

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF VERMONT**

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In re:

**AMENDMENT TO PROCEDURE REGARDING  
CONDUIT MORTGAGE PAYMENTS  
IN CHAPTER 13 CASES AND  
VACATUR OF STANDING ORDER # 10-02**

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**STANDING ORDER # 11-04**

On December 1, 2011, Federal Rule of Bankruptcy Procedure 3002.1 became effective. Certain provisions of that rule conflict with this Court's Standing Order # 10-02 "In re: Conduit Mortgage Payments" issued on September 28, 2010. Official Bankruptcy Forms have also been adopted that eliminate the need for certain Local Forms, which were adopted to implement Standing Order # 10-02. Therefore, Standing Order # 10-02 is hereby vacated.<sup>1</sup>

In order to enhance the likelihood that debtors will be able to retain their residences, that Mortgage Creditors will be paid in a timely manner, and that Chapter 13 cases filed in this District will succeed, Chapter 13 debtors who are delinquent on their home mortgages on the date they file for bankruptcy relief will henceforth be required to make post-petition mortgage payments through their Chapter 13 plans. This Standing Order is entered to effectuate the new procedure and shall apply to (i) all cases filed under Chapter 13 on or after November 1, 2010, (ii) all cases converted to Chapter 13 on or after November 1, 2010, and (iii) all cases in which the Chapter 13 plan is modified, on or after November 1, 2010, based upon a post-petition payment default.

- (a) **Local Bankruptcy Forms.** This Standing Order requires use of the following local bankruptcy forms: Form Y-1 Mortgage Creditor Checklist; Form Y-2 Notice of Conduit Mortgage Payment and Authorization to Release Information to the Trustee; Form Y-5 Model Mortgage Payment History; and Form Y-6 Notice of Transfer of Claim (Other than for Security). All of these forms are available on the Court's website: [www.vtb.uscourts.gov](http://www.vtb.uscourts.gov). Use of these Local Bankruptcy Forms is required, with the exception that if a Mortgage Creditor is already using forms that substantially conform to the Local Bankruptcy Forms, and provide all of the information on the Local Bankruptcy Forms, the Mortgage Creditor may use its own forms unless and until the Court orders otherwise.
- (b) **Definitions.** For the purposes of this Standing Order, the following terms have the following meanings:
- (1) The "Administrative Arrearage" is the sum of the first two post-petition Regular Monthly Mortgage Payments due under the note, which the Trustee pays with the Pre-Petition Mortgage Arrearage pursuant to the terms of this Standing Order.
  - (2) An "Administrative Arrearage Claim" is a claim that must be included in a Conduit Mortgage Payment Plan, which consists of at least the first two monthly mortgage payments which come due immediately after the filing of the Chapter 13 case. This claim, consisting of an amount equal to at least two monthly mortgage payments, is paid to the mortgage creditor or servicer during the term of the Chapter 13 Plan and is intended to address the fact that payments of the regular monthly (conduit) mortgage payment by the trustee will not typically commence until approximately 30 to 60 days from the date the

petition is filed. The purpose of including an Administrative Arrearage Claim in a Plan is to allow conduit mortgage payments to start later than the first mortgage payment due date after the filing of the petition and for those payments to be caught up in the following months of the Plan.

- (3) A “Conduit Mortgage Payment” is the Regular Monthly Mortgage Payment the debtor is obligated to pay to the Mortgage Creditor post-petition, which the Trustee disburses pursuant to the terms of this Standing Order.
- (4) A “Conduit Mortgage Payment Plan” is a Chapter 13 Plan which includes the payment of ongoing monthly mortgage payments on one or more mortgages, by the trustee to the mortgage holder(s) from payments which are included in the debtor’s plan payments to the trustee.
- (5) The debtor is “Delinquent” when he or she 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 subsequent to the Filing Date.
- (6) The “Filing Date” is the date the case was filed under or converted to Chapter 13.
- (7) A “Mortgage Creditor” is the 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, whichever files a proof of claim for the mortgage debt. (Wherever this Standing Order refers to notice on the Mortgage Creditor, or requires the Mortgage Creditor to file a document, that reference is to the Mortgage Creditor’s attorney.)
- (8) The “Plan Completion Date” is the date on which the debtor fulfilled the debtor’s obligations under the Chapter 13 plan, as identified by the Trustee, or as determined by the Court in the event of a dispute.
- (9) The “Post-Petition Mortgage Arrearage” is the sum of past due Regular Monthly Mortgage Payments the debtor owes to a Mortgage Creditor post-petition, excluding the first two post-petition Regular Monthly Mortgage Payments (which are treated as the Administrative Arrearage).
- (10) 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.
- (11) A “Regular Monthly Mortgage Payment” is the sum of the principal, interest, taxes, insurance, administrative fees, and any other charges properly escrowed, charged, or assessed under a note secured by a properly perfected mortgage on the debtor’s residential real property, which is due each month.
- (12) The “Trustee” is the standing Chapter 13 Trustee for the District of Vermont.
- (13) The “Trustee’s Mortgage Payment Accounting” is a complete history of the Trustee’s receipt of payments from the debtor and disbursement of checks to the Mortgage Creditor, with the disbursements showing separate entries for the Conduit Mortgage Payments and Pre-Petition Mortgage Arrearage components.

(14) A “Waiver Order” is an order entered by this Court that waives the requirement to make Conduit Mortgage Payments to the Mortgage Creditor through the Chapter 13 plan.

(c) **Post-Petition Mortgage Payments.** A debtor shall be required to make Conduit Mortgage Payments as follows:

(1) When the debtor is not Delinquent.

- (A) Except as provided in subparagraphs (c)(1)(C) and (D) of this Standing Order, a debtor who is not Delinquent is not required to make Conduit Mortgage Payments.
- (B) A debtor who is not Delinquent may elect to make Conduit Mortgage Payments as outlined in this Standing Order, by specifying this in a chapter 13 plan.
- (C) If (i) a debtor has been making Regular Monthly Mortgage Payments directly to a Mortgage Creditor post-petition pursuant to subparagraph (c)(1)(A) of this Standing Order, (ii) 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, (iii) the Court finds the debtor is in default on those payments, and (iv) the outcome of the motion for relief from stay is the Court’s entry of an order that 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 for relief from stay based upon the debtor’s election to make Conduit Mortgage Payments, then the Mortgage Creditor shall 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 amount of the monthly plan payments to an amount sufficient to pay the increased plan payment including the Conduit Mortgage Payment, and directing the debtor to comply with all applicable provisions of this Standing Order.
- (D) If (i) a debtor has been making Regular Monthly Mortgage Payments directly to a Mortgage Creditor post-petition pursuant to subparagraph (c)(1)(A) of this Standing Order, and (ii) 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 order shall reflect that the debtor shall 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 the debtor shall increase the monthly plan payment accordingly.

(2) When the debtor is Delinquent.

- (A) Except as provided in subparagraph (c)(2)(B) of this Standing Order, a debtor who is Delinquent is required to make Conduit Mortgage Payments.
- (B) A debtor who is Delinquent may obtain a Waiver Order only upon a showing of cause, based upon exigent circumstances.
  - (i) The additional cost associated with the Trustee’s fee on the Conduit Mortgage Payment will not constitute cause for entry of a Waiver Order unless the debtor shows that the additional cost would cause the plan to fail.
  - (ii) The debtor shall bear the burden of showing cause in any motion for a Waiver Order. The debtor must file the motion on notice to the Trustee and

the Mortgage Creditor within seven (7) days of the Filing Date, and may use the default procedure. See Vt. LBR 9013-4.

- (iii) A Mortgage Creditor or the 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 subparagraph (c)(1)(D) of this Standing Order.

(d) **Duties of the debtor.** A debtor who is Delinquent, is otherwise subject to the Conduit Mortgage Payment requirement, or voluntarily opts to make Conduit Mortgage Payments, must fulfill the following duties:

- (1) Duty to specify components of Mortgage Creditor's claim in Chapter 13 plan.
  - (A) The debtor shall specify in the Chapter 13 plan:
    - (i) the amount of the Conduit Mortgage Payment;
    - (ii) the amount of the Pre-Petition Mortgage Arrearage and the Regular Monthly Mortgage Payments included in that arrearage figure; and
    - (iii) the amount of the Administrative Arrearage and the Regular Monthly Mortgage Payments included in that figure.
  - (B) The debtor shall also file Form Y-8 Wage Withholding Authorization with the plan, unless filing a motion for waiver of the wage withholding requirement. See Standing Order # 10-03.
- (2) Duty to provide forms to the Trustee and Mortgage Creditor. The debtor shall complete Form Y-1 Mortgage Creditor Checklist and Form Y-2 Notice of Conduit Mortgage Payment and Authorization to Release Information to the Trustee, and shall provide both forms, along with a copy of the three (3) most recent mortgage invoices or monthly payment vouchers the debtor has, to the Trustee, with a copy to the Mortgage Creditor, no later than seven (7) days after the Filing Date.
- (3) Duty to make timely first plan payment directly to the Trustee. The debtor shall make the first plan payment, in an amount that includes the full Conduit Mortgage Payment, directly to the Trustee within thirty (30) days of the Filing Date.
- (4) Duty to make sufficient plan payments. If the amount of the Regular Monthly Mortgage Payment increases during the term of the plan, the debtor shall increase the amount of plan payment to the Trustee by an amount equal to the increase in the Regular Monthly Mortgage Payment due, plus the Trustee's fee allocable to that additional sum, and the Trustee shall effectuate this via notice to the entity withholding the plan payment. The

increased plan payment shall be due on the effective date of the increase in the Regular Monthly Mortgage Payment. If the amount of the Regular Monthly Mortgage Payment decreases during the term of the plan, the plan payment shall not change, the Trustee shall retain the additional funds, and the Trustee shall disburse them as set forth in subparagraph (g)(1)(D) of this Standing Order, unless the debtor modifies the plan to provide otherwise.

- (5) Penalty for failure to comply with foregoing requirements. The debtor's failure to comply with the requirements of subparagraph (d) of this Standing Order may result in the Court denying confirmation of the Chapter 13 plan.
- (6) Additional duty to object to proof of claim. If the debtor believes that the Mortgage Creditor's proof of claim is inaccurate, the debtor shall promptly file an objection to the Mortgage Creditor's proof of claim.
  - (A) If the debtor's objection is overruled, within seven (7) days of the Court's ruling, (i) the Trustee shall file a notice of increased plan payment and serve 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 (ii) the debtor shall file a motion to amend or modify the plan if needed.
  - (B) If the debtor's objection is sustained, the Trustee shall continue to disburse payments in the amount determined by the Court and file an amended proof of claim on behalf of the Mortgage Creditor consistent with the Court's order.

(e) **Duties of the Trustee.**

- (1) Duty to disburse Conduit Mortgage Payments. Upon receipt from the debtor of Form Y-1 Mortgage Creditor Checklist, Form Y-2 Notice of Conduit Mortgage Payment and Authorization to Release Information to the Trustee, and the first plan payment, the Trustee shall 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, such as the filing of a proof of claim by the Mortgage Creditor or 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 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 the Trustee paid to the Mortgage Creditor was not due, either in whole or in part, the Trustee shall recover and the Mortgage Creditor shall disgorge any such overpayments. See subparagraph (f)(2) of this Standing Order.
- (2) Duty to pay Administrative Arrearage with Pre-Petition Mortgage Arrearage. The Trustee shall pay the amount due for Administrative Arrearage with the amount due for Pre-Petition Mortgage Arrearage.
- (3) Duty regarding plan payment increases. Upon receipt of Official Bankruptcy Form B 10 (Supplement 1) Notice of Mortgage Payment Change pursuant to subparagraph (g)(1) of this Standing Order, the Trustee shall:
  - (A) file notice of any required plan payment increase with the Court;

- (B) serve a copy of such notice on the debtor and the debtor's attorney; and
  - (C) if the debtor does not object within fourteen (14) days of service of the Notice of Mortgage Payment Change pursuant to subparagraph (g)(1) of this Standing Order, then the Trustee shall file a notice of increased plan payment and promptly serve notice of increased wage withholding on the entity withholding the plan payment, and shall commence making Conduit Mortgage Payments in the new amount on the later of the date the Trustee begins receiving increased plan payments or the effective date of the new payment.
- (4) Duty to disburse only full payments. The Trustee shall disburse only payments in an amount equal to the Regular Monthly Mortgage Payment to the Mortgage Creditor as Conduit Mortgage Payments unless the Trustee is disbursing a final payment due to satisfaction of claim, conversion, or dismissal. If funds in the debtor's account with the Trustee are not sufficient to make a full Conduit Mortgage Payment and pay the corresponding Trustee's fee, then the Trustee shall hold such funds until the Trustee receives from the debtor an amount sufficient to do so; the Trustee shall notify the debtor, the debtor's attorney, and the Mortgage Creditor by email within seven (7) days of the date the Trustee intended to make the Conduit Mortgage Payment and specify the amount the Trustee has available for that payment at that time, and the additional amount needed to make a full payment.
- (5) Duty to specify proper application of payment. The Trustee's payments to a Mortgage Creditor shall include a voucher narrative indicating how to apply each payment to the Conduit Mortgage Payment, Administrative Arrearage, and Pre-Petition Mortgage Arrearage components of the Mortgage Creditor's allowed claim; each voucher narrative shall also include the debtor's name, the Chapter 13 case number, and the Mortgage Creditor's account number.
- (6) Duties upon the debtor's default. If the debtor fails to make any timely or full plan payment, including the first plan payment, then the Trustee shall take the following steps:
- (A) The first time the debtor fails to make a timely or full plan payment, the Trustee shall, within fourteen (14) days of that default, file and serve upon the debtor, the debtor's attorney, and the Mortgage Creditor, a notice of delinquency specifying the due date and amount of the missed payment, and the amount needed to cure the plan payment default. If the debtor does not cure the default or file a motion to modify the Chapter 13 plan within fourteen (14) days of the filing of the Trustee's notice, the Trustee shall file and serve upon all parties in interest a motion to dismiss the case based upon the payment default and any other grounds the Trustee deems warrant dismissal of the case.
  - (B) The second time the debtor fails to make a timely or full plan payment, the Trustee shall, within fourteen (14) days of that default, file and serve upon all parties in interest a motion to dismiss the case, specifying that it is the second payment default and any other grounds the Trustee deems warrant dismissal of the case.

(C) Nothing in this Standing Order precludes a Mortgage Creditor, or any other party in interest, from filing a motion to dismiss case or a motion for relief from stay based upon a debtor's default in plan payments or other requirements of this Standing Order, or other grounds set forth in 11 U.S.C. § 1307.

(7) Duty to declare Plan Completion Date. Within twenty-one (21) days of the date the debtor has made his or her final plan payment, the Trustee shall make a docket entry identifying the Plan Completion Date.

(8) Duty to file motion to declare the debtor current at conclusion of case. See subparagraph (h) of this Standing Order.

(f) **Duties of the Mortgage Creditor.**

(1) 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 shall attach to the proof of claim Official Bankruptcy Form B 10 (Attachment A) Mortgage Proof of Claim Attachment in order to facilitate a prompt commencement of post-petition payments in the correct amount, and is encouraged to provide the Mortgage Proof of Claim Attachment to the Trustee in advance of filing the proof of claim.

(2) Duty to disgorge. If the Court determines that a payment the Trustee made to the Mortgage Creditor included an overpayment or was otherwise improper, the Mortgage Creditor shall be required to disgorge that sum promptly to the Trustee.

(3) Duty to apply payments properly. The Mortgage Creditor shall apply each Conduit Mortgage Payment disbursed by the Trustee to the earliest outstanding post-petition payment due under the plan, as shall be specified on the voucher narrative accompanying the Trustee's payment. This requires the Mortgage Creditor to treat the sums due as the Administrative Arrearage as part of the Pre-Petition Mortgage Arrearage for purposes of applying payments and to apply the first Conduit Mortgage Payment it receives to the third Regular Monthly Mortgage Payment due from the debtor post-petition.

(4) Duty to limit late fees. The Mortgage Creditor shall not charge the debtor a late fee unless:

(A) the reason for the late payment was the debtor's failure to make a full or timely plan payment to the Trustee; and

(i) either the Trustee and the debtor consent to the assessment of a late fee;

(ii) or the Court enters an order, which the Mortgage Creditor may seek through an emergency motion for expedited relief for cause shown, authorizing the Mortgage Creditor to charge and the Trustee to pay a late fee, and directing a one-time increase in the plan payment amount to fund payment of the late fee and corresponding Trustee's commission; or

(B) the Court enters an order authorizing the Mortgage Creditor to collect a late fee, e.g., in connection with a motion to dismiss or motion for relief from stay; or

(C) the Mortgage Creditor obtains an order pursuant to subparagraph (g)(2) of this Standing Order.

(5) Duty to provide annual payment history.

(A) During the pendency of the Chapter 13 case, the Mortgage Creditor shall provide to the debtor, the debtor's attorney, and the Trustee, on or before March 1st of each year, a twelve-month summary of the activity through December 31st of the previous year, on the loan on which Conduit Mortgage Payments have been disbursed, using Form Y-5 Model Mortgage Payment History.

(B) If the case was filed or converted from another chapter on or after January 1st, the first annual payment history shall include activity on the account from the Filing Date through December 31st of the previous year. The Mortgage Creditor shall not file the annual payment histories with the Court except as attachments, when pertinent, to a motion for relief from stay or a motion to dismiss, unless authorized to do so by Court order.

(6) Duty to provide documents to the debtor's attorney and the Trustee. The Mortgage Creditor shall provide to the debtor's attorney and the Trustee copies of all documents sent to the debtor post-petition, including correspondence, statements, payment coupons, escrow notices, and default notices, and any other documents that disclose a change in:

- (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.

(7) Duty to attach information to motion for relief from stay. A motion for relief from stay in a Conduit Mortgage Payment case shall be accompanied by either Form Y-5 Model Mortgage Payment History setting forth the post-petition account history, or a print-out from the Trustee's website showing the debtor's plan payment history, including the portion of the website's 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.

(g) **Post-Petition Changes and Charges to Regular Monthly Mortgage Payments.**

(1) Changes to Regular Monthly Mortgage Payment amount. If the mortgage documents authorize the Mortgage Creditor to modify the Regular Monthly Mortgage Payment amount, the following requirements shall apply:

(A) The Mortgage Creditor shall file and serve on the debtor, the debtor's attorney, and the Trustee Official Bankruptcy Form B 10 (Supplement 1) Notice of Mortgage



Payment Change giving at least the notice required by the loan documents, but in no event less than twenty-one (21) days' notice of the effective date. The Notice of Mortgage Payment Change shall include the new Regular Monthly Mortgage Payment amount, the date the new payment takes effect, the term of the new payment, if any, and an explanation for the payment change.

- (B) Within fourteen (14) days of service of the Notice of Mortgage Payment Change, the debtor, the Trustee, or any other party in interest may file a response or objection to the Notice of Mortgage Payment Change specifying the basis of the response or objection. If no response in opposition or objection is filed, the debtor shall be 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. See subparagraph (e)(3) of this Standing Order.
  - (C) When a modified Regular Monthly Mortgage Payment amount goes into effect pursuant to subparagraph (g)(1)(B) of this Standing Order, the Trustee shall file notice of the new Regular Monthly Mortgage Payment amount and may disburse the new Conduit Mortgage Payment without awaiting the Court order authorizing modification of the plan, as of the effective date set forth in the Notice of Mortgage Payment Change, unless the Trustee's Notice specifies a different date.
  - (D) If additional monies become available due to a decrease in the Regular Monthly Mortgage Payment amount, the Trustee shall hold such monies in reserve to be applied, if needed, to any later increase in the Regular Monthly Mortgage Payment amount. Any additional reserve monies remaining at the end of the plan term shall be paid to the general unsecured creditors, unless the Court orders otherwise.
- (2) Treatment of post-petition charges and fees incurred. If the Mortgage Creditor incurs post-petition attorney's fees, costs, or other charges, such as property inspection fees, persistent post-petition late charges not addressed as described in subparagraph (f)(3) of this Standing Order, or other items payable by the debtor under the terms of the loan documents, then the following requirements shall apply:
- (A) To collect these fees the Mortgage Creditor must file a motion requesting that the additional fees and costs be added to the Mortgage Creditor's existing Pre-Petition Mortgage Arrearage claim, which shall be accompanied by Form Y-5 Model Mortgage Payment History. If the Mortgage Creditor fails to request payment of such post-petition charges for the previous calendar year, by March 31st of the current calendar year, it shall be precluded from requesting these fees in any contested manner or adversary proceeding in the case, unless the Court determines that the failure to file a timely motion was substantially justified or harmless.
  - (B) Not later than thirty (30) days after service of the motion and Model Mortgage Payment History, the debtor, the Trustee, or any other party in interest may file a response or objection thereto. If no response in opposition or objection is filed, the debtor shall be deemed to have accepted that the charge is owed, reasonable, and

secured by the debtor's residential real property. In the absence of a response in opposition or objection, the Trustee shall add such amount to the Mortgage Creditor's existing Pre-Petition Mortgage Arrearage claim for payment as funds are available for that class of claimant, promptly notify the debtor and the debtor's attorney of the change in the Pre-Petition Mortgage Arrearage figure, and notify the debtor if this will require a motion to modify plan.

(C) Alternatively, the Mortgage Creditor may file a motion requesting that the additional fees and costs be paid post-petition. In that event, the Mortgage Creditor shall file Official Bankruptcy Form B 10 (Supplement 2): Notice of Post-Petition Mortgage Fees, Expenses and Charges with a motion requesting that the debtor either amend the plan or make a separate additional payment to satisfy the allowed outstanding post-petition charges; the Mortgage Creditor may file this motion using the default procedure.

(3) Post-petition changes to the name, identity, or address of the Mortgage Creditor. The Mortgage Creditor shall notify the debtor, the debtor's attorney, and the Trustee immediately upon learning of a change in the name or identity of the Mortgage Creditor payee or a change of address to which Conduit Mortgage Payments should be made, using Form Y-6 Notice of Transfer of Claim (Other than for Security). The Mortgage Creditor shall be precluded from seeking late fees based upon the Trustee's failure to send payments to the correct party or correct address if that failure is reasonably attributable to the timing of the notice by the Mortgage Creditor.

(h) **"Payments Current Order" at Completion, Dismissal, and Conversion of Chapter 13 Case.**

In order to provide the debtor and Mortgage Creditor with finality as to the status of the debtor's payments on the Mortgage Debt as of the conclusion of the bankruptcy case, the following procedures will apply to all cases pending on or after the date of this Standing Order.


- (1) In Completed Conduit Mortgage Payment Cases. Within thirty (30) days after the Debtor completes all payments under the plan, the Trustee shall
- (A) file and serve the Notice of Final Cure Payment required by Rule 3002.1(f) (the "Rule 3002.1(f) Notice");
  - (B) attached as an exhibit to the Rule 3002.1(f) Notice, a Trustee's Mortgage Payment Accounting;
  - (C) file a motion for an Order determining whether the debtor has cured the mortgage default and paid all required post-petition amounts to the Trustee and any Mortgage Creditor, pursuant to Rule 3002.1(h), regardless of whether the Mortgage Creditor has filed a response to the Rule 3002.1(f) Notice; and
  - (D) articulate specifically in that motion what relief or declaration the Trustee is seeking, and whether the Trustee is proceeding under Rule 3002.1(i).

- (2) In Completed Non-Conduit Mortgage Payment Cases Where the Debtor Paid a Mortgage Arrears Through the Plan.
- (A) Within thirty (30) days after the Debtor completes all payments under the plan, the Trustee shall file and serve the Rule 3002.1(f) Notice and provide the debtor with a copy of the Trustee’s Mortgage Payment Accounting (with respect to the payments the Trustee made to the Mortgage Creditor).
- (B) If the Mortgage Creditor does not respond to the Rule 3002.1(f) Notice within twenty-one (21) days of service, the Debtor may serve a motion to obtain an Order that the Debtor is current on the Mortgage debt (“Payments Current Motion”), following the procedure set out in Ruled 3002.1(g)-(i). To obtain an Order declaring the Debtor current on the Mortgage as of the completion of the plan (a “Payments Current Order”), the Debtor must serve a Payments Current Motion on the Mortgage Creditor, all parties who claim an interest in the debtor’s residential real property, and the Trustee; and attach copies of (i) the Mortgage Creditor’s proof of claim, (ii) the confirmation order, (iii) the Trustee’s Mortgage Payment Accounting, and (iv) copies of the Debtor’s cancelled checks (or other records) showing proof the Debtor made all required payments to the Mortgage Creditor. A Payments Current Motion must be filed using the conventional procedure, see Vt. LBR 9013-3, on at least twenty-one (21) days’ notice.
- (C) If the Mortgage Creditor objects to entry of a Payments Current Order, then the Mortgage Creditor must file an objection no later than three (3) business days before the hearing date, setting forth specific grounds for its position, and attaching a payment history to show that the debtor is not current. If the Mortgage Creditor does not object, (i) it shall be deemed to have acknowledged that the debtor is current with Regular Monthly Mortgage Payments through the Plan Completion Date, and that the debtor owes no other fees or charges under the note, (ii) shall be precluded from separately objecting to the Trustee’s final report with respect to whether the debtor is current on its mortgage debt ,and (iii) shall be precluded from disputing that the debtor is current (as set forth in the Payments Current Order) in any other proceeding.
- (D) Any other party in interest may file a response to the Payments Current Motion, provided it is filed no later than three (3) business days before the hearing date.
- (E) Upon entry of a Payments Current Order, the debtor will be: (i) deemed current on the mortgage as of the Filing Date, extinguishing any right of the Mortgage Creditor to recover any amount alleged to have arisen prior to the Filing Date or to declare a default under the note or mortgage based upon events prior to the Filing Date; and (ii) deemed current post-petition through the Plan Completion Date, thereby extinguishing any right of the Mortgage Creditor to recover any amount alleged to have arisen between the Filing Date and Plan Completion Date or to declare a default under the note or mortgage based upon events between the Filing Date and Plan Completion Date.

- (3) In Completed non-Conduit Mortgage Payment Cases Where the Debtor Did Not Pay a Mortgage Arrears Through the Plan. If the debtor made Regular Monthly Mortgage Payments to a Mortgage Creditor, directly, during the pendency of the bankruptcy case, the debtor may file a Payments Current Motion to obtain an Order that the Debtor is current on the Mortgage debt as of the Plan Completion Date. To obtain this relief, the Debtor must proceed as set out in subsection (h)(2) above.
- (4) Determination of Status of the Debtor's Mortgage Payments. Except as otherwise provided herein, the procedures set forth in Rule 3002.1 shall be sufficient to determine the status of a debtor's mortgage payments..
- (5) Rights in Chapter 13 Cases that Are Not Completed. Within ninety (90) days of the date of conversion or dismissal of a chapter 13 case, the debtor may file a motion seeking an Order declaring the status of the debtor's pre- and post-petition obligations to the Mortgage Creditor, on twenty-one (21) days' notice, using the conventional procedure. The debtor may rely upon the Trustee's final report to demonstrate proof of payments. The debtor, the Mortgage Creditor, and the Trustee shall proceed – and shall have the same rights and duties – as set forth in subparagraph (h)(2) of this Standing Order.
- (i) **Jurisdiction.** This Court shall retain jurisdiction over any order entered pursuant to this Standing Order.

SO ORDERED.

December 13, 2011  
Burlington, Vermont

  
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Colleen A. Brown  
United States Bankruptcy Judge

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<sup>i</sup> This standing order replaces Standing Order # 10-02, changing the text thereof only to the extent necessary to comply with Federal Rule of Bankruptcy Procedure 3002.1 ("Rule 3002.1") and the new Official Forms, and to include two additional definitions