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6 **UNITED STATES BANKRUPTCY COURT**
7 **DISTRICT OF ARIZONA**

8 In the matter of:

9 AMENDMENTS TO LOCAL RULES OF
10 BANKRUPTCY PROCEDURE AND
11 MORTGAGE MODIFICATION
12 MEDIATION PROGRAM PROCEDURE

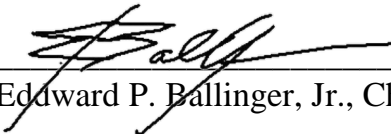
AMENDED GENERAL ORDER 23-4

13 Upon consideration of the ruling of the Ninth Circuit Court of Appeals in *Matter of*
14 *Evans*, 69 F.4th 1101 (9th Cir. 2023), the bankruptcy judges in the District of Arizona have
15 determined that it is necessary to amend Rules 2084-4 and 2084-6 of the Local Rules of
16 Bankruptcy Procedure for the District of Arizona, and section III of the Mortgage
17 Modification Mediation Program Procedures. The Rules and Procedures, as amended, are
18 attached to this General Order¹ and are effective immediately in all cases open as of, or filed
19 after, the date of this Order.

20 **IT IS SO ORDERED.**

21 Dated this 25th day of October, 2023.

22 FOR THE COURT:

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24 _____
25 Honorable Eddward P. Ballinger, Jr., Chief Judge
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¹ The attachment includes redline and clean copies of the Amended Rules and Procedures.

Rule 2084-4. Plan

(a) Plan Requirements. Local Form 2084-4 (Chapter 13 Plan) must be used for all original, amended, or modified plans. All sections of the plan must be completed, or if not applicable marked with N/A or NONE. The treatment of all known secured or priority creditors must be disclosed in the plan. Varying provisions must be specific and consistent with the Code, FRBP or Local Rules.

(b) Defaulted Payments on Claims Secured by Security Interests in Debtor's Principal Residence. This subsection applies to all plans filed in this District when the debtor is in default of obligations secured by a consensual non-HOA security interest in the debtor's principal residence.

(1) Conduit Payments. Conduit payments must be [set forth in the plan form and made by the debtor to the trustee.](#) ~~through the plan.~~ A debtor may be excused from making conduit payments only by a Court order. The debtor may seek to be excused from conduit payments by:

(A) Obtaining a Court order after notice to the trustee and holder or servicer of the secured obligation; and

(B) Filing an amended or modified plan to eliminate future conduit payments, if necessary.

(2) Debtor's Duties:

Unless the Court has entered an order allowing the debtor to make direct payment to the real property creditor:

(A) Debtor must complete the Mortgage Creditor Checklist (Local Form 2084-4A) and Authorization to Release Information (Local Form 2084-4B), and serve these Forms on the trustee – not the Court – within seven (7) days of the petition date.

(B) Debtor or debtor's counsel must serve on the trustee a copy of all correspondence, notices, statements, payment coupons, escrow notices and default notices concerning any post-petition adjustment to the monthly mortgage payment or interest rate immediately on receipt or creation of that document.

(C) Debtor must ~~include remit to the trustee~~ the regular post-petition payment amount owing to the real property creditor along with the trustee's fee of 10%. ~~in the regular plan payments.~~

(D) In the event the monthly conduit payment is changed due to either a change in escrow requirements or a change in an adjustable interest rate,

debtor must decrease or increase the plan payment by the same amount including the trustee's fee of 10%.

(3) Trustee's Duties:

(A) ~~Pursuant to~~ Under 28 U.S.C. § 586 and 11 U.S.C. § 1326, if a plan is confirmed, the trustee is authorized to retain ~~deduct from any payments collected under the plan~~ the authorized percentage fee for all conduit payments disbursed in the case.

(B) Pursuant to the Mortgage Modification Mediation (“MMM”) Procedures, if the debtor has been referred to the MMM Program, the trustee may retain the authorized percentage fee for all conduit payments disbursed after entry of the MMM referral order.

(C) The trustee's obligations under this Local Rule shall not render the trustee subject to any rules and regulations governing mortgage servicers.

(DB) The trustee will disburse conduit payments regardless of whether the Court has confirmed a plan or the real property creditor has filed a proof of claim. The trustee is not required to distribute a partial payment to a real property creditor.

(EC) If the trustee does not have sufficient funds to pay all required monthly conduit disbursements and any required adequate protection payments, the trustee will internally allocate the funds on a pro rata basis to the creditors entitled to disbursements. The trustee will retain the amount allocated to the conduit until there are sufficient funds to make a full conduit payment. The trustee is authorized to pay partial adequate protection payments.

(FD) The trustee may rely on the debtor's representation of the amount of the conduit payment pending notice from the real property creditor of a different amount.

(GE) Within twenty-eight (28) days after the trustee has received any notice of a change in the monthly conduit payment, the trustee will file a notice of the terms of the change with the Court and provide notice of that change to debtor, debtor's attorney and real property creditor. The notice will be treated as an amendment to the creditor's real property proof of claim and a modification to the debtor's plan under Code §§ 1323 or 1329. A party in interest will have an opportunity to object within twenty-one (21) days after the trustee files it. After the filing of the notice, the trustee is authorized to disburse the new monthly conduit payment. In the event of an objection to the notice, the objecting party must set the objection for hearing. Unless a Court order is entered sustaining the objection, the trustee is authorized to disburse the new monthly conduit payment.

(HF) If the amount of the new conduit payment jeopardizes the feasibility of the plan, the trustee may file a motion to modify the plan or seek dismissal.

(IG) The trustee shall comply with FRBP 3002.1(f).

(4) Real Property Creditor's Duties:

(A) The real property creditor must file a proof of claim (Official Form B410) with attachments, within seventy (70) days after the filing of the petition or conversion of the case.

(B) The real property creditor must comply with FRBP 3002.1 and file Official Form B410s-1 or Official Form B410s-2, as applicable.

(C) At least sixty (60) days before a change of name or address where payments are to be made, the real property creditor must file a notice of the change on the claims register, and serve the trustee, debtor and debtor's counsel. If a transfer of a claim is other than for security, the transferee must file official forms B2100A and B2100B, pay any applicable fee, and serve the official forms on the trustee, debtor, and debtor's counsel.

(D) The real property creditor must immediately serve the trustee with copies of correspondence, notices, statements, payment coupons, escrow notices and default notices concerning any change to the monthly payment or interest rate.

(E) Confirmation of a plan imposes an affirmative duty and legal obligation on the real property creditor to do all of the following:

(i) Apply payments on the arrearage in accordance with the plan. Unless ordered otherwise, the arrearage shall be deemed cured and paid in full upon the entry of the discharge order.

(ii) Treat the debtor's account as current upon confirmation of the plan, thereby precluding the imposition of late payment charges or other default-related fees based solely on any pre-petition default.

(iii) Apply the conduit payments to the month in which they were designated under the plan. Even if payments are placed into a suspense, forbearance or similar account, they will be deemed applied to the debt pursuant to this subsection.

(iv) The real property creditor cannot impose a late charge on conduit payments paid or tendered to the real property creditor during the contractual grace period. For purposes of determining whether a late charge may be imposed, a conduit payment tendered by the trustee must be applied to the post-petition installment payment then due.

(v) Conduit payments received timely by the trustee in accordance with these procedures shall be deemed payments made timely under the terms of the mortgage.

(F) The real property creditor must comply with FRBP 3002.1(g).

(5) Interim Mortgage Payments. The trustee may pay an amount not exceeding two full regular monthly payments inclusive of escrow deposits. These payments shall reimburse the real property creditor for post-petition delinquencies that may accrue until the trustee begins payments to that creditor. Once the trustee begins disbursements that include conduit payments, those payments shall constitute current payments on the mortgage regardless of the contractual due date.

(6) Effect of Plan Completion. If the debtor pays the arrearage, together with any interest as specified in the confirmation order, then all pre-petition defaults under the note and other loan documents will be deemed cured.

(c) Amended Plan. Other than the original plan, a plan filed before entry of a confirmation order must be titled “Amended Plan.”

(d) Modified Plan. A plan filed after entry of a confirmation order must be titled as a “Modified Plan.” A modified plan must conform with Local Form 2084-4, and account for disbursements made to creditors.

(e) Service of Plan. The debtor must file each plan using the applicable ECF filing event so that service can be effected by the Clerk or Bankruptcy Noticing Center.

(f) Dismissal for Failure to Properly File. If the debtor fails to file any plan, the trustee may lodge and serve a proposed dismissal order. If the deficiency is not cured or a hearing is not requested within fourteen (14) days of service of the proposed dismissal order, the Court may dismiss the case without further notice or a hearing.

[Notes 2023: This rule has been amended in response to *Matter of Evans*, 69 F.4th 1101 \(9th Cir. 2023\).](#)

Notes 2022: The language of subsection (b) is updated to clarify that the conduit payment requirement applies to defaulted obligations secured by a consensual non-HOA security interest in the debtor’s principal residence, not just to mortgage obligations. This rule is not intended to apply to HOA liens, tax liens, or judicial liens. This subsection is also amended to limit the notice required for motions to waive conduit payments. Other technical changes made. See also FRBP 3002.1.

Rule 2084-6. Adequate Protection Payments

(a) Plan Proposal. ~~A plan~~The plan form must include monthly adequate protection payments to creditors secured by depreciating personal property, beginning with month one. Unless ordered otherwise, the debtor shall not make adequate protection payments directly to any creditor or reduce the amount of the plan payments for any amount attributable to the adequate protection payments.

(b) Trustee Payment. The trustee is authorized to make pre-confirmation adequate protection payments to one or more secured creditors if:

- (1) The plan provides for payment of the adequate protection payments;
- (2) The debtor's Schedule D discloses the debt and describes the collateral;
- (3) A secured proof of claim is filed, with documentation evidencing a perfected purchase money security interest in the personal property;
- (4) The debtor or creditor sends a request to the trustee for payment of pre-confirmation adequate protection payments set forth in the plan; and
- (5) The personal property collateral is depreciating and the amount of the adequate protection payments approximates the depreciation, which is generally at least 1% of the value of the property per month.

(c) Payment Without Prejudice. Payment of pre-confirmation adequate protection is without prejudice to the secured creditor's right to object to the plan, or seek a determination on to the value of the secured claim or amount necessary to provide adequate protection.

(d) Timing of Payments. ~~The trustee is entitled to take the percentage fee from all adequate protection payments received or collected.~~ To the extent the trustee has funds on hand, the trustee must begin making pre-confirmation adequate protection payments if the trustee receives the request more than fourteen (14) days before the trustee's scheduled monthly distribution; otherwise the trustee will distribute adequate protection payments beginning with the next month's distribution. If the debtor has paid an insufficient amount to pay adequate protection payments in full, the trustee will pay the creditors in pro rata, as modified by LR 2084-4(b)(3)(C).

(e) Payment on Confirmation. If the case trustee has not made pre-confirmation adequate protection payments, the trustee will disburse the accumulated adequate protection payments after-upon plan confirmation. ~~TheIf a plan is confirmed, the trustee is authorized to retain the trustee's authorized percentage fee for all accumulated adequate protection payments disbursed after confirmation of the plan in the case.~~

(f) Payment on Pre-Confirmation Dismissal. If the Court dismisses the case before plan confirmation, the trustee will pay the creditor any adequate protection payments due and owing, in accordance with (b) above or Court Order, from funds received by the trustee under Code § 1326(a)(1)(A), less ~~the statutory trustee's fee and~~ allowed administrative expenses.

Local Rules and MMM Procedures_Redline 10/23/23

If the trustee is required to pay adequate protection payments to more than one creditor but the trustee has insufficient funds to pay them in full, the trustee shall pay the creditors pro rata.

[Notes 2023: This rule has been amended in response to *Matter of Evans*, 69 F.4th 1101 \(9th Cir. 2023\).](#)

MMM Procedures

III. General Duties of Parties

- (A) Conduit Payment Requirement in a Chapter 13 Case – A Debtor participating in the MMM Program is required to pay all post-petition installment payments to Lender through the Chapter 13 trustee as conduit payments including, but not limited to, ongoing mortgage payments, trial loan modification payments, final loan modification payments, Estimated Monthly Payments, arrearages, and post-petition fees and costs (if any).
- (B) Payment of Chapter 13 Trustee Fee – In Chapter 13 cases, a Debtor who seeks referral to the MMM Program consents to pay the Chapter 13 trustee the statutory trustee fee for all conduit disbursements made by the Chapter 13 trustee to the Lender after entry of the MMM referral order.
- ~~(B)~~(C) Duration of MMM Program – The entire MMM proceedings in a case shall be completed no later than one hundred and fifty (150) days after entry of the Order referring the case to the MMM Program, unless agreed to by the parties on the MMM Portal or extended by an order of the Court. If the parties reach a trial loan modification agreement through the MMM Program, this deadline shall be automatically extended for sixty (60) days after the last trial loan modification payment.
- ~~(C)~~(D) Good Faith – All Required Parties shall act in good faith throughout the entirety of the MMM Program. If any party fails to comply timely and in full with the deadlines and requirements of the MMM Program, then upon motion filed by a party or the trustee, the Court may impose appropriate sanctions after notice and a hearing.
- ~~(D)~~(E) Compliance with Bankruptcy Code and Rules – Nothing in these procedures shall relieve Required Parties or any other party in interest from complying with orders of the Court, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, or any local rules or administrative rules.

Rule 2084-4. Plan

(a) Plan Requirements. Local Form 2084-4 (Chapter 13 Plan) must be used for all original, amended, or modified plans. All sections of the plan must be completed, or if not applicable marked with N/A or NONE. The treatment of all known secured or priority creditors must be disclosed in the plan. Varying provisions must be specific and consistent with the Code, FRBP or Local Rules.

(b) Defaulted Payments on Claims Secured by Security Interests in Debtor's Principal Residence. This subsection applies to all plans filed in this District when the debtor is in default of obligations secured by a consensual non-HOA security interest in the debtor's principal residence.

(1) Conduit Payments. Conduit payments must be set forth in the plan form and made by the debtor to the trustee. A debtor may be excused from making conduit payments only by a Court order. The debtor may seek to be excused from conduit payments by:

(A) Obtaining a Court order after notice to the trustee and holder or servicer of the secured obligation; and

(B) Filing an amended or modified plan to eliminate future conduit payments, if necessary.

(2) Debtor's Duties:

Unless the Court has entered an order allowing the debtor to make direct payment to the real property creditor:

(A) Debtor must complete the Mortgage Creditor Checklist (Local Form 2084-4A) and Authorization to Release Information (Local Form 2084-4B), and serve these Forms on the trustee – not the Court – within seven (7) days of the petition date.

(B) Debtor or debtor's counsel must serve on the trustee a copy of all correspondence, notices, statements, payment coupons, escrow notices and default notices concerning any post-petition adjustment to the monthly mortgage payment or interest rate immediately on receipt or creation of that document.

(C) Debtor must remit to the trustee the regular post-petition payment amount owing to the real property creditor along with the trustee's fee of 10%.

(D) In the event the monthly conduit payment is changed due to either a change in escrow requirements or a change in an adjustable interest rate, debtor must decrease or increase the plan payment by the same amount including the trustee's fee of 10%.

(3) Trustee's Duties:

(A) Pursuant to 28 U.S.C. § 586 and 11 U.S.C. § 1326, if a plan is confirmed, the trustee is authorized to retain the authorized percentage fee for all conduit payments disbursed in the case.

(B) Pursuant to the Mortgage Modification Mediation (“MMM”) Procedures, if the debtor has been referred to the MMM Program, the trustee may retain the authorized percentage fee for all conduit payments disbursed after entry of the MMM referral order.

(C) The trustee’s obligations under this Local Rule shall not render the trustee subject to any rules and regulations governing mortgage servicers.

(D) The trustee will disburse conduit payments regardless of whether the Court has confirmed a plan or the real property creditor has filed a proof of claim. The trustee is not required to distribute a partial payment to a real property creditor.

(E) If the trustee does not have sufficient funds to pay all required monthly conduit disbursements and any required adequate protection payments, the trustee will internally allocate the funds on a pro rata basis to the creditors entitled to disbursements. The trustee will retain the amount allocated to the conduit until there are sufficient funds to make a full conduit payment. The trustee is authorized to pay partial adequate protection payments.

(F) The trustee may rely on the debtor’s representation of the amount of the conduit payment pending notice from the real property creditor of a different amount.

(G) Within twenty-eight (28) days after the trustee has received any notice of a change in the monthly conduit payment, the trustee will file a notice of the terms of the change with the Court and provide notice of that change to debtor, debtor’s attorney and real property creditor. The notice will be treated as an amendment to the creditor’s real property proof of claim and a modification to the debtor’s plan under Code §§ 1323 or 1329. A party in interest will have an opportunity to object within twenty-one (21) days after the trustee files it. After the filing of the notice, the trustee is authorized to disburse the new monthly conduit payment. In the event of an objection to the notice, the objecting party must set the objection for hearing. Unless a Court order is entered sustaining the objection, the trustee is authorized to disburse the new monthly conduit payment.

(H) If the amount of the new conduit payment jeopardizes the feasibility of the plan, the trustee may file a motion to modify the plan or seek dismissal.

(I) The trustee shall comply with FRBP 3002.1(f).

(4) Real Property Creditor's Duties:

(A) The real property creditor must file a proof of claim (Official Form B410) with attachments, within seventy (70) days after the filing of the petition or conversion of the case.

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(D) The real property creditor must immediately serve the trustee with copies of correspondence, notices, statements, payment coupons, escrow notices and default notices concerning any change to the monthly payment or interest rate.

(E) Confirmation of a plan imposes an affirmative duty and legal obligation on the real property creditor to do all of the following:

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(iii) Apply the conduit payments to the month in which they were designated under the plan. Even if payments are placed into a suspense, forbearance or similar account, they will be deemed applied to the debt pursuant to this subsection.

(iv) The real property creditor cannot impose a late charge on conduit payments paid or tendered to the real property creditor during the contractual grace period. For purposes of determining whether a late charge may be imposed, a conduit payment tendered by the trustee must be applied to the post-petition installment payment then due.

(v) Conduit payments received timely by the trustee in accordance with these procedures shall be deemed payments made timely under the terms of the mortgage.

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(5) Interim Mortgage Payments. The trustee may pay an amount not exceeding two full regular monthly payments inclusive of escrow deposits. These payments shall reimburse the real property creditor for post-petition delinquencies that may accrue until the trustee begins payments to that creditor. Once the trustee begins disbursements that include conduit payments, those payments shall constitute current payments on the mortgage regardless of the contractual due date.

(6) Effect of Plan Completion. If the debtor pays the arrearage, together with any interest as specified in the confirmation order, then all pre-petition defaults under the note and other loan documents will be deemed cured.

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Rule 2084-6. Adequate Protection Payments

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(b) Trustee Payment. The trustee is authorized to make pre-confirmation adequate protection payments to one or more secured creditors if:

- (1) The plan provides for payment of the adequate protection payments;
- (2) The debtor's Schedule D discloses the debt and describes the collateral;
- (3) A secured proof of claim is filed, with documentation evidencing a perfected purchase money security interest in the personal property;
- (4) The debtor or creditor sends a request to the trustee for payment of pre-confirmation adequate protection payments set forth in the plan; and
- (5) The personal property collateral is depreciating and the amount of the adequate protection payments approximates the depreciation, which is generally at least 1% of the value of the property per month.

(c) Payment Without Prejudice. Payment of pre-confirmation adequate protection is without prejudice to the secured creditor's right to object to the plan, or seek a determination on to the value of the secured claim or amount necessary to provide adequate protection.

(d) Timing of Payments. To the extent the trustee has funds on hand, the trustee must begin making pre-confirmation adequate protection payments if the trustee receives the request more than fourteen (14) days before the trustee's scheduled monthly distribution; otherwise the trustee will distribute adequate protection payments beginning with the next month's distribution. If the debtor has paid an insufficient amount to pay adequate protection payments in full, the trustee will pay the creditors in pro rata, as modified by LR 2084-4(b)(3)(C).

(e) Payment on Confirmation. If the case trustee has not made pre-confirmation adequate protection payments, the trustee will disburse the accumulated adequate protection payments upon plan confirmation. If a plan is confirmed, the trustee is authorized to retain the authorized percentage fee for all adequate protection payments disbursed in the case.

(f) Payment on Pre-Confirmation Dismissal. If the Court dismisses the case before plan confirmation, the trustee will pay the creditor any adequate protection payments due and owing, in accordance with (b) above or Court Order, from funds received by the trustee under Code § 1326(a)(1)(A), less allowed administrative expenses. If the trustee is required to pay adequate protection payments to more than one creditor but the trustee has insufficient funds to pay them in full, the trustee shall pay the creditors pro rata.

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- (C) Duration of MMM Program – The entire MMM proceedings in a case shall be completed no later than one hundred and fifty (150) days after entry of the Order referring the case to the MMM Program, unless agreed to by the parties on the MMM Portal or extended by an order of the Court. If the parties reach a trial loan modification agreement through the MMM Program, this deadline shall be automatically extended for sixty (60) days after the last trial loan modification payment.
- (D) Good Faith – All Required Parties shall act in good faith throughout the entirety of the MMM Program. If any party fails to comply timely and in full with the deadlines and requirements of the MMM Program, then upon motion filed by a party or the trustee, the Court may impose appropriate sanctions after notice and a hearing.
- (E) Compliance with Bankruptcy Code and Rules – Nothing in these procedures shall relieve Required Parties or any other party in interest from complying with orders of the Court, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, or any local rules or administrative rules.