

**REQUIRED PROVISION FOR ALL MODIFICATION ORDERS WHERE THE DEBTOR(S) ARE
ADDING TO BE PAID THROUGH THE PLAN POST PETITION MORTGAGE ARREARS**
(Revised 3/18/16)

The following provision is required for all Modification Orders/Modified Chapter 13 Plans for cases pending in the Tyler, Marshall, Lufkin, and Beaumont Divisions of the Eastern District of Texas where the Debtor(s) are adding to be paid through the Plan post-petition mortgage arrears:

Post-Petition Mortgage Arrears:

In addition to pre-petition arrearage, if any, as set forth in the Debtor(s)' Chapter 13 Plan, [Name of Creditor] shall be paid its post-petition arrearage in the amount of \$ _____. This post-petition arrearage amount shall be subordinated to the existing payment rights of the junior classes under the Debtor(s)' previously confirmed Chapter 13 plan. The Trustee shall accrue without interest these future plan distributions attributable to said Creditor as set forth herein that are not otherwise supported by a proof of claim until such time as the creditor's allowed claim is amended to reflect the amount of the post-petition arrears or until further order of this Court. Upon the filing of such a claim by said Creditor, the Trustee is authorized to disburse the escrowed amount and all future disbursements as contemplated herein to said creditor pursuant to this provision.

Generally, the Debtor(s) must certify to the Court that they have made all of the post-petition direct payments (including mortgage payments) have been made as a condition for the Debtor(s) proposed Plan to be confirmed. See TXEB Local Form 3015-c (Declaration of Debtors Under Penalty of Perjury Regarding Status of Post-Petition Obligations as of Chapter 13 Plan Confirmation Hearing). Accordingly, this provision is not applicable to the original Confirmation Orders.

However, in the event the Court allows the Debtor(s) to modify their Chapter 13 plan to add some missed post-petition mortgage payments (usually in the form of an Agreed Order in relation to the Mortgage Company's Motion to Lift Stay), the Court will require this provision in such a Modification Order to assure that the payment of the post-petition mortgage arrearage claim will be subordinated to the dividend of the junior right creditors (ie, unsecured creditors). In other words, the Court will not allow the Debtor(s) to cure such a post-petition mortgage payment default at the expense of the unsecured creditors by either reducing the previous dividend to the unsecured creditors or delay the payment of this dividend to the unsecured creditors by paying such prior to the payment of the post-petition mortgage arrearage claim. This provision also notes that the Trustee is to escrow the disbursements to this claim until such time as the mortgage creditor files a proof of claim to support the payment of this post-petition mortgage arrearage claim.