

## **Moratoriums & Post-Confirmation Modified Plans**

### **Please note:**

*A moratorium is a form of a modified plan, thus regardless of a moratorium or modified plan being filed, the case may not run longer than the requirements in 11 U.S.C. § 1329(c) & (d).*

*The Trustee's office deals with a high volume of modified plans and moratoriums. Please allow 72 hours for a response to an emailed request for the review of a moratorium or modified plan. Additionally, if a moratorium or modified plan is filed, the Trustee's office will contact you if there is an issue. Please do not contact the Trustee's office to review a filed moratorium or modified plan as it will further delay review.*

### **Moratoriums**

A moratorium is a temporary suspension of payments to the Trustee and is usually granted for a two or three month period. When a moratorium is granted, the payments are not forgiven, but deferred to the end of the plan.

The motion for a moratorium must be filed with a proposed order and provide appropriate notice. See SCLBR 9013-4, Exhibit A. The motion must include:

1. An explanation of why the moratorium is necessary;
2. The number of months requested;
3. The date the payments will resume.

For conduit cases, please use the forms located at [www.scb.uscourts.gov/local-forms](http://www.scb.uscourts.gov/local-forms). **Please submit conduit moratorium requests to the appropriate post-confirmation case administrator prior to the filing of the request.**

The Trustee retains the discretion to object to the motion for any reason, but generally objects to the motion for the following reasons:

1. The moratorium is longer than three months;
2. A prior moratorium has already been granted;
3. The moratorium was filed within 6 months of confirmation;
4. The moratorium does not cure the past due amount (check this on 13network.com).

*Please contact the relevant case administrator or staff attorney to discuss your specific case if you have questions as to whether the Trustee will object.*

Example Order for a Non-Conduit Moratorium (please review the local forms for the conduit form order):

## ORDER

This matter is before the Court on the Debtor's request for a Moratorium.

Following consideration of this matter it is

**ORDERED** that the Moratorium requested is allowed. However, should the Debtor fail to make the regular monthly payments due in February 2017, this case may be dismissed, without further notice or hearing upon the request of the Trustee.

**AND IT IS SO ORDERED.**

**Pay orders:** If the debtor is on a pay order, we do not stop payroll deductions, but will review the case for possible refund. You may request that the wage order be vacated, but please be advised the Trustee will not reinstate the wage order once vacated.

If the Trustee has no objection to the moratorium, we will file Trustee's Notice of Consent after the objection time runs on the motion. After the order has been signed and filed, we will write the debtor to advise the moratorium was granted and when their next payment will be due.

**IF THE DEBTOR FAILS TO MAKE PAYMENTS BY THE RESUME DATE THE CASE MAY BE DISMISSED WITHOUT FURTHER NOTICE OF HEARING.**

### Post-Confirmation Modified Plans

Please consult SC LBR 3015-2(b) for the forms and noticing requirements. In the form motion, please be sure to include:

1. Changes made to the plan;
2. Reason(s) for the change;
3. Specific creditor(s) directly affected by the change.

Generally, the Trustee will object if amended schedules are not filed to support a change lowering the plan payment. The Trustee will also generally object if the terms of the modified plan are retroactive.

Please be advised that the stipulation procedure outlined in SC LBR 3015-2(c) cannot be used to lower the plan payment. A modified plan must be filed, with schedules in support.

Finally, please be advised that the Trustee will file a Notice of Plan Payment Change to increase the payment in a conduit case, if necessary, if a Notice of Mortgage Payment Change requires the plan payment to increase. **It is the debtor's responsibility to timely review the Notice of Mortgage Payment Change and file the appropriate objections or motion to resolve the issue if there is an error in the escrow analysis.** The Trustee will not stop disbursement on a mortgage, or refrain from filing a motion to dismiss, solely on communication from the debtor that there is an issue with the mortgage payment.