



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed May 6, 2020


United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

IN RE: §
§
ADJUSTMENT OF PLAN PAYMENTS §
IN CHAPTER 13 CASES AS A RESULT OF § **GENERAL ORDER 2020-13**
FORBEARANCE AGREEMENTS AND §
RELATED PROVISIONS REGARDING §
THE CONDUIT PROGRAM §

In light of the recent outbreak of the disease designated as COVID-19 and in anticipation that many Debtors¹ will qualify for and obtain agreements regarding the forbearance or deferment of Current Post-Petition Mortgage Payment(s) to a Mortgage Lender or the forbearance of payments from another secured creditor (“Forbearance Agreements”) for some period of time, the Court enters this General Order Regarding the Adjustment of Plan Payments in Chapter 13 Cases and Amendments to Certain Provisions Regarding the Conduit Program.

This Order is applicable to Cases pending as of the date of the entry of this Order and to Cases filed after the entry of this Order.

This Order is applicable in all Cases in which the Debtor qualifies for and obtains a Forbearance Agreement as a result of relief afforded to the Debtor by a Mortgage Lender or other secured creditor (“Secured Lender”) because of the COVID-19 public health crisis or pursuant to the Coronavirus Aid, Relief, Economic and Security Act (“CARES Act”).

If the Debtor is a Conduit Debtor and the Debtor receives a forbearance from a Mortgage Lender, he/she may seek a reduction of his/her monthly Plan Payments equal to the amount of the current post-petition mortgage payments that come due during the period of the Forbearance Agreement and the term of the Plan.

¹ Unless separately defined herein, all terms shall have the same definition as in General Order 2017-01.

If the Debtor receives a forbearance on payments owed to another Secured Lender, and the payments to that Secured Lender are being disbursed by the Chapter 13 Trustee, the Debtor may seek a reduction of his/her monthly Plan Payments equal to the amount of monthly payments made by the Trustee to the Secured Lender that come due during the period of the Forbearance Agreement and the term of the Plan.

The Debtor, Mortgage Lender, or Secured Lender shall file a Notice of Mortgage Forbearance or any similar document which, in the opinion of the Trustee, provides sufficient evidence of the Debtor's receipt of a forbearance. Such documentation may consist of an affidavit signed by the Debtor if, in the opinion of the Trustee, such affidavit is sufficient evidence of the Forbearance Agreement.

Upon receipt of such documentation, the Trustee shall prepare and file with the Court a Notice of Adjusted Plan Payment as a Result of a Forbearance Agreement ("Notice"). The Notice shall state the adjusted Plan Payment amount calculated to be consistent with the terms of the Forbearance Agreement. The Notice shall state the commencement date for and the duration of the adjusted Plan Payment ("Forbearance Period"). The Notice shall also state the Plan Payment amount after the termination of the Forbearance Agreement and the date after which such Plan Payment(s) shall be made.

The Notice shall be served on the Debtor, the Debtor's Counsel, the Mortgage Lender or Secured Lender, and counsel for the Mortgage Lender or Secured Lender, if any. The Notice shall contain a 14-day negative notice which shall read as follows:

NO HEARING WILL BE CONDUCTED HEREON UNLESS A WRITTEN REPOSENSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT (ADDRESS OF CLERK'S OFFICE) BEFORE CLOSE OF BUSINESS ON (MONTH) (DAY) (YEAR), WHICH IS AT LEAST 14 DAYS FROM THE DATE OF SERVICE HEREOF.

ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK, AND A COPY SHALL BE SERVED UPON THE CHAPTER 13 TRUSTEE, DEBTOR(S), COUNSEL FOR THE DEBTOR(S), MORTGAGE LENDER OR SECURED LENDER, AND COUNSEL FOR THE MORTGAGE LENDER OR SECURED LENDER, PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS FILED, A HEARING MAY BE HELD AFTER APPROPRIATE NOTICE.

IF NO HEARING ON THIS NOTICE IS TIMELY REQUESTED, THE NOTICE SHALL BE DEEMED UNOPPOSED AND THE PAYMENT TERMS SET OUT IN THIS NOTICE SHALL BE DEEMED AS THE PLAN PAYMENTS WITHOUT THE ENTRY OF A FURTHER ORDER OF THE COURT.

If no response objecting to the Notice is timely filed, the Plan Payments and the term(s) for such payments, as set out in the Notice, shall become effective as of the date set out in the Notice for the term of the Forbearance Agreement, unless otherwise ordered by the Court. No further modification of the Chapter 13 Plan will be required to make the Forbearance Agreement effective.

During the Forbearance Period, the Trustee will not make any disbursement of the Current Post-Petition Mortgage Payments to the Mortgage Lender or any payments to the Secured Lender so long as the Trustee receives notice of the Forbearance Agreement in sufficient time to adjust the disbursement.

If the Trustee has disbursed a payment subject to the Forbearance Agreement prior to receiving notice of the Forbearance Agreement, the Trustee shall have no obligation to recover that payment from the Mortgage Lender or Secured Lender. Additionally, the payment so disbursed shall be deemed to be the first payment due to the Mortgage Lender or Secured Lender after the termination of the Forbearance Period.

If the Trustee receives a payment in excess of the adjusted Plan Payment (“Overpayment”) during the Forbearance Period, the Trustee may refund the Overpayment to the Debtor. The Trustee is authorized to retain the Overpayment until the Trustee’s applicable hold time for a payment of the type received has elapsed.

If applicable, the Trustee will send an amended wage directive to the Debtor’s employer.

If the Debtor is not a Conduit Debtor or if the payments to a Secured Lender are disbursed by the Debtor directly to the Secured Lender, the Trustee will not be required to file the Notice described herein. The Debtor may rely on the Forbearance Agreement he/she has with the Mortgage Lender or Secured Lender.

At the end of the term of the Forbearance Agreement, and all extensions thereof, the Debtor may file a Plan Modification to pay any payments that came due during the Forbearance Period as a post-petition mortgage arrearage or a post-petition arrearage to the Secured Lender. This arrearage may be paid over the remaining term of the Plan, pursuant to 11 U.S.C. § 1329, or may be provided for in accordance with the CARES Act or any other applicable statutory provisions.

In determining whether a Debtor is required to become a Conduit Debtor, payments that are subject to a Forbearance Agreement shall not be considered as being in default. However, if the Debtor fails to make all payments required by the Mortgage Lender following the termination of the Forbearance Period, such Debtor may be considered as being in default for the purposes of determining whether the Debtor is required to become a Conduit Debtor.

If a Debtor complies fully with the requirements of a Forbearance Agreement during the term of the Plan and makes all other payments required pursuant to the Plan, the Debtor’s right to obtain a discharge will not be affected by the non-payment of Current Post-Petition Mortgage Payments or other any other payments to a Secured Lender during the Forbearance Period.

It is **SO ORDERED**.

###END OF ORDER###