

**CONSUMER BANKRUPTCY**  
**CHAPTER 13 MORTGAGE PAYMENTS:**  
**ADDING A MIDDLEMAN**

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Before the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), bankruptcy courts required debtors to continue making their regular monthly **postpetition** mortgage payments directly to the mortgage lender, while payments for **prepetition** arrears were made inside the plan over the life of the plan, through the Chapter 13 Trustee.

The distinction between **prepetition** payments (payments in arrears as of the date of filing) and **postpetition** payments (regular monthly payments becoming due after the date of filing) can result in confusion in lenders’ payment histories. This confusion, in turn, can result in time-consuming contests before the courts over the accuracy of payment histories. Procedures have been initiated in the Southern District Courts to attempt to alleviate such contests.

Lenders who deal with debtors in Chapter 13 cases pending in the Southern District of Texas will find that the Southern District requires Chapter 13 debtors with cases filed **after** October 17, 2005 (the effective date of BAPCPA) to pay their **postpetition** mortgage payments to the Chapter 13 Trustee’s office for the Trustee to distribute to the mortgage lender. However, in light of the extra administration involved at the Trustee’s office, there may be a two- or three-month delay before the lender begins to receive **postpetition** payments from the Trustee’s office.

**This new procedure also affects cases filed before October 17, 2005. In those cases, if the debtor’s Chapter 13 plan is modified after confirmation, all future mortgage payments must also be paid through the Trustee.**

The following is a scenario in the Southern District: The mortgage lender files a motion for relief from the automatic stay because the lender has not received post-petition mortgage payments for two or three months. The parties resolve the motion by entering into an agreed order which allows the debtor to cure the default by changing or modifying the Chapter 13 plan payments to include the defaulted payments. Once the debtor’s modified plan is approved by the court, the debtor must send all future mortgage payments through the Trustee. Lenders who are not aware of this change may believe that the debtor has defaulted on the mortgage payment, when in fact the payments were already made through the Chapter 13 Trustee’s office.

If the debtor fails to make payments to the Trustee’s office, then the Trustee will send the lender a notice of nonpayment and may file a motion to dismiss the bankruptcy

case. However, it may take some weeks before such actions are taken. Accordingly, from a practical standpoint, if the lender is not receiving payments from the Trustee's office, the lender should first contact the Trustee's office to determine whether the mortgage payments have been made, before seeking further relief such as filing a motion for relief or sending a notice of default under an existing agreed order. Otherwise, needless time and irrecoverable expense may be incurred in pursuit of payments which the debtor has already made to the Trustee, but which the lender has not yet received.

Although other Texas Chapter 13 Trustees are evaluating the establishment of similar procedures, they have not yet changed their programs. However, the Lubbock Division of the Northern District of Texas is currently running a pilot program utilizing the method of payment of postpetition mortgage payments through the Chapter 13 Trustee's office, and the results remain to be seen.

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