of B) if the debtor determines that motion, and (iii) he or she cannot proceed with mediation until the debtor has obtained certain information from the creditor, the debtor must serve on the creditor and the mediator a demand for documents from the creditor (Vt. LB MM Form #9) that identifies the documents the debtor needs from the creditor (e.g., copy of the promissory note, copy of the loan history) and the mortgage that are why, and file with the subject Court a copy of the demand for creditor documents.~~

~~(4) Within 45 days of the appointment of the mediator, the mediator must hold a pre-mediation. Any telephone conference with the debtor and creditor to identify any missing documents, expedite exchange of any necessary documents, and address any impediments to moving forward or other party may provide the mediator with other information pertinent to the mediation pre-mediation issues. At the pre-mediation telephone conference, the mediator must, at a minimum, record the status of the parties' efforts, the progress the parties have made on the production and exchange of financial documents, any review of information that occurs during the conference, any request for additional information, the anticipated time frame for submission of any additional information and the creditor's review of the information, and the scheduling of the mediation session. The mediator may require the creditor's representative to participate in the pre-mediation telephone conference, and any other meetings the mediator deems appropriate in order to expeditiously conclude the mediation process.~~

~~(5) Within 21 days of the date the debtor filed the notice of compliance (Vt. LB MM Form #5):~~

~~(A) the creditor must serve the debtor and the mediator with a creditor's response to the adequacy of the debtor's mediation documents (Vt. LB MM Form #8) and file the same with the Court, with a certificate of service; or~~

~~(B) if the creditor finds the documents from the debtor to be incomplete, finds the debtor has not served all documents articulated on the list, or determines additional documents are necessary in this particular case, the creditor may file a motion to compel compliance with the mediation order (Vt. LB MM Form #4) in lieu of the response; and~~

~~(C) if the debtor files a demand for documents from the creditor (Vt. LB MM Form #9), the creditor must serve the documents requested by the debtor on the debtor and mediator, along with a response to the demand for creditor documents, and file a copy of the response (without attachments) and a certificate of service with the Court.~~

~~(6) If the creditor serves a motion to compel compliance with the mediation order (Vt. LB MM Form #4), the debtor will have 14 days to file a response and serve upon the creditor any documents required to bring the debtor into compliance with the mediation order. A motion to compel is a non-routine motion for purposes of this Rule. Cf. Vt. LBR 9013-2) ____ (b), (c)(4). The creditor may set a hearing thereon, to be held shortly after the expiration of the debtors' response time; if the creditor does not set a hearing, the Court will do so if it deems a hearing necessary.~~

~~(7) The mediator must schedule the mediation session to be held within 21 days of the filing of the creditor's response, or of an order adjudicating the motion if the creditor files a motion in lieu of the creditor's response, whichever is later. The first mediation session must be held within 90 days of the appointment of the mediator, unless the Court grants a motion to enlarge the time. The mediation~~

~~must conclude within 14 days of the first mediation session, unless the mediator determines there is good cause to extend the mediation period. The mediator shall make initial contact with the parties to formulate a preliminary schedule for have broad discretion and authority to manage the mediation process within 7 days of the mediator's appointment, including the authority to enlarge the 90-day time period between appointment of the mediator and the convening of the first mediation session, provided the mediator files (A) a statement setting forth the basis for enlarging this time period and (B) a precise and firm schedule for commencing and completing the mediation.~~

(3) The mediation shall be completed within 120 days of the mediator's appointment and the mediator shall file a final report of mediation within seven days of completing the mediation. See Vt. LB MM Form #12.

(A) If the mediation results in a successful loan ~~(8)~~ — if a modification, the parties shall promptly file a motion for approval of a loan modification. See Vt. LB Form W-3 Motion for Approval of Mortgage Modification.

~~If, during the course of mediation, the creditor decides not to modify the loan is denied, the creditor must provide a written explanation at the time of denial that includes as to why a modification is denied (including the input figures used in calculating eligibility for a modification). If the debtor believes the creditor denied the modification in bad faith, or reached a conclusion based on the basis of erroneous facts or calculations, the debtor may file, within 14 days of the conclusion of the mediation, a motion to compel the creditor to participate in further mediation within 14 days' notice of the creditor's denial.~~

(4) If the mediation will not be completed within 120 days of the mediator's appointment, the mediator shall file an interim report of mediation no later than seven days after the expiration of that 120-day period. See Vt. LB MM Form #12. The interim report shall describe the status of the mediation, explain why mediation is not yet completed, and state the date by which the mediator expects the mediation will be completed

(9) The mediator must file a report of mediation (Vt. LB MM Form #6) within 14 days of the conclusion of the mediation. In lieu of Vt. LB MM Form # 6, the mediator may file a Vermont Foreclosure Mediation Report, as described in 12 V.S.A. § 4634.

~~(10) Unless, within 120 days of the date the mediator was appointed,~~

~~(A) the mediator files a statement and schedule, or a report (or interim report, Vt. LB MM Form # 12) of mediation, or~~

~~(B).~~

(5) If the mediator fails to file a final or interim report of mediation within the time periods specified in subparagraphs (c)(3) and (c)(4) above, the mediator and the parties shall appear at a status hearing to explain why mediation has not been completed and when they expect to complete it.

(6) The entry of the debtor's discharge shall not be delayed due to an open mediation in their case, unless the Court orders otherwise after a motion and a hearing (or stipulation of the parties).

(d) Required Documents. ~~Unless the debtor obtains an order stating otherwise, files a stipulation between the debtor, creditor, and mediator deferring mediation due to a temporary payment plan,~~

~~the Clerk shall set a status hearing for the next hearing date, at which the parties' representative and the mediator shall be required to appear and explain why the mediation has not been completed.~~

~~(11) Unless, after motion and a hearing (or a stipulation of the parties) the Court enters an order providing otherwise, the fact that the debtor is engaged in mediation shall not delay the entry of discharge.~~

~~**(d) Required Documents.** must produce all documents Unless waived by the creditor reasonably requests, the debtor must deliver the following documents to the creditor and providemediator:~~

- ~~(1) — a request for modification and affidavit or an alternative, analogous form required by the creditor;~~
- ~~(2) — an IRS Form 4506T (with § 5 left blank);~~
- ~~(3) — a fully completed financial worksheet for loan modification (Vt. LB MM Form #10) with all supporting information required by the worksheet;~~
- ~~(4) — the two most recent bank statements for each account on which the debtor is a signatory (all pages; no computer printouts);~~
- ~~(5) — the two most recently filed federal tax returns with affidavit affirming that the debtor has signed them and that these are true and correct copies of those documents what the debtor has filed;~~
- ~~(6) — a copy of the Schedules I & J filed with the bankruptcy petition, and, if the bankruptcy case has been pending more than 60 days, amended Schedules I & J showing income and expenses as of the date of the motion for mediation;~~
- ~~(7) — a Dodd Frank Certification;~~
- ~~(8) — a debtor's hardship letter (Vt. LB MM Form #7, or the hardship form required by the creditor, if any) specifying the circumstances pertinent to the debtor;~~
- ~~(9) — the debtor's two most recent electric utility bills;~~
- ~~(10) — the debtor's current property tax bill;~~
- ~~(11) — a copy of the debtor's current driver's license or a statement from the debtor affirming s/he does not have a driver's license;~~
- ~~(12) — the debtor's homeowner's insurance declarations page;~~
- ~~(13) — a contribution letter from each household member who, though not liable on the loan, has been contributing to the mediator loan payments, specifying the amount of any continuing contribution, along with other income information from that person and his or her consent to any credit check required by the creditor;~~
- ~~(14) — the debtor's payment advices representing the most recent consecutive 30 day period;~~
- ~~(15) — if the debtor is self-employed, profit and loss statements for the last two quarters and for the year to~~

~~date, and the most recent four months of business bank statements (all pages; no computer printouts);~~

- ~~(16) if the debtor receives social security, disability, pension, or other public assistance benefits, the award letter and the most recent benefit statement;~~
- ~~(17) if the debtor owns real property that the debtor rents, including rental of part of the property subject to the mediation, a copy of the current rental agreements (or an affidavit describing lease terms), a listing of monthly rental income, and two months' canceled rent checks;~~
- ~~(18) if the debtor is divorced, a copy of all divorce decrees and all separation agreements signed by the debtor in the past eight years, and a copy of any quitclaim deed to the occupant spouse;~~
- ~~(19) a statement describing any alimony and/or child support award paid to either debtor, if the debtor wishes to have that income considered; and~~
- ~~(20) a statement articulating whether the debtor is a member of a homeowners' association.~~

(e) The Cost of Mediation Fee.

- (1) The mediator is entitled to a ~~flat~~ fee of \$900 per mediation. This fee covers all services of the mediator, including, but not limited to, ~~holding the~~ pre-mediation telephone conference(s), communications with the parties, ~~the filing of an~~ interim and final reports, and ~~conducting~~ conduct of the mediation session(s).
- (2) The fee for the mediator ~~shall~~ will be ~~allocated~~ split equally among the parties to the mediation, except that the case trustee shall not be required to pay any portion of the mediator's fee, even if ~~the trustee~~ he participates in the mediation.
- (3) If the mediator or a party seeks to change the amount or allocation ~~any~~ of the fee for the mediation following relief, that person must file a motion ~~with the Court, on 14 days' notice to all parties to the mediation and the case trustee,~~ showing cause for such relief:
 - ~~(A) a different fee for the mediator;~~
 - ~~(B) a different allocation of the mediator's fee; or~~
 - ~~(C) an assessment of costs against a party to the mediation.~~
- ~~(4) An application for any of these forms of relief must:~~
 - ~~(A) show good cause for the relief sought, including an explanation of the circumstances giving rise to the application;~~
 - ~~(B) be on 14 days' notice to all parties to the mediation and plus the case trustee; and~~
 - ~~(C) include a specific breakdown of the time spent, any costs incurred, and a computation of the amount sought.~~

(f) Post-Final ReportMediation Requirements and Obligations.

(1) Within 14 days of the ~~conclusion of the mediation, the mediator must file a report of mediation (Vt. LB MM Form #6) that:~~

~~(A) sets out the names and addresses of all persons who participated in the mediation session(s), identifying each person's role in the mediation, and specifying which representative of each party had decision-making authority;~~

~~(B) states whether any person required to participate in mediation failed to~~

~~(i) participate in the mediation;~~

~~(ii) make a good faith effort to mediate,~~

~~(iii) timely supply documentation, information, or input figures necessary to the mediation, or~~

~~(iv) timely supply responses, information, or data requested by the mediator;~~

~~(C) summarizes the results of the mediation, stating whether full or partial settlement was reached and appending any agreement of the parties, if available; and~~

~~(D) describes the circumstances if the mediation failed because a party (or parties) failed to follow through on a proposal or an instruction from the mediator.~~

~~(2) Within 14 days of the filing of the final report of mediation, the party who filed the motion for mediation (Vt. LB MM Form #1) must file (A) a post-mediation motion to declare mediation closed or stipulation, with a proposed order attached declaring mediation closed (Vt. LB MM Form #11), or (B) a stipulation requesting entry of an order that:~~

~~(A) finds that the parties have had a full opportunity to mediate the subject mortgage;~~

~~(B) states whether the mediation not be closed until proceeded in good faith;~~

~~(C) states whether an agreement was reached; and~~

~~(D) sets a particular status hearing for a date or the occurrence of a particular event (e.g., the approval of a temporary payment plan or execution of a final shortly after the conclusion of any trial modification agreement). period, or establishes a scheduled next step necessary to move the case forward.~~

(23) If the party who filed the motion for mediation fails to timely file a motion to close mediation, or if at any time during the mediation process, the party who initiated the mediation is not complying with this Rule, the mediator or any party to the mediation may file a motion to close ~~the~~ mediation. See Vt. LB MM Form #11.

(g) ~~Preclusion on~~ Mediator Prohibited from Testifying About the Mediation. Mediators ~~may not~~. ~~No mediator will~~ be required to testify in any action relating to any mortgage or debt that was at issue in a mediation conducted pursuant to this Rule.

(h) ~~Criteria for Eligibility to Serve as a Mediator in Bankruptcy Court Mediations. To serve~~In order to be on

- ~~the panel of Court-approved bankruptcy mediators, an attorney must meet the minimum~~
- ~~certification requirements of the Vermont state court mediation program and have significant~~
- ~~bankruptcy experience.~~

(i) **Retention of Jurisdiction.** This Court retains jurisdiction to interpret and enforce any agreement or result obtained through mediation conducted pursuant to this Rule.

- ~~agreement reached through mortgage mediation conducted pursuant to this Rule or in a~~
- ~~bankruptcy case in this District.~~

(j) **Service.** Whenever ~~the~~ debtor is required to serve ~~the~~ creditor under this Rule, the debtor must serve the creditor at the address set forth on the creditor's proof of claim, if a proof of claim has been filed in this case, or the address on record with the Clerk for such purposes. If the creditor has not filed a proof of claim in this case or given the Clerk a preferred service address, the debtor must serve the creditor by serving the attorney who represents the creditor in a pending foreclosure action against the subject property. If there is no foreclosure action pending and no other address on record, the debtor must serve the creditor as required by Fed. R. Bankr. P. 7004.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re: _____,
[_____],
Debtor(s).

Case # _____
Chapter _____

REPORT OF MEDIATION INTERIM / FINAL

Name of Lender: _____ Date mortgage executed: _____
Last four digits of loan number: _____ Current loan balance: _____
Property address: _____ Date mediator appointed: _____
Mediator: _____ Mediation completed? _____ (if so, date?)

1. Date of first mediator contact: _____
2. Date[s] of pre-mediation conference[s]: _____ Name and role of each participant: _____
3. Date[s] of mediation session[s]: _____ Name and role of each participant: _____
4. At each mediation event, all parties participated in good faith. If not, explain: _____

5. **Interim Report:**

Status of mediation: _____ Anticipated completion date: _____

Explanation of why mediation is not completed: _____

A. ___ To advance the mediation, the mediator, on behalf of all parties, requests a status hearing or in-chambers conference) [*select one*] within ___ days ; OR

B. ___ The status hearing scheduled for _____ is not needed and the mediator and parties request the status hearing be cancelled or postponed for ___ days (*select one*) because:

the mediator and parties have agreed as follows: _____

the mediator has scheduled the following event[s]: _____; OR

C. ___ The mediator recommends the following alternative course of action: _____.

6. **Final Report:** The use of mediation has resulted in the following:

Loan modification

Reinstatement

Short sale

Forbearance

Surrender of property

If other agreement, describe: _____

No agreement

8. Court action requested: _____

9. Other information pertinent to the status or conduct of the mediation: _____.

Date: _____

By : _____
Signature with mediator's printed name,
address, e-mail address, telephone number

PROPOSED STIPULATION PROCEDURE ALLOWING DEBTOR TO APPLY
SURPLUS CMP FUNDS TO CURE PLAN PAYMENT ARREARAGES

Periodically conduit mortgage cases approach the end of their term with surplus funds due to downward adjustments in mortgage payments or other downward adjustments in priority or secured claims. According to the boilerplate provisions of our confirmation order such funds are treated as disposable income and are added to the dividend to unsecured creditors, which allows the receipts and disbursements under a plan to balance notwithstanding lower than expected priority or secured claims. For a variety of reasons some debtors face challenges in making plan payments at the end of a plan and they approach the end of the plan with arrearages. It has occurred to the Chapter 13 trustee that in such cases it would make sense to adjust the plan to apply some of the surplus from reduced mortgage payments to cure the arrearage and allow the plan to complete on time. In such situations where that type of adjustment does not impair the treatment of any creditor under the plan, and where it is clear that there is no disposable income resulting from the adjustment, it does not make a lot of sense to go through the entire plan modification process when in fact no disbursements under the plan treatment of creditors are being modified. In fact, if the mortgage had been paid directly by a debtor during the plan the debtor would have had the benefit of the drop in mortgage payments which would facilitate making all of the final plan payments.

The Chapter 13 Trustee only envisions such stipulations when the following criteria are met:

1. The debtor is experiencing some unexpected difficulty in making plan payments or curing a plan arrearage within the last year of a plan;
2. Reductions in mortgage payments, secured or priority claims have created a surplus of funds in the plan which allows the plan to be consummated with less than the full proposed amount paid in.
3. The proposed adjustment would not reduce any treatment of any creditor or class of creditor under the Plan.

An example of how this might work is over the life of a 5 year plan a debtor accumulates a surplus of \$3,500 from lower than expected mortgage payments. Due to unexpected medical expenses and car repairs in the last year of the plan the debtors are behind by \$1,500. The debtor and trustee could stipulate to use \$1,500 of the surplus to cure the arrearage (essentially reducing the total to be paid under the plan by \$1,500). That would still leave an extra \$2,000 of the surplus to add to the dividend to unsecured creditors above and beyond what the plan required.

I think it is important to remember that right now the only thing that creates an expectation that the surplus would go to unsecured creditors is the standard plan language, not the Bankruptcy Code or Rules. In some districts the plan would be considered done once all the claims are paid per the plan and there would be no issue as to whether or not there would be a surplus, the plan would simply be done.

Also this would only happen if the Trustee agrees to the relief and the Court approves it.

**PROPOSAL TO AMEND THE CONDUIT MORTGAGE PAYMENT RULES TO ONLY PAY
MORTGAGE PAYMENTS AFTER THE FILING OF A MORTGAGE PROOF OF CLAIM**

Since the amendment of the Vermont Local Bankruptcy Rules in 2011 requiring the payment of mortgage payments through Chapter 13 plans where the mortgage was not current on the date the petition was filed, the rules have required the trustee to commence mortgage payments as soon as practicable and generally well before plan confirmation and before a mortgage proof of claim is filed. Some of the drawbacks to this approach is that often debtors have no accurate information as to where their mortgage payments should be sent- due to changes in mortgage services, transfers of claims or just inaccurate records. Sometimes debtors do not even have an accurate idea of who the current mortgage holder is.

It is not unusual for such early “pre-proof of claim” disbursement to be rejected by creditors or returned to the trustee. Sometimes such payments simply go stale and are never negotiated. The trustee has learned over the last year that the overwhelming choice of trustee offices that disburse mortgage payments is never to make mortgage disbursements until a mortgage proof of claim is filed. This allows for more complete and more accurate information to be used to disburse mortgage payments. It provides for a check on what the monthly payment should be as well as a correct creditor name and address. Moreover, even if the debtor disagrees with the information in the proof of claim, the debtor can object to the claim and the Court can resolve the issue. Ideally this process should be part of a plan confirmation process.

On December 1, 2017 new Federal Bankruptcy Rules will require proofs of claims for mortgages to be filed within 70 days of the petition date. For cases in which proofs of claim are filed in a timely manner there should be no extended delay in mortgage payments since it is not until a case is 30 days from filing date that the trustee even has the first payment to disburse. Allowing a full monthly disbursement cycle after the first payment is due will be at day 60, only ten days before proofs of claim are due.

For all of the above reasons the Chapter 13 trustee believes it makes sense not to disburse mortgage payments to creditors until a proof of claim is filed and that the Vermont Local Bankruptcy Rules should be amended to make that change.