

**TRUSTEE’S SUGGESTED LANGUAGE FOR USE IN THE NEW CHAPTER 13 PLAN FORM  
EFFECTIVE 12/01/17 IN THE CHARLOTTESVILLE, HARRISONBURG, AND LYNCHBURG  
DIVISIONS OF THE WESTERN DISTRICT OF VIRGINIA**

Herbert L. Beskin, Chapter 13 Trustee, 30 January, 2018

**1. For conduit plans [Trustee is paying the ongoing mortgage]:**

**Part 1.3 - Check box 1.3 on first page of plan.**

**Part 3.1 – Include treatment of the mortgage claim here as follows:**

- a. for “collateral” please include the property address
- b. for “current installment payment” please use the exact amount (compare to claim if filed)
- c. for “disbursed by” please indicate the “Trustee”
- d. for “amount of arrears” please include prepetition, gap, and post-petition arrears
- e. do not provide for interest on arrears unless required by the Deed of Trust
- f. show “pro rata” for plan payment on arrears portion
- g. for “estimated total payments by trustee” include the following:
  - (i) total of all ongoing mortgage payments
  - (ii) total of all arrears (prepetition, gap payments, and other post-petition arrears)

**Part 8.1 - Include the following special language. *(This language ensures the accuracy of these payments, and THE TRUSTEE WILL NOT RECOMMEND CONFIRMATION OF ANY CONDUIT PLAN THAT DOES NOT INCLUDE THIS LANGUAGE. )***

Pursuant to Part 3.1, the Trustee shall pay the designated post-petition mortgage payments through the plan. These mortgage payments shall be classified and paid as follows:

- (1) Pre-petition Arrears: The prepetition arrears are \$\_\_\_\_\_.
- (2) GAP Payments: The first two post-petition mortgage payments shall be disbursed pro-rata by the Trustee as post-petition arrears, including late fees, in the approximate amount of \$\_\_\_\_\_, for the months of \_\_\_\_\_ through and including \_\_\_\_\_.
- (3) Other Post-petition Arrears: The following additional post-petition default shall be cured and disbursed by the Trustee, approximately \$\_\_\_\_\_, for the months of \_\_\_\_\_ through and including \_\_\_\_\_.
- (4) Ongoing Payments: The regular post-petition mortgage payments shall be disbursed by the Trustee beginning with the mortgage payment due for the month of \_\_\_\_\_, and continuing for approximately \_\_\_\_\_ months; the total number of such payments to be made by the Trustee will usually equal the number of monthly plan payments being made by the Debtor(s) to the Trustee, unless the plan pays off early.

(5) Disbursement of ongoing post-petition mortgage payments from the Chapter 13 Trustee may not begin until an allowed claim on behalf of the mortgagee has been filed. At the completion of the term of the plan, it is predicted that the Debtor(s) shall resume monthly mortgage payments directly pursuant to the terms of the mortgage contract beginning with the payment due in (month), (year).

2. **Part 4.2:** Use 8% for conduit plans [Trustee paying the ongoing mortgage], and 10% for all other plans.
3. **Part 5.1:** Trustee suggests that you check boxes 2 and 3. This will provide an estimated payout percentage and amount, and make it clear that unsecured creditors are getting whatever is remaining after other required disbursements have been made. Note: As of 1/30/18, the issue of whether the debtors need only check box 3 is currently under consideration by Judge Connelly
4. **Part 8.1:**

**NOTE REGARDING PART 3.1: POST-PETITION MORTGAGE FEES:**

Any fees, expenses, or charges accruing on claims set forth in Section 3.1 of this Plan which are noticed to the debtors pursuant to Bankruptcy Rule 3002.1(c) shall not require modification of the debtors' plan to pay them. Instead, any such fees, expenses, or charges shall, if allowed, be payable by the debtors outside the Plan unless the debtor chooses to modify the plan to provide for them.

**NOTE REGARDING PART 3.5 (SURRENDER OF COLLATERAL): *(THE TRUSTEE WILL PROBABLY OBJECT IF THIS PROVISION IS NOT INCLUDED IN PLANS WHERE PROPERTY IS BEING SURRENDERED IN PART 3.5.)***

Any unsecured proof of claim for a claim of deficiency that results from the surrender and liquidation of collateral noted in Part 3.5 of this Plan must be filed by the earlier of the following or such claim shall be forever barred: (1) within 180 days of the date of the first confirmation order confirming a plan providing for the surrender of said collateral, (2) within the time period for the filing of an unsecured deficiency claim as established by any Order granting relief from the automatic stay with respect to said collateral. Said unsecured proof of claim for a deficiency must include appropriate documentation establishing that the collateral surrendered has been liquidated, and the proceeds applied, in accordance with applicable state law.

**NOTE REGARDING PART 4.3 (DEBTORS' ATTORNEY'S FEES):**

The \$\_\_\_\_\_ in Debtor(s)' attorney's fees to be paid by the Chapter 13 Trustee are broken down as follows:

- (i) \$\_\_\_\_\_: Fees to be approved, or already approved, by the Court at initial plan confirmation;
- (ii) \$\_\_\_\_\_: Additional pre-confirmation or post-confirmation fees already approved by the Court by separate order or in a previously confirmed modified plan;
- (iii) \$\_\_\_\_\_: Additional post-confirmation fees being sought in this modified plan, which fees will be approved when this plan is confirmed.

**NOTE REGARDING PARTS 3.2 AND 3.3 [ADEQUATE PROTECTION PAYMENTS]:**

The debtors propose to make adequate protection payments other than as provided in Local Rule 4001-2. Unless otherwise provided herein, the monthly payment amounts listed in Parts 3.2 and 3.3 of this Chapter 13 Plan will be paid as adequate protection beginning prior to confirmation to the holders of allowed secured claims.

**NOTE REGARDING TREATMENT AND PAYMENT OF CLAIMS *(Note: This is the same language as that contained in paragraph 8 of the former WD of VA Chapter 13 form plan in use until 11/30/17. This language may save you from having to object to certain claims.)***

- All creditors must timely file a proof of claim to receive any payment from the Trustee.
- If a claim is scheduled as unsecured and the creditor files a claim alleging the claim is secured but does not timely object to confirmation of the Plan, the creditor may be treated as unsecured for purposes of distribution under the Plan. This paragraph does not limit the right of the creditor to enforce its lien, to the extent not avoided or provided for in this case, after the debtor(s) receive a discharge.
- If a claim is listed in the Plan as secured and the creditor files a proof of claim alleging the claim is unsecured, the creditor will be treated as unsecured for purposes of distribution under the Plan.
- The Trustee may adjust the monthly disbursement amount as needed to pay an allowed secured claim in full.