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**CHAPTER 13 TRUSTEE'S POSITION STATEMENT¹ REGARDING
CONDUIT MORTGAGE REQUIREMENT UNDER LBR 3015-1(E)**

Local Bankruptcy Rule (LBR) 3015-1(e) provides for the treatment of real estate mortgages in the Chapter 13 Mandatory Form Plan, as follows: "Unless otherwise ordered by the court, regular monthly payments on a real estate mortgage pursuant to §1322(b)(5) of the Code shall be disbursed by the trustee if the obligation is in arrears as of the petition filing date." See LBR 3015-1(e)(1). If the proposed plan does not comply with LBR 3015-1(e), the Trustee will object to confirmation.

Pursuant to Rule 3001(f) of the Federal Rules of Bankruptcy Procedure, a mortgage Proof of Claim is prima facie evidence of the validity and amount of the claim. If any arrearage is shown in the Proof of Claim (Official Form 410, Part 2, Number 9), the Trustee will consider the loan to be in arrears, regardless of the amount or nature of the arrearage (i.e. installment payments, pre-petition fees, expenses, charges, and escrow shortfall).

Where the pre-petition arrearage includes a de minimis amount, the debtor may choose to object to the mortgage arrearage claim and seek to have the arrearage claim disallowed. If the mortgage arrearage claim is disallowed, then a direct mortgage payment is permitted. ***Any order sustaining or resolving an objection to claim must expressly provide that the mortgage arrearage claim is disallowed.*** For example: "The parties hereby agree Creditor's arrearage claim in the amount of \$_____ shall be disallowed as a claim and not scheduled for payment by the Trustee."

In lieu of filing a formal objection to claim, the debtor may seek to have the mortgage holder amend its Proof of Claim to remove the de minimis amount. The amended claim must be filed prior to permitting the direct payment of the mortgage.

If a motion for relief from stay is filed as a result of the debtor's failure to maintain direct mortgage payments, any resolution of the motion must require the debtor to modify the plan to provide for conduit mortgage payments going forward.

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.