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**CHAPTER 13 TRUSTEE'S POSITION STATEMENT¹ REGARDING
MORTGAGE LOAN MODIFICATIONS**

Approved Plan Language

If a loan modification is pending on the date of filing, the debtor must provide for payment of the mortgage through the plan on a conduit basis. The Trustee will pay pre-petition arrearages, if any, and include the arrearage amount in the plan calculation, unless the following approved language is included in the Special Provisions Section of the plan:

Debtor(s) have completed and submitted paperwork for a mortgage modification to creditor (insert creditor name) regarding the real property located at (insert address). Trustee will not pay on any mortgage arrearage claim to this creditor until or unless an amended plan or Motion to Modify plan is filed with the Court directing the Trustee to do so.

The Trustee shall make the monthly mortgage payment to creditor through the plan beginning with the first month after the petition filing date.

Debtor(s) shall file a Status Report no later than six months from the date of confirmation indicating the status of the pending loan modification. If the loan modification is successful, the plan continues as confirmed.

If the loan modification is not successful, the Debtor must indicate such in the Status Report and file a Motion to Modify to incorporate funding for the mortgage arrears and directing the Trustee to commence payment on such arrears OR provide for surrender of the real property. Creditor shall have 365 days from the date of the order modifying the plan to file any deficiency claim which shall be paid as a general unsecured claim. If the deficiency claim is not filed within 365 days of the order modifying the plan, then the claim shall be deemed disallowed and discharged upon completion of the plan.

¹ The Trustee reserves the right to proceed in any manner that is appropriate based upon the facts of each case, and as permitted under applicable bankruptcy law.

If the loan modification is still in process within six months after confirmation, the Debtor shall file a subsequent Status Report every 60 days. If the loan modification is neither approved nor denied within one year after confirmation, the Debtor shall file a motion with the Court asking for more time to complete the loan modification process.

Failure to comply with this special provision constitutes a material default under 11 USC §1307(c)(6).

Trial Period Payments

If the modification involves a trial period, a notice of payment change is not effective to implement a trial period payment. The debtor must file a motion to approve and disburse trial period payments. The order approving trial period payments must specify the dates and amounts of the payments the Trustee is to disburse. The order shall further specify that the Trustee will continue to disburse the monthly mortgage payment at the trial period payment amount until entry of a subsequent order of the Court.

Until an order is entered either approving a trial period payment or approving a permanent loan modification, the Trustee will disburse mortgage payments pursuant to the last allowed notice of payment change. Please refer to the Trustee's Position Statement regarding Notices of Payment Change.

Once trial period payments have been completed, the debtor must file a motion to approve the permanent loan modification (see below). In the event the debtor neither accepts nor wishes to pursue the permanent loan modification, the debtor must modify the plan as stated in the Approved Plan Language to either provide for payment of the pre-petition arrearages in the plan or to surrender the real property.

Approval of Mortgage Loan Modifications

If the debtor accepts a permanent mortgage loan modification, the debtor must file a motion to approve loan modification detailing the terms of the agreement including, but not limited to, treatment of any pre-petition arrearage.

The order approving loan modification must specify the effective date and amount of the modified monthly mortgage payment, as well as treatment of any pre-petition arrearage.

Upon entry of the order, the Trustee will pay the modified monthly mortgage payment pursuant to the terms of the order.

In cases confirmed *with* the Approved Plan Language, no motion to modify is necessary. The plan will continue as confirmed. In cases confirmed *without* the Approved Plan Language, a modification of the plan may be necessary if the loan modification causes significant changes in the debtor's financial circumstances. See 11 U.S.C. §1329.

It is the Trustee's position that a post-petition mortgage loan modification that capitalizes the pre-petition arrearages into the loan does not excuse the debtor from the requirements of LBR 3015-1(e)(1). Therefore, if the post-petition mortgage payments were being disbursed through the Trustee's office prior to a loan modification, the mortgage payments must continue to be disbursed through the Trustee's office following a loan modification.