

FILED

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO

2015 NOV 17 PM 2:05

IN RE:) THIRD AMENDED ADMINISTRATIVE
ORDER NO. 09-02)
)
ADMINISTRATION OF) JUDGE PAT E. MORGENSTERN-CLARREN
CHAPTER 13 CASES IN) JUDGE ARTHUR I. HARRIS
THE CLEVELAND COURT) JUDGE JESSICA PRICE SMITH

U.S. BANKRUPTCY COURT
NORTHERN DIST. OF OHIO
CLEVELAND

**ORDER GOVERNING CONDUIT MORTGAGE PAYMENTS
IN CHAPTER 13 CASES**

This Standing Order is effective for all Chapter 13 cases filed on or after December 1, 2015.

- I. As used in this Administrative Order, the following definitions shall apply:
 - i. "Arrearage" is the total amount past due as of the petition date, as stated in the Real Property Creditor's filed proof of claim, or such other total amount as may be determined by the Court.
 - ii. "Trustee" is the Standing Chapter 13 Trustee.
 - iii. "Debtor" is the Chapter 13 Debtor or Debtors.
 - iv. "Conduit Payments" are the Mortgage Payments which first become due post-petition and are paid by the Debtor to the Real Property Creditor through the Trustee.
 - v. "Mortgage Payments" are those regular, periodic payments which are owed by the Debtor to the Real Property Creditor as set forth in the documents evidencing the loan that is the basis of the Real Property Creditor's claim. These payments are limited to the principal and interest owed on the mortgage loan unless the Real Property Creditor has imposed a pre-petition escrow requirement for the prepayment of property taxes and insurance, in which case the mortgage payment will consist of principal, interest, property taxes, and insurance premiums. For purposes of this Administrative Order and the efficient administration of Conduit Payments, Mortgage Payments shall not include the regular, periodic payments owed on a home equity line of credit (HELOC).
 - vi. "Real Property Creditor" is an entity entitled to enforce a note given by the Debtor, which note is secured by a mortgage on the Debtor's principal residence (including manufactured and mobile homes) and with respect to which the Debtor proposes to make continuing post-petition Mortgage Payments to the Trustee under the terms of the Debtor's Chapter 13 Plan. Real Property Creditor includes an entity acting either on its own behalf or through a disclosed agent, such as a servicer. Should a Debtor choose to

include inside the plan the continuing post-petition mortgage payments on a debt secured by the Debtor's non-principal residence, the creditor holding the note given by the Debtor, which note is secured by a mortgage on the Debtor's non-principal residence, shall be deemed to be a Real Property Creditor for purposes of this Administrative Order

- II. Unless the Court orders otherwise for good cause (including but not limited to the absence of a pre-petition mortgage delinquency), all Mortgage Payments shall be made by the Debtor to the Trustee for disbursement by the Trustee as Conduit Payments. The plan payment to be paid by the Debtor to the Trustee shall include the Conduit Payment, inclusive of Trustee's fees.
- III. The Trustee is authorized to deduct from any payments collected under 11 U.S.C. §1326, the authorized percentage fee on the funds distributed as necessary costs and expenses, together with any fee, charge or amount required under §1326.
- IV. The Trustee will not make payments to the Real Property Creditor on the Arrearage until such time as a proof of claim is filed with the Court and the Chapter 13 plan is confirmed.
- V. The Trustee is authorized to disburse Conduit Payments, as if the Chapter 13 plan had been confirmed, once the Real Property Creditor has filed a proof of claim accompanied by a Mortgage Proof of Claim Attachment (Official Form 410A). In the absence of the timely filing of a Mortgage Proof of Claim Attachment by the Real Property Creditor, the Trustee is authorized to pay the monthly conduit payment amount stated in the plan. The Trustee shall commence disbursements as soon as is practicable and is not required to make partial payments to Real Property Creditors.
- VI. Any Conduit Payment paid or tendered to the Real Property Creditor shall be applied to the next post-petition payment due under the terms of the note and shall not accrue a late charge as per the terms of the note unless the Debtor fails to make a full payment or payments under the Chapter 13 Plan, which causes a delay in the distribution of the Conduit Payment to the Real Property Creditor.
- VII. If the Real Property Creditor proposes a change in the Conduit Payment due to a change in the escrow portion of the Conduit Payment for insurance and/or taxes, changed interest rate, or other reason, the Real Property Creditor shall file with the Court a Notice of Mortgage Payment Change (Official Form 410S1) no later than 21 days before a payment in the new amount is due. A party in interest shall have an opportunity to object to the proposed change in payment by filing an objection within 21 days after the notice is filed. The Real Property Creditor shall forward a copy of the notice to the Debtor and, if not served electronically through the Court's CM/ECF system, the Trustee and Debtor's attorney. If no objection is filed by a party in interest to the Real Property Creditor's Notice of Mortgage Payment Change within 21 days after the notice is filed, the Trustee is authorized to disburse the new Conduit Payment.
- VIII. If the Real Property Creditor proposes to increase the Conduit Payment by more than \$20.00, the Trustee shall file with the Court a notice of the change in the Debtor's plan payment. Such notice shall be treated as a modification of the

Debtor's plan. Should the new Conduit Payment jeopardize the feasibility of the plan, the Trustee may seek dismissal or conversion of the case, whichever the Trustee deems appropriate.

- IX. As soon as practicable before a change of the Real Property Creditor payee, or the address to which payments should be made, the Real Property Creditor shall file with the Court a document that substantially conforms to Exhibit A, Notice of Transfer of Servicing, and/or Exhibit B, Notice of Transfer of Claim (Other than for Security), and serve it on the Trustee, the Debtor, and the Debtor's attorney.
- X. If the Debtor has made all payments required under the Chapter 13 Plan and this Order, a party in interest may file a motion seeking an order of the Court determining that all pre-petition and/or post-petition defaults to the Real Property Creditor are deemed cured and all payments made on such debt through the date of plan completion are current, extinguishing any right of the Real Property Creditor to recover any amount alleged to have arisen before the filing of the petition, or to declare a default of the note, mortgage or other loan documents based upon pre-petition events, with no arrearage, no escrow balance, late charges, costs, expenses or attorney fees owing, except to the extent that the Court orders otherwise.
- XI. Nothing in this Administrative Order shall relieve any party from complying with any obligation under the United States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules of the District and Bankruptcy Court for the Northern District of Ohio – Eastern Division (Cleveland), or any applicable Administrative or General Orders.
- XII. These procedures may be varied in a particular case only by order of the Court.



Pat E. Morgenstern-Clarren
Chief United States Bankruptcy Judge



Arthur I. Harris
United States Bankruptcy Judge



Jessica Price Smith
United States Bankruptcy Judge

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION (CLEVELAND)

In re:) Case No.
Debtor Name,)
)
)
Debtor.) NOTICE OF TRANSFER
) OF SERVICING
)
) (no hearing required)

The servicing of the note securing a mortgage represented by the Proof of Claim No.____
filed on _____ in the amount of \$_____, by _____,
Transferor, with the address of _____ has been
transferred to _____, Transferee
(Loan No. _____).

Chapter 13 Trustee payments and Conduit Payments should be sent to _____
_____ at _____.

Dated: _____

By: _____

CERTIFICATE OF SERVICE

Creditor (Transferee), _____, certifies that it has served a copy of this Notice by ordinary U.S. mail or served electronically through the Court's ECF System on this _____ day of _____, _____:

Debtor(s)

Name
Street Address
City, State Zip

Debtor's Attorney

Name
Street Address
City, State Zip

Trustee

Name
Street Address
City, State Zip

Transferor

Name
Street Address
City, State Zip

U.S. Trustee

Name
Street Address
City, State Zip

Certifier

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION (CLEVELAND)

In re:) Case No.
Debtor Name,)
)
) NOTICE OF TRANSFER
Debtor.) OF CLAIM (Other than for Security)¹
)
) (no hearing required unless objection filed
) under Fed. R. Bankr. P. 3001(e)(2))

A proof of claim has been filed in this case. The transferee evidences, by way of the attached documentation, that the claim has been transferred, other than for security, as is stated in this notice.

Original Claim Information:

Name of Claimant: _____
Name of Payee [if different from claimant]: _____
Payment Address: _____
Last 4 digits of Account No: _____
Claim No. on Court's Registry: _____
Amount of Claim as of petition date: _____
Total debt Arrears

Transferee Information:

Name of Claimant: _____
Name of Payee [if different from claimant]: _____
Payment Address: _____
Name/Address for Notices [if different from payment address]: _____

Phone No: _____
Last 4 digits of Account No: _____

I, _____, declare under penalty of perjury that the information provided in this Notice is true and accurate to the best of my knowledge. I also declare that a copy of this Notice has been mailed to the Transferor and that proof of the transfer is attached.

¹This Notice must be used when any of the original payment information in a proof of claim changes. However, it should not be used for an amendment to the amount of the claim. For changes in the amount of the claim or the arrears, an amended proof of claim must be filed.

By: _____
Type or Print Transferee/Agent of Transferee

Date: _____

Signature

CERTIFICATE OF SERVICE

Creditor (Transferee), _____, certifies that it has served a copy of this Notice by ordinary U.S. mail or served electronically through the Court's ECF System on this _____ day of _____, _____.

Debtor(s)

Name
Street Address
City, State Zip

Debtor's Attorney

Name
Street Address
City, State Zip

Trustee

Name
Street Address
City, State Zip

Transferor

Name
Street Address
City, State Zip

U.S. Trustee

Name
Street Address
City, State Zip

Certifier